

ADDENDUM NUMBER 2
COUNTY OF FRESNO
REQUEST FOR PROPOSAL (RFP)
NUMBER: 962-5062

Closing Date: 2:00 p.m. on August 16, 2012

1. The provisions of the RFP and any previous addendum shall be superseded if in conflict with any provision of this Addendum, to the extent of any such conflict.
2. The RFP is issued by the County of Fresno in conjunction with the City of Fresno. The Proposer acknowledges and agrees that City and County shall not be jointly or severally liable under the RFP and any contract awarded thereunder. City and County may cancel the RFP in whole or in part.
3. **Bid Deposit:** No proposal will be considered for award unless the Proposer has complied with the following:

Proposers must submit a deposit in the amount of **ten thousand dollars (\$10,000)** with their proposal in the form of a Certified or Cashier's Check, an irrevocable letter of credit, or a certificate of deposit, or a bidder's bond of a corporate surety, authorized by the California Insurance Commissioner to do business in the State of California, payable and acceptable to the City of Fresno. Such deposit shall be retained by the City of Fresno as a guarantee that the Proposer, if awarded all or part of the proposal, will, within 10 calendar days from the date the Notice of Award is mailed to the Proposer, execute and return a Contract furnished by the City. All deposits will be returned when the Contract has been executed for all items awarded, or if all proposals are rejected.

A proposal without a proper deposit will automatically be rejected.

4. **Contact Authorization:** The County's Purchasing Agent authorizes Proposers to contact City's Purchasing Manager with any questions other than those about the RFP process. All contacts with potential Proposers will be logged by both the City's Purchasing Manager and the County's Purchasing Agent with the identity of the Proposer, the question and the response provided. The City and County will share this information with the other on the same day to ensure consistency in responses. Any written communication to the County Purchasing Agent, whether or not required under this RFP, shall include a copy to the City's Purchasing Manager, Jason MacDonald. The contact information for the City's Purchasing Manager is as follows:

Office of the Purchasing Manager
Attn: Jason MacDonald
Building "A," 2101 "G" Street
Fresno, California, 93706

E-mail: Jason.MacDonald@fresno.gov
Fax: (559) 488-1069
Phone: (559) 621-1332

The City's Purchasing Manager and County's Purchasing Agent shall determine the materiality of Proposer's question in deciding whether to respond by addendum. Any

revisions to the RFP will be made only by written addendum, signed by both the County and the City, duly issued and distributed. The City and County will not be responsible for any verbal explanations or interpretations including, without limitation, those given during the Facilities Tour and Vendor Conference.

5. **Availability of Proposals for Review:** Proposals will be opened and publicly read at the Closing Date and Time set forth in the Notice of the RFP, as may be modified by any addendum. All proposal information will be available for review 5 business days prior to any contract award. Neither County, nor City assumes any responsibility for the confidentiality of information offered in a proposal.
6. **Participation and Replacement Page:** In addition to the County and City, Bidder may agree to extend the terms of the resulting contract to other political subdivisions, municipalities and tax-supported agencies. Such participating governmental bodies shall make purchases in their own name, make payment directly to Bidder, and be liable directly to the Bidder, holding the County of Fresno and City of Fresno harmless.

Page 16, PARTICIPATION, of the RFP is replaced in its entirety with REV. PAGE 16 located on Page 14 of this Addendum.

7. **Local Preference - City and Additional Form to be Submitted by Proposers with their Proposal, if Applicable:** In City's evaluation of the cost proposal, City's 5% local preference will be afforded "local firms" under Fresno Municipal Code Section 4-109, Local Preference in Contracting for Services. Except for those contracts funded by the federal or state government when such funding would be jeopardized because of this preference, the City of Fresno extends a five percent (5%) preference for a local firm in evaluating proposals for award. The amount of the preference shall be equal to the amount of the percentage applied to the lowest proposal price from a firm other than a local firm, if the Proposer submitting the lowest proposal price is not a local firm. The Proposer shall certify, under penalty of perjury, that the Proposer qualifies as a local firm. The preference is waived if the certification does not appear on the proposal.

"Local firm" shall mean a firm with a fixed primary or branch office within a twenty-five mile radius of Fresno City Hall, located at 2600 Fresno Street in the City of Fresno, and a majority of the work on the project will be performed by employees who are permanently assigned to such office prior to the City requesting proposals for the project and whose regular duties would include local work on other than City projects.

Proposers shall submit the form, CERTIFICATION FOR LOCAL PREFERENCE, with their proposal if they seek the benefit of local preference. The form is included in this Addendum on Page 15.

8. **Local Preference - County:** In County's evaluation of the proposals, when all other factors being equal, the County will determine that it is in its best interest to award to the Fresno County vendor.
9. **Tie Bids:** All other factors being equal and if neither or both are Fresno County vendors, the contract may be awarded by the flip of a coin in the presence of witnesses or the entire bid may be rejected and re-bid.
10. **Awards:** Notwithstanding that Proposer gives notice of all-or-none award in its Proposal, the City and County reserve the right to accept any item, group of items, or accept no items at all.

11. **Appeals:** Appeals must be submitted in writing within *seven (7) business days after notification of proposed recommendations for award. A "Notice of Award" is not an indication of either County's or City's acceptance of an offer made in response to this RFP. Appeals shall be submitted to County of Fresno Purchasing, 4525 E. Hamilton Avenue, Fresno, California 93702-4599, with copy to the City's Purchasing Manager. Appeals shall address only areas regarding RFP contradictions, procurement errors, quotation rating discrepancies, legality of procurement context, conflict of interest, and inappropriate or unfair competitive procurement grievance regarding the RFP process.

County Purchasing Agent and City Purchasing Manager will provide a joint written response to the complainant within seven (7) business days unless the complainant is notified more time is required.

If the protesting bidder is not satisfied with the decision of City and County Purchasing, he/she shall have the right to appeal to the City and County Chief Administrative Officers within *seven (7) business days after notification by City and County Purchasing; except, if notified to appeal directly to the Board of Supervisors and City Council, respectively, at the scheduled date and time.

If the protesting bidder is not satisfied with the decision of County Purchasing Agent/CAO's and City Purchasing Manager/CAO's, the final appeal is with the Board of Supervisors and City Council, respectively.

*The seven (7) business day period shall commence upon the date that the notification is issued and signed by both the County and City.

12. **Audited Financial Statements:** Copies of the audited Financial Statements for the last three (3) years for the business, agency or program that will be providing the service(s) proposed. If audited statements are not available, compiled or reviewed statements will be accepted with copies of three years of corresponding federal tax returns. This information is to be provided to both the County and the City after the RFP closes, if requested by either County or City. **Do not provide with your proposal.**

13. **Background Review:** The City and County reserve the right to conduct a background inquiry of each proposer/bidder which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal/bid to the City and County, the vendor consents to such an inquiry and agrees to make available to the City and County such books and records the City and/or County deem necessary to conduct the inquiry.

14. **Proposed Recommendation for Award and Negotiations:** Award Notices are tentative: A "Notice of Award" is not an indication of City's or County's acceptance of an offer made in response to this RFP. Acceptance of an offer made in response to this RFP shall occur only upon award by the respective governing bodies of the City and County, and upon execution of an agreement by all parties to the agreement. Notwithstanding the foregoing, in the event of an award for a separate agreement between the County and vendor, the respective acceptance of an offer made in response to this RFP may also occur upon issuance of a valid written Purchase Order by Fresno County Purchasing.

The City Purchasing Manager and County Purchasing will chair or co-chair all award, evaluation and contract negotiation committees. The County and City shall act together as the sole judge in the ranking process during evaluations.

The City of Fresno and the County of Fresno reserve the right to determine the most qualified Proposer and negotiate with one or more Proposers concurrently in the best interests of the City and the County. The City and County intend to award a single contract, but may award multiple contracts to multiple vendors.

The City and County will negotiate a contract (sample City/County/Vendor and City/Vendor agreements included in this Addendum to the RFP) with the selected Proposer(s), giving due consideration to the respective sample agreements herein and standard contracts and associated legal documents submitted by the Proposer.

The City and County reserve the right to negotiate deviations from the prescribed terms, conditions and requirements with the selected Proposer(s). Any negotiations by or with a Proposer(s) will be conducted within the presence of both City and County representatives.

15. **Award/Rejection:** The award will be made to the Proposer(s) whose proposal and qualifications demonstrate the most responsible and advantageous proposal to both the City and the County. The County and City shall be the sole judge in making such determination. The City and County shall not be obligated to accept the lowest cost proposal, but will make an award in the best interest of the City and County after all factors have been evaluated. The City will act as the sole judge of what is in the City's best interest and the County will act as the sole judge of what is in the County's best interest.

Award of any Agreement in which the City or County is to be a party thereto, will require approval by the respective governing body.

The County and City reserve the right to reject any and all proposals.

16. **Optional Facilities:** It is anticipated that the future Vendor would have the option to enter into a \$1 per year lease agreement with either the City, County or a private third party for use of one or more of three (3) facilities to be used for providing animal control services. Two of the facilities are located in downtown Fresno and the other is the Elkhorn facility located in Caruthers (facility details can be found on the RFP website). Facility 1 (Elkhorn) is owned by County and Facility 2 (Densmore) is owned by City. Facility 3 at 745 Broadway & 1880 Inyo (SW corner of Inyo & Broadway, Fresno) is owned by a private third party and Proposer would be responsible for securing any lease from the private third party as with any alternate site proposed by the Vendor.
17. **Fidelity Bonds:** The successful Proposer may be required to furnish fidelity bonds (or deposit into the respective agency-held retention account).
18. **Appropriation of Funds:** Any Agreement is contingent upon the appropriation of monies by the governing bodies of the City and County. In addition to any other right retained by the City and County to terminate the Agreement, the City and County retain the right to terminate the Agreement upon 30 days prior notice in the event of non-appropriation of funds by their respective governing bodies sufficient to fund their respective obligations under the Agreement.

19. **Optional Continuation of Agreement:** Upon expiration or termination of the Agreement, Vendor shall aid the City and County in continuing, uninterruptedly, the requirements of the Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the City and County's authorized representatives, for a specified term not to exceed 6 months. Such continuance shall be on the same terms and conditions as provided in the Agreement; except the County and City may request part or all of the services to be performed and payment will be limited to the respective fees in the Agreement for such services.
20. **Patent and Copyright Indemnity:** The Vendor shall indemnify and hold the City, County, and each of their officials, officers, agents, employees and volunteers, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with this Proposal. This paragraph shall survive cancelation or expiration of this RFP.
21. **Default:** In case of default by the selected Vendor, the City and County may procure materials and services from another source and may recover the loss occasioned thereby from any unpaid balance due the selected Vendor, or by any other legal means available to the City and County. Vendor shall reimburse City and County for expenses related to delivery of non-specified materials or services.
22. **Year Compliance Warranty:** Vendor warrants that any product furnished in connection with the services pursuant to this Agreement/order shall support a four-digit year format and be able to accurately process date and time data from, into and between the twentieth and twenty-first centuries, as well as leap year calculations. "Product" shall include, without limitation, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein. This warranty shall survive termination or expiration of this Agreement.

In the event of any decrease in product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the product from operating correctly using dates beyond December 31, 1999, Vendor shall restore or repair the product to the same level of functionality as warranted herein, so as to minimize interruption to County's and City's ongoing business process, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by Vendor. Nothing in this warranty shall be construed to limit any rights or remedies the County or City may otherwise have under this Agreement with respect to defects other than year performance.

23. **Audits & Retention:** The Vendor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under the contract. Such records shall be complete and available to the City of Fresno, Fresno County, the State of California, the federal government or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the contract and for a period of at least three (3) years following the City's and County's final payment under the contract or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described above until all pending matters are closed.

Books, accounts and records of Vendor's revenues, costs and expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall specifically identify the respective services reimbursed or reimbursable by the State of California. Such books, accounts and records shall be maintained in such a manner as to clearly distinguish revenues, expenses and State of California reimbursements arising hereunder from activities by Vendor on behalf of the City from activities by Vendor on behalf of the County. Such books, accounts and records shall also be maintained in such a manner as to clearly distinguish revenues, expenses and State of California reimbursements arising hereunder from other Vendor activities.

This section shall survive expiration or termination of the Agreement.

24. **Data Security:** Individuals and/or agencies that enter into a contractual relationship with the County or City for the purpose of providing services must employ adequate controls and data security measures, both internally and externally to ensure and protect the confidential information and/or data provided to Contractor by the respective County or City, preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of County or City data including sensitive or personal client information; abuse of County or City resources; and/or disruption to County or City operations.

Individuals and/or agencies may not connect to or use County or City networks/systems via personally owned mobile, wireless or handheld devices unless authorized by County and City, respectively, for telecommuting purposes and provide a secure connection; up to date virus protection and mobile devices must have the remote wipe feature enabled. Computers or computer peripherals including mobile storage devices may not be used (County, City or Contractor device) or brought in for use into the County's or City's system(s) without prior authorization from County's Chief Information Officer and/or designee(s) or City's Chief Information Officer and/or designee(s), respectively.

No storage of County's or City's private, confidential or sensitive data on any hard-disk drive, portable storage device or remote storage installation unless encrypted according to advance encryption standards (AES of 128 bit or higher).

The County and City will immediately be notified of any violations, breaches or potential breaches of security related to the respective County's or City's confidential information, data and/or data processing equipment which stores or processes the respective County or City data, internally or externally.

County and City shall provide oversight to Contractor's response to all incidents arising from a possible breach of security related to the respective County or City's confidential client information. Contractor will be responsible to issue any notification to affected individuals as required by law or as deemed necessary by County and City in their sole discretion. Contractor will be responsible for all costs incurred as a result of providing the required notification.

The provisions of the RFP and any earlier released addendum shall be superseded if in conflict with any provision of this addendum, to the extent of any such conflict.

25. **Replacement Pages:** Pages 7 and 8, TRADE SECRET ACKNOWLEDGEMENT, of the RFP are replaced in their entirety with REV. PAGE 7 and REV. PAGE 8 located on Pages 16-17 of this Addendum.
26. **Replacement Paragraph:** The last paragraph of Page 9, DISCLOSURE - CRIMINAL HISTORY & CIVIL ACTIONS, of the RFP is replaced in its entirety with the following language:

"Any Bidder who is awarded a contract must sign an appropriate Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Additionally, the Bidder awarded the contract must immediately advise the County and City in writing if, during the term of the agreement: (1) Bidder becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the excluded parties list system (<http://www.epls.gov>); or (2) any of the above listed conditions become applicable to Bidder. The Bidder will indemnify, defend and hold the County and City harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The preceding sentence shall survive termination or expiration of the Agreement."

27. **Independent Contractor:** Vendor is and throughout this Agreement shall be an independent contractor and not an employee or agent of the City or County. However, City and County shall retain the right to administer this Agreement so as to verify that Vendor is performing its obligations in accordance with the terms and conditions hereof. This Agreement does not evidence a partnership or joint venture between any of the Parties. Vendor shall have no authority to bind the City or County absent its express written consent. Except to the extent otherwise provided in this Agreement, each Party shall bear its own costs and expenses in pursuit hereof.

Because of its status as an independent contractor, Vendor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City or County employees. Vendor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Vendor shall be solely responsible, indemnify, defend and save City and County harmless from all matters relating to employment and tax withholding for and payment of Vendor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and

all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City or County employment benefits, entitlements, programs and/or funds offered employees of City or County whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. The preceding sentence shall survive termination or expiration of this Agreement. It is acknowledged that during the term of this Agreement, Vendor may be providing services to others unrelated to City, County or to this Agreement.

28. **Indemnification:** To the furthest extent allowed by law, Vendor shall indemnify, hold harmless and at City's or County's request, defend City, County and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, County, Vendor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Vendor's obligations under the preceding sentence shall apply regardless of whether City, County or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City, County or any of their officers, officials, employees, agents or volunteers.

If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to indemnify, hold harmless and defend City, County and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This Section shall survive termination or expiration of this Agreement.

29. **Insurance:** Throughout the life of this Agreement, Vendor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A FSC VII" in Best's Insurance Rating Guide. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate applying separately to the work performed under the Agreement

Upon occupancy, the insurance shall include owner, landlord and tenant's liability coverage and fire legal liability coverage. At any time, the City and County may require other specific coverages including products liability, Explosion Collapse-Underground, or any other liability insurance deemed necessary because of the nature of this Agreement.

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) used in connection with this Agreement with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROFESSIONAL LIABILITY insurance which shall include coverage appropriate to the Vendor's profession with limits of liability of not less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate. However, if Vendor employs licensed professional staff (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C., Veterinarian) in providing services, the limits of liability shall not be less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate.

In the event Vendor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Vendor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and Vendor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, both City's Risk Manager and County's Risk Manager or their respective designees. At the combined option of both City's Risk Manager and County's Risk Manager, or their respective designees, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, County and their officers, officials, employees, agents and volunteers; or (ii) Vendor shall provide a financial guarantee, satisfactory to both City's Risk Manager and County's Risk Manager, or their respective designees, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City or County be responsible for the payment of any deductibles or self-insured retentions. However, with the prior consent and approval of City and County, the Vendor may maintain a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, changed, non-renewed, or reduced in coverage or in

limits, except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City and County. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Vendor shall furnish City and County with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City or County, Vendor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, County and each of their officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Vendor's insurance shall be primary, no contribution shall be required of City or County, and any other insurance, or self-insurance, maintained by the City, County, or any of their officials, officers, agents, employees or volunteers shall be excess only. The coverage shall contain no special limitations on the scope of protection afforded to City, County, and each of their officers, officials, employees, agents and volunteers.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Vendor and its insurer shall waive any right of subrogation against City, County and each of their officers, officials, employees, agents and volunteers.

If the Professional Liability insurance policy is written on a claims-made form:

- i. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Vendor.
- ii. Insurance must be maintained at Vendor's sole cost and expense, and evidence of insurance must be provided, for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Vendor must purchase at its sole cost and expense "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
- iv. A copy of the claims reporting requirements must be submitted to City and County for review.
- v. These requirements shall survive expiration or termination of the Agreement.

Vendor shall furnish City and County with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager and County's Risk Manager, or their respective designees, prior to City and County's execution of the Agreement and before work commences. Anytime, upon request of City or County, Vendor shall immediately furnish City and County with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

In the event Vendor fails to keep in effect at all times insurance coverage as herein provided, the City and County may, in addition to other remedies they may have, suspend or terminate this Agreement upon the occurrence of such event. All payments due or that become due to Vendor shall be withheld until notice is received by County and City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to County and City. No action taken by City or County pursuant to this section shall in any way relieve Vendor of its responsibilities under this Agreement. The phrase "fails to keep in effect at all times insurance coverage" shall include, without limitation, notification received by City or County that the insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Vendor shall not be deemed to release or diminish the liability of Vendor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and County shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the City and County's right to obtain indemnification from Vendor or any third parties. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Vendor, its principals, officers, agents, employees, persons under the supervision of Vendor, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to provide insurance protection in favor of City, County and each of their officers, officials, employees, agents and volunteers in accordance with the terms of this section for "Vendor Insurance," except that any required certificates and applicable endorsements shall be on file with Vendor, City and County prior to the commencement of any services by the subcontractor.

30. **Confidentiality:** All services performed by vendor shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

Vendor shall submit to City and County's monitoring of said compliance.

Vendor may be a Business associate of City or County, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, vendor may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of City or County, as specified by the City or County, respectively, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to City and County, respectively, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

Vendor shall not use or further disclose PHI other than as permitted or required by the City or County, respectively, or as required by law without written notice to the City and County.

Vendor shall ensure that any agent, including any subcontractor, to which Vendor provides PHI received from, or created or received by the Vendor on behalf of County and/or City, shall comply with the same restrictions and conditions with respect to such information.

31. **Procurement Card:** The City of Fresno may use a procurement card to place and make payment for orders under the ensuing contract.
32. **Severability:** The provisions of this Agreement are severable. In the event any term, covenant, condition, or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice any Party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.
33. **Non-solicitation:** Vendor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights or benefits hereunder.
34. **Attorney's Fees:** If any Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party(ies) its reasonable attorney's fees and legal expenses in addition to any other relief to which such Party may be entitled.
35. **No Third Party Beneficiaries:** The Parties acknowledge and agree that the Vendor is providing services hereunder only to and for the benefit of the City and County and that there are no intended or incidental beneficiaries of this Agreement.
36. **Cost Proposal:** The services performed by Vendor for City shall include only those services to the extent performed and originating in or directly for the area within the incorporated limits of the City. The services performed by Vendor for County shall include only those services to the extent performed and originating in or directly for the unincorporated area of the County. Proposers shall complete the Cost Proposal that will cover all services to be rendered to City and County. The division of the actual costs between the City and the County will be subject to negotiation. City and County reserve the right to make baseline adjustments to the division of actual costs during negotiations and any Agreement.
37. **Proposal Content Requirements and Replacement Pages:** Pages 41 - 45, PROPOSAL CONTENT REQUIREMENTS and AWARD CRITERIA of the RFP are replaced in their entirety with REV. PAGE 41 through REV. PAGE 45 located on Pages 18 - 22 of this Addendum.
38. **Additional Forms to be Completed and Submitted by Proposers with their Proposal:** Proposers shall complete and submit with their proposal the forms entitled STATEMENT OF ACCEPTANCE OF THE CITY/VENDOR/COUNTY AGREEMENT

REQUIREMENTS and STATEMENT OF ACCEPTANCE OF THE CITY/VENDOR AGREEMENT REQUIREMENTS. These forms are included in this Addendum on Pages 23 and 24, respectively.

39. **Additional Form to be Completed and submitted by Proposers with their Proposal:** Proposers shall complete and submit with their proposals a Disclosure of Conflict of Interest form. During the term of the Agreement, Vendor shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Vendor thereon. The DISCLOSURE OF CONFLICT OF INTEREST form is included in this Addendum on Page 25.
40. **Sample Agreements:** A SAMPLE CITY/COUNTY/VENDOR AGREEMENT and a SAMPLE CITY/VENDOR AGREEMENT are included in this Addendum on Pages 26-47 and Pages 48-66, respectively.
41. **Compliance with City Ordinance:** Vendor acknowledges and agrees that it shall perform all of its obligations under this Agreement in full compliance with all applicable federal, state and local laws (including, without limitation, Article 3, Chapter 10 of the Fresno Municipal Code) and regulations, which are now in effect or hereinafter enacted from time to time.

PARTICIPATION

The County of Fresno and City of Fresno are members of the Central Valley Purchasing Group. This group consists of Fresno, Kern, Kings, and Tulare Counties and all governmental, tax supported agencies within these counties.

Whenever possible, these and other tax supported agencies co-op (piggyback) on contracts put in place by one of the other agencies.

Any agency choosing to avail itself of this opportunity, will make purchases in their own name, make payment directly to the Contractor, be liable directly to the Contractor and vice versa, per the terms of the original contract, all the while holding the County of Fresno and City of Fresno harmless. If awarded this contract, please indicate whether you would extend the same terms and conditions to all tax supported agencies within this group as you are proposing to extend to Fresno County and the City of Fresno.

☐

Yes, we will extend contract terms and conditions to all qualified agencies within the Central Valley Purchasing Group and other tax supported agencies.

☐

No, we will not extend contract terms to any agency other than the County of Fresno and the City of Fresno.

(Authorized Signature)

Title

*** Note: This form/information is not rated or ranked in evaluating proposal.**

VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL, IF APPLICABLE

CERTIFICATION FOR LOCAL PREFERENCE

We certify that we qualify as a local firm pursuant to Fresno Municipal Code Section 4-109.

Location of Business:

(Please provide street address, no PO Box)

Primary Office []

Branch Office []

(Please mark as applicable)

Address: _____

Phone: _____

The undersigned Proposer hereby declares under penalty of perjury under the laws of the State of California that the information contained on this CERTIFICATION FOR LOCAL PREFERENCE is correct and complete.

Signature: _____

Date: _____

(Printed Name & Title)

(Name of Company)

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

TRADE SECRET ACKNOWLEDGEMENT

All proposals received by the County and City shall be considered "Public Record" as defined by Section 6252 of the California Government Code. This definition reads as follows:

"...Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975."

Each proposal submitted is Public record and is therefore subject to inspection by the public per Section 6253 of the California Government Code. This section states that "every citizen has a right to inspect any public record".

The County and City will not exclude any proposal or portion of a proposal from treatment as a public record except in the instance that it is submitted as a trade secret as defined by the California Government Code. Information submitted as proprietary, confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

"Trade secrets" as defined by Section 6254.7 of the California Government Code are deemed not to be public record. This section defines trade secrets as:

"...Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data or compilation of information that is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it."

Information identified by bidder as "trade secret" will be reviewed by County of Fresno's and City of Fresno's legal counsel to determine conformance or non-conformance to this definition. Examples of material not considered to be trade secrets are pricing, cover letter, promotional materials, etc. Such material should be submitted in a separate binder not marked "Trade Secret".

INFORMATION THAT IS PROPERLY IDENTIFIED AS TRADE SECRET AND CONFORMS TO THE ABOVE DEFINITION WILL NOT BECOME PUBLIC RECORD. COUNTY AND CITY WILL SAFEGUARD THIS INFORMATION IN AN APPROPRIATE MANNER.

Information identified by bidder as trade secret and determined not to be in conformance with the California Government Code definition shall be excluded from the proposal. Such information will be returned to the bidder at bidder's expense upon written request.

Trade secrets must be submitted in a separate binder that is plainly marked "Trade Secrets."

The County and City shall not in any way be liable or responsible for the disclosure of any proposals or portions thereof, if (1) they are not submitted in a separate binder that is plainly marked "Trade Secret" on the outside; or (2) if disclosure is required under the law or by order of the Court.

Vendors are advised that the County and City do not wish to receive trade secrets and that Vendors are not to supply trade secrets unless they are absolutely necessary.

TRADE SECRET ACKNOWLEDGEMENT

I have read and understand the above "Trade Secret Acknowledgement."

I understand that the County of Fresno and City of Fresno have no responsibility for protecting information submitted as a trade secret if it is not delivered in a separate binder plainly marked "Trade Secret." I also understand that all information my company submits, except for that information submitted in a separate binder plainly marked "Trade Secret," are public records subject to inspection by the public. This is true no matter whether my company identified the information as proprietary, confidential or under any other such terms that might suggest restricted public access.

Enter company name on appropriate line:

(Company Name) has submitted information identified as Trade Secrets in a separate marked binder.**

(Company Name) has not submitted information identified as Trade Secrets. Information submitted as proprietary confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

ACKNOWLEDGED BY:

_____ Signature	()	_____ Telephone
_____ Print Name and Title		_____ Date
_____ Address		

_____ City	_____ State	_____ Zip

**Bidders brief statement that clearly sets out the reasons for confidentiality in conforming with the California Government Code definition.

PROPOSAL CONTENT REQUIREMENTS

It is important that the Proposer submit his/her proposal in accordance with the format and instructions provided under this section. Doing so will facilitate the evaluation of the proposal. It will limit the possibility of a poor rating due to the omission or mis-categorization of the requested information. Responding in the requested format will enhance the evaluation team's item by item comparison of each proposal item. The vendor's proposal may be placed at a disadvantage if submitted in a format other than that identified below.

Proposers are requested to submit their proposals in a binder (one that allows for easy removal of pages) with index tabs separating the sections identified. Each page should be numbered.

Each binder is to be clearly marked on the cover with the proposal name, number, closing date, "Original" or "Copy", and Proposer's name.

Merely offering to meet the specifications is insufficient and will not be accepted. Each Proposer shall submit a complete proposal with all information requested. Supportive material may be attached as appendices. All pages, including the appendices, must be numbered.

Proposers are instructed not to submit confidential, proprietary and related information within the request for proposal. If you are submitting trade secrets, it must be submitted in a separate binder clearly marked "TRADE SECRETS", see Trade Secret Acknowledgement section.

The content and sequence of the proposals will be as follows:

- I. RFP PAGE 1 AND ADDENDUM PAGE 1 (IF APPLICABLE) completed and signed by participating individual or agency.
- II. PROPOSAL IDENTIFICATION SHEET (as provided)
- III. COVER LETTER: A one-page cover letter and introduction including the company name and address of the Proposer and the name, address and telephone number of the person or persons to be used for contact and who will be authorized to make representations for the Proposer.
 - A. Whether the Proposer is an individual, partnership or corporation shall also be stated. It will be signed by the individual, partner, or an officer or agent of the corporation authorized to bind the corporation, depending upon the legal nature of the Proposer. A corporation submitting a proposal may be required before the contract is finally awarded to furnish a certificate as to its corporate existence, and satisfactory evidence as to the officer or officers authorized to execute the contract on behalf of the corporation.
- IV. TABLE OF CONTENTS
- V. CONFLICT OF INTEREST STATEMENT: The Contractor may become involved in situations where conflict of interest could occur due to individual or organizational activities that occur within the County of Fresno. In this section the Proposer should address the potential, if any, for conflict of interest and indicate plans, if applicable, to address potential conflict of interest. This section will be reviewed by County Counsel

for compliance with conflict of interest as part of the review process. The Vendor shall comply with all federal, state and local conflict of interest laws, statutes and regulations.

- VI. TRADE SECRET, PARTICIPATION ACKNOWLEDGMENT AND REFERENCES: Sign where required.
- VII. DISCLOSURE OF CONFLICT OF INTEREST: Complete the form and sign where required.
- VIII. LOCAL PREFERENCE CERTIFICATION (if applicable)
- IX. CERTIFICATION – DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS
- X. SELF-DEALING TRANSACTION DISCLOSURE (Financial)
- XI. EXCEPTIONS: This portion of the proposal will note any exceptions to the requirements and conditions taken by the Proposer. If exceptions are not noted, the County will assume that the Proposer's proposals meet those requirements. The exceptions shall be noted as follows:
 - A. Exceptions to General Conditions.
 - B. Exceptions to General Requirements.
 - C. Exceptions to Specific Terms and Conditions.
 - D. Exceptions to Scope of Work.
 - E. Exceptions to Proposal Content Requirements.
 - F. Exceptions to Sample City/County/Vendor Agreement (attach STATEMENT OF ACCEPTANCE OF THE CITY/COUNTY/VENDOR AGREEMENT REQUIREMENTS)
 - G. Exceptions to Sample City/Vendor Agreement (attach STATEMENT OF ACCEPTANCE OF THE CITY/VENDOR AGREEMENT REQUIREMENTS)
 - H. Exceptions to any other part of this RFP.
- XII. VENDOR COMPANY DATA: This section should include:
 - A. A narrative which demonstrates the vendor's basic familiarity or experience with problems associated with this service/project. Relevant experience of providing similar services to municipalities should be included.
 - B. Descriptions of any similar or related contracts under which the Proposer has provided services.
 - C. Describe senior management's responsibilities, experience and philosophy of animal control.
 - D. Descriptions of the qualifications of the individual(s) providing the services.

- E. Indicate whether a partnership has been or will be formed in order to fulfill the proposed scope of work.
- F. For subcontracted work, indicate the name and address of each firm and the type of work tasks they will perform. Identify the qualification and experience.
- G. Any material (including letters of support or endorsement) indicative of the Proposer's capability.
- H. Reference List (form provided)
- I. A brief description of the Proposer's current operations, and ability to provide the services.
- J. Copies of the audited Financial Statements for the last three (3) years for the Proposer or program that will be providing the service(s) proposed. If audited statements are not available, compiled or reviewed statements will be accepted with copies of three years of corresponding federal tax returns. This information is to be provided after the RFP closes, if requested. **Do not provide with your proposal.**
- K. Describe all contracts that have been terminated within the last five (5) years:
 - 1. Name of contracting parties
 - 2. Date of original contract
 - 3. Reason for termination
 - 4. Contact person and telephone number for other party(ies) to contract
- L. Describe all lawsuit(s) or legal action(s) that are currently pending; and any lawsuit(s) or legal action(s) that have been resolved within the last five (5) years:
 - 1. Location filed, name of court and docket number
 - 2. Nature of the lawsuit or legal action
- M. Describe any payment problems that you have had with the County or the City within the past three (3) years:
 - 1. Funding source
 - 2. Date(s) and amount(s)
 - 3. Resolution
 - 4. Impact to financial viability of organization.

XIII. SCOPE OF WORK:

- A. Bidders are to use this section to describe the essence of their proposal.

B. This section should be formatted as follows:

1. A general discussion of your understanding of the project, the Scope of Work proposed and a summary of the features of your proposal.
2. A detailed description of your proposal as it relates to each item listed under the "Scope of Work" section of this RFP. Bidder's response should be stated in the same order as are the "Scope of Work" items. Each description should begin with a restatement of the "Scope of Work" item that it is addressing. Bidders must explain their approach and method of satisfying each of the listed items. The project should be described in functional and operational terms. The description should be precise and designed to have measurable outcomes. The narrative should describe how the Bidder will prepare for the implementation of the contract, staffing levels, shift coverage, staff training, and how delivery of service and quality of care will be assured.
3. Describe your intake and vaccination protocols.
4. Provide a solution that addresses the feral cat problem in the community. What is the best way to use limited resources and money on this issue?
5. A detailed plan that addresses the reduction of euthanasia rates.
6. Describe how you would assist individuals that cannot afford the cost to reclaim or adopt back their animal (i.e. volunteer, payment arrangements, etc.)
7. Address how the Vendor will dispose of dead animals.
8. Identify data software system. Include the capabilities of the software, how it will be utilized by the Vendor, who owns the data, and who will have access the data.
9. A detailed description of the Bidder's community outreach plan and how it will involve and include animal rescue organizations in its business plan and animal control operations.

C. Staffing Pattern: Provide a fourteen (14) day detailed staffing pattern. Include number and type of staff for each service area as described in the scope of work. Provide sufficient detail, including identifying full vs. part-time staff, shift schedule, etc. Identify rural vs. metro field staff.

D. When reports or other documentation are to be a part of the proposal a sample of each must be submitted. Reports should be referenced in this section and submitted in a separate section entitled "REPORTS."

E. A complete description of any alternative solutions or approaches to accomplishing the desired results.

XIV. COST PROPOSAL: The Vendor will be responsible for all expenses associated with the performance of the agreed upon services, including but not limited to retrofitting the facility, providing adequate staffing levels, animal containment vehicles, equipment,

supplies, insurance, etc. **All costs required to comply with the provisions of this RFP shall be included in the cost proposal worksheets.**

AWARD CRITERIA

Award will be made to the Proposer whose proposal and qualifications demonstrate the most responsible and advantageous proposal to both the City and the County. The City and County shall not be obligated to accept the lowest cost proposal, but will make an award in the best interest of the City and County after all factors have been evaluated. The City will act as the sole judge of what is in the City's best interest and the County will act as the sole judge of what is in the County's best interest.

Proposal shall be evaluated in accordance with, but not limited to, the following criteria:

1. Proven Performance and Experience – The Proposer's background, experience, and stability will be assessed. In addition, the quality and level of experience of administrative and animal control staff will be evaluated. The Proposer's record of successful service and experience in providing similar animal control services to municipalities.
2. Comprehensiveness of the Proposer's submitted proposal – The Proposer understands the Scope of Work and the ability to perform such services. The Proposer's ability to clearly describe how the proposed program will meet the service requirements, specifications, and objectives described herein. Ability to describe and effectively implement sound solutions with limited resources. Ability and willingness to work cooperatively with the City, County, and rescue organizations; and manage the transition of service from the City and County's current animal control service provider.
3. The financial stability of the Proposer.
4. Conformance to the terms and conditions of the RFP.
5. The reasonableness of cost in relation to scope of work.

VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL

**STATEMENT OF ACCEPTANCE OF THE CITY/COUNTY/VENDOR
AGREEMENT REQUIREMENTS**

The Proposer shall sign below that the Proposer accepts in whole the terms and conditions of the City/County/Vendor Agreement set forth in this Addendum to the RFP on Pages 26-47. If the Proposer takes exception to any provision of the Agreement, such provision(s) shall be listed here below and the Proposer shall sign that the Proposer accepts all remaining provisions of the Agreement not listed.

Note: Any exceptions may render the proposal non-responsive.

☐ ACCEPT
☐ DO NOT ACCEPT

If "DO NOT ACCEPT" is checked, please list exceptions:

Firm Name

Signature of Authorized Person

Type or Print Name of Authorized Person

VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL

**STATEMENT OF ACCEPTANCE OF THE CITY/VENDOR
AGREEMENT REQUIREMENTS**

The Proposer shall sign below that the Proposer accepts in whole the terms and conditions of the City/Vendor Agreement set forth in this Addendum to the RFP on Pages 48-66. If the Proposer takes exception to any provision of the Agreement, such provision(s) shall be listed here below and the Proposer shall sign that the Proposer accepts all remaining provisions of the Agreement not listed.

Note: Any exceptions may render the proposal non-responsive.

☐ **ACCEPT**
☐ **DO NOT ACCEPT**

If "DO NOT ACCEPT" is checked, please list exceptions:

Firm Name

Signature of Authorized Person

Type or Print Name of Authorized Person

VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL

DISCLOSURE OF CONFLICT OF INTEREST

ANIMAL CONTROL SERVICES
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Signature

Date

(name)

(company)

☐ Additional page(s) attached.

(address)

(city state zip)

SAMPLE CITY/COUNTY/VENDOR AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "City"), the COUNTY OF FRESNO, a political subdivision of the State of California (hereinafter referred to as "County"), ("City" and "County" are collectively referred to herein as "Agency"), and [Vendor Name], [Legal Identity] (hereinafter referred to as "Vendor").

WITNESSETH:

WHEREAS, Agency solicited proposals for Animal Control Services in County of Fresno Request for Proposal, Number: 962-5062 ("RFP"); and

WHEREAS, on _____, 2012, Vendor submitted a Proposal to Agency pursuant to said RFP; and

WHEREAS, the Agency has a need for animal control, poundmaster, shelter and veterinary services, facilities and unrelated activities for animals from the unincorporated areas of the County ("Rural Area") and the incorporated limits of the City ("Urban Area"), respectively, as authorized and required by Food and Agriculture Code Sections 31105, 31106, Penal Code Section 597f, Fresno County Ordinance Code, Chapter 9.04 and Article 3, Chapter 10 of the Fresno Municipal Code; and

WHEREAS, the Agency has a further need for services to enforce the Agency's respective leash law ordinances, in Chapter 9.04 of the County's Ordinance Code and Article 3, Chapter 10 of the Fresno Municipal Code; and

WHEREAS, Vendor desires to provide [identify all or which part] services to Agency, pursuant to the terms and conditions of this Agreement; and

WHEREAS, Vendor is engaged in the business of providing the services, and represents to Agency that Vendor possesses unique and superior knowledge, skill, resources, facilities and expertise to be able to provide the services, and is fully competent and authorized in such matters, and will take all necessary and appropriate action and employ all necessary and appropriate resources, equipment, facilities, expertise and personnel to fully perform the services, holding any and all implicated licenses, permits, permissions and/or approval; and

WHEREAS, in reliance upon the foregoing representations of the Vendor, Agency desires to obtain the services from Vendor, as an independent contractor of the Agency, pursuant to the terms and conditions of this Agreement, to ensure that the services are being provided to residents in the Rural Area and in the Urban Area; and

WHEREAS, this Agreement, and the services to be provided hereunder, are contingent on the Agency's respective governing bodies appropriating money for each Fiscal Period hereunder sufficient for the continued performance of Agency's obligations hereunder, such that should sufficient funds not be appropriated, the services provided may be modified, or this Agreement terminated, at any time by the Agency as provided in Section V hereunder.

Proposal No. 962-5062

NOW THEREFORE, in consideration of the above recitals which are made part of this Agreement, the mutual promises and covenants herein contained, and for other good and valuable consideration the sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree as follows:

I. TERM AND RENEWALS

1. The Agreement shall be effective from the date of execution by all Parties ("Effective Date") and will continue so long as any amount remains unpaid hereunder, for an Initial Term beginning on the Effective Date and expiring at midnight on June 30, 2016, subject to such termination rights as are provided in Section V below.

2. The Initial Term of the Agreement may be extended for up to two 1-year Renewal Terms by Agency, upon the terms and conditions herein except that the fixing of the amount of fees due shall be by the Parties' written agreement added as a renewal addendum hereto, unless any Party shall give written notice of non-renewal at least 180 days prior to expiration of the then current Initial Term or Renewal Term, subject to such termination rights as are provided in Section V below. In no event shall this Agreement extend beyond June 30, 2018, except as provided in the following paragraph. For purposes of this Agreement, the term "Agency" shall refer to both the City and County, unless the particular provision or context otherwise requires.

3. Upon expiration or termination of this Agreement, Vendor shall aid the Agency in continuing, uninterrupted, the requirements of this Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Agency's authorized representatives, for a specified term not to exceed 12 months. Such continuance shall be on the same terms and conditions as provided in this Agreement; except the Agency may request part or all of the services to be performed and payment will be limited to the respective fees in the respective Fee Schedule for such services.

4. The contract year and the Fiscal Period shall run from July 1 through June 30.

II. SERVICES

1. Without limiting any obligations or liabilities owed by the Vendor hereunder, during the entire term hereof the Vendor shall provide the City and County with those services including, but not limited to, those that are set forth in the Scope of Work, attached hereto as **Exhibit A**. The services performed for City, hereunder, shall include only those services to the extent performed and originating in or directly for the Urban Area. The services performed for County, hereunder, shall include only those services to the extent performed and originating in or directly for the Rural Area. Vendor's daily schedule and hours worked under this Agreement on a given day shall generally be subject to Vendor's discretion, provided that Vendor shall devote sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

2. The Vendor shall possess and maintain all necessary equipment, supplies and facilities, and employ and supervise all necessary personnel, to successfully render all services agreed upon during the term of this Agreement and any renewals thereof. The Agency assumes no obligation for the provision of equipment, supplies, facilities, or personnel to the Vendor for the execution of the Agreement except as expressly provided in paragraph 6, below, in this Section II. All costs of Vendor's performance hereunder including said equipment,

Proposal No. 962-5062

supplies, facilities, and personnel are to be included in the monetary amount requested by the Vendor and agreed to in this Agreement.

3. Vendor acknowledges and agrees that it shall perform all of its obligations under this Agreement in full compliance with all applicable federal, state and local laws (including, without limitation, Article 3, Chapter 10 of the Fresno Municipal Code) and regulations, which are now in effect or hereinafter enacted from time to time. The Vendor, and not the Agency, is responsible for ascertaining what other laws and regulations, not specifically stated herein, apply to the performance of Vendor's obligations herein, and the Agency is under no duty whatsoever to advise Vendor of same. Vendor acknowledges and agrees that, at all times hereunder, it shall hold any and all necessary licenses, permits, permissions and approvals to provide the services.

4. Notwithstanding the foregoing, the respective Agency agrees to notify the Vendor of proposed changes in its respective Code affecting Vendor's performance under this Agreement, no less than 30 days prior to the scheduled date for public hearing on the adoption of same.

5. Vendor is engaged in the business of providing the services, and represents to Agency that Vendor possesses unique and superior knowledge, skill, resources, facilities and expertise to be able to provide the services, and is fully competent and authorized in such matters, and will take all necessary and appropriate action and employ all necessary and appropriate resources, equipment, facilities, expertise and personnel to fully perform the services from and after the effective date of this Agreement according to the terms and conditions hereof. The Agency relies upon the expertise of Vendor as a specialist to do and perform the services. Acceptance of the services by either Agency shall not operate as a release of Vendor from performance standards as a specialist.

6. [RESERVED - FACILITIES - RELATED TO ANY LEASE WITH CITY OR COUNTY]

III. FEES

1. In consideration of the Vendor's performance hereunder including the services, and subject to the terms and conditions herein, the Agency agrees to compensate the Vendor according to, and in the manner provided in, the Fee Schedule, attached hereto as **Exhibit B**. The City shall be solely responsible for payment of those fees and costs set forth in the portion entitled "City Fee Schedule," and the County shall be solely responsible for payment of those fees and costs set forth in the portion entitled "County Fee Schedule." Notwithstanding anything stated to the contrary herein, any compensation payable by an Agency to Vendor for services rendered, or reimbursement payable by an Agency for Vendor's expenses incurred, under this Agreement shall be subject to Vendor performing the services to the satisfaction of the respective Agency.

2. Notwithstanding such Fee Schedule, the Parties agree that:

(a) The Agency shall not reimburse the Vendor for any non-Fee Schedule costs or expenses incurred by Vendor in pursuit hereof including, without limitation, non-mandated costs associated with educating the public on matters of animal ownership, absent the Agency's prior express written consent.

Proposal No. 962-5062

(b) At any time during this Agreement, each Agency reserves the right to make, in writing with notice to the other Parties, baseline adjustments to the division of actual costs between the County and City as contained in the Fee Schedule. Such adjustment shall be for the purpose of accurately reflecting the division of actual costs for the respective services to the extent performed and originating in or directly for the Rural Area and Urban Area. Such written notice to the other Parties shall include a detailed explanation for said adjustment and any supporting documentation. Only the other Agency shall have the right to object by written notice to all Parties within 10 days and providing a detailed explanation for the objection and any supporting documentation. Absent any objection, the adjustment is final. In the event of an objection, the Agency will be responsible for resolving any issue and notifying the Vendor of the resolution. Vendor shall cooperate with both City and County in resolving such issue. The City and County may agree, in writing, to refer the matter to a mediator or hearing officer that is agreed upon by the Agency.

(c) The Vendor shall provide the respective Agency with a one hundred percent (100%) credit against Fee Schedule fees owing, or a cash payment in the event no such fees are owing, in the amount of all funding, reimbursement, or monetary assistance received by Vendor from the State of California ("State") for its performance of state mandated services, to the extent of Vendor's performance for the respective Agency.

(d) For a period of 3 years after final payment, Vendor shall provide any substantiation and support for fees, costs and expenses to Agency upon the reasonable request of either Agency.

(e) Books, accounts and records of Vendor's revenues, costs and expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall specifically identify the respective services reimbursed or reimbursable by the State. Such books, accounts and records shall be maintained in such a manner as to clearly distinguish revenues, expenses and State reimbursements arising hereunder from activities by Vendor on behalf of the City from activities by Vendor on behalf of the County. Such books, accounts and records shall also be maintained in such a manner as to clearly distinguish revenues, expenses and State reimbursements arising hereunder from other Vendor activities.

(f) The Vendor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under the Agreement. Such records shall be complete and available to the City, County, the State, the federal government or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the Agreement and for a period of at least 3 years following the City's and County's final payment under the Agreement or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described herein until all pending matters are closed.

(g) In no event shall any payment by an Agency constitute a waiver by said Agency of any breach of this Agreement or any default which may then exist on the part of the Vendor. Neither shall such payment impair or prejudice any remedy available to said Agency with respect to the breach or default. The Agency shall have the right to demand of Vendor the repayment to the Agency of any funds disbursed to Vendor under this Agreement, which in the judgment of the Agency were not expended in accordance with the terms of this Agreement.

Proposal No. 962-5062

Vendor shall promptly refund any such funds upon demand or, at the Agency's option, such repayment shall be deducted from future payments owing to Vendor under this Agreement.

(h) Each Agency may use a procurement card to make payment for services under the Agreement.

(i) This Paragraph 2 of Section III shall survive expiration or termination of this Agreement.

IV. REPORTS & FUNDING REQUESTS

1. The Vendor agrees to provide the Agency with a written report pertaining to each respective Agency's jurisdiction during the term of this Agreement, as follows:

(a) Service Reports: The Vendor shall provide the Agency with monthly and annual service reports covering activities and services performed in the execution of this Agreement in the format provided by the Agency entitled "Service Report Format." Monthly reports are due by the 15th of each month for the previous month, and the annual reports are due by October 1st of each year. Such reports shall be approved by the Board of Directors (or all Members or all General Partners, as applicable) of the Vendor prior to submission to the Agency.

(b) Fiscal Report: Vendor shall provide the Agency with monthly and annual fiscal reports and audited financial statements covering all income and expenses incurred in the execution of this Agreement in the format provided by the Agency entitled "Fiscal Report Format." Monthly reports are due by the 15th of each month for the previous month; and the annual audit is due by October 1st of each year. Such reports shall be approved by the Board of Directors (or all Members or all General Partners, as applicable) of the Vendor prior to submission to the Agency. Vendor agrees to provide copies of state and federal returns and filings to Agency upon the reasonable request of either Agency.

(c) Complaint Report: Vendor shall provide, on a quarterly basis, the Agency with copies of complaints regarding services and designated as to the specific service and respective Agency jurisdiction, including complainant identification and steps taken to resolve the complaint.

(d) Requests for Funding Adjustment: A written request for any funding adjustment for a Renewal Term, shall be provided the Agency by April 1st of the preceding contract year.

(e) Dog Bites: Within 24 hours of learning of any animal bite, the Vendor shall inform the Agency's authorized representatives thereof.

V. TERMINATION OF AGREEMENT

1. Except as otherwise expressly provided herein, the term of this Agreement shall expire upon the first to occur of:

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- (i) the expiration of the Initial Term or any Renewal Term during which an Event of Non-Appropriation by either Agency occurs;
- (ii) the day after the last scheduled payment hereunder is paid in full by the Agency;
- (iii) Vendor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Vendor;
- (iv) written notice following any breach or default hereunder by Vendor where such breach or default is not cured within 30 days written notice thereof by the respective Agency to Vendor;
- (v) 180 days written notice without cause by either County or City hereto;
- (vi) written notice following any breach or default hereunder by Vendor where such breach or default is not susceptible of cure following written notice thereof by the Agency;
- (vii) Vendor's material cessation of business or operations; or
- (viii) expiration.

Any such termination shall not relieve a Party of obligations due and owing at the time of termination. However, in the event of breach or default by any Party, the other Parties shall be relieved of their obligations under this Agreement and may pursue any legal remedies.

2. The terms and conditions of this Agreement, and the services to be provided hereunder for the respective Agency, are contingent upon the approval of funds by such Agency. An "Event of Non-Appropriation" means the failure of the City Council or the County Board of Supervisors to appropriate money for any Fiscal Period sufficient for the continued performance by the respective Agency of all such Agency's obligations hereunder.

3. Each Agency agrees that its primary business official will do all things lawfully within such official's power (i) to include amounts to make payments hereunder in each annual or biennial budget (as appropriate) to be submitted to the respective Agency's governing body and (ii) to maintain and utilize any funds appropriated in any given Fiscal Period for the purpose for which those funds were appropriated. Each Agency hereby agrees to notify Vendor and the other Agency immediately, and in no case later than 30 days, following the occurrence of an Event of Non-Appropriation. The Parties herein acknowledge that appropriation for payments hereunder is a government function which the respective Agency cannot contractually commit itself in advance to perform and this Agreement does not constitute such a commitment.

4. Immediately upon any termination hereof, and without waiver or limitation as to claims, damages, rights and remedies available to each Agency under law, contract and equity, the Vendor immediately shall return to the respective Agencies any unearned (current year) fee payments, and the respective Agency shall be possessed of a complete right of setoff as to sums, as well as all properties and materials in the possession of Vendor at the time of termination that are owned by the respective Agency. Such unearned fees shall not be construed as, nor constitute a recovery or waiver as to, any claims, damages, rights or remedies available to the respective Agency upon breach or default by Vendor hereunder.

5. Notwithstanding the above, each Agency at all times retains any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State or any other applicable law including, without limitation, the right to proceed by appropriate court action to enforce the terms of the Agreement and the right to recover direct, indirect, consequential or

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incidental damages for the breach of the Agreement. If it is determined that an Agency improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

6. In the event of default by the Vendor, the Agency may procure materials and services from another source and may recover the loss occasioned thereby from any unpaid balance due the selected Vendor, or by any other legal means available to the Agency. Vendor shall reimburse the Agency for expenses related to delivery of non-specified materials or services.

VI. RELEASE OF INFORMATION AND OWNERSHIP OF WORK PRODUCT

1. Except to the extent required by law, any reports, information, or other data prepared or assembled by Vendor pursuant to this Agreement for Agency shall not be made available to any individual or organization by Vendor without the prior written approval of each Agency.

2. All right, title and interest in and to any and all data, materials, reports, compilations, documents, instruments and/or other information in any form/media generated by Vendor in pursuit of this Agreement and the services provided for herein shall be vested in the Agency and shall be transmitted to each Agency by Vendor upon termination of the Agreement. Vendor shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

3. Except to any extent expressly set forth in this Agreement, neither the City, nor the County grants, conveys, or delegates to Vendor any property interest or express or implied agency, license, right or authority. Without limitation, Vendor shall have no authority to bind the City or the County absent the respective Agency's express written consent.

VII. CONFIDENTIALITY

1. Vendor shall not disclose information about the City or County's business or business practices and safeguard confidential data which Vendor's staff may have access to in the course of system implementation.

2. All services performed by vendor shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

(a) Vendor shall submit to City and County's monitoring of said compliance.

(b) Vendor may be a Business associate of City or County, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, Vendor may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of City or County, as specified by the City or County, respectively, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to City and County, respectively, as the

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"Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

(c) Vendor shall not use or further disclose PHI other than as permitted or required by the City or County, respectively, or as required by law without written notice to the City and County.

(d) Vendor shall ensure that any agent, including any subcontractor, to which Vendor provides PHI received from, or created or received by the Vendor on behalf of County and/or City, shall comply with the same restrictions and conditions with respect to such information.

3. Data Security. Vendor shall employ adequate controls and data security measures, both internally and externally to ensure and protect the confidential information and/or data provided to Vendor by the respective County or City, preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of County or City data including sensitive or personal client information; abuse of County or City resources; and/or disruption to County or City operations.

(a) Vendor may not connect to or use County or City networks/systems via personally owned mobile, wireless or handheld devices unless authorized by County and City, respectively, for telecommuting purposes and provide a secure connection; up to date virus protection and mobile devices must have the remote wipe feature enabled. Computers or computer peripherals including mobile storage devices may not be used (County, City or Vendor device) or brought in for use into the County's or City's system(s) without prior authorization from County's Chief Information Officer and/or designee(s) or City's Chief Information Officer and/or designee(s), respectively.

(b) No storage of County's or City's private, confidential or sensitive data on any hard-disk drive, portable storage device or remote storage installation unless encrypted according to advance encryption standards (AES of 128 bit or higher).

(c) The Agency will immediately be notified by Vendor of any violations, breaches or potential breaches of security related to the respective County's or City's confidential information, data and/or data processing equipment which stores or processes the respective County or City data, internally or externally.

(d) The Agency shall provide oversight to Vendor's response to all incidents arising from a possible breach of security related to the respective County or City's confidential client information. Vendor will be responsible to issue any notification to affected individuals as required by law or as deemed necessary by County and City in their sole discretion. Vendor will be responsible for all costs incurred as a result of providing the required notification.

4. Year Compliance Warranty. Vendor warrants that any product furnished in connection with the services pursuant to this Agreement shall support a four-digit year format and be able to accurately process date and time data from, into and between the twentieth and twenty-first centuries, as well as leap year calculations. "Product" shall include, without limitation, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein. This warranty shall survive termination or expiration of this Agreement. In the event of any decrease in product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the product from operating correctly using dates beyond December 31, 1999, Vendor shall restore or repair the product to the same level of functionality as warranted herein, so as to

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minimize interruption to County's and City's ongoing business process, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by Vendor. Nothing in this warranty shall be construed to limit any rights or remedies the County or City may otherwise have under this Agreement with respect to defects other than year performance.

VIII. INDEMNIFICATION

1. County shall indemnify, hold harmless and defend City and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by County, City, Vendor, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of County or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by County of governmental immunities including California Government Code Section 810 et seq.

2. City shall indemnify, hold harmless and defend County and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, County, Vendor, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

3. To the furthest extent allowed by law, Vendor shall indemnify, hold harmless and defend City, County and each of their officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, County, Vendor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Vendor's obligations under the preceding sentence shall apply regardless of whether City, County or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City, County or any of their officers, officials, employees, agents or volunteers.

4. If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to indemnify, hold harmless and defend City, County and each of their officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

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5. This Section VIII shall survive termination or expiration of this Agreement.

IX. INSURANCE AND BOND REQUIREMENTS

1. City and County Insurance: It is understood and agreed that County and City maintain insurance policies or self-insurance programs to fund their respective liabilities. The County and City agree that such respective programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the other Agency and each of their officers, officials, employees, agents, and volunteers. Evidence of Insurance, e. g., Certificates of Insurance or other similar documentation, shall not be required of City or County under this Agreement.

2. Vendor Insurance: Throughout the life of this Agreement, Vendor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A FSC VII" in Best's Insurance Rating Guide.

(a) The following policies of insurance are required:

(1) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate applying separately to the work performed under the Agreement

Upon occupancy, the insurance shall include owner, landlord and tenant's liability coverage and fire legal liability coverage. At any time, the City and County may require other specific coverages including products liability, Explosion Collapse-Underground, or any other liability insurance deemed necessary because of the nature of this Agreement.

(2) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) used in connection with this Agreement with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(3) WORKERS' COMPENSATION insurance as required under the California Labor Code.

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(4) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(5) PROFESSIONAL LIABILITY insurance which shall include coverage appropriate to the Vendor's profession with limits of liability of not less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate. However, if Vendor employs licensed professional staff (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C., Veterinarian) in providing services, the limits of liability shall not be less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate.

(b) Umbrella or Excess Insurance. In the event Vendor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

(c) Deductibles and Self-insured Retentions. Vendor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and Vendor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, both City's Risk Manager and County's Risk Manager or their respective designees. At the combined option of both City's Risk Manager and County's Risk Manager, or their respective designees, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, County and their officers, officials, employees, agents and volunteers; or (ii) Vendor shall provide a financial guarantee, satisfactory to both City's Risk Manager and County's Risk Manager, or their respective designees, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City or County be responsible for the payment of any deductibles or self-insured retentions. However, with the prior consent and approval of City and County, the Vendor may maintain a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement.

(d) All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, changed, non-renewed, or reduced in coverage or in limits, except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City and County. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Vendor shall furnish City and County with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City or County, Vendor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

(e) The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, County and each of their officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Vendor's insurance shall be primary, no contribution shall be required of City or County, and any other insurance, or self-insurance,

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maintained by the City, County, or any of their officials, officers, agents, employees or volunteers shall be excess only. The coverage shall contain no special limitations on the scope of protection afforded to City, County, and each of their officers, officials, employees, agents and volunteers.

(f) The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Vendor and its insurer shall waive any right of subrogation against City, County and each of their officers, officials, employees, agents and volunteers.

(g) If the Professional Liability insurance policy is written on a claims-made form:

- i. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Vendor.
- ii. Insurance must be maintained at Vendor's sole cost and expense, and evidence of insurance must be provided, for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Vendor must purchase at its sole cost and expense "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
- iv. A copy of the claims reporting requirements must be submitted to City and County for review.
- v. These requirements shall survive expiration or termination of the Agreement.

(h) Verification of Coverage. Vendor shall furnish City and County with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager and County's Risk Manager, or their respective designees, prior to City and County's execution of the Agreement and before work commences. Anytime, upon request of City or County, Vendor shall immediately furnish City and County with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(i) In the event Vendor fails to keep in effect at all times insurance coverage as herein provided, the City and County may, in addition to other remedies they may have, suspend or terminate this Agreement upon the occurrence of such event. All payments due or that become due to Vendor shall be withheld until notice is received by County and City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to County and City. No action taken by City or County pursuant to this section shall in any way relieve Vendor of its responsibilities under this Agreement. The phrase "fails to keep in effect at all times insurance coverage" shall include, without limitation,

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notification received by City or County that the insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(j) The fact that insurance is obtained by Vendor shall not be deemed to release or diminish the liability of Vendor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and County shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the City and County's right to obtain indemnification from Vendor or any third parties. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Vendor, its principals, officers, agents, employees, persons under the supervision of Vendor, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(k) If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to provide insurance protection in favor of City, County and each of their officers, officials, employees, agents and volunteers in accordance with the terms of this section for "Vendor Insurance," except that any required certificates and applicable endorsements shall be on file with Vendor, City and County prior to the commencement of any services by the subcontractor.

3. Fidelity Bond (or separate Agency held retention account):

(a) Vendor shall maintain a fidelity bond in the principal amount of \$200,000. Vendor shall provide evidence of the existence of said fidelity bond and of the commitment of the bond underwriter to notify the City and County in writing not less than 30 days before the expiration, cancellation or other material change to said bond.

(b) In lieu of providing a fidelity bond, Vendor may deposit the principal amount of \$150,000 in the retention account held by the City and the principal amount of \$50,000 in the retention account held by the County.

4. Performance Bond: Vendor shall provide two good and sufficient surety bonds from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the Agency, and approved by the Agency. Each bond shall be a Faithful Performance Bond to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the respective Agency. One shall be for 100 percent of the Total Cost set forth in the City Fee Schedule, naming City as the Obligee, and the second shall be for 100 percent of the Total Cost set forth in the County Fee Schedule, naming County as the Obligee.

X. CONFLICT OF INTEREST

1. Prior to City's execution of this Agreement, Vendor shall complete a City of Fresno Disclosure of Conflict of Interest Form, attached hereto as **Exhibit C**. During the term of this Agreement, Vendor shall have the obligation and duty to immediately notify City and County in writing of any change to the information provided by Vendor on such Statement.

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2. This paragraph is only applicable if the Vendor is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, the Vendor changes its status to operate as a corporation. Members of the Vendor's Board of Directors (or all Members or General Partners, as applicable) shall disclose any self-dealing transactions that they are a party to while Vendor is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the Vendor is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors (or all Members or General Partners, as applicable) shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as **Exhibit D**, and submitting it to the Agency prior to commencing with the self-dealing transaction or immediately thereafter.

3. The Vendor shall not enter into any proposed transaction or series of transactions, if any person who is then one of its directors, employees, or officers, would, directly or indirectly, receive any income as the result of such a proposed transaction or series of transactions.

4. Vendor represents and warrants that as of the effective date hereof, it represents no client whose interests are adverse to either the City's, or the County's.

5. Vendor shall not employ or retain the services of any person while such person either is employed by City or County, or is a member of any City or County commission, board, committee, or similar City or County body. This requirement may be waived by the City Manager on behalf of the City, if no actual or potential conflict is involved and if not otherwise prohibited by law. This requirement may be waived by the Department of Public Health Director on behalf of County, if no actual or potential conflict is involved and if not otherwise prohibited by law.

6. Vendor shall comply with all applicable laws, rules, regulations and professional canons/requirements governing avoidance of impermissible client conflicts, including without limitation the requirements of the California Political Reform Act (Government Code Section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et seq.)

7. This Section IX shall survive expiration or termination of this Agreement.

XI. NONDISCRIMINATION

1. Vendor shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Vendor agrees as follows:

(a) Vendor will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

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(b) Vendor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Vendor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees and applicant for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Vendor will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Vendor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

2. This Agreement must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. The Agency has a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this Agreement. The Vendor must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this Agreement. In addition, the Vendor may be required to provide evidence substantiating that its employees have the necessary skills and training to perform the required services or work.

XII. INVALID PROVISIONS

The provisions of this Agreement are severable. In the event any term, covenant, condition, or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice any Party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

XIII. INDEPENDENT CONTRACTOR

1. Vendor is and throughout this Agreement shall be an independent contractor and not an employee or agent of the City or County. However, Agency shall retain the right to administer this Agreement so as to verify that Vendor is performing its obligations in accordance with the terms and conditions hereof.

2. Because of its status as an independent contractor, Vendor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City or County employees. Vendor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Vendor shall be solely responsible, indemnify, defend and save City and County harmless from all matters relating to employment and tax withholding for and payment of Vendor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City or County employment benefits, entitlements, programs and/or funds offered employees of City or County whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. The preceding sentence shall survive termination or expiration of this Agreement. It is acknowledged that during the term of this Agreement, Vendor may be providing services to others unrelated to City, County or to this Agreement.

XIV. PARTNERSHIP VENTURE

This Agreement does not evidence a partnership or joint venture between any of the Parties. Vendor shall have no authority to bind the City or County absent that Agency's express written consent. Except to the extent otherwise provided in this Agreement, each Party shall bear its own costs and expenses in pursuit hereof.

XV. NO THIRD PARTY BENEFICIARIES

The Parties acknowledge and agree that the Vendor is providing services hereunder only to and for the benefit of the Agency and that there are no intended or incidental beneficiaries of this Agreement.

XVI. NOTICES

1. Any notice required or intended to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of the Agreement or at such other address as the Party may from time to time designate by written notice.

2. Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 AM., on the 4th calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

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3. A Party giving written notice to another Party, shall copy the remaining Party unless the notice was required to be directed to all other Parties hereunder.

XVII. NON-ASSIGNMENT AND SUBCONTRACTING

1. This Agreement is personal to Vendor and there shall be no assignment by Vendor of its rights or obligations under this Agreement without the prior written consent of both City and County.

2. Vendor hereby agrees not to assign the payment of any monies due Vendor from City or County under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City and County retain the right to pay any and all monies due Vendor directly to Vendor.

3. Vendor shall assume full responsibility for all services and activities performed hereunder, whether or not they are provided directly. Further, Vendor shall be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Agreement as provided herein. Vendor may not subcontract or transfer this Agreement, or any right or obligation arising out of this Agreement, without first having obtained the express written consent of the Agency.

XVIII. BINDING

Subject to Section XVII, above, once the Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

XIX. NON-SOLICITATION

Vendor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights or benefits hereunder.

XX. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purpose of the filing of any case, claim, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California. Any claim which cannot be amicably settled without court action will be litigated in the U. S. District Court for the Eastern District of California in Fresno, CA or in a State court for Fresno County.

XXI. ATTORNEY'S FEES

If any Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party(ies) its reasonable attorney's fees and legal expenses in addition to any other relief to which such Party may be entitled.

XXII. CUMULATIVE REMEDIES

No remedies or election hereunder shall be deemed exclusive but shall, wherever possible be cumulative with all other remedies at law or in equity.

XXIII. WAIVER

The waiver by any Party of a breach by another Party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

XXIV. PRECEDENCE OF DOCUMENTS

The order of precedence of documents shall be: (1) Permits from other agencies as may be required by law; (2) Supplemental Agreements, Amendments, or Contract the one dated later having precedence over another dated earlier; (3) Scope of Work; (4) Vendor's Proposal.

Whenever any conflict appears in any portion of the Agreement, it shall be resolved by application of the order of precedence.

XXV. INTERPRETATION

The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any Party, but rather by construing the terms in accordance with their generally accepted meaning.

XXVI. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

XXVII. FUTHER ASSISTANCE

1. Vendor agrees that time is of the essence in its performance of this Agreement.
2. Upon request, and at no cost to the City or County, a representative of the Vendor shall attend meetings of the City Council and County Board of Supervisors for the purpose of providing expert information to said Council and Board, and/or for the purpose of providing information to said Council and Board concerning any matter arising out of or in connection with the Vendor's provision of services under this Agreement.
3. Agency shall review with and provide the Vendor with copies of all studies, reports, and recommendations prepared by the Agency covering any aspect of this Agreement or operations of the Vendor. Representatives of Vendor shall meet at least once each quarter with representatives of both City and County to review the Vendor's activities and performance

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in the execution of this Agreement. All meetings with Vendor shall be held with representatives of all Parties present. The Vendor shall recommend appropriate revisions to the Agency's respective ordinances covering animal control consistent with the Vendor's experience in performing said services.

4. This Agreement will be administered jointly by the City and County by their representatives, identified as follows: This Agreement shall be administered for the City by the City Manager, or such person as she/he shall designate. This Agreement shall be administered for the County by the Department of Public Health Director, or such person as she/he shall designate.

5. The Vendor shall abide by the requirements of the Immigration Control and Reform Act assuring the right to work of all newly hired employees and that all required documentation of the right to work is inspected and that the INS Form I-9 is completed. The Vendor shall make the required documentation available upon request to the City's Finance Director and the County's Department of Public Health Director for inspection.

6. The Vendor shall cooperate and coordinate with Agency and Agency's current service provider in transitioning the services from said provider to Vendor.

7. The Vendor shall carry out this Agreement in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies.

8. Vendor guarantees that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this Agreement. At any time upon request of City or County, the Vendor shall provide evidence substantiating that its employees have the necessary skills and training to perform the required services or work.

XXVIII. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Vendor shall sign the Certification Regarding Debarment, Suspension, and Other Responsibility Matters, attached hereto as **Exhibit E**. Additionally, the Vendor shall immediately advise the Agency in writing if, during the term of the Agreement: (1) Vendor becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the excluded parties list system (<http://www.epls.gov>); or (2) any of the listed conditions in the signed Certification become applicable to Vendor. The Vendor will indemnify, defend and hold the Agency harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The preceding sentence shall survive termination or expiration of the Agreement.

XXIX. PATENT AND COPYRIGHT INDEMNITY

Vendor warrants that Vendor, or its designated subcontractor, owns any proposed programs furnished or used by Vendor in connection with this Agreement and has the right to license their use to Agency. The Vendor shall indemnify and hold the City, County, and each of their officials, officers, agents, employees and volunteers, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or

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used in connection with this Agreement. This paragraph shall survive cancelation or expiration of this Agreement.

XXX. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

XXXI. NO JOINT OR SEVERAL LIABILITY

The Parties agree that City and County shall not be jointly and severally liable under this Agreement. The City and County do not intend this Agreement to be a joint powers agreement, nor do they intend to create through this Agreement a joint powers agency or entity as such terms are defined in the Joint Exercise of Powers Act, California Government Code section 6500, et seq.

XXXII. FINAL AGREEMENT AND MODIFICATION

This Agreement and any documents, instruments and materials referenced herein represents the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise expressly provided, this Agreement may be modified only by written instrument duly authorized by City, County and Vendor.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

VENDOR NAME,
[Legal Identity]

By: _____
Bruce Rudd,
Assistant City Manager

By: _____

Name: _____

Title: _____
(if corporation or LLC, Board Chair,
Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

Name: _____

By: _____
Deputy

Title: _____
(if corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

APPROVED AS TO LEGAL FORM:
KEVIN B. BRIGGS
County Counsel

By: _____
Nancy A. Algier Date
Senior Deputy

By: _____
Kevin B. Briggs

COUNTY OF FRESNO,
a political subdivision of the State of California

BERNICE E. SEIDEL, Clerk
Board of Supervisors

By: _____
Chairman, Board of Supervisors

By: _____

APPROVED AS TO ACCOUNTING FORM:
VICKI CROW, C.P.A., Auditor-Controller/
Treasurer-Tax Collector

By: _____
Vicki Crow

ADDRESSES: CITY: City of Fresno Attention: Bruce Rudd, Assistant City Manager 2600 Fresno St. Fresno, CA 93721 List of Attachments follows on next page.	VENDOR: Name Attention: [Name], [Title] Address COUNTY: Director, County of Fresno Department of Public Health P.O. Box 11867 Fresno, CA 93775
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Attachments:

- Exhibit A - Scope of Work
- Exhibit B - Fee Schedule
- Exhibit C - Disclosure of Conflict of Interest Form
- Exhibit D - Self-Dealing Transaction Disclosure Form
- Exhibit E - Certification Regarding Debarment, Suspension, and Other
Responsibility Matters

SAMPLE CITY/VENDOR AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "Agency"), and [Vendor Name], [Legal Identity] (hereinafter referred to as "Vendor").

WITNESSETH:

WHEREAS, Agency solicited proposals for Animal Control Services in conjunction with the County of Fresno in County of Fresno Request for Proposal, Number: 962-5062 ("RFP"); and

WHEREAS, on _____, 2012, Vendor submitted a Proposal to Agency pursuant to said RFP; and

WHEREAS, the Agency has a need for animal control, poundmaster, shelter and veterinary services, facilities and unrelated activities for animals from the incorporated limits of the City of Fresno ("Urban Area") as authorized and required by Food and Agriculture Code Sections 31105, 31106, Penal Code Section 597f, and Article 3, Chapter 10 of the Fresno Municipal Code; and

WHEREAS, the Agency has a further need for services to enforce the Agency's leash law ordinance in Article 3, Chapter 10 of the Fresno Municipal Code; and

WHEREAS, Vendor desires to provide [identify all or which part] services to Agency, pursuant to the terms and conditions of this Agreement; and

WHEREAS, Vendor is engaged in the business of providing the services, and represents to Agency that Vendor possesses unique and superior knowledge, skill, resources, facilities and expertise to be able to provide the services, and is fully competent and authorized in such matters, and will take all necessary and appropriate action and employ all necessary and appropriate resources, equipment, facilities, expertise and personnel to fully perform the services, holding any and all implicated licenses, permits, permissions and/or approval; and

WHEREAS, in reliance upon the foregoing representations of the Vendor, Agency desires to obtain the services from Vendor, as an independent contractor of the Agency, pursuant to the terms and conditions of this Agreement, to ensure that the services are being provided to residents in the Urban Area; and

WHEREAS, this Agreement, and the services to be provided hereunder, are contingent on the Agency's governing body appropriating money for each Fiscal Period hereunder sufficient for the continued performance of Agency's obligations hereunder, such that should sufficient funds not be appropriated, the services provided may be modified, or this Agreement terminated, at any time by the Agency as provided in Section V hereunder.

NOW THEREFORE, in consideration of the above recitals which are made part of this Agreement, the mutual promises and covenants herein contained, and for other good and valuable consideration the sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree as follows:

I. TERM AND RENEWALS

1. The Agreement shall be effective from the date of execution by both Parties ("Effective Date") and will continue so long as any amount remains unpaid hereunder, for an Initial Term beginning on the Effective Date and expiring at midnight on June 30, 2016, subject to such termination rights as are provided in Section V below.

2. The Initial Term of the Agreement may be extended for up to two 1-year Renewal Terms by Agency, upon the terms and conditions herein except that the fixing of the amount of fees due shall be by the Parties' written agreement added as a renewal addendum hereto, unless a Party shall give written notice of non-renewal at least 180 days prior to expiration of the then current Initial Term or Renewal Term, subject to such termination rights as are provided in Section V below. In no event shall this Agreement extend beyond June 30, 2018, except as provided in the following paragraph.

3. Upon expiration or termination of this Agreement, Vendor shall aid the Agency in continuing, uninterrupted, the requirements of this Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Agency's authorized representative, for a specified term not to exceed 12 months. Such continuance shall be on the same terms and conditions as provided in this Agreement; except the Agency may request part or all of the services to be performed and payment will be limited to the fees in the Fee Schedule for such services.

4. The contract year and the Fiscal Period shall run from July 1 through June 30.

II. SERVICES

1. Without limiting any obligations or liabilities owed by the Vendor hereunder, during the entire term hereof the Vendor shall provide the Agency with those services including, but not limited to, those that are set forth in the Scope of Work, attached hereto as **Exhibit A**. The services performed for Agency, hereunder, shall include only those services to the extent performed and originating in or directly for the Urban Area. Vendor's daily schedule and hours worked under this Agreement on a given day shall generally be subject to Vendor's discretion, provided that Vendor shall devote sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

2. The Vendor shall possess and maintain all necessary equipment, supplies and facilities, and employ and supervise all necessary personnel, to successfully render all services agreed upon during the term of this Agreement and any renewals thereof. The Agency assumes no obligation for the provision of equipment, supplies, facilities, or personnel to the Vendor for the execution of the Agreement except as expressly provided in paragraph 6, below, in this Section II. All costs of Vendor's performance hereunder including said equipment, supplies, facilities, and personnel are to be included in the monetary amount requested by the Vendor and agreed to in this Agreement.

3. Vendor acknowledges and agrees that it shall perform all of its obligations under this Agreement in full compliance with all applicable federal, state and local laws (including, without limitation, Article 3, Chapter 10 of the Fresno Municipal Code) and regulations, which are now in effect or hereinafter enacted from time to time. The Vendor, and not the Agency, is responsible for ascertaining what other laws and regulations, not specifically stated herein, apply to the performance of Vendor's obligations herein, and the Agency is under no duty

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whatsoever to advise Vendor of same. Vendor acknowledges and agrees that, at all times hereunder, it shall hold any and all necessary licenses, permits, permissions and approvals to provide the services.

4. Notwithstanding the foregoing, the Agency agrees to notify the Vendor of proposed changes in its Code affecting Vendor's performance under this Agreement, no less than 30 days prior to the scheduled date for public hearing on the adoption of same.

5. Vendor is engaged in the business of providing the services, and represents to Agency that Vendor possesses unique and superior knowledge, skill, resources, facilities and expertise to be able to provide the services, and is fully competent and authorized in such matters, and will take all necessary and appropriate action and employ all necessary and appropriate resources, equipment, facilities, expertise and personnel to fully perform the services from and after the effective date of this Agreement according to the terms and conditions hereof. The Agency relies upon the expertise of Vendor as a specialist to do and perform the services. Acceptance of the services by Agency shall not operate as a release of Vendor from performance standards as a specialist.

6. [RESERVED - FACILITIES - RELATED TO ANY LEASE WITH AGENCY]

III. FEES

1. In consideration of the Vendor's performance hereunder including the services, and subject to the terms and conditions herein, the Agency agrees to compensate the Vendor according to, and in the manner provided in, the Fee Schedule, attached hereto as **Exhibit B**. Notwithstanding anything stated to the contrary herein, any compensation payable by Agency to Vendor for services rendered, or reimbursement payable by Agency for Vendor's expenses incurred, under this Agreement shall be subject to Vendor performing the services to the satisfaction of the Agency.

2. Notwithstanding such Fee Schedule, the Parties agree that:

(a) The Agency shall not reimburse the Vendor for any non-Fee Schedule costs or expenses incurred by Vendor in pursuit hereof including, without limitation, non-mandated costs associated with educating the public on matters of animal ownership, absent the Agency's prior express written consent.

(b) The Vendor shall provide the Agency with a one hundred percent (100%) credit against Fee Schedule fees owing, or a cash payment in the event no such fees are owing, in the amount of all funding, reimbursement, or monetary assistance received by Vendor from the State of California ("State") for its performance of state mandated services, to the extent of Vendor's performance for the Agency.

(c) For a period of 3 years after final payment, Vendor shall provide any substantiation and support for fees, costs and expenses to Agency upon its reasonable request.

(d) Books, accounts and records of Vendor's revenues, costs and expenses pertaining to the services shall be kept on a generally recognized accounting basis and shall specifically identify the respective services reimbursed or reimbursable by the State. Such books, accounts and records shall be maintained in such a manner as to clearly distinguish revenues, expenses and State reimbursements arising hereunder from other Vendor activities.

(f) The Vendor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under the Agreement. Such records shall be complete and available to Agency, the State, the federal government or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the Agreement and for a period of at least 3 years following the Agency's final payment under the Agreement or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described herein until all pending matters are closed.

(g) In no event shall any payment by Agency constitute a waiver by Agency of any breach of this Agreement or any default which may then exist on the part of the Vendor. Neither shall such payment impair or prejudice any remedy available to Agency with respect to the breach or default. The Agency shall have the right to demand of Vendor the repayment to the Agency of any funds disbursed to Vendor under this Agreement, which in the judgment of the Agency were not expended in accordance with the terms of this Agreement. Vendor shall promptly refund any such funds upon demand or, at the Agency's option, such repayment shall be deducted from future payments owing to Vendor under this Agreement.

(h) Agency may use a procurement card to make payment for services under the Agreement.

(i) This Paragraph 2 of Section III shall survive expiration or termination of this Agreement.

IV. REPORTS & FUNDING REQUESTS

1. The Vendor agrees to provide the Agency with a written report pertaining to Agency's jurisdiction during the term of this Agreement, as follows:

(a) Service Reports: The Vendor shall provide the Agency with monthly and annual service reports covering activities and services performed in the execution of this Agreement in the format provided by the Agency entitled "Service Report Format." Monthly reports are due by the 15th of each month for the previous month, and the annual reports are due by October 1st of each year. Such reports shall be approved by the Board of Directors (or all Members or all General Partners, as applicable) of the Vendor prior to submission to the Agency.

(b) Fiscal Report: Vendor shall provide the Agency with monthly and annual fiscal reports and audited financial statements covering all income and expenses incurred in the execution of this Agreement in the format provided by the Agency entitled "Fiscal Report Format." Monthly reports are due by the 15th of each month for the previous month; and the annual audit is due by October 1st of each year. Such reports shall be approved by the Board of Directors (or all Members or all General Partners, as applicable) of the Vendor prior to submission to the Agency. Vendor agrees to provide copies of state and federal returns and filings to Agency upon the reasonable request of Agency.

(c) Complaint Report: Vendor shall provide, on a quarterly basis, the Agency with copies of complaints regarding services and designated as to the specific service, including complainant identification and steps taken to resolve the complaint.

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(d) Requests for Funding Adjustment: A written request for any funding adjustment for a Renewal Term, shall be provided the Agency by April 1st of the preceding contract year.

(e) Dog Bites: Within 24 hours of learning of any animal bite, the Vendor shall inform the Agency's authorized representative thereof.

V. TERMINATION OF AGREEMENT

1. Except as otherwise expressly provided herein, the term of this Agreement shall expire upon the first to occur of:

- (i) the expiration of the Initial Term or any Renewal Term during which an Event of Non-Appropriation by Agency occurs;
- (ii) the day after the last scheduled payment hereunder is paid in full by the Agency;
- (iii) Vendor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Vendor;
- (iv) written notice following any breach or default hereunder by Vendor where such breach or default is not cured within 30 days written notice thereof by the Agency to Vendor;
- (v) 180 days written notice without cause by Agency;
- (vi) written notice following any breach or default hereunder by Vendor where such breach or default is not susceptible of cure following written notice thereof by the Agency;
- (vii) Vendor's material cessation of business or operations; or
- (viii) expiration.

Any such termination shall not relieve a Party of obligations due and owing at the time of termination. However, in the event of breach or default by either Party, the other Party shall be relieved of its obligations under this Agreement and may pursue any legal remedies.

2. The terms and conditions of this Agreement, and the services to be provided hereunder for the Agency, are contingent upon the approval of funds by the Agency. An "Event of Non-Appropriation" means the failure of the City Council to appropriate money for any Fiscal Period sufficient for the continued performance by the Agency of all Agency's obligations hereunder.

3. Agency agrees that its primary business official will do all things lawfully within such official's power (i) to include amounts to make payments hereunder in each annual or biennial budget (as appropriate) to be submitted to the Agency's governing body and (ii) to maintain and utilize any funds appropriated in any given Fiscal Period for the purpose for which those funds were appropriated. Agency hereby agrees to notify Vendor immediately, and in no case later than 30 days, following the occurrence of an Event of Non-Appropriation. The Parties herein acknowledge that appropriation for payments hereunder is a government function which the Agency cannot contractually commit itself in advance to perform and this Agreement does not constitute such a commitment.

4. Immediately upon any termination hereof, and without waiver or limitation as to claims, damages, rights and remedies available to Agency under law, contract and equity, the

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Vendor immediately shall return to the Agency any unearned (current year) fee payments, and the Agency shall be possessed of a complete right of setoff as to sums, as well as all properties and materials in the possession of Vendor at the time of termination that are owned by the Agency. Such unearned fees shall not be construed as, nor constitute a recovery or waiver as to, any claims, damages, rights or remedies available to the Agency upon breach or default by Vendor hereunder.

5. Notwithstanding the above, Agency at all times retains any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State or any other applicable law including, without limitation, the right to proceed by appropriate court action to enforce the terms of the Agreement and the right to recover direct, indirect, consequential or incidental damages for the breach of the Agreement. If it is determined that Agency improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

6. In the event of default by the Vendor, the Agency may procure materials and services from another source and may recover the loss occasioned thereby from any unpaid balance due the selected Vendor, or by any other legal means available to the Agency. Vendor shall reimburse the Agency for expenses related to delivery of non-specified materials or services.

VI. RELEASE OF INFORMATION AND OWNERSHIP OF WORK PRODUCT

1. Except to the extent required by law, any reports, information, or other data prepared or assembled by Vendor pursuant to this Agreement for Agency shall not be made available to any individual or organization by Vendor without the prior written approval of Agency.

2. All right, title and interest in and to any and all data, materials, reports, compilations, documents, instruments and/or other information in any form/media generated by Vendor in pursuit of this Agreement and the services provided for herein shall be vested in the Agency and shall be transmitted to Agency by Vendor upon termination of the Agreement. Vendor shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

3. Except to any extent expressly set forth in this Agreement, the Agency does not grant, convey, or delegate to Vendor any property interest or express or implied agency, license, right or authority. Without limitation, Vendor shall have no authority to bind the Agency absent the Agency's express written consent.

VII. CONFIDENTIALITY

1. Vendor shall not disclose information about the Agency's business or business practices and safeguard confidential data which Vendor's staff may have access to in the course of system implementation.

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2. All services performed by vendor shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

(a) Vendor shall submit to Agency's monitoring of said compliance.

(b) Vendor may be a Business associate of Agency, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, Vendor may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of Agency, as specified by the Agency, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to Agency, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

(e) Vendor shall not use or further disclose PHI other than as permitted or required by the Agency, or as required by law without written notice to the Agency.

(f) Vendor shall ensure that any agent, including any subcontractor, to which Vendor provides PHI received from, or created or received by the Vendor on behalf of Agency, shall comply with the same restrictions and conditions with respect to such information.

3. Data Security. Vendor shall employ adequate controls and data security measures, both internally and externally to ensure and protect the confidential information and/or data provided to Vendor by the Agency, preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of Agency data including sensitive or personal client information; abuse of Agency resources; and/or disruption to Agency operations.

(a) Vendor may not connect to or use Agency networks/systems via personally owned mobile, wireless or handheld devices unless authorized by Agency for telecommuting purposes and provide a secure connection; up to date virus protection and mobile devices must have the remote wipe feature enabled. Computers or computer peripherals including mobile storage devices may not be used (Agency or Vendor device) or brought in for use into the Agency's system(s) without prior authorization from Agency's Chief Information Officer and/or designee(s).

(b) No storage of Agency's private, confidential or sensitive data on any hard-disk drive, portable storage device or remote storage installation unless encrypted according to advance encryption standards (AES of 128 bit or higher).

(c) The Agency will immediately be notified by Vendor of any violations, breaches or potential breaches of security related to Agency's confidential information, data and/or data processing equipment which stores or processes the Agency data, internally or externally.

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(d) The Agency shall provide oversight to Vendor's response to all incidents arising from a possible breach of security related to the Agency's confidential client information. Vendor will be responsible to issue any notification to affected individuals as required by law or as deemed necessary by Agency in its sole discretion. Vendor will be responsible for all costs incurred as a result of providing the required notification.

4. Year Compliance Warranty. Vendor warrants that any product furnished in connection with the services pursuant to this Agreement shall support a four-digit year format and be able to accurately process date and time data from, into and between the twentieth and twenty-first centuries, as well as leap year calculations. "Product" shall include, without limitation, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein. This warranty shall survive termination or expiration of this Agreement. In the event of any decrease in product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the product from operating correctly using dates beyond December 31, 1999, Vendor shall restore or repair the product to the same level of functionality as warranted herein, so as to minimize interruption to Agency's ongoing business process, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by Vendor. Nothing in this warranty shall be construed to limit any rights or remedies the Agency may otherwise have under this Agreement with respect to defects other than year performance.

VIII. INDEMNIFICATION

1. To the furthest extent allowed by law, Vendor shall indemnify, hold harmless and defend Agency, its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Agency, Vendor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Vendor's obligations under the preceding sentence shall apply regardless of whether Agency or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of Agency, its officers, officials, employees, agents or volunteers.

2. If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to indemnify, hold harmless and defend Agency, its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

3. This Section VIII shall survive termination or expiration of this Agreement.

IX. INSURANCE AND BOND REQUIREMENTS

1. Vendor Insurance: Throughout the life of this Agreement, Vendor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A FSC VII" in Best's Insurance Rating Guide.

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(a) The following policies of insurance are required:

(1) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate applying separately to the work performed under the Agreement

Upon occupancy, the insurance shall include owner, landlord and tenant's liability coverage and fire legal liability coverage. At any time, Agency may require other specific coverages including products liability, Explosion Collapse-Underground, or any other liability insurance deemed necessary because of the nature of this Agreement.

(2) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) used in connection with this Agreement with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(3) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(4) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(5) PROFESSIONAL LIABILITY insurance which shall include coverage appropriate to the Vendor's profession with limits of liability of not less than \$1,000,000 per claim/occurrence and \$2,000,000 policy aggregate. However, if Vendor employs licensed professional staff (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C., Veterinarian) in providing services, the limits of liability shall not be less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate.

(b) Umbrella or Excess Insurance. In the event Vendor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

(c) Deductibles and Self-insured Retentions. Vendor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required

hereunder and Vendor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, Agency's Risk Manager or his/her designee. At the option of Agency's Risk Manager, or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Agency, its officers, officials, employees, agents and volunteers; or (ii) Vendor shall provide a financial guarantee, satisfactory to Agency's Risk Manager, or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Agency be responsible for the payment of any deductibles or self-insured retentions. However, with the prior consent and approval of Agency, the Vendor may maintain a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement.

(d) All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, changed, non-renewed, or reduced in coverage or in limits, except after 30 calendar day written notice by certified mail, return receipt requested, has been given to Agency. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Vendor shall furnish Agency with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for Agency, Vendor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

(e) The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name Agency, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Vendor's insurance shall be primary, no contribution shall be required of Agency, and any other insurance, or self-insurance, maintained by the Agency, or any of its officials, officers, agents, employees or volunteers shall be excess only. The coverage shall contain no special limitations on the scope of protection afforded to Agency, its officers, officials, employees, agents and volunteers.

(f) The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Vendor and its insurer shall waive any right of subrogation against Agency, or any of its officers, officials, employees, agents and volunteers.

(g) If the Professional Liability insurance policy is written on a claims-made form:

- i. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Vendor.
- ii. Insurance must be maintained at Vendor's sole cost and expense, and evidence of insurance must be provided, for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Vendor must purchase at its sole cost and expense

“extended reporting” coverage for a minimum of 5 years following the expiration or termination of the Agreement.

- iv. A copy of the claims reporting requirements must be submitted to Agency for review.
- v. These requirements shall survive expiration or termination of the Agreement.

(h) Verification of Coverage. Vendor shall furnish Agency with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the Agency’s Risk Manager, or his/her designee, prior to Agency’s execution of the Agreement and before work commences. Anytime, upon request of Agency, Vendor shall immediately furnish Agency with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(i) In the event Vendor fails to keep in effect at all times insurance coverage as herein provided, the Agency may, in addition to other remedies they may have, suspend or terminate this Agreement upon the occurrence of such event. All payments due or that become due to Vendor shall be withheld until notice is received by Agency that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Agency. No action taken by Agency pursuant to this section shall in any way relieve Vendor of its responsibilities under this Agreement. The phrase “fails to keep in effect at all times insurance coverage” shall include, without limitation, notification received by Agency that the insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(j) The fact that insurance is obtained by Vendor shall not be deemed to release or diminish the liability of Vendor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Agency shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the Agency’s right to obtain indemnification from Vendor or any third parties. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Vendor, its principals, officers, agents, employees, persons under the supervision of Vendor, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(k) If Vendor should subcontract all or any portion of the services to be performed under this Agreement, Vendor shall require each subcontractor to provide insurance protection in favor of Agency, its officers, officials, employees, agents and volunteers in accordance with the terms of this section for “Vendor Insurance,” except that any required certificates and applicable endorsements shall be on file with Vendor and Agency prior to the commencement of any services by the subcontractor.

3. Fidelity Bond (or separate Agency held retention account):

(a) Vendor shall maintain a fidelity bond in the principal amount of \$150,000. Vendor shall provide evidence of the existence of said fidelity bond and of the commitment of

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the bond underwriter to notify the Agency in writing not less than 30 days before the expiration, cancellation or other material change to said bond.

(b) In lieu of providing a fidelity bond, Vendor may deposit the principal amount of \$150,000 in the retention account held by the Agency.

4. Performance Bond: Vendor shall provide a good and sufficient surety bond from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the Agency, and approved by the Agency. The bond shall be a Faithful Performance Bond to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the Agency. The bond shall be for 100 percent of the Total Cost set forth in the Fee Schedule, naming Agency as the Obligor.

X. CONFLICT OF INTEREST

1. Prior to Agency's execution of this Agreement, Vendor shall complete a Disclosure of Conflict of Interest Form, attached hereto as **Exhibit C**. During the term of this Agreement, Vendor shall have the obligation and duty to immediately notify Agency in writing of any change to the information provided by Vendor on such Statement.

2. This paragraph is only applicable if the Vendor is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, the Vendor changes its status to operate as a corporation. Members of the Vendor's Board of Directors (or all Members or General Partners, as applicable) shall disclose any self-dealing transactions that they are a party to while Vendor is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the Vendor is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors (or all Members or General Partners, as applicable) shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as **Exhibit D**, and submitting it to the Agency prior to commencing with the self-dealing transaction or immediately thereafter.

3. The Vendor shall not enter into any proposed transaction or series of transactions, if any person who is then one of its directors, employees, or officers, would, directly or indirectly, receive any income as the result of such a proposed transaction or series of transactions.

4. Vendor represents and warrants that as of the effective date hereof, it represents no client whose interests are adverse to Agency's.

5. Vendor shall not employ or retain the services of any person while such person either is employed by Agency, or is a member of any Agency commission, board, committee, or similar Agency body. This requirement may be waived by the City Manager on behalf of the Agency, if no actual or potential conflict is involved and if not otherwise prohibited by law.

6. Vendor shall comply with all applicable laws, rules, regulations and professional canons/requirements governing avoidance of impermissible client conflicts, including without limitation the requirements of the California Political Reform Act (Government Code Section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et seq.)

7. This Section X shall survive expiration or termination of this Agreement.

XI. NONDISCRIMINATION

1. Vendor shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Vendor agrees as follows:

(a) Vendor will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Vendor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Vendor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees and applicant for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Vendor will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Vendor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

2. This Agreement must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. The Agency has a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this Agreement. The Vendor must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this

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Agreement. In addition, the Vendor may be required to provide evidence substantiating that its employees have the necessary skills and training to perform the required services or work.

XII. INVALID PROVISIONS

The provisions of this Agreement are severable. In the event any term, covenant, condition, or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either Party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

XIII. INDEPENDENT CONTRACTOR

1. Vendor is and throughout this Agreement shall be an independent contractor and not an employee or agent of the Agency. However, Agency shall retain the right to administer this Agreement so as to verify that Vendor is performing its obligations in accordance with the terms and conditions hereof.

2. Because of its status as an independent contractor, Vendor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to Agency employees. Vendor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Vendor shall be solely responsible, indemnify, defend and save Agency harmless from all matters relating to employment and tax withholding for and payment of Vendor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in Agency employment benefits, entitlements, programs and/or funds offered employees of Agency whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. The preceding sentence shall survive termination or expiration of this Agreement. It is acknowledged that during the term of this Agreement, Vendor may be providing services to others unrelated to Agency or to this Agreement.

XIV. PARTNERSHIP VENTURE

This Agreement does not evidence a partnership or joint venture between the Parties. Vendor shall have no authority to bind the Agency absent Agency's express written consent. Except to the extent otherwise provided in this Agreement, each Party shall bear its own costs and expenses in pursuit hereof.

XV. NO THIRD PARTY BENEFICIARIES

The Parties acknowledge and agree that the Vendor is providing services hereunder only to and for the benefit of the Agency and that there are no intended or incidental beneficiaries of this Agreement.

XVI. NOTICES

1. Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of the Agreement or at such other address as the Party may from time to time designate by written notice.

2. Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 AM., on the 4th calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

XVII. NON-ASSIGNMENT AND SUBCONTRACTING

1. This Agreement is personal to Vendor and there shall be no assignment by Vendor of its rights or obligations under this Agreement without the prior written consent of Agency.

2. Vendor hereby agrees not to assign the payment of any monies due Vendor from Agency under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). Agency retains the right to pay any and all monies due Vendor directly to Vendor.

3. Vendor shall assume full responsibility for all services and activities performed hereunder, whether or not they are provided directly. Further, Vendor shall be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Agreement as provided herein. Vendor may not subcontract or transfer this Agreement, or any right or obligation arising out of this Agreement, without first having obtained the express written consent of the Agency.

XVIII. BINDING

Subject to Section XVII, above, once the Agreement is signed by both Parties, it shall be binding upon, and shall inure to the benefit of, both Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

XIX. NON-SOLICITATION

Vendor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights or benefits hereunder.

XX. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purpose of the filing of any case, claim, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California. Any claim which cannot be amicably settled without court action will be litigated in the U. S. District Court for the Eastern District of California in Fresno, CA or in a State court for Fresno County.

XXI. ATTORNEY'S FEES

If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses in addition to any other relief to which such Party may be entitled.

XXII. CUMULATIVE REMEDIES

No remedies or election hereunder shall be deemed exclusive but shall, wherever possible be cumulative with all other remedies at law or in equity.

XXIII. WAIVER

The waiver by either Party of a breach by the other Party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by both Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

XXIV. PRECEDENCE OF DOCUMENTS

The order of precedence of documents shall be: (1) Permits from other agencies as may be required by law; (2) Supplemental Agreements, Amendments, or Contract the one dated later having precedence over another dated earlier; (3) Scope of Work; (4) Vendor's Proposal.

Whenever any conflict appears in any portion of the Agreement, it shall be resolved by application of the order of precedence.

XXV. INTERPRETATION

The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

XXVI. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

XXVII. FUTHER ASSISTANCE

1. Vendor agrees that time is of the essence in its performance of this Agreement.
2. Upon request, and at no cost to the Agency, a representative of the Vendor shall attend meetings of the City Council for the purpose of providing expert information to said Council, and/or for the purpose of providing information to said Council concerning any matter arising out of or in connection with the Vendor's provision of services under this Agreement.

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3. Agency shall review with and provide the Vendor with copies of all studies, reports, and recommendations prepared by the Agency covering any aspect of this Agreement or operations of the Vendor. Representatives of Vendor shall meet at least once each quarter with representatives of Agency to review the Vendor's activities and performance in the execution of this Agreement. All meetings with Vendor shall be held with representatives of all Parties present. The Vendor shall recommend appropriate revisions to the Agency's ordinances covering animal control consistent with the Vendor's experience in performing said services.

4. This Agreement will be administered by the Agency's representative, identified as follows: This Agreement shall be administered for the Agency by the City Manager, or such person as she/he shall designate.

5. The Vendor shall abide by the requirements of the Immigration Control and Reform Act assuring the right to work of all newly hired employees and that all required documentation of the right to work is inspected and that the INS Form I-9 is completed. The Vendor shall make the required documentation available upon request to the Agency's Finance Director for inspection.

6. The Vendor shall cooperate and coordinate with Agency and Agency's current service provider in transitioning the services from said provider to Vendor.

7. The Vendor shall carry out this Agreement in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies.

8. Vendor guarantees that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this Agreement. At any time upon request of Agency, the Vendor shall provide evidence substantiating that its employees have the necessary skills and training to perform the required services or work.

XXVIII. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Vendor shall sign the Certification Regarding Debarment, Suspension, and Other Responsibility Matters, attached hereto as **Exhibit E**. Additionally, the Vendor shall immediately advise the Agency in writing if, during the term of the Agreement: (1) Vendor becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the excluded parties list system (<http://www.epls.gov>); or (2) any of the listed conditions in the signed Certification become applicable to Vendor. The Vendor will indemnify, defend and hold the Agency harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The preceding sentence shall survive termination or expiration of the Agreement.

XXIX. PATENT AND COPYRIGHT INDEMNITY

Vendor warrants that Vendor, or its designated subcontractor, owns any proposed programs furnished or used by Vendor in connection with this Agreement and has the right to license their use to Agency. The Vendor shall indemnify and hold the City, County, and each of their officials, officers, agents, employees and volunteers, harmless from liability of any nature or

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kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with this Agreement. This paragraph shall survive cancelation or expiration of this Agreement.

XXX. EXHIBITS

Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

XXXI. FINAL AGREEMENT AND MODIFICATION

This Agreement and any documents, instruments and materials referenced herein represents the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise expressly provided, this Agreement may be modified only by written instrument duly authorized by Agency and Vendor.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

VENDOR NAME,
[Legal Identity]

By: _____
Bruce Rudd,
Assistant City Manager

By: _____

Name: _____

Title: _____
(if corporation or LLC, Board Chair,
Pres. or Vice Pres.)

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____

Name: _____

By: _____
Deputy

Title: _____
(if corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Nancy A. Algier Date
Senior Deputy

ADDRESSES:

CITY:
City of Fresno
Attention: Bruce Rudd, Assistant City Manager
2600 Fresno St.
Fresno, CA 93721

VENDOR:
Name
Attention: [Name], [Title]
Address

Attachments:

- Exhibit A - Scope of Work
- Exhibit B - Fee Schedule
- Exhibit C - Disclosure of Conflict of Interest Form
- Exhibit D - Self-Dealing Transaction Disclosure Form
- Exhibit E - Certification Regarding Debarment, Suspension, and Other
Responsibility Matters