

ANIMAL SHELTER SERVICE AGREEMENT

This Animal Shelter Service Agreement (hereinafter "Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "Fremont"), and the CITY OF SAN LEANDRO, a California charter city (hereinafter "San Leandro"). Fremont and San Leandro may individually be referred to herein as "party" and collectively referred to herein as the "parties."

RECITALS

- A.** Fremont constructed the Tri-City Animal Shelter and operates the shelter with its own employees.
- B.** Fremont has been providing animal shelter services to San Leandro since 2005 and the parties wish to continue the services through an updated contract to reflect the ongoing land, building and maintenance costs as well as update the costs for providing animal shelter services.
- C.** In addition to San Leandro, Fremont has provided animal shelter services to the cities of Newark and Union City and will continue to do so under terms similar to this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF ANIMAL SHELTER SERVICES.** Fremont shall perform the services ("Animal Shelter Services") described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement to San Leandro.
- 2. TERM.** This Agreement shall become effective on the date the Agreement is fully executed. Fremont will begin providing the Animal Services to San Leandro pursuant to this Agreement on July 1, 2018 and this Agreement shall be for a period of three (3) years and ending on June 30, 2021 ("Termination Date"). The parties shall have the option to renew this Agreement for two (2) additional three (3) year terms. In order to exercise the option for a renewal term, a party shall indicate in writing its intent to exercise the option and the other party shall accept or deny the renewal option within fourteen days. A renewal option can only be exercised if both parties are willing to extend the term of this Agreement.
- 3. TERMINATION.**

3(A) Termination without Cause. This Agreement may be terminated by either party without cause upon one hundred eighty (180) days written notice to

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the other party. If San Leandro exercises its right to terminate this Agreement in accordance with this section, San Leandro shall pay Fremont for all services performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit "B".

3(B) Termination for Cause. If either party fails to cure any material breach, following notice and opportunity to cure, either party, upon written notice to the other, may terminate this Agreement for cause. The termination shall be effective not less than sixty (60) days from the date of the notice or such longer time as determined by both parties.

4. ANIMAL SHELTER SERVICES COSTS. In consideration of Fremont's performance of the services described in section 1 and Exhibit "A", San Leandro shall pay the amounts specified in Exhibit "B", for the services rendered under this Agreement. The amount San Leandro shall pay for Animal Shelter Services is broken down into three (3) fees (Maintenance, Land and Building, and Services) as described in Exhibit "B", attached hereto and incorporated herein by reference. The compensation payable to Fremont for the services identified in Exhibit "A" shall not exceed \$150,000 annually.

5. PAYMENT. On or before April 1 of each year this Agreement is in force, Fremont will provide San Leandro a copy of the proposed annual animal shelter budget plus computations indicating San Leandro's pro rata share of the budget cost. Budget estimates will be based on the number of animals received at the shelter during the prior fiscal year. Fremont shall send monthly invoices to San Leandro which shall be calculated as 1/12 of the annual amount for all three fees. San Leandro shall pay the invoices within thirty (30) days of the date of the invoice. After thirty (30) days, payment shall be considered late and a default under section 15 of this Agreement. Fremont shall calculate annual adjustments of the actual annual costs ("true-up") following the closing of the fiscal year and those adjustments shall be included in the February invoice.

6. AUTHORIZED REPRESENTATIVES.

6(A). Fremont's Authorized Representative. All services performed by Fremont under this Agreement shall be performed by, or under the supervision of, Fremont's Authorized Representative, the Animal Services Manager, unless otherwise designated in writing by Fremont's Authorized Representative or the Fremont Chief of Police.

6(B). San Leandro's Authorized Representative. San Leandro's Authorized Representative under this agreement is the San Leandro Chief of Police or his/her designee.

7. ADDITIONAL USER OF THE ANIMAL SHELTER. Both parties acknowledge and

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agree that Fremont may provide animal shelter services to other agencies, including the cities of Newark and Union City, without the consent of San Leandro. If Fremont alters which agencies receive animal shelter services from Fremont, Fremont shall recalculate the amortization of the building maintenance accordingly and Fremont reserves the right to adjust the animal shelter services costs if the agencies which are receiving such services change.

8. INFORMATION AND DOCUMENTATION.

8(A) Accounting Records. San Leandro and Fremont shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. The accounting records to be maintained in accordance with this Agreement shall include, at a minimum, documents which support Fremont's costs and expenses related to this Agreement including documentation of requests for services, services preformed, invoices, and payments. Each party's accounting records shall be made available to the other party with a reasonable time after the request, during normal business hours.

8(B) Ownership of Work Product. All original documents prepared by Fremont (including its employees and agents) for this Agreement ("work product"), whether complete or in progress, are the property of Fremont. San Leandro shall have the right to make and keep copies of the work product.

9. NONDISCRIMINATION. The parties shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. The parties shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.

10. COMPLIANCE WITH LAW. The parties shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement.

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- 11. INSURANCE.** Each party shall maintain general liability insurance including bodily injury and property damage, with a single combined liability limit of not less than \$2 million and automobile liability insurance with a liability limit of not less than \$2 million, insuring all liability of the party, including its authorized representatives, for claims arising out of and in connection with the services under this Agreement, including the use and/or occupancy of a party's owned equipment, apparatus, real property and premises. Either party shall provide acceptable insurance certificates showing proof of insurance coverage upon the request of the other party.
- 12. INDEMNIFICATION.** Each party shall indemnify, hold harmless, and defend the other party and its elected officials, officers, agents and employees from and against any and all claims including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees resulting or arising from that party's performance, failure to perform, or willful misconduct, under this Agreement. The indemnified party shall cooperate with the indemnifying party in the defense of any action required by this section. Notwithstanding the foregoing if either party is held liable upon a judgment for damages under this section, and that party pays in excess of its pro rata share in satisfaction of such judgment, that party is entitled to contribution from the other party under Government Code section 895.6.
- 13. FORCE MAJEURE.** If by reason of *force majeure* Fremont is unable in whole or in part to perform the services under this Agreement, Fremont shall not be in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Fremont.
- 14. RELATIONSHIP OF THE PARTIES.** It is expressly understood that this is an agreement between two independent contractors and that no agency, employee, partnership, joint venture or other relations is established by the Agreement. Neither party shall have the authority to act on behalf of the other party or to bind the other party to any obligation whatsoever. Nothing contained in this Agreement is intended to, nor shall it be construed in any way, to be a joint powers agreement of any kind.
- 15. DEFAULT.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be

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cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

16. CONTINUOUS SERVICE DELIVERY. Fremont agrees that there is a public health and safety obligation to assist San Leandro in every effort to ensure uninterrupted and continuous service delivery in the event of a material breach, even if Fremont disagrees with the alleged determination of material breach. Accordingly, Fremont will continue to provide services under this Agreement during any dispute resolution process. Additionally, in the event the Agreement is terminated for any reason, Fremont shall cooperate with San Leandro in its transition to a new service provider.

17. DISPUTE RESOLUTION.

17(A) In the event that either party disputes any provision or interpretation of or performance under this Agreement, including cost of service or billing, or contends there has been a material breach of the Agreement, the parties shall meet to attempt to resolve the dispute. Disputes not resolved at the City Manager and Police Chief (or his/her designee) level may be escalated by giving written notice to the other party of the need to proceed with mediation. It is the parties' intention to avoid the cost of litigation and to resolve any issues that may arise amicably if possible.

17(B) Within ten (10) business days from the effective date, pursuant to section 15, of written notice from one party to the other indicating that a dispute is to be mediated, the parties shall mutually select one person who shall mediate the dispute. The parties should select a qualified professional with expertise in the subject matter of the dispute. If the parties are unable to mutually agree upon a mediator within fourteen (14) business days following the notice, the parties shall each designate one person as a mediator within twenty (20) business days following the notice.

17(C) These two designated mediators shall mutually select a third mediator (also a qualified professional with expertise in the subject of the dispute) within twenty (20) business days of the notice. The one selected mediator shall mediate the dispute. The mediation shall be completed within thirty (30) business days of the appointment of the mediator. The mediation shall be conducted in accordance with the discretion of the mediator. However, if the mediator is unable to resolve the dispute within thirty (30) business days and the parties do not agree to an extension of time, the mediator shall submit specific and written recommendations for full resolution of the dispute within

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ten (10) business days thereafter. The parties shall consider the written recommendations of the mediator.

17(D) The fees and expenses of the one selected mediator shall be divided equally between the Parties. The above deadlines shall be enforced unless extensions are mutually agreed upon or granted to either party by the mediator for good cause shown.

18. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three (3) working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: Fremont

Attn: Police Chief
2000 Stevenson Blvd.
Fremont, CA 94538

With a Copy To:

City Attorney
3300 Capitol Avenue
Building A
Fremont, CA 94538

To: San Leandro

Attn: City Manager
835 E. 14th St.
San Leandro, CA 94577

With a Copy To:

City Attorney
co/ Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

19. HEADINGS. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

20. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

21. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.


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- 22. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the parties' duties be delegated, without the written consent of the other party. Any attempt to assign or delegate this Agreement without the written consent of the other party shall be void and of no force or effect. Consent by a party to one assignment shall not be deemed to be consent to any subsequent assignment.
- 23. SUCCESSORS.** This Agreement shall bind and inure to the benefit of all successors and assigns of the parties and any associates in interest, and their respective directors, officers, agents, servants, and employees, and the successors and assigns of each of them, separately and collectively.
- 24. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 25. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 26. CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
- 27. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- 28. EACH PARTY'S ROLE IN DRAFTING THE AGREEMENT.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- 29. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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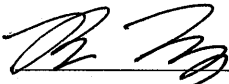
IN WITNESS WHEREOF, Fremont and San Leandro do hereby agree to the full performance of the terms set forth herein.

CITY OF FREMONT

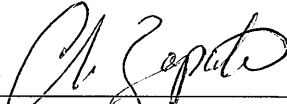
By: 
By: Brian Stott
Title: City Manager, Deputy
Date: 6/8/18

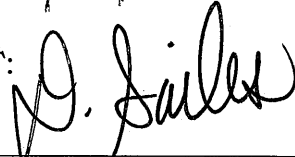
ATTEST: 
By: Susan Gauthier
City Clerk

APPROVED AS TO FORM:

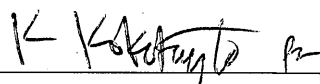

By: Bronwen Lacey
Title: Deputy City Attorney

CITY OF SAN LEANDRO

By: 
By: Chris Zapata
Title: City Manager
Date: 6/18/18

ATTEST: 
By: Tamika Greenwood
City Clerk

APPROVED AS TO FORM:


By: Richard D. Pio Roda
Title: City Attorney

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EXHIBIT “A” **Scope of Services**

- I. During the term of this Agreement, Fremont shall provide to San Leandro and be responsible for the following services described in this Exhibit “A”.

A. Animal Sheltering Services

1. Fremont shall provide shelter for stray domestic animals found within the boundaries of San Leandro. Shelter services shall include the administrative tasks necessary for surrender of such animals at the Animal Services Center, the care of animals during the holding period, and final disposition of animals through redemption, adoption, rescue or humane euthanasia. Fremont shall shelter such animals received at the Tri-City Animal Shelter in accordance with applicable state regulations, local ordinances and policies governing humane treatment of animals.
2. Fremont shall provide for the proper disposal of domestic and wild animal carcasses.
3. Fremont will not be responsible for shelter or veterinary services for exotic animals not allowed by state regulations, livestock or wildlife.
4. Fremont will provide emergency veterinary services to animals that were found in San Leandro only if the need for veterinary services is discovered after impoundment. Fremont will transport an animal requiring emergency medical treatment to the veterinary hospital of Fremont’s choosing.
5. Fremont shall provide strict quarantine facilities for domestic animals that have bitten a human being when the bite broke the skin. Fremont will decapitate an animal suspected of rabies that has died during the quarantine or requires humane euthanasia. Fremont will maintain the head and requisite paperwork for the Alameda County Health Department to pick up.
6. Fremont will not provide quarantine facilities for a dog involved in an altercation with an animal where one or both of the animals were bitten. However, Fremont will provide shelter service to dog involved in an altercation with an animal where one or both of the animals were bitten and the dog is impounded by San Leandro as a result of San Leandro classifying the dog as potentially dangerous, dangerous or vicious.

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7. Fremont shall maintain appropriate staffing levels to provide the services set forth in this Agreement.
8. The Tri-City Animal Shelter shall have public access hours on a schedule designed to benefit the public and facilitate the services established in this Agreement, provided that public access be a minimum of twenty-five (25) hours per week. Fremont shall notify the public any changes of hours or closures, such as recognized holidays, on the City of Fremont's website and at the Tri-City Animal Shelter.
9. Fremont shall accept animals from San Leandro at the Tri-City Animal Shelter twenty-four (24) hours a day, seven (7) days a week. Access to the Tri-City Animal Shelter for accepting animals may be restricted to the Drop off Cages when Fremont staff is unavailable.
10. Fremont shall provide monthly sheltering statistics to San Leandro, including the number of impounded strays that have been redeemed by San Leandro citizens. Information contained on the reports shall be agreed upon by all parties.
11. Fremont will provide training for San Leandro animal control officers regarding the policies and procedures of the Tri-City Animal Shelter.
12. Fremont shall maintain records as required by State regulations and Fremont records retention schedule.
13. Fremont will hold animals and redeem animals to their owners pursuant to the Fremont Municipal Code and state law, regardless of whether the San Leandro Municipal Code contains different requirement.

II. During the term of this Agreement, San Leandro shall provide to Fremont and be responsible for the following service services described in this Exhibit "A".

1. San Leandro shall provide all field services to residents. Field services shall include but not be limited to picking up domestic animals running at large, conducting investigations of potentially dangerous, dangerous and vicious dogs, conducting bite investigations, responding to nuisance complaints and checking on possible instances of neglect or abuse.
2. San Leandro shall be responsible for licensing all animals residing in San Leandro pursuant to the San Leandro Municipal Code.

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3. San Leandro shall provide Fremont with all information pertaining to the impoundment of an animal. This includes but is not limited to; reporting party's name and phone number, location where the animal was picked up, circumstances of the impoundment (e.g., arrest, hospitalized, stray), and owner's name, address and phone number if known.
4. San Leandro staff shall confer with Tri-City Animal Shelter's staff as to kenneling the animal. San Leandro staff shall assist the shelter staff to complete the intake process.
5. San Leandro staff will not utilize the outside night drop boxes when shelter staff is present.
6. San Leandro staff trained in animal services will log all animals into the computer database, including those animals that were brought in deceased.
7. San Leandro will provide all pertinent information regarding the animal in the computer database.
8. San Leandro will scan every domestic animal, live or deceased, for a microchip or identification tag and input this information into the computer database. If possible, San Leandro will return the animal to the owner before impoundment at the Tri-City Animal Shelter.
9. San Leandro will transport any impounded domestic animal that is sick or injured to a veterinarian for medical treatment before bringing the animal to the Tri-City Animal Shelter for boarding. If upon delivery to the Tri-City Animal Shelter, Fremont staff determines that the animal is not stable, San Leandro will transport the animal back to the veterinarian.
10. San Leandro will provide written weekly updates to Fremont for animals being held at the Tri-City Animal Shelter for protective custody or an administrative hearing.
11. San Leandro shall inform Fremont regarding potential issues with residents known to San Leandro as requiring caution and cases that could impact the services provided by Fremont pursuant to this Agreement.

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EXHIBIT “B” Compensation

For all services identified in Exhibit “A”, Scope of Services, San Leandro agrees to pay and Fremont agrees to accept as total compensation the following:

A. Maintenance Fee

The amount of San Leandro’s Maintenance Fee will be calculated on an annual basis based on the three (3) year average of total maintenance costs for the shelter multiplied by the percent of animals boarded at the shelter for San Leandro in the prior fiscal year. San Leandro’s Maintenance Fee for the first fiscal year of this Agreement is calculated to be as follows:

3 year average of maintenance costs for the shelter	% of animals boarded for San Leandro in the prior fiscal year	San Leandro’s Year 1 Maintenance Fee
\$131,000	11.6%	\$15,196

B. Land and Building Fee

The amount of San Leandro’s Land and Building Fee costs will be calculated on an annual basis based on the amortized amount of shelter building remodel over 30 years, multiplied by the percent of animals boarded at the shelter for San Leandro in the prior fiscal year. San Leandro’s Land and Building Fee for the first fiscal year of this Agreement is calculated to be as follows:

Amortized amount of building remodel over 30 years	% of animals boarded for San Leandro in the prior fiscal year	San Leandro’s Year 1 Land and Building Fee
\$124,898	11.6%	\$14,488

C. Animal Services Costs

The amount of San Leandro’s Animal services will be calculated on an annual basis based on the three (3) average cost to board an animal at the shelter multiplied by the percent of animals boarded at the shelter for San Leandro in the prior fiscal year. San Leandro’s Animal Services Costs for the first fiscal year of this Agreement is calculated to be as follows:

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3 year average of the cost per animal	% of animals boarded for San Leandro in the prior fiscal year	San Leandro's Animal Services Cost
\$145	11.6%	\$75,270

D. Total Costs

The total annual costs to San Leandro in Year 1, July 1, 2018 to June 30, 2019 are as follows:

Description	Annual Costs	Monthly Cost
Maintenance Fee	\$15,196	\$1,266.33
Land & Building Fee	\$14,488	\$1,207. 35
Animal Services Costs	\$76,270	\$6,355.83
TOTAL COSTS – YEAR 1	\$105,954.00	\$8,829.51

This Exhibit “B” will be updated annually by Fremont to reflect the adjustments in the annual percentage of animals boarded for San Leandro.