

**AMENDMENT NUMBER TWO
TO PROFESSIONAL SERVICES AGREEMENT
WITH
NCAH, INC. DBA NEWPORT CENTER ANIMAL HOSPITAL**

This Amendment Number Two ("Amendment") is made and entered into this 16th day of April, 2019 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and NCAH, INC., a California corporation DBA NEWPORT CENTER ANIMAL HOSPITAL ("Contractor").

WHEREAS, City and Contractor entered into an agreement on January 21, 2018 for Contractor to provide animal shelter services (the "Agreement"); and

WHEREAS, on June 5, 2018, City and Contractor extended the term of the Agreement and amended the Scope of Services; and

WHEREAS, City and Contractor now desire to further extend and amend the Agreement as set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Scope of Services shall be deleted in its entirety and replaced with the Revised Scope of Services set forth in Exhibit "A," attached hereto and incorporated herein by this reference.
2. Section 2.1 of the Agreement shall be deleted in its entirety and replaced with the following:
 - 2.1 Compensation. Contractor's monthly compensation shall not exceed Twenty-Three Thousand Dollars (\$23,000.00). Notwithstanding the foregoing, if City requires animal shelter services for more than eight hundred fifty (850) animals per calendar year, City shall pay Contractor Twenty-Four Dollars (\$24.00) per additional animal. Such additional fee shall include all costs associated with providing care to such animals, including but not limited to all medical procedures and care and boarding.
3. Section 2.3 of the Agreement shall be deleted in its entirety and replaced with the following:
 - 2.3 Method of Billing. Consultant shall submit invoices on a monthly basis for the services provided during the prior calendar month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be

designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

4. The term of the Agreement shall be extended through June 30, 2021. Thereafter, the Agreement may be extended by three (3) additional one (1) year periods upon mutual written agreement of the parties.
5. All terms not defined herein shall have the same meaning and use as set forth in the Agreement.
6. All other terms, conditions, and provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by and through their respective authorized officers, as of the date first written above.

CITY OF COSTA MESA

Samar S. Retoreman Date: 6/12/19
Acting City Manager

CONTRACTOR

[Signature] Date: 6/10/19
Signature
Dr. Anthony Rizk - Owner
Name and Title

ATTEST:

Brenda Green 6/12/19
City Clerk



APPROVED AS TO FORM:

[Signature] Date: 6/12/19
City Attorney

APPROVED AS TO INSURANCE:


Risk Management

Date: 6/12/19

APPROVED AS TO CONTENT:


Project Manager

Date: 6/11/19

DEPARTMENTAL APPROVAL:


Parks and Community Services Director

Date: 6/10/19

APPROVED AS TO PURCHASING:


Finance Director

Date: 6/11/19

EXHIBIT A
REVISED SCOPE OF SERVICES

Animal Shelter

Scope of Services

1. Animal Acceptance

- a. Acceptance of Animals. Contractor shall accept dogs, cats, and small animals, including reptiles, birds, goats, pigs, or other small animals brought to the facility by the City's Animal Control Officers, including live stray domestic animals, deceased animals for disposal, and owner-releases for adoption or euthanasia. Contractor shall also accept such animals brought to the facility by City residents.
- b. Open Shelter Policy. Contractor shall maintain an "open shelter policy" and accept all dogs and cats brought in by *City residents* and/or found *within City limits*. Such policy prevents City residents and/or animals from being denied and alternately placed in the care of the Orange County Animal Care (OCAC). The open shelter policy does not apply to non-City residents or animals found outside City limits.
- c. Drop-Off Procedures. Contractor shall provide a procedure whereby animals may be delivered to the facility. The procedure shall provide City's Animal Control Officers with flexibility in drop-off times. City Animal Control Staff shall be permitted to access the shelter portion of the facility seven (7) days per week during regular business hours.

2. Shelter Operations

- a. Facility Requirements. Contractor shall provide an adequate number of dog kennels, cat cages and separate areas for animals in quarantine and/or isolation designated for City's animals, which shall include, at a minimum:
 - i. 10 kennels for dogs under normal conditions
 - ii. 5 kennels for dogs under quarantine
 - iii. 5 kennels for dogs in isolation
 - iv. 10 kennels for cats under normal conditions
 - v. 10 kennels for cats under quarantine and/or isolation

Contractor shall adhere to the guidelines relating to dog kennel and cat cage sizes, including related amenities, that are set forth in The Association of Shelter Veterinarians *Guidelines for Standards of Care in Animal Shelters* ("ASV Guidelines"), incorporated by this reference as if fully set forth herein. Contractor shall maintain the facility in accordance with the ASV Guidelines, including but not limited to the sanitation guidelines set forth therein.

- b. Animal Care. Contractor shall provide the proper care and protection of all animals in Contractor's custody. Adequate food and housing shall be provided and the facility shall not be overpopulated. Contractor shall maintain sanitary conditions for all animals housed at all times and provide adequate storage of deceased animals in an area out of view from the general public.
 - i. Intake. Upon intake, the Contractor shall provide a general physical exam, immediate general care, if needed, and a behavioral assessment of each animal. General care shall include medical grooming, as necessary, and vaccinations for dogs and cats under the age of one year with no owner information or prior vaccination history available that are deemed by Contractor healthy to receive the vaccinations. Upon request from the City, Contractor shall also vaccinate

animals that are over one year old that City anticipates being held at the facility for an extended period. Vaccinations of such animals shall include rabies vaccinations.

- ii. Food and Water. Contractor shall provide adequate food and water, at Contractor's expense, to all City animals in Contractor's custody. Type and brand of food may be mutually agreed upon between the Contractor and the City's Animal Control Officers.
- c. Veterinary Services. Veterinary services must be available to impounded City animals during normal business hours. In the event a veterinarian is required to perform routine or emergency medical services for any sick or injured animal delivered to the facility, the charge to the owner of said animal shall be accordance with the fee schedule set forth in Contractor's Proposal.
- d. Holding Requirements.
 - i. Animals shall be held in accordance with the requirements of sections 31108 and 31752 of the California Food and Agriculture Code, unless otherwise requested by City's Animal Control Officers. Notwithstanding Sections 31108 and 31752, the holding period for all animals, whether impounded or relinquished by their owners, shall be seven (7) days. At the completion of the seven-day hold period, Contractor shall perform sterilization procedures on all unaltered animals that require sterilization (i.e. dogs, cats, and rabbits), unless an animal is unable to withstand anesthesia due to medical reasons, advanced age, or if deemed too young by Contractor. Contractor shall hold animals that require sterilization procedures for an additional three (3) days from the date the animal receives the sterilization procedure, or until such time as the animal recovers from the sterilization procedure, at no cost to the City. Contractor shall provide a Certificate of Sterility for all animals that are altered by Contractor and for all animals Contractor's veterinarian determines to have been previously altered. Upon completion of the holding period and prior to an animal being transferred to City's adoption service provider, Contractor shall implant each impounded animal that does not have a microchip with a microchip and register, or re-register, each animal to the City of Costa Mesa. Notwithstanding the foregoing, animals that require twenty-four (24) hour care may be transferred immediately to the custody of the City's adoption service provider. Contractor shall provide to City within twenty-four (24) hours of any such transfer a record of the transfer, which shall include the transfer date, impound number, and description of the animal. "Days" as used in this section means days that the shelter is open to the public.
 - ii. Contractor shall ensure that animals with police holds, quarantines, or pets held in protective custody are in an isolated area not permitted within view or access of the public. Quarantined animals shall be separated from other animals with proper ventilation.
 - iii. Upon direction from City's Animal Control, Contractor shall hold animals longer than the above stated retention period for police purposes, such as police holds, quarantine, vicious animal investigations, nuisance enforcement, or cruelty investigations.
- e. Euthanasia. At the request of the City's Animal Control personnel with concurrence from the treating veterinarian, or at the sole discretion of the veterinarian, Contractor shall

arrange and/or provide for the humane euthanasia and disposal of animals that have been declared vicious, terminally ill, or contagious. This shall be accomplished in a manner approved by Federal and State regulations, which shall not subject animals to any unnecessary pain.

- i. No impounded animal shall be euthanized or otherwise disposed of without notice to the owner, if such person is known. Contractor shall make all reasonable attempts to reunite animals with their owner before euthanasia or adoption, to include accessing current licensing records, using tag contact information (provided tags worn by the animal), and scanning all animals to detect implanted computer chips.
- ii. Upon proof of certified controlled substance training by the City's Animal Control personnel, Contractor will provide City's Animal Control with controlled substances necessary to perform field captures and euthanasia. The controlled substances will be charged to the City at the same cost paid by veterinarians.
 1. Telazol (class III drug, 100mg/ml concentrate, used primarily in dog capture)
 2. Ketamine (class III drug, 100mg/ml for cats and subhuman primates and some dog captures)
 3. Sodium Pentobarbital (class II drug, 250 ml bottle, for euthanasia only)

f. Animal Disposal.

- i. Deceased Animals. Deceased animals shall be disposed in accordance with applicable laws.
- ii. Unclaimed Animals. Contractor shall provide for the humane disposal of unclaimed deceased animals after holding such animals for the holding period agreed upon by City and Contractor, unless the condition of an animal requires immediate disposal. Costa Mesa Animal Control will make reasonable efforts to locate the owners of deceased animals during such holding period. Contractor shall under no circumstances sell unclaimed deceased animals for purposes of medical research or other activities which may harm them without the prior written consent of City's Animal Control.

g. Adoptions.

- i. Medical Procedures. Contractor shall perform all necessary medical procedures to determine whether an animal is healthy and adoptable, including but not limited to determining whether an animal has been spayed/neutered. Contractor shall perform all required pre-adoption medical procedures, including but not limited to spaying and neutering, as required, and vaccinations, at no cost to City. Contractor shall perform FELV/FIV testing on all felines prior to any transfers to the City's adoption service provider, at no cost to the City. The term "adoptable" includes Healthy, Treatable-Rehabilitatable, and Treatable-Manageable animals, as defined in Maddie's Fund's *A Guide to Asilomar Accords Definitions: "Healthy," "Treatable," "Unhealthy & Untreatable,"* incorporated herein by this reference as if fully set forth herein.

1. Sterilization Procedures.

- a. Contractor shall perform sterilization procedures on cats once they are

eight (8) weeks old and weigh at least two (2) pounds, and on dogs once they are at least four (4) months old. If an animal is transferred to the City's adoption service provider prior to receiving sterilization procedures due to the animal's age and/or weight and the City's adoption service provider elects to utilize Contractor's services once the animal reaches the required age and/or weight, Contractor shall perform sterilization procedures on such animal at no additional cost to City or the City's adoption service provider.

- b. Contractor shall use dissolvable sutures to close incisions, unless Contractor determines that staples or standard sutures are necessary. If Contractor determines that staples or standard sutures are necessary, and utilizes such staples or sutures, Contractor shall permit the City or the City's adoption service provider to return the animal to Contractor for removal of the staples or sutures, at no cost to City or the City's adoption service provider.

2. Required Medical Procedures.

- a. Definition. Required medical procedures means all pre-adoption medical procedures that Contractor is required to perform as set forth herein, including sterilization procedures, as required, microchipping, vaccinations, and FELV/FIV testing on felines.
- b. Procedure. Unless otherwise set forth herein or otherwise agreed upon by City and Contractor, Contractor shall perform all required medical procedures prior to the transfer of an animal from Contractor to City's adoption service provider. The costs for such procedures are included in Contractor's monthly compensation.

3. Elective Medical Procedures.

- a. Definition. Elective medical procedure means a medical procedure that is not required prior to an animal's adoption in order for the animal to be adoptable, including but not limited to mass removal and teeth extraction.
 - b. Procedure. Prior to performing any required medical procedures that require anesthesia, Contractor shall notify City's adoption service provider of all elective medical procedures. If City's adoption service provider requests that Contractor perform any such elective medical procedure on an animal, Contractor shall bill City's adoption service provider for such elective medical procedure. Contractor shall not bill City for any elective medical procedures.
- ii. Transfers. Contractor shall permit relinquishment of adoptable animals to another contractor and/or non-profit organization, as chosen by the City, in order to facilitate further care and/or adoption services. Contractor shall permit transfers to the City's adoption service provider up to three times per week, unless Contractor and City's adoption service provider determine that fewer transfers are required based upon the number of animals in Contractor's care that are ready to be transferred. City shall coordinate the dates and times of such transfers. Contractor shall cooperate with City and City's adoption service

provider to facilitate such transfers. If Contractor and City's adoption service provider determine that fewer than three transfers are required in any given week, Contractor shall not charge the City for the additional days animals are kept in Contractor's care in between the cancelled transfer date and the next transfer date. Residents who bring in stray dogs, cats and/or other animals to the Contractor shall be given the first opportunity to adopt them before they are transferred to the City's adoption service provider.

1. Transfer List. City will send to Contractor the tentative list of animals to be transferred by 12:00 p.m. two (2) business days before the scheduled transfer date. Contractor will confirm with City the list of animals to be transferred by 12:00 p.m. on the business day before the scheduled transfer date.
2. Postponement. If an animal shows signs of illness or condition requiring medical care, as determined by Contractor, prior to the scheduled transfer of that animal, Contractor shall postpone the transfer until such time as the illness or condition improves, at no additional cost to City or City's adoption service provider. If an animal shows signs of illness or a condition requiring medication or exhibits a change in behavior, as determined by Contractor, prior to the scheduled transfer of the animal, Contractor shall note such illness or condition and the medication provided, or the behavioral change, in the transfer paperwork provided to the City's adoption service provider. Contractor shall provide notice to the City at least forty-eight (48) hours prior to a scheduled transfer of any animals exhibiting any illness, condition, or a change in behavior, or as soon as Contractor becomes aware of such illness, condition, or change. Contractor shall provide an update on the status of such illness, condition or change to the City within twenty-four (24) hours of the scheduled transfer. Contractor shall note any illnesses, conditions, or behavioral changes in the transfer paperwork.
- iii. Medical Records and Transfer Documents. Contractor shall provide to City's adoption service provider medical records relating specifically to animal case summaries and pre-adoption exams and procedures performed by Contractor for each animal transferred to the adoption service provider's care. Such records shall include all relevant medical information relating to each animal, including but not limited to information relating to vaccinations, deworming, and all other medical procedures performed by Contractor, as well as any relevant behavioral information. Contractor shall further provide to City's adoption service provider documents relating to the origin of each animal, noting whether the animal was a stray, was an over-the-counter stray, or was surrendered by its owner and providing any relevant information provided by the surrendering party.
- iv. Return of Transferred Animals. If an animal transferred from Contractor's care to the care of City's adoption service provider experiences any health issues within seventy-two (72) hours from the transfer, City or City's adoption service provider may cause the animal to be transferred back to Contractor's care, at no cost to City or City's adoption service provider. If an animal transferred from Contractor's care to the care of City's adoption service provider experiences any health issues arising from or relating to any care or treatment provided by Contractor, including but not limited to infections or complications relating to incisions or procedures performed by Contractor, within ten (10) days of the transfer, City or City's adoption service provider may cause the animal to be transferred back to

Contractor's care. Contractor shall accept such animal and provide any necessary medical treatment to such animal at no cost to City or City's adoption service provider. If an animal transferred from Contractor's care to the care of City's adoption service provider experiences health issues beyond ten (10) days from the date of transfer, Contractor and City's adoption service provider shall determine whether such animal should be returned to Contractor's care, and the costs associated with same. If an animal is returned to Contractor's care, City's adoption service provider will pay Contractor directly for the costs associated with such care. City shall not incur any costs associated with animals returned to Contractor's care.

- v. Holding Room. Contractor shall provide to City and/or City's adoption service provider a room for holding animals in the process of being transferred to the adoption service provider's care and for pre-adoption appointments with residents considering animal adoption.
- 4. Rabies Vaccinations. Contractor shall administer rabies vaccinations to each dog prior to adoption or redemption by their owner unless proof of current rabies inoculation is furnished at the time of release.
- 5. Lost-and-Found. Contractor shall provide lost-and-found and referral services as required by the California Food and Agriculture Code Section 32001, subdivisions (a) through (e).
- 6. Animal Cruelty Investigations. Contractor shall provide support in animal cruelty investigations by performing examinations, necropsies, reports, or other procedures necessary to the case.

3. Records

- a. Treatment Records. Contractor shall maintain health treatment records, if applicable, and statistical records for all animals it handles.
- b. Surrendered Animals. Contractor shall notify City in writing within twenty-four (24) hours of animals surrendered directly to Contractor. Such notice shall include a description and photograph of the animal.
- c. Monthly Reports. Contractor shall keep comprehensive records and submit regular monthly reports to the City's Animal Control Department. Reports shall, at a minimum, include the number of impounds, disposition of each animal, and any fee collected that are payable to the City of Costa Mesa. The City may also require additional information, which includes, but is not limited to the following, as applicable:
 - i. Description of the animal's including breed, color, gender, size, and behavioral disposition
 - ii. Who brought the animal in, the date the animal was brought in, and where and how the animal was obtained
 - iii. Animal's owner (if known)
 - iv. Duration of stay
 - v. If transfer was delayed due to illness or change in behavior
 - vi. When the animal was redeemed or who adopted the animal name and address of new owner
 - vii. When the animal was euthanized and reason

- viii. Disposition of all complaints regarding animal(s)
- ix. All dangerous and potentially dangerous animals and dog bite incidents
- x. Fees collected
- xi. Records of licenses sold with names and addresses

4. Fees

- a. Contractor shall establish fees for impoundment, feeding, care, veterinarian services, and disposition of animals. Said fees shall be charged to members of the public whose animals are subject to this Agreement. Dog license fees will be collected on behalf of the City from dog owners, when applicable.
- b. Contractor shall be responsible for collecting all fees due to the City (e.g. license fees, spay/neuter fines, subsequent impound fees, etc.), issuing receipts for payment, and remitting monies due to the City directly to the City's Animal Control staff prior to releasing the animals. Collected fees shall be remitted to the City within 10 working days following the end of the prior month.
- c. When charging subsequent impound fees, the 12-month period used to determine the fee charged for subsequent impounds shall be the 12 months subsequent to the current impoundment. Contractor shall charge Costa Mesa residents redeeming animals from impound an impound fee of forty dollars (\$40) for the first impoundment, sixty dollars (\$60) for the second impoundment within a 12-month period, and ninety dollars (\$90) for the third and subsequent impoundments within a 12-month period.
- d. Contractor shall collect a mandatory non-spayed or un-neutered fee in accordance with Food and Agriculture Code sections 30804.7 and 31751.7, which shall be remitted to the City. The Contractor shall honor spay or neuter vouchers, issued by the City and distributed to low income families.

5. Miscellaneous

- a. Inspections. City may conduct one (1) inspection of the premises per week, accompanied by Contractor, for the purpose of inspecting the premises for compliance with the obligations set forth herein. City and Contractor shall mutually agree upon the date and time of each inspection.
- b. Volunteers. City and Contractor may mutually agree to permit volunteers to work on the premises to assist with the care of animals that come into the facility under City authority. All volunteers shall be approved and trained by the Costa Mesa Police Department and managed by the Costa Mesa Parks and Community Services Department.
- c. Animal Control Services. City may request, and the Contractor may supply, special Animal Control Services not otherwise provided herein, including agreed upon services, the retention of the animals related to criminal prosecutions for other than violation of animal control regulations or ordinances.
- d. Access and Community Involvement. Contractor shall:
 - i. Post shelter hours and phone number on the exterior of the shelter facility and on Contractor's website.

- ii. Include a link to the City's impounded animals page (<https://www.costamesaca.gov/residents/pets/impounded-animals>) on Contractor's website.
- iii. Participate in at least two (2) low-cost vaccination clinics hosted by City by providing low-cost vaccinations. Contractor shall receive no additional compensation from City for such participation.
- iv. Provide spay/neuter voucher application forms to Costa Mesa residents in need of financial assistance with spaying and neutering their dogs and/or cats.
- v. If Contractor facilitates the adoption of a dog that was surrendered directly to Contractor by a City resident, Contractor shall administer the dog licensing for the dog via the City's online licensing system.
- vi. Recommend microchipping to animal owners that redeem their pets from Contractor.

Additional Insured – Owners, Lessees or Contractors – AB 90 67 12 93
Policy Amendment Section II

Insured: Newport Center Animal Hospital **Policy Number:** AZC80924184

Producer: Veterinary Ins Services Co **Effective Date:** 9/1/2018

Schedule

Name of Person(s) or Organization(s)

The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers, 99 Fair Drive Costa Mesa, CA 92626

This insurance is primary and non-contributory. Waiver of subrogation applies.

Separation of Insureds- Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies -As if each Named Insured were the only Named Insured; and Separately to each insured against whom claim is made or suit is brought.

(If no entry appears above, information required to complete this Endorsement will be shown in the Declarations as applicable to this Endorsement)

The following is Added to Part I – WHO IS AN INSURED in the Business Liability Section of this policy arising out of **your work** for that insured by or for you.

- 5. The person or organization shown in the Schedule is also an insured, but only with respects to liability All other terms and conditions of the policy apply.

This form must be attached to Change Endorsement when issued after the policy is written. One of the **Fireman's Fund Insurance Companies** as named in the policy.

Secretary *Julie A. Green*

President *Art Cruz*

Art Cruz

05/03/19

Authorized Agent

Date

Waiver of Our Right to Recover from Others Endorsement – California

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be determined by multiplying the California workers' compensation premium due on such remuneration by the factor **0.050**.

Schedule

Person or Organization

**City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers
99 Fair Drive
Costa Mesa, CA 92626**

Job Description

RE: Animal Services

This endorsement is subject to a minimum premium charge of \$200

Nothing in this endorsement shall vary, alter, waive or extend any of the terms, conditions or limitations of this policy other than as stated above. Nothing elsewhere in this policy shall be held to vary, alter, waive or limit the terms, conditions, agreements or limitations of this endorsement.

This Endorsement when attached to Policy Number: VTN 164407-2
issued to NEWPORT CENTER ANIMAL HOSPITAL
shall be valid and shall form part of referenced policy. The effective date of this endorsement is 09/01/13 at 12:01 A.M.

Endorsement No.: 3

Date Issued: 08/14/18

Producer Number: 16900

Agency Name: VETERINARY INSURANCE SERVICES COMPANY

Refer To Signature Page

Authorized Representative