

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is effective as of _____ ("Effective Date"), by and between Animal Balance, a California nonprofit public benefit corporation ("Contractor"); and the City of Stockton Animal Services Center ("Partner") (singularly, "Parties" and collectively, "Parties").

RECITALS

WHEREAS, Partner desires that Contractor provide, and Contractor desires to provide, experienced veterinary medical personnel to perform high quality high volume spay/neuter surgeries, which, if requested, shall include microchipping or treatments of parasites ("Services");

WHEREAS, Contractor is an independent entity certified to do business, has the requisite licenses, registrations and certifications to perform the Services, and is customarily engaged in the business of providing the Services consistent with the work described in the Statement(s) of Work ("SOW") attached herein and appended from time to time as **Schedule A**;

WHEREAS, Partner wishes to engage Contractor for such services on the basis set out in this Agreement and the SOW; and

WHEREAS, Contractor agrees to provide the Services as described in the SOW and covenants it will abide by the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the Parties, hereby agree, incorporating these recitals by reference thereto, as follows:

AGREEMENT

1. **INDEPENDENT CONTRACTOR STATUS.** It is the Parties' intent that each of them, including their officers, directors, principals, managers, employees, representatives and agents, at all times, and with respect to this Agreement, are independent contractors, and neither are officers, directors, principals, managers, employees, representatives and agents of the other Party. Neither Party shall represent that it is an officer, director, principal, manager, employee, representative, affiliate or agent of the other Party.
2. **SERVICES AND DUTIES.** Contractor shall perform the duties described in the SOW.
3. **TERM OF AGREEMENT.** This Agreement will commence on the Effective Date and will continue until completion of the Services on or during the dates described in the SOW, as may be agreed to from time to time.
4. **CONFIDENTIAL INFORMATION.**

(A) **Confidential Information – In General.** Each Party (“Receiving Party”) acknowledges that the other Party (“Disclosing Party”) has technical information, processes and compilations of information, records, specifications and information concerning assets, information regarding methods of doing business, trade, business and financial secrets, and other confidential and proprietary information (collectively, the “Confidential Information”) and that during the term of this Agreement, they may each receive, use or contribute to the Confidential Information. For purposes of this Agreement, Confidential Information shall include (i) each Party's technology, processes, methodologies, business practices and technical information; (ii) information, lists and databases regarding the Parties, their customers, employees, donors, assets, suppliers, or their marketing plans, business plans, financial status, agreements, patents or trade secrets; (iii) in any form, furnished to or obtained by the Receiving Party from the Disclosing Party including, without limitation, employee, donor, and client data, budget and other financial data, program plans and strategies, technical data and research, and know-how; and (iv) any and all other information, documents, items or materials deemed by the Disclosing Party, in its sole discretion, as confidential or that should reasonably be understood by the Receiving Party to be confidential at the time of such disclosure. Confidential Information excludes information which: (a) is or becomes generally available to the public other than as a result of a disclosure by the Disclosing Party; (b) was known by the Receiving Party prior to its being furnished by the Disclosing Party; (c) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party; or (d) is independently developed by the Receiving Party.

(b) **Disclosure of Confidential Information.** During and following the Term, each Party agrees (i) to hold Confidential Information of the Disclosing Party in confidence, and (ii) not to release any of the Disclosing Party's Confidential Information to any person, except that the Receiving Party shall be allowed to disclose the Disclosing Party's Confidential Information to its contractors and/or employees as needed to complete the Services. Disclosure is also permitted pursuant to a valid legal obligation, including but not limited to a subpoena, a court order, a California Public Records Act request, or a discovery request. Each Party agrees to use reasonable efforts to give the Disclosing Party notice of any and all attempts to compel disclosure of any Confidential Information, in such a manner so as to provide such Party with written notice at least five (5) days before disclosure or within one (1) business day after a Party is informed that such disclosure is being or shall be compelled, whichever is earlier. Such written notice shall include a description of the information to be disclosed, the court, government agency, or other forum through which the disclosure is sought, and the date by which the information is to be disclosed, and shall contain a copy of the subpoena, order or other process used to compel disclosure.

(c) **Return of Confidential Information.** Upon a Party's written request, the Receiving Party will deliver to the Disclosing Party all Confidential Information in tangible form or in the Receiving Party's possession or control. Any retention by a Receiving Party of Confidential Information following the termination of this Agreement or upon such written request from the Disclosing Party shall constitute a breach of this Agreement.

5. LOCATION AND TIME OF SERVICES (“CLINICS”). The Clinics subject to this Agreement shall take place at the location(s), date(s), and time(s) as stated in the SOW.
6. TERMINATION.

(a) Partner may terminate this Agreement at any time for any reason by providing no less than 21-days written notice in advance of a Clinic next-scheduled under the SOW. If Partner terminates this Agreement less than 21 days in advance of that next-scheduled Clinic, Contractor may deem the deposit paid for the next-scheduled Clinic forfeited and nonrefundable, in Contractor's sole discretion.

(b) Contractor may terminate this Agreement prior to any Services being provided by providing a 21-days written notice to the Partner, and shall refund any deposit previously paid by Partner if terminated prior to the Services, or any part of the Services, being provided.

(c) Upon proper termination by either Party, the Contractor shall be allowed to invoice and receive any payments paid for completed clinics or Services.

7. **FACILITIES/PREMISES PERMITS, CONDITIONS AND ACCESS.** Partner shall provide a temperature-controlled location for the Clinics. The location must meet the specifications for comparable facilities as set forth by AVMA guidelines, which shall not abridge applicable California law.
 - (A) Partner shall ensure that all permits required for the Clinics are obtained and remain valid for each Clinic.
 - (B) Partner shall ensure that information requested by Contractor and third parties with a need to know information related to the Services in Partner's possession or control are so provided. Partner shall ensure that Contractor has access to the Clinics premises between the hours of 7:00 AM- 7:00 PM one day prior to each Clinic, and one day following each Clinic.
 - (C) Partner shall ensure an adequate setup at each Clinic for curbside patient drop-off and pickup. Partner shall ensure there is adequate parking and traffic control at each Clinic.
8. **PARTNER-RETAINED PERSONNEL FOR NON-MEDICAL DUTIES.** At least 30 days before each Clinic, Contractor shall notify Partner regarding the number of persons that Partner must provide to assist with general, non-medical duties such as registration, cleaning, and animal transport ("Non-medical Duties").
 - (A) For each Clinic, Partner shall provide an adequate number of persons, in Partner's sole and absolute discretion, to assist with these Non-medical Duties. Partner shall ensure that Partner and its personnel have signed the Contractor's liability waiver, release, and acknowledgement of receipt of Contractor's handbook document prior to performing Non-medical Duties at any Clinic.
 - (B) Partner shall be responsible for supervision of all of Partner's personnel.
9. **PUBLICITY.** The Parties shall mutually provide appropriate credit and acknowledgement of Contractor's and Partner's performance at each Clinic as publicity opportunities may arise from time to time, including in any publication in news or social media related to the Clinics. In any and all social media, publicity of any kind, press releases, or website postings created or controlled by the Parties regarding the Clinics, each Party shall expressly identify and give credit to the other Party in their respective publications. Additionally, Contractor shall provide Partner with reasonable advance notice of any and all publicity or social media posts in draft form for Partner's review and comment prior to publication or posting.
10. **MEALS.** Partner shall provide daily lunch to Contractor and all members of its team, following a vegan/vegetarian diet, for each Clinic.

11. ANIMAL PATIENT LIST. No later than three days before each Clinic, Partner shall ensure that Contractor receives the daily schedule of animals for each clinic date per the formula as follows: 50% dogs/50% cats.
 - (A) Partner agrees to follow the schedule template provided by the Contractor, which template shall be provided no later than 30 days before any given Clinic.
 - (B) The animals that are ineligible for Clinics and Contractor shall not provide Services to the following: (i) dogs greater than 80 pounds; (ii) animals less than two pounds or eight weeks of age; (iii) brachycephalic dogs; (iv) any animal which Contractor deems inappropriate for Services, in the sole discretion of Contractor.
 - (C) Partner shall ensure that the patient's medical record is completed and signed using the name of the animal's legal owner at the time Services are rendered.
12. POST-CLINIC COMMUNICATIONS AND CARE. Partner and its representatives shall exercise good faith efforts to call the designated after-hours line to talk to a Contractor representative in the event of any postoperative concerns, including using its best efforts to adhere to the following contact protocol:
 - (A) The owner of the animals, whether that is a member of the public or a shelter or municipality, shall send Contractor a photo of the incision site upon request, when available. The owner shall call the line twice and wait at least 15 minutes for a return call before calling the Contractor's emergency number. If Contractor and the owner mutually determine that a visit to a veterinarian is necessary, Contractor shall be responsible for payment for the initial exam. Any additional care must be approved by the Contractor in advance, which approval shall not be unreasonably withheld. Contractor shall not be responsible for any veterinary charges or payments unless Contractor has approved the expense in writing prior to treatment.
13. EUTHANASIA. No animal receiving Services at a Clinic shall be euthanized unless the decision to euthanize has been mutually agreed upon by designated representatives of both Contractor and Partner. Euthanasia shall be performed pursuant to the Contractor's SOP for euthanasia.
14. INSURANCE.
 - (A) Contractor shall be responsible for obtaining premises insurance for the Clinics. No less than one month before each Clinic, Contractor shall provide Partner with proof of insurance with respect to the facilities and/or premises at each Clinic.
 - (B) Contractor shall maintain or cause to be maintained any and all business, professional and/or malpractice insurance customary in veterinary medical services and/or required by applicable law related to Contractor's performance of Services.
15. NON-DISPARAGEMENT. Except as required by applicable law and/or compelled action in a valid legal or administrative proceeding, the Parties will take no action which is intended, or would reasonably be expected, to harm the other Party or the other Party's reputation, or which would reasonably be expected to lead to unfavorable publicity for that Party.
16. FORCE MAJEURE. If the performance of any act required by this Agreement to be performed by either Contractor or Partner is prevented or delayed by reason of an act of God, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability, commercially reasonable maintenance of staffing levels, and maintenance

of equipment and transport that is not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

17. ASSIGNMENT. Neither this Agreement nor any right or obligation of any Party hereunder nor interest herein may be assigned or transferred by any Party without the written consent of the other Party.
18. MUTUAL INDEMNIFICATION AND LIMITATION OF LIABILITY.
 - (A) To the fullest extent permitted by law, City of Stockton shall hold harmless, defend and indemnify Animal Balance and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Animal Balance's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of Animal Balance. This obligation is independent of and shall not in any way be limited by the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.
 - (B) To the fullest extent permitted by law, Animal Balance shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Animal Balance's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.
19. MISCELLANEOUS.
 - (A) **Amendments and Modifications.** This Agreement may be amended or modified only by the written consent of the Parties.
 - (B) **Entire Agreement.** This Agreement, including any Addenda or Schedules hereto, constitutes the entire agreement of the Parties and supersedes and replaces all prior written or oral agreements, negotiations and prior writings with respect to the subject matter hereof.
 - (C) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally, via electronic mail or by courier or overnight delivery service, if such notice is addressed to the Party to be notified at such Party's address as listed below:

FOR _____

FOR ANIMAL BALANCE:

Emma Clifford
Animal Balance
PO Box 66406
Portland OR 97290
clifford@animalbalance.org

- (D) **Donations.** Any donations received by the Partner or Contractor during the Clinics shall be delivered to Partner so long as Partner maintains its tax-exempt status at the time of the donation.
- (E) **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of California. If legal action is commenced by any Party with respect to the subject matter hereof, the Parties agree that the jurisdiction and venue of such action shall be located in San Joaquin County Superior Court.
- (F) **Legal Disputes, Attorneys' Fees and Costs.** If any dispute arises between the Parties with respect to matters covered by this Agreement, the Parties shall first use commercially reasonable, good faith efforts to participate in mediation before commencing legal proceedings. The prevailing Party in any such dispute shall be entitled to seek an award of reasonable attorney fees, expert witness fees and out-of-pocket costs incurred in connection with such dispute, in addition to any other relief to which it may be entitled.
- (G) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such unenforceable provision(s) shall be deemed severed from the agreement but the remaining provisions of the agreement shall remain in force.
- (H) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
- (I) **Construction of Agreement.** Each Party acknowledges that, in executing this agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this agreement. This agreement shall not be construed against either Party by reason of the drafting or preparation hereof.
- (J) **Compliance with Laws.** The Parties agree to abide by all federal, state or local laws, regulations, ordinances or other legal requirements in connection with Contractor's performance of the Services hereunder. In addition, at all times during this Agreement, each Party shall have in effect all licenses, permits and authorizations required by applicable law. No Party shall perform any Services under this Agreement for which it does not hold all necessary licenses, permits and authorizations.
- (K) **Survival.** Notwithstanding any other provision of this Agreement to the contrary, Sections 4 (Confidential Information), 15 (Non-disparagement), and 17 (Indemnification), and each and every provision which by its terms is intended to survive termination, shall survive the termination of this Agreement and/or the termination of any Party's rights and obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CONTRACTOR:

Animal Balance
a California nonprofit public benefit
corporation

PARTNER:

By: _____

By: _____

Emma Clifford, Founder and Director

SCHEDULE A – STATEMENT OF WORK

STATEMENT OF WORK NO.: 1

CLINIC LOCATION:

CLINIC DATE(S):

SERVICES:

1. Contractor shall primarily provide spay/neuter surgeries, and may assist with other animal ailments in its sole discretion. Should the Contractor decide not to treat other ailments, Contractor will refer the animal to a local veterinarian for further care at the discretion of the animal's owner. Contractor shall advise the owner that any expenses resulting from such referrals shall not be the responsibility of either Partner or Contractor.
2. Contractor shall provide an experienced high quality high volume veterinary medical team consisting of a minimum of two (2) veterinarians licensed in the State of _____, one (1) clinic coordinator and two (2) to four (4) technicians, whose skill level matches customary veterinary clinic expectations.
3. Contractor shall cooperate with Partner to obtain the veterinary medical supplies necessary for the target number of surgeries.
4. Contractor shall coordinate with Partner to ensure that all necessary equipment is provided to safely allow Contractor to provide the Services. Contractor shall also coordinate with the Partner to organize and orchestrate the flow of the sterilization clinic so that it is efficient and safe for all humans and animals.
5. Contractor shall provide accurate medical records for each patient to Partner within one week of each Clinic. The contents of such medical records shall be mutually agreed upon by the Parties to the Agreement.
6. No later than 30 days before each clinic, Contractor shall provide its current Medical, Volunteer and Clinic Flow SOPs and Contractor handbook to Partner, and immediately provide any updated or modified versions that may be created.

SERVICE FEES

1. The total cost for 200 surgeries is \$_____per clinic. Not later than 21 days before the commencement date of each of the Clinics, Partner shall pay Contractor a \$_____ deposit for the respective Clinic.
2. If Contractor performs more than 200 surgeries at any Clinic, additional surgeries shall be charged at a rate of \$100 per surgery.
3. Contractor shall provide a final invoice within five business days of each Clinic's end date, which will include charges for any additional surgeries provided over the agreed upon amount. Payment is due in 30 days from invoice date.

CONTRACTOR:

Animal Balance

a California nonprofit public benefit
corporation

By: _____

Emma Clifford, Founder and Director

DATE: _____

PARTNER:

By: _____

DATE: _____

Exhibit B:
Insurance Requirements for Professional Services
(Veterinary Services)

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance appropriates to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 12 19 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Consultant may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The policies shall be provided on a true "following form" coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Consultant to purchase coverage with a lower

retention or provide proof of ability to pay losses and related expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (Professional & Pollution only)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All required documents are to be received and approved by the City of Stockton before work commences. However, failure to obtain the documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees, and Volunteers
425 N El Dorado Street
Stockton, CA 95202