

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, between the CITY OF STOCKTON, a municipal corporation ("CITY"), and Andrew J. Frey, Inc., a corporation whose address is 1661 W. Fremont St., Stockton, CA 95203, and telephone number is 209.467.8727, ("CONSULTANT").

### RECITALS

A. CONSULTANT is qualified to and experienced in providing After-Hours Veterinary Hospital and/or Emergency Care for the purposes specified in this Agreement.

B. CITY finds it necessary and advisable to use the services of the CONSULTANT for the purposes provided in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, CITY and CONSULTANT agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to CITY the services described in Exhibit A. CONSULTANT shall provide said services at that time, place and in the manner specified in Exhibit A.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONSULTANT only the facilities and equipment listed in Exhibit A according to the terms and conditions set forth in Exhibit A.

3. **Term.** This Agreement shall commence on the date written above and shall expire on 36 months from date listed above; provided, however the parties may agree, in writing, to change either the commencement or expiration date.

4. **Compensation.** CITY shall pay CONSULTANT for services rendered pursuant to this Agreement as described more particularly in Exhibit A. The payments shall be made on a monthly basis upon receipt and approval of CONSULTANT'S invoice. Total compensation for services and reimbursement for costs shall not exceed \$240,000.

a. Invoices must submitted by CONSULTANT to CITY must contain the Billing Level (I, II or III) as specified in original request, a copy of the original Shelter Request, any additional fees (i.e. radiographs, etc.) that have been pre-approved by the Shelter Veterinarian, and the total cost for all categories. Payment shall be made within thirty (30) days of receipt of CONSULTANT'S invoice and approved by CITY.

b. Upon completion of work and acceptance by CITY, CONSULTANT shall have five (5) business days in which to submit final invoicing for payment. The CITY shall have no obligation or liability to pay any invoice for work performed which the CONSULTANT fails or neglects to submit within five (5) business days after the work is accepted by the CITY.

5. **Sufficiency of Consultant's Work.** All services of CONSULTANT shall be adequate and sufficient to meet the purposes of this Agreement.

6. **Ownership of Work.** CONSULTANT shall keep services confidential. Services shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the CITY provides prior written consent.

7. **Changes.** CITY may request changes in the scope of services to be provided by CONSULTANT. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, CONSULTANT shall have the status of an independent contractor and CONSULTANT shall not be considered to be an employee of the CITY for any purpose. All persons working for or under the direction of CONSULTANT are its agents and employees and are not agents or employees of CITY.

9. **Termination for Convenience of City.** The CITY may terminate this Agreement at any time by mailing a notice in writing to CONSULTANT. The Agreement shall then be deemed terminated, and no further work shall be performed by CONSULTANT. If the Agreement is so terminated, the CONSULTANT shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The CONSULTANT shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the CITY, and then only upon such terms and conditions as CITY may set forth in writing. CONSULTANT shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** With the exception that this section shall in no event be construed to require indemnification by CONSULTANT to a greater extent than permitted under the public policy of the State of California, CONSULTANT shall, indemnify, protect, defend with counsel approved by CITY and at CONSULTANT'S sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents employees and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from

any violation of any federal, state, or municipal law or ordinance, or CITY Policy, by CONSULTANT or CONSULTANT'S officers, agents, employees, volunteers or subcontractors. CONSULTANT shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of CONSULTANT to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by CONSULTANT under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by CONSULTANT to a greater extent than permitted under the public policy of the State of California, the parties agree that CONSULTANT'S duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by CONSULTANT or CONSULTANT'S officers, agents, employees, volunteers or subcontractors. CONSULTANT'S duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY'S liability, breach of this Agreement, or other obligation or fault has been determined. CONSULTANT shall be immediately obligated to pay for CITY'S defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse CONSULTANT for amounts paid in excess of CONSULTANT'S proportionate share of responsibility for the damages within 30 days after CONSULTANT provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures CONSULTANT is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by CONSULTANT to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, CONSULTANT shall indemnify, defend, and hold harmless CITY its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of CONSULTANT, regardless of whether such claim may be covered by any applicable workers compensation insurance. CONSULTANT'S indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT under workers' compensation acts, disability acts, or other employee benefit acts.

12. **Insurance.** Throughout the life of this Contract, the CONSULTANT shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than \$1,000,000 per occurrence, and if written on an Aggregate basis, \$2,000,000 Aggregate limit (CG 0001). Contractors with excavation and underground risks shall have coverage for and exclusions removed for "x, c, and u."

B. WORKERS' COMPENSATION Insurance as required under the California Labor Code, and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.

All self-insured retentions (SIR) must be disclosed to the CITY'S Risk Manager for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the CITY. CITY reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

The Policy(ies) shall also provide the following:

i. The Commercial General Liability insurance shall be written on ISO approved occurrence form (see items 1 and 2 above) and endorsed to name: City of Stockton, its Mayor, Council, officials, representatives, agents, employees and volunteers are additional insureds. The CITY requires ISO Endorsement CG 20 10 11 85 (or equal) Additional Insured Endorsement. The Policy(ies) shall contain no special limitations on the scope of coverage afforded to the CITY, its officials, employees, agents, or volunteers.

ii. For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officials, representatives, agents, employees and volunteers. Any coverage maintained by the CITY shall be excess of the CONSULTANT'S insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

iii. The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the CITY'S insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

iv. The limits of Insurance required in this agreement may be satisfied by

a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY (if agreed to in a written contract or agreement) before the CITY'S own Insurance or self-insurance shall be called upon to protect it as a named insured.

v. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the City of Stockton. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

vi. Regardless of these contract minimum insurance requirements, the CONSULTANT and its insurer shall agree to commit the CONSULTANT'S full policy limits and these minimum requirements shall not restrict the CONSULTANT'S liability or coverage limit obligations

vii. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

viii. CONSULTANT shall furnish the CITY with the Certificates and Endorsements for all required insurance, prior to the CITY'S, execution of the Agreement and start of work

ix. Notwithstanding any other provision in this Agreement or other contract documents, the proper address for mailing Certificates, Endorsements and Notices shall be:

City of Stockton,  
Attn: Risk Management,  
425 N. El Dorado Street,  
Stockton, CA 95202-1997

x. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the CONSULTANT shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

xi. The CONSULTANT'S Workers' Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City of Stockton, its Mayor, Council, officials, representatives, agents, employees, and volunteers.

xii. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the City's Risk Manager (209) 937-5037. Our Fax is (209) 937-8833.

#### GENERAL INSURANCE PROVISIONS:

a. If at any time during the life of the Contract or any extension, the CONSULTANT fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the CONSULTANT shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right (but not obligation) to purchase insurance or insure (or self-insure) for the above required coverages, at the CONSULTANT'S full expense.

b. If the CONSULTANT should subcontract all or any portion of the work to be performed in this contract, the CONSULTANT shall cover the subcontractor, and/or require each subcontractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any Cancellation, Lapse, Reduction in Coverage, or Change of Subcontractor's insurance shall have the same impact as described above.

c. Any failure to comply with reporting or other provisions of the policies on the part of the CONSULTANT, including breaches of warranties, shall not affect coverage provided to the City of Stockton, its Mayor, Council, officials, representatives, agents, employees, and volunteers.

d. The CONSULTANT shall furnish the CITY with Certificates of Insurance and separate original additional insured endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, and any supplementary conditions, in a form acceptable to the CITY. The CONSULTANT shall furnish complete, certified copies of all required insurance policies, including all original endorsements specifically required hereunder.

e. The CITY, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30-days written notice to CONSULTANT.

f. The failure of the CITY to enforce any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract or after completion of the work.

g. Evidence of the required insurance coverages shall be furnished to the CITY with certificates with endorsements prior to the commencement of the work. Failure by the CITY to obtain certificate and/or endorsements shall not be construed as a waiver of any provision of this Agreement.

**Please note: If CONSULTANT(s) do not come on-site to provide services; or do not pickup and deliver the animals, there are no insurance requirements for the City of Stockton Animal Shelter.**

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To CONSULTANT:  
Stockton Veterinary Emergency  
and Specialty Center  
Attn: Andrew Frey  
1661 W. Fremont St.  
Stockton, CA 95203

To CITY:  
City Manager  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202

14. **Conformance to Applicable Laws.** CONSULTANT shall comply with all applicable Federal, State, and Municipal laws, rules, ordinances, and CITY Policies. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including, without limitation, race, color, national origin, ancestry, sex or religion of such person. CONTRACTOR shall comply, and shall ensure that its agents, officers, directors, employees, representatives, servants and vendors comply with all applicable federal, state and local laws, rules, regulations and ordinances, as well as all policies and procedures applicable to CITY'S contractors, in its performance pursuant to this Agreement. In particular and without limitation, CONTRACTOR will comply with all federal, state and local laws regarding equal employment opportunity and nondiscrimination, and with CITY'S equal opportunity and discrimination and harassment policies (HR-12 and HR-15), copies of which may be found on the CITY'S web site at [www.stocktongov.com](http://www.stocktongov.com). CONTRACTOR will also ensure compliance of these same laws and policies by any of its subcontractors. Any agent or representative of CONTRACTOR who fails to comply with an applicable law, rule, regulation, ordinance or CITY policy shall, at the request of CITY, be removed from any work pursuant to this Agreement.

15. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. CONSULTANT represents that its work will not unlawfully infringe any other copyrighted work and will defend and indemnify the CITY under Paragraph 11 of this Agreement for any claims of breach of copyright arising from or related to CONSULTANT'S work. CONSULTANT

covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** CONSULTANT shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the CITY to inspect and audit.

17. **Confidentiality.** CONSULTANT shall exercise reasonable precautions to prevent the unauthorized disclosure and use of CITY reports, information or conclusions.

18. **Conflicts of Interest.** CONSULTANT covenants that other than this Agreement, CONSULTANT has no financial interest with any official, employee or other representative of the CITY. CONSULTANT and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of CONSULTANT'S services under this Agreement. If such an interest arises, CONSULTANT will immediately notify the CITY.

19. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

20. **No Personal Liability.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by the CITY or for any amount due CONSULTANT.

21. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

22. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

23. **Relationship Between/Among the Parties.** The parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between CITY and CONSULTANT.

24. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

25. **Waiver.** The waiver by any party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement. In the event either CITY or CONSULTANT at any time waive any breach of this Agreement by the other, such waiver shall not

constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

26. **Entire Agreement.** The Agreement contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral, except those executed concurrently with this Agreement. Concurrent execution is defined as execution within three business days. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein. All exhibits to this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement.

27. **Amendment or Modification.** This Agreement may not be altered, amended or modified except by an instrument in writing signed by the parties hereto.

28. **Bankruptcy of CONTRACTOR.** If CONTRACTOR should commence any proceedings under the Bankruptcy Act, or if the CONTRACTOR be adjudged a bankrupt, or if CONTRACTOR Should make an assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR'S insolvency, then the CITY may, without prejudice to any other right or remedy, in its sole discretion, terminate the Agreement and assign the work to a third party, or the CITY may complete the work.

29. **Authority of Signatories.** The individuals executing this Agreement represent and warrant they have the authority to sign on behalf of their respective parties.

30. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which may be deemed an original, but all of which shall constitute one and the same document.

31. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

32. **Further Assurances.** The parties hereto agree to take such actions and execute such additional documents as a reasonably necessary to carry out the provisions of this Agreement.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF STOCKTON**

**CONSULTANT**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Signature

ATTEST:

Andrew J. Frey  
Print Name

\_\_\_\_\_  
City Clerk

Title: President, Andrew J. Frey, Inc.

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **EXHIBIT A**

### **SCOPE**

CONSULTANT must agree with SPECIFICATIONS/PRICING FOR HOSPITAL AND EMERGENCY CARE

AND

- Service Hours: 8am-5pm Monday – Friday; 8am-4pm Saturday

AND/OR

- After hours hospital and/or emergency care: From 5pm-8am Monday – Friday; and 24 hours Saturday and Sunday and all State, Federal, or Local Holidays

### **SPECIFICATIONS/PRICING FOR HOSPITAL AND EMERGENCY CARE**

The following are bundled overnight (M-F overnight) and weekend (Sat AM to Monday AM) care packages for animals transferring from the City of Stockton Animal Shelter to the hospital or emergency clinic for overnight care during the week or weekend. All Bundles Include:

- Initial doctor's examination and case review
- Hospitalization from the time of arrival until 8:00 AM the following morning for overnight shifts, or 24 hours for weekend shifts.
- Nursing and doctor care and monitoring
- Communications and updates on status changes during shift
- Summary and medical plan provided upon discharge.
- Hospitalization in isolation area if appropriate
- A thorough medical record in digital form (email or pdf) must accompany the animal when it leaves the Provider's care and returns to the Shelter

**Level I Transfer Case – Bundle Price to SAS: \$100/weeknight overnight; \$150/weekend 24 hour shift**

Appropriate for patients not on IV fluids.

Includes (in addition to above):

- Oral or injectable medication administration of any medications provided by shelter
- Euthanasia if indicated (patient is irremediably suffering with grave prognosis).

**Level II Transfer Case – Bundle Price to SAS \$125/weeknight overnight;  
\$185/weekend 24 hour shift**

Appropriate for patients on IV fluids and/or multiple injectable medications.

Includes (in addition to above):

- Oral or injectable medication administration of any medications provided by shelter.
- Maintenance on supplied intravenous fluid.
- Up to 3 injections of medication during the shift.
- A PCV/TP/Blood Glucose check during the shift (or equivalent as needed).
- Euthanasia if indicated (patient is irremediably suffering with grave prognosis).

**Level III Transfer Case – Bundle Price to SAS \$150/weeknight overnight;  
\$225/weekend 24 hour shift**

Appropriate for patients on IV fluids and/or requiring additional nursing care –non-ambulatory patients, patients on more than one IV fluid and/or receiving critical care/constant monitoring.

Includes (in addition to above):

- Oral or injectable medication administration of any medications provided by shelter.
- Maintenance on supplied intravenous fluids.
- Up to 4 injections of medication during the shift.
- An Istat EC8+/PCV/TP/Blood Glucose blood panel during the shift (or equivalent diagnostic as needed).
- Critical care level monitoring, non-ambulatory care.
- Euthanasia if indicated (patient is irremediably suffering with grave prognosis).

Radiographs if indicated will be provided at \$50 for one view, or \$100 for 2 views. If more views are suggested, prior approval to take more views would be required. Radiographs will be provided to shelter on cds supplied by the Shelter.

In order to receive payment for radiographs, Vendors must supply radiographs that are clear and free from obstructions that would render it impossible for the Shelter veterinarian to diagnose the animal and prescribe a course of treatment. The Shelter reserves the right to refuse payment for unusable radiographs.

**NOTE: Bundles do not include medications prescribed by the Vendor, additional bags of intravenous fluids, additional diagnostics or additional treatments not specified as included in the bundle. Vendors will acquire authorization prior to charging for these additional services.**

The Shelter will send instructions for the required Level of care. It is the intention of the Shelter to provide a supply of commonly needed medications to the hospital/emergency clinic. Vendors must acquire prior authorization for additional services.