

AGREEMENT FOR PROVISION OF
OC ANIMAL CARE SERVICES
BETWEEN
COUNTY OF ORANGE
AND
CITY OF YORBA LINDA
MAY 31, 2016 THROUGH MAY 30, 2026

THIS AGREEMENT entered into this 31ST day of May 2016, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE, a political subdivision of the State of California (COUNTY) and the CITY OF YORBA LINDA (CITY). This Agreement shall be administered by County of Orange OC Community Resources (ADMINISTRATOR).

WITNESSETH:

WHEREAS, CITY wishes to contract with COUNTY for the provision of the OC Animal Care Services described herein; and

WHEREAS, COUNTY is willing and able to provide such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

Term: MAY 31, 2016 through MAY 30, 2026

Notices to COUNTY and CITY:

COUNTY: County of Orange
OC Community Resources
Director's Office
1770 North Broadway
Santa Ana, CA 92706-2642

and

County of Orange
OC Community Resources
OC Animal Care Director
561 The City Drive South
Orange, CA 92868

CITY: City Manager
City of Yorba Linda
4845 Casa Loma Linda Avenue
Yorba Linda, CA 92885

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I. ALTERATION OF TERMS

This Agreement, together with Exhibit A and B, attached hereto and incorporated herein by reference, fully expresses all understanding of COUNTY and CITY with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by both COUNTY and CITY. This Agreement supersedes any and all previous agreements between the parties relating to the subject matter hereof.

II. INDEMNIFICATION AND INSURANCE

A. CITY agrees to indemnify, defend and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands, including defense costs, or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CITY pursuant to this Agreement. If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CITY and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

B. COUNTY agrees to indemnify, defend and hold CITY, its elected and appointed officers, employees, agents, directors, members, shareholders and/or affiliates harmless from any claims, demands, including defense costs, or liability of any kind or nature, including but not limited to, personal injury or property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this Agreement. If judgment is entered against COUNTY and CITY by a court of competent jurisdiction because of the concurrent active negligence of CITY, COUNTY and CITY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

C. Each party agrees to provide the indemnifying party with written notification of any claim related to services provided by either party pursuant to this Agreement within thirty (30) calendar days of notice thereof, and in the event the indemnifying party is subsequently named party to the litigation, each party shall cooperate with the indemnifying party in its defense.

D. Without limiting CITY's indemnification, CITY warrants that it is self-insured or shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance covering its operations, placed with reputable insurance companies. Upon request by ADMINISTRATOR, CITY shall provide evidence of such insurance.

E. Without limiting COUNTY's indemnification, COUNTY warrants that it is self-insured or shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance

covering its operations, placed with reputable insurance companies. Upon request by CITY, COUNTY shall provide evidence of such insurance.

III. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Agreement shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified on Page 3 of this Agreement or otherwise directed by ADMINISTRATOR or CITY;

2. When FAXed, transmission confirmed;

3. When sent by electronic mail; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service.

B. Termination Notices shall be addressed as specified on Page 3 of this Agreement or as otherwise directed by ADMINISTRATOR or CITY and shall be effective when FAXed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service.

C. Each party shall notify the other party, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose either party to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CITY.

D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

IV. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

V. STATUS OF THE PARTIES

Each party is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Each party is entirely responsible for compensating staff and consultants employed by that party. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CITY or any of either party's employees, agents, consultants, or subcontractors. Each party assumes exclusively the responsibility for the acts of its

employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. Each party, its agents, employees, or subcontractors, shall not be entitled to any rights or privileges of the other party's employees and shall not be considered in any manner to be employees of the other party.

VI. TERM

- A. The term of this Agreement shall commence as specified on Page 3 of this Agreement.
- B. This Agreement shall be effective for the full ten (10) year term specified on Page 3 of this Agreement, provided no notice of termination has been given by COUNTY in accordance with the Termination paragraph of this Agreement.

VII. TERMINATION

A. COUNTY may terminate this Agreement immediately upon default by CITY of its obligations hereunder or under that Participation Agreement entered into, in the year 2016, between CITY, COUNTY, and all other cities then contracting for Animal Care Services with COUNTY, for the purpose of allocating the increased costs of Animal Care Services resulting from the construction of a new animal shelter.

B. Upon termination, both parties shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

C. Any obligation of COUNTY under this Agreement is contingent upon the inclusion of sufficient funding for the services hereunder in the applicable budgets approved by the Board of Supervisors. In the event such funding is subsequently reduced or terminated, COUNTY may terminate this Agreement upon thirty (30) calendar days written notice given to CITY. Any obligation of CITY under this Agreement is contingent on COUNTY making available to CITY the continued use of Animal Care Services pursuant to the terms hereof. CITY acknowledges that other local cities have or will enter into similar agreements with the COUNTY to provide Animal Care Services for a period of ten (10) years, that the sharing of costs among the COUNTY and all contracting cities allows for costs efficiencies and operational savings to COUNTY and each contracting city, and that COUNTY and each contracting city have entered into their Services Agreements in reliance on such shared costs and resulting savings. CITY further acknowledges that the refusal of CITY to fulfill its obligations under this Agreement would increase the financial burden of services on COUNTY and all remaining contracting cities. CITY therefore agrees that it will fulfill its obligations hereunder and acknowledges that COUNTY and the other cities acquiring Animal Care Services from COUNTY are relying on CITY'S stated agreement, and the sharing of costs with CITY, in electing to acquire similar services.

VIII. THIRD PARTY BENEFICIARY

Except to the extent provided for in Section VII above with respect to other contracting cities, neither party hereto intends that this Agreement shall create rights hereunder in third parties including, but not limited to, any subcontractors or any clients provided services hereunder.

IX. WAIVER OF DEFAULT OR BREACH

Waiver of any default shall not be considered a waiver of any subsequent default. Waiver of any breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach shall not be considered a modification of the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange, State of California.

CITY OF YORBA LINDA

BY:  DATED: 5/31/16
MARK PULONE, CITY MANAGER

ATTEST:

BY:  DATED: 5/31/16
MARCIA BROWN, CITY CLERK

APPROVED AS TO FORM:

BY:  DATED: 5/31/16
CITY ATTORNEY

COUNTY OF ORANGE

BY: _____



DATED: _____

7/28/16

TITLE: _____

occr Director

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

BY: _____


DEPUTY

DATED: _____

7-28-16

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
OC ANIMAL CARE SERVICES
WITH
CITY OF YORBA LINDA
MAY 31, 2016 THROUGH MAY 30, 2026

I. DEFINITIONS

- A. "Actual Cost" means all COUNTY expenditures, including indirect charges, for providing Animal Care Services to CITY pursuant to this Agreement.
- B. "Animal Care Notice of Intent" means the document, signed by authorized representatives of COUNTY and CITY, which specifies all Animal Care Services COUNTY intends to provide to CITY, the estimated cost of the services, and the effective date.
- C. "Animal Care Service(s)" means one or more service to be provided by COUNTY to CITY, as specified, by category, in Paragraph II.B. of Exhibit A to this Agreement.
- D. "Fee Revenue" means revenue collected by COUNTY for Animal Care Services provided by COUNTY to CITY pursuant to this Agreement.
- E. "Fiscal Year" means a twelve (12)-month period from July through June.
- F. "Net Cost" means Actual Cost minus Fee Revenue.
- G. "Service Details" mean the activities performed by COUNTY within an Animal Care Service category.

II. SERVICES TO BE PROVIDED BY COUNTY

A. ANIMAL CARE NOTICE OF INTENT

1. Annually, by March 1, CITY shall identify which of the Animal Care Services, specified below in subparagraph II.B. of Exhibit A to this Agreement, CITY would like COUNTY to provide during the next Fiscal Year. CITY and COUNTY may agree to individualized levels of Service Details within the Animal Care Services selected. Requests for individualized levels of Service Details will only be considered by COUNTY if the resulting service level will not conflict with state or federal statutes and will not endanger public health.

2. Annually, by April 1, COUNTY shall prepare and send to CITY an Animal Care Notice of Intent which shall include, but not be limited to, a list of Animal Care Services, and individualized Service Details, if any, COUNTY agrees to provide, estimated costs for said services, and the start date for those services. COUNTY shall provide the Animal Care Services specified in the Animal Care Notice of Intent signed by both ADMINISTRATOR or designee, and an authorized representative of CITY.

3. Upon mutual agreement of CITY and COUNTY, COUNTY may prepare a new or amended Animal Care Notice of Intent at any time, may change due dates specified in subparagraph II.A.1. and II.A.2. of Exhibit A to this Agreement, and may modify the format of the Animal Care Notice of Intent attached to this Agreement as Exhibit B.

B. ANIMAL CARE SERVICES – COUNTY provides the following seven (7) categories of Animal Care Services. Each category of service includes Service Details which may be added or changed by ADMINISTRATOR upon six (6) months prior notification to CITY. COUNTY shall provide to CITY the Animal Care Services specified on the most current, Animal Care Notice of Intent for the Fiscal Year, signed in accordance with subparagraph II.A.2. of this Exhibit A to the Agreement.

1. ANIMAL CONTROL SERVICES – Animal Control Services include, but are not limited to, emergency response service; patrolling; impounding of stray animals and of owner-released animals; animal cruelty investigations; animal bite investigations; citation issuance; field release to owner and impound fee collection for impounded animals; quarantine activities including home checks of animals involved in bites; site inspections required to comply with vicious dog ordinances; emergency transportation of injured, impounded animals to a veterinarian; impounding of deceased animals for disposal; responses to requests for assistance from law enforcement and CITY officials regarding suspected criminal activities or zoning violations related to animals; advice to residents regarding wildlife management or other animal concerns, not to include wildlife eradication or relocation services; injured wildlife pick-up; animal license issuance and renewal, fee collection and payment services; customer support regarding animal licensing; animal license billing; and delinquent animal license follow-up; assistance to residents regarding potentially dangerous and/or vicious animals; impound data entry; and impound animal photography.

2. ANIMAL CARE SPECIAL SERVICES

a. Animal Care Special Services include, but are not limited to animal license issuance and renewal; fee collection and payment services; customer support regarding animal licensing; animal license billing; delinquent animal license follow-up; animal field canvassing to locate and license unlicensed animals; inspection of animal-related businesses in CITY jurisdiction in response to complaints and in accordance with COUNTY established inspection schedules; and when applicable, issuance of animal permits for private homes.

b. The number of hours of canvassing provided to CITY by COUNTY will be prorated based on available canvassing hours and CITY percentage of costs of Animal Care Services received by CITY during the previous Fiscal Year. At sole discretion of COUNTY, COUNTY may provide canvassing services to cities that did not receive canvassing services in the previous Fiscal Year. COUNTY may change its methodology for allocating canvassing hours upon six (6) months prior notification to cities.

3. ANIMAL CARE SHELTER SERVICES

a. Animal Care Shelter Services include, but are not limited to, retention of impounded

animals at COUNTY's Animal Care Shelter (Shelter), public display of animals to allow owner identification; contact of owners when animals are wearing identification; sale or release of impounded animals to residents; animal evaluation for adoption; reasonable effort toward animal placement; public education; volunteer services; rescue group coordination; euthanasia and disposal of animals that are neither redeemed nor adopted; veterinary services and spay/neuter surgeries consistent with standards established by the California Veterinary Medical Board; and necropsies on animals that die under suspicious circumstances or at the request of law enforcement.

b. CITY may request additional retention days for healthy, non-aggressive impounded animals. Additional retention days will be offered to CITY upon written approval by COUNTY's OC Community Resources Director, or designee, on a space available basis only.

c. COUNTY agrees to maintain its Shelter in a humane manner, consistent with applicable laws, keep said premises in a clean condition at all times, and use humane methods of care consistent with applicable laws.

d. No animals may be donated, sold or otherwise released for the purposes of experimentation, research or vivisection.

4. BARKING DOG COMPLAINT SERVICES – Barking Dog Compliant Services include, but are not limited to, receipt of barking dog complaints from residents, customer assistance regarding barking dog complaints, issuance of citations, and administrative hearings in response to complaints received by COUNTY for barking dogs within jurisdiction of CITY.

5. STANDARD LICENSING SERVICES – Standard Licensing Services include, but are not limited to, animal license issuance and renewal, fee collection and payment services; customer support regarding animal licensing; animal license billing; and delinquent animal license follow-up.

6. CITY LICENSE SERVICES

a. City License Services include, but are not limited to, issuance of CITY animal licenses at the time of adoption or redemption by owners. CITY shall provide CITY licensing tags to COUNTY. COUNTY shall provide quarterly licensing reports to CITY.

b. CITY shall make its best effort to provide updated animal licensing information to COUNTY.

7. ANIMAL IMPOUND SERVICES – Animal Impound Services include, but are not limited to, data entry of impound information for each live or deceased animal from CITY, impound animal photography for each live animal, owner notification of impounded animal, and posting of animal photographs on COUNTY website. COUNTY shall receive CITY animals at Shelter at times arranged by COUNTY.

C. COUNTY shall notify CITY of COUNTY's hours of operation for Animal Care Services. COUNTY may adjust hours of operation for Animal Care Services upon ninety (90) calendar days prior notification given to CITY.

D. Animals which are being retained for criminal prosecutions, except for violations of animal

control regulations and/or ordinances pursuant to this Agreement, are not to be construed as held pursuant to the services provided under this Agreement; housing will be provided at the discretion of COUNTY and at COUNTY's usual and customary charges for such housing.

E. To facilitate the performance of services, COUNTY shall have full cooperation and assistance from CITY, its officers, agents and employees.

III. PAYMENTS

A. BASIS FOR PAYMENT

1. CITY shall pay COUNTY the Net Cost of providing Animal Care Services specified in Animal Care Notice of Intent for CITY signed in accordance with subparagraph II.A. CITY Net Costs may include services/supplies procured but not yet delivered within the Fiscal Year.

2. The methodology for determining CITY's Actual Cost of Animal Care Services shall be provided to CITY annually in accordance with the Reports paragraph of this Agreement. CITY shall take all action necessary to ensure that Animal Care Services fees effective with respect to CITY are consistent with the most recent animal care services fees approved by the County of Orange Board of Supervisors (the "COUNTY FEES") which fee amounts will be charged for Animal Care Services within CITY's jurisdiction and shall be used in determining CITY's Actual Cost of Animal Care Services. If CITY wishes to charge fees which are different from the COUNTY FEES, CITY shall notify COUNTY of the applicable fee amounts to be charged for Animal Care Services within CITY's jurisdiction (the "CITY FEES") and the applicable CITY FEES will be charged for Animal Care Services within CITY's jurisdiction and shall be used in determining CITY's Actual Cost of Animal Care Services.

3. COUNTY shall record and retain all Fee Revenue derived from providing Animal Care Services to CITY. CITY's Fee Revenue shall be credited to CITY's Actual Cost of Animal Care Services. COUNTY shall have all fee collection powers of CITY and shall receive full cooperation from CITY to enable efficient enforcement of fee collection.

B. PAYMENT SCHEDULE

1. Each Fiscal Year, CITY shall pay COUNTY in arrears for the Net Cost of Animal Care Services provided in accordance with the following payment schedule. Billings are due from COUNTY to CITY within thirty (30) calendar days following the three-month Period specified below.

<u>Period</u>	<u>Billing Due</u>	<u>Payment Due</u>
July 1 through September 30	October 30	November 25
October 1 through December 31	January 30	February 25
January 1 through March 31	April 30	May 25
April 1 through June 30	July 30	August 25

2. If payment is not received by COUNTY by the payment due date specified above in subparagraph III.B. of Exhibit A to this Agreement, COUNTY may cease providing any further service under this Agreement and may satisfy the indebtedness in any manner prescribed by law.

3. COUNTY may modify the payment schedule upon six (6) months written notification to CITY.

IV. CITY MANAGERS ASSOCIATION ANIMAL CARE COMMITTEE

A subcommittee of the Orange County City Managers Association representing all cities participating in OCAC services exists to facilitate communication between OCAC and the city managers and staff of participating cities regarding financial and operational matters of OCAC, including, but not limited to: the assessment of cost options for animal care services provided under the Services Agreements; supplemental services or financial requests which result in a change to a participating city's Actual Cost; consideration of new or adjusted fees; and other Service Details which may arise during the course of the Agreement. COUNTY shall provide regular updates on operations to the City Managers Association Animal Care Committee and to a participating city upon request.

V. LAWS AND REGULATIONS

A. COUNTY shall comply with all applicable governmental laws, regulations, and requirements related to Animal Care Services, as they exist now or may be hereafter amended or changed and shall enforce federal and state statutes deemed applicable to CITY by COUNTY. Animal Care Services provided by COUNTY to CITY may be changed to comply with said laws, regulations, and requirements. ADMINISTRATOR will make its best efforts to notify CITY of changes that may impact Animal Care Services provided through this Agreement.

B. For each Animal Care Service that COUNTY agrees to provide to CITY in an Animal Care Notice of Intent, CITY shall enact and maintain in full force and effect ordinances identical to COUNTY ordinances which apply to said service, including but not limited to, those related to fees. ADMINISTRATOR shall notify CITY of the deadline for adopting said ordinances. If COUNTY is unable to enforce an animal care ordinance because of the limitations of a CITY ordinance or failure of CITY to adopt identical ordinances related to an Animal Care Service, COUNTY may suspend provision of one or all Animal Care Services to CITY or may terminate this Agreement. It is solely the responsibility of CITY to immediately notify COUNTY of any discrepancy between relevant ordinances maintained by CITY and those maintained by COUNTY.

D. If CITY wishes to maintain any relevant ordinance that is not consistent, on any point, with COUNTY ordinances, CITY shall immediately notify COUNTY of the discrepant ordinance. At the sole discretion of COUNTY, COUNTY may waive CITY enactment and maintenance of COUNTY animal care ordinances and may agree to enforce, and issue citations for violations pursuant to, the discrepant CITY ordinance. CITY acknowledges that individualized enforcement of unique CITY ordinances may result in increased costs to CITY.

E. CITY shall notify COUNTY of its intent to add, amend, or delete any CITY animal care ordinance at least ninety (90) calendar days in advance of its addition, amendment, or deletion.

F. CITY may request that specific ordinances adopted by CITY not be enforced in CITY by COUNTY. Requests for exclusion must be submitted in writing and received by COUNTY ninety (90) calendar days prior to the requested exclusion. Requests for exclusion will only be considered by COUNTY if they are not in conflict with state statutes and do not endanger public health. COUNTY shall notify CITY, in writing, of COUNTY's decision regarding the requested exclusion.

G. COUNTY's OC Community Resources Director, or designee, may provide assistance to CITY in defining the manner in which enforcement of a new or amended animal care ordinance would be provided by COUNTY. Requests for assistance must be made in writing and received by COUNTY ninety (90) calendar days prior to the requested implementation of the service. If the cost of such service can be delineated and accommodated by COUNTY, COUNTY will send an amended Animal Care Notice of Intent to CITY which will include reference to the CITY ordinance.

H. CITY will reimburse COUNTY for ordinance enforcement, as specified in the Payments Paragraph of this Agreement.

VI. REPORTS

A. Each Fiscal Year, COUNTY shall provide to CITY written, quarterly reports of Animal Care Services revenue and expenses for each period specified below. Said reports will be due to CITY within thirty (30) calendar days of the month following the reporting period, in accordance with the schedule below:

<u>Period</u>	<u>Reports Due</u>
July 1 through September 30	October 30
October 1 through December 31	January 30
January 1 through March 31	April 30
April 1 through June 30	July 30

B. Each Fiscal Year, COUNTY shall provide the following Animal Care Services reports to CITY by July 30:

1. A payment methodology report for Animal Care Services to be provided by COUNTY during the next Fiscal Year and
2. A Fiscal Year intake and outcome report.

C. COUNTY may change the due dates for reports specified in subparagraphs VI.A. and VI.B. above upon six (6) months written notification to CITY.

D. No less than once every three (3) years, COUNTY shall engage an external auditor to review CITY billings.

VII. RECORDS

A. All records created or received by COUNTY in accordance with the performance of COUNTY services pursuant to this Agreement are confidential. COUNTY agrees to keep said records in such form and manner as the Auditor-Controller of COUNTY shall specify. Said records shall be open for examination by CITY at all reasonable times.

B. Once each Fiscal Year, COUNTY shall deliver to CITY only the addresses of each CITY licensed animal upon demand without additional expense or cost to CITY. Any such information requested which is confidential pursuant to the terms of the Public Records Act shall be released to CITY pursuant to government code. Prior to each disclosure, CITY agrees to complete and return to COUNTY a "Confidentiality Agreement" on a form approved or provided by COUNTY. The parties agree and understand that this procedure is required by the Public Records Act and necessitated to permit CITY to obtain the information required for its use, and to allow COUNTY to disclose said information. Upon receipt by COUNTY, the records requested may be released to the extent COUNTY is in possession of such records, and permitted by state law to disclose them voluntarily.

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