

ATTACHMENT 2

AGREEMENT REGARDING ANIMAL SERVICES FACILITIES

This agreement (the “Agreement”) is made by and between the City of Lathrop, a municipal corporation, (hereinafter “Lathrop”) and the City of Manteca, a municipal corporation (hereinafter “Manteca”) (together the “Parties”) effective the 1st day of October 1, 2021, and expiring on September 30, 2022, regarding the use of the Manteca Animal Control Facility (hereinafter the “Shelter”) subject to the following terms and conditions.

RECITALS

WHEREAS, there is no physical facility in the city limits of Lathrop for the placement and impoundment of animals found in the Lathrop city limits until redeemed, adopted or euthanized; and

WHEREAS, Lathrop has been contracting with Manteca for Shelter services since 2002; and

WHEREAS, Lathrop desires to continue to contract with Manteca for Shelter services subject to the terms and conditions set out below;

WHEREAS, the Parties recognize, acknowledge, and agree that this shall be the last contract and term between the Parties for Manteca to provide the services described herein to Lathrop; and

WHEREAS, the Parties have met, conferred, and negotiated in good faith, and agree to the terms and conditions set out below;

NOW THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement. Neither Party is the agent, representative, and/or employee of the other in any capacity whatsoever. Neither Party nor its employees, agents, and/or representatives shall have a claim against the other Party under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers’ Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.
2. **INDEMNIFICATION:** To the fullest extent permitted by law, Lathrop shall hold harmless, defend and indemnify the City of Manteca, its City Council, its

ATTACHMENT 2

employees, staff, appointed, and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except to the extent such Liabilities are caused by the negligence of Manteca. Manteca may participate in the defense of any such claim without relieving Lathrop of any obligation hereunder. Lathrop shall adjust and bolster its insurance, accordingly. The obligations of this indemnity shall be for the full amount of all damage to Manteca, including defense costs, and shall not be limited by any insurance limits.

Manteca shall hold harmless, defend and indemnify the City of Lathrop, its City Council, its employees, staff, appointed, and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, except to the extent such Liabilities are caused by the negligence of Lathrop. Lathrop may participate in the defense of any such claim without relieving Manteca of any obligation hereunder.

3. **TERM AND COSTS:** The term of this agreement shall begin on October 1, 2021, and conclude on September 30, 2022. This agreement and the Parties' relationship regarding Lathrop's use of the Shelter shall expire at the end of this agreement (September 30, 2022). The Parties may mutually agree in writing to extend the term of this Agreement an additional one-month, two-months, but no more than three-months, subject to the same terms and conditions set out herein. Such an agreement to extend this Agreement must be in writing and must be reached at least ninety (90) days before the expiration of the term of this Agreement; otherwise, this Agreement shall expire on September 30, 2022.

For the term set out herein, annual compensation is to be paid to the City of Manteca, by the City of Lathrop, in the amount of \$94,587, subject to additional costs as noted below in Section 8. The above mentioned amount includes one-thousand (\$1,000) dollars a month rent for the Shelter. Payments shall be made monthly, in advance, for one-twelfth of the year's annual cost. Payments received later than the 15th of the month in which they are due will be assessed a 10% late fee. Additional costs (as set out below in Section 8) shall be paid by Lathrop to Manteca within thirty (30) days after Lathrop receives the bill from Manteca. Late fees for additional costs shall be capped at 3%, unless Manteca agrees in writing to waive the late fee.

ATTACHMENT 2

Either Party may terminate this Agreement by providing the other Party 120 days' written notice.

4. **USE:** The Parties agree that Manteca will provide animal shelter services to Lathrop for animals impounded pursuant to and consistent with state and local law. Such services shall include, but not be limited to receiving all live and dead animals at the Shelter, providing live animals at the Shelter with food, water, housing, vaccinations and emergency veterinary care, euthanizing animals, arranging for the redemption of animals, arranging for the adoption of animals, arranging for placement of animals with rescue organizations, arranging for the spay/neutering of animals, and collecting fees related to the aforementioned services.
5. **OPERATIONS:** All Shelter operations, including all handling of animals from intake to disposition, hours of operations, and facility management, shall be under the exclusive control of the Manteca Police Department and in accordance with the policies and procedures of the City of Manteca and Manteca Police Department.
6. **EUTHANIZATION:** In the event that an animal originating in the city limits of Lathrop is impounded at the Manteca Shelter, and is to be euthanized, Manteca personnel shall perform such euthanization, and shall do so in accordance with State law. For purposes of determining the requisite impound period, Manteca personnel shall use the impound date, in accordance with State law and City of Manteca policies and practices. Animals may be held longer than is required, at the sole discretion of the Shelter personnel. Any disputes arising under sections 5 or 6 shall be resolved by the Manteca Chief of Police in his/her sole discretion.
7. **ADOPTION/REDEMPTION:** The Parties agree that Manteca shall provide all necessary personnel for the surrender, adoption, and redemption of animals originating in the corporate limits of Lathrop. Manteca shall collect all necessary license, board, care, adoption, and surrender and impoundment fees relative to an adoption, surrender or redemption. When providing adoption or redemption services, Manteca shall also collect the spay/neuter deposits required under California Law, if applicable, for animals originating in the corporate limits of the City of Lathrop. Manteca shall collect all fees mandated by State law, including but not limited to, those fees required under the California Food & Agriculture Code.
8. **VETERINARY CARE & VACCINATION COSTS:** Lathrop shall be responsible for all veterinary costs associated with a Lathrop animal (i.e., any animal Lathrop brings to and/or transports to the Shelter). In the event that Shelter personnel determine that a Lathrop animal being held at the Shelter is in need of veterinary care the Manteca personnel will contact Lathrop personnel for transport of the pet for veterinary care; again, Lathrop will responsible for such related costs. In an emergency situation,

ATTACHMENT 2

Manteca Shelter personnel will obtain the necessary care and then as soon as practical Manteca Shelter personnel will make every effort to notify the Lathrop Animal Services Director of the circumstances; again, Lathrop will responsible for such related costs. Pursuant to Manteca Shelter practices and policies, all animals will be evaluated at intake by Manteca Shelter personnel for the need to be vaccinated. All animals determined to be in need of vaccination shall be vaccinated by Manteca personnel. A record will be kept of all Lathrop animals that are vaccinated and the City of Lathrop shall reimburse the City of Manteca for the actual cost of all vaccines used on Lathrop animals. Lathrop will retain the right to vaccinate their own animals prior to delivery at the shelter. If Lathrop personnel provide Manteca with proof of vaccination, no further vaccinations are needed.

9. **CREDITS AND OFFSETS:** Manteca shall pay Lathrop, on a monthly basis, all fees and fines collected, including but not limited to unaltered animal impound fees, license fees, surrender fees, adoption fees, impound fees, spay/neuter fees, fines, board, care and veterinary/medical costs received by the Manteca facility for animals originating in the city limits of the City of Lathrop.
10. **SPAY/NEUTER DEPOSITS AND FINES:** Manteca shall collect all spay and neuter deposits required under the California Food & Agriculture Code for all animals originating from or adopted to Lathrop. Manteca shall pay over to Lathrop, on a monthly basis, all such deposits that may be received. Lathrop shall expressly indemnify, release, save, and hold Manteca harmless from and against any and all third party claims relating to the legal collection, retention and expenditure of such spay and neuter deposits.
11. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Parties covenant that they presently have no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
12. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

ATTACHMENT 2

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day. For purposes of this Agreement, the Parties may also agree to electronic mail delivery for purposes of Notice.

The Parties also agree that electronic mail may serve as an appropriate and effective platform to effectuate notice, provided, however that each Party is responsible for keeping the other Party up to date on the appropriate email address for purposes of Notice.

Addresses for purpose of giving notice are as follows:

To Manteca: CITY OF MANTECA
 Attn: City Manager
 1001 W. Center Street
 Manteca, California 95337

To Lathrop: CITY OF LATHROP
 390 Towne Centre Drive
 Lathrop, CA 95330

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

13. **USE OF CITY OF MANTECA PROPERTY:** Lathrop shall not use Manteca Shelter property (including equipment, instruments, storage, and supplies) or personnel for any purpose except those described and/or related to this Agreement.
14. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** The Parties agree that they will comply with Title VII of the Civil Rights Act of 1964,

ATTACHMENT 2

the California Fair Employment & Housing Act ("FEHA") and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

15. **AUDITS; ACCESS TO RECORDS:** A Party shall make available to the other Party, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures or disbursements charged to a Party, and shall furnish to the Party, its authorized agents, officers or employees such other evidence or information as the Party may require with regard to any such expenditure or disbursement charged by or to a Party. The Parties shall maintain full and adequate records in accordance with generally accepted practices to show any actual costs incurred by in the performance of this Agreement.
16. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
17. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between Manteca and Lathrop relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
18. **HEADINGS:** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
19. **ADVERTISING OR PUBLICITY:** Neither Party shall use the name of the other Party, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the other Party in each instance.
20. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual, written agreement of the Parties. No

ATTACHMENT 2

supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both Parties.

21. **SUBCONTRACTING/ASSIGNMENT:** Neither Party shall subcontract, assign or delegate any portion of this Agreement and/or any duties or obligations hereunder without the other Party's prior, written approval. Failure to do adhere to this provision shall result in a material breach by a Party. Moreover, neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
22. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2) shall survive termination or expiration.
23. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
24. **EXTENSION:** This agreement may be extended by mutual, written agreement of Manteca and Lathrop, subject to the requisite approval of the City Council or their designee, and subject to Section 3 above.
25. **SIGNATORY:** By signing this Agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.
26. **VENUE AND CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California. The exclusive venue to resolve any disputes that may arise during the term of and/or related to this Agreement are the state and federal courts of San Joaquin County, California.
27. **INSURANCE**

A. Insurance requirements for Lathrop can be found on the attached form to this Agreement. Other insurance provisions can be found below:

ATTACHMENT 2

B. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing an A.M. Best's rating of no less than A:VI and shall be endorsed with language substantially as follows:

- (1) Manteca, its elected and appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to general liability policy arising out of work performed by or on behalf of Lathrop, including materials, parts, or equipment furnished in connection with such work.
- (2) The general liability policy shall be considered primary insurance as respects Manteca, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by Manteca, including any self-insured retention Manteca may have, shall be considered excess insurance only and shall not contribute with it.
- (3) The insurance shall apply to each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- (4) The insurer waives all rights of subrogation against Manteca, its elected and appointed officers, officials, employees, and agents.
- (5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Manteca, its elected and appointed officers, officials, employees, agents, or volunteers.
- (6) Any cancelled or non-renewed policy will be replaced with no coverage gap and a current Certificate of Insurance will be provided to Manteca.
- (7) Manteca will not accept any endorsements that were issued in 2004. Acceptable endorsement forms are CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or equivalent.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to Manteca. At Manteca's option, Lathrop shall demonstrate financial capability for payment of those deductibles or self-insured retentions.

ATTACHMENT 2

D. Certificates of Insurance. Lathrop shall provide to Manteca certificates of insurance with original endorsements as evidence of the required insurance coverage. Certificates of insurance shall be filed with Manteca on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with Manteca at all times during the term of this Agreement.

28. **MEDIATION:** The Parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the Parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE (“JAMS”) or its successor in interest. JAMS shall provide the Parties with the names of five qualified mediators. Each Party shall have the option to strike two of the five mediators selected by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

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ATTACHMENT 2

The Parties, by and through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City of Manteca,
a California municipal corporation

By:

Benjamin Cantu
Mayor, City of Manteca

By:

Toby Wells
City Manager

ATTEST:

By:

City Clerk
Cassandra Candini-Tilton

APPROVED AS TO FORM:

By:

City Attorney
L. David Nefouse

By:

Acting Finance Director
Jared Hansen

By:

Director of Employee Services & Engagement
Aaron Slater

ATTACHMENT 2

City of Lathrop,
a California municipal corporation

By:

Stephen J. Salvatore
City Manager
City of Lathrop

ATTEST:

By:
Teresa Vargas
City Clerk

APPROVED AS TO FORM:

By:
Salvador Navarrete
City Attorney