

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
PETDATA, INC.**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and "PetData, Inc.", hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of the professional services hereinafter described for the Health Department, Public Health and Environmental Protection Division.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services
Exhibit B—Payments and rates
Attachment I—§504 Compliance

2. Services to be performed by Contractor

In full consideration of the payments herein provided for Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In full consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed FOUR HUNDRED EIGHTY THOUSAND DOLLARS (\$480,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2008 through December 31, 2010.

This Agreement may be terminated by Contractor, the Health Department Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance waived
- (c) Professional Liability waived

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. Notices

Any notice, request, demand, or other communication required or permitted

hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to:

Director, Health Department
225 37th Avenue, Room 178
San Mateo, CA 94403

In the case of Contractor, to:

President, PetData, Inc.
1850 Crown Drive., #1110
Farmers Branch, TX 75234

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

PETDATA, INC.

Contractor's Signature

Date: _____

Long Form Agreement/Non Business Associate v 6/28/06

Exhibit "A"

I. In full consideration of the payments herein provided for in Exhibit "B", Contractor shall provide the following animal licensing services:

A. Management of the daily operations for animal licensing including:

1. Data Entry & Processing

- a. Process correspondence from pet owners.
- b. Process and collect animal licensing fees.
- c. Enter licensing and vaccination data into Contractor's proprietary database.
- d. Provide customer service including communication with citizens, veterinarians, and designated County staff.
- e. Provide data entry of both new and renewal licenses, ensuring complete and accurate information.
- f. Implement a process for a weekly direct transfer of data from Contractor's database to the County's database.
- g. Work with the County to develop a process for the Contractor to issue service animal tags.
- h. Work with the County to develop a process for the Contractor to handle rabies exemptions.

2. Veterinarians & Other Authorized Registrars

- a. Process license sales and vaccination reports from veterinary clinics.
- b. Ensure reasonable quantities of on-site of basic supplies (reporting forms, vaccination certificates, citizen mailing envelopes, etc.) necessary to sell license tags and/or report information on citizens vaccinating their animals against rabies.
- c. Notify all veterinarians who are delinquent in submitting their monthly vaccination without license (VWL) reports.

3. Animal License Tags

- a. Process and mail license tags within ten business days after receipt of payment and completed information as required by the local ordinance.
- b. Issue replacement tags to pet owners whose license tags have been lost, stolen, or damaged.

4. Electronic Payments & Banking

- a. Provide the ability for pet owners to pay through the Contractor's Merchant Service Provider.
- b. Provide on-line customer service via the Contractor's website to allow pet owners to make license payments or donations.
- c. Deposit all receipts collected for licensing into a bank account

set up solely for the purpose of managing County animal licensing funds.

1. Make daily deposits and transmit a pdf of the deposit slips on a daily basis.
 2. Collect and report electronic and charge card payments shall be collected and reported as outlined by the County.
 3. Send all funds collected and deposited on behalf of the County via a monthly wire transfer.
- d. Accept license fees from licensees via the following forms of payment at a minimum: check, money order, debit or ATM Card, or credit cards.
1. Charges to Licensee for electronic payments:
Cost Recovery Processing Fees in the amount of 3% of transaction amount with a minimum fee of \$1.75 per credit card transaction, online or off-line, to be charged to licensee. Note: Contractor shall use their own designated Merchant Service Provider to conduct all credit card transactions.
5. Communication & Access
- a. Provide timely responses to and communication with citizens, County designees, and Animal Control and Licensing Program representatives including Animal Control Officers.
 - b. Provide a customized San Mateo County toll-free number and answering service.
 - c. Provide 24/7 access to Contractor's database by County, Emergency Dispatch, and any other authorized Division personnel, including login.
 - d. Communicate to pet owners on the status of their pet's license status including annual billing.
6. Reporting (formatting to be agreed upon)
- a. Provide monthly report of animals licensed to the County.
 - b. Provide statistical reports as requested by the County.
- B. Contractor agrees that the animal licensing information belongs to the County and will never sell, transfer, or release personal data to a third party.
- C. With the exception of the license tags, Contractor agrees to cover the cost of all animal licensing supplies needed for daily operation.
- D. Contractor agrees to comply with California state and local laws governing animal licensing.
- E. Contractor will back up all databases twice during the working day.

II. County agrees to provide the following to Contractor:

- A. Access to County's database to allow import of data into Contractor's database.
- B. Licensing tags to Contractor's on-site location for disbursement.
- C. Any licensing fees collected by County or other Contractors of the County: such fees and supporting documents will be forwarded to the Contractor for processing with the exception of cash. Supporting documents with cash payments will be forwarded to the Contractor for processing. Cash will be deposited into County's bank account directly by County staff.

Exhibit "B"

In full consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

- A. Fixed Fees:
 - One-year license: \$3.65 per license
 - Multi-year license: \$3.65 for the first year and \$2.00 for each addition year
 - Late fees collected: \$2.50 collection service fee for each license
 - Replacement tags: \$3.65 per tag
 - Service animals (e.g. seeing-eye dogs, hearing dogs, etc.): No fee for any license or tag issued

Fixed fees shall be payable to Contractor for all licenses processed during the term of this Agreement, regardless of whether they are processed by Contractor, County personnel, or a County contractor.

- B. In any event, the maximum amount the County shall be obligated to pay for services rendered under this Agreement shall not exceed FOUR HUNDRED EIGHTY THOUSAND DOLLARS (\$480,000) for the Agreement term.
- C. Monthly Reporting

Payment by County to Contractor shall be monthly. Contractor shall bill County on or before the tenth (10th) working day of each month for the prior month. The invoice shall include a summary of services and charges for the month of service. In addition, Contractor shall provide back-up to the invoice. Such back-up shall be in the form of a monthly report of the animals licensed. (Required information and formatting to be agreed upon.)
- D. Additional Service Fees

Contractor shall invoice County for any bank deposit and supply fees outside the scope of this Agreement.
- E. At the discretion of the Director of Public Health and Environmental Protection Division, an annual meeting may be scheduled between the Contractor and County.

- F. If County or Contractor finds that performance is inadequate, at the County's discretion, a meeting may be called to discuss the causes for the performance problem, and this Agreement may be renegotiated, allowed to continue to end of term, or terminated pursuant to Paragraph 4 of this Agreement. Any unspent monies due to performance failure may reduce the following year's agreement, if any.

- G. In the event this Agreement is terminated prior to December 31, 2010, Contractor shall be paid for services already provided pursuant to this Agreement.