

**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
SERVICES**

THIS AGREEMENT is made and entered into on \_\_\_\_\_, by and between the CITY OF FRESNO, a California municipal corporation (the City), and NORTHSTAR GENERAL INC., a California Corporation (the Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional Civil and Architectural services for the design of plans and general construction contract documents for an Animal Control Facility (the Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a General Contractor and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Public Works Department Director (the Director) or the Director's designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. The Consultant shall perform the services described herein and in **Exhibit A** to complete the Project more fully described in **Exhibit A**, and this shall include all work incidental to, or necessary to perform, such services. The City shall also perform all City responsibilities and obligations required of the City as indicated in **Exhibit A**. The services of the Consultant shall consist of five parts as described below. By entry into this Agreement and upon the City's issuance of a written "Notice to Proceed," the City contracts for the services in Part One. In the event the Consultant performs services without the City's prior written authorization, the Consultant will not be entitled to compensation for such services.

(a) Part One. Schematic Site Design Phase.

(1) The Consultant shall review the description of the Project set forth in **Exhibit A** and consult with designated representatives of the City to ascertain the requirements of the Project.

(2) Upon receipt of all City design and program criteria from City and a final boundary and topographic survey pursuant to City responsibilities established by Consultant. The Consultant shall complete a Site Plan in accordance with the detailed minimum requirements set forth in Exhibit A. The Site Plan shall include sufficient detail for the design of the Project, to establish a

4 building animal shelter & parking lot, and as necessary to obtain the acceptance of the City. The Consultant shall provide the City with an electronic file of the Site Plan in the following format: .dwg and .pdf.

(3) The Consultant shall conduct due diligence as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible the City department/division that is available in the City's records and is required by the Consultant in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements.

(4) The Consultant shall provide a preliminary evaluation of the Project taking into consideration an estimate of the cost of construction (Construction Budget) of \$12,875,800.00.

(5) Based upon the mutually agreed upon Project requirements and any adjustments within the scope of this proposal and Consultant's expertise authorized by the City and the consultant in the Construction Budget, the Consultant shall design and prepare site plan drawings and other documents for review, modification, if required, and acceptance by the City staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(6) The Consultant shall submit a preliminary estimate of construction cost for review and acceptance by the City. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include the Consultant's compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, the cost of any work which may be let on a segregated bid basis and any equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget. Where alternate or deduct designs may be necessary, consultant shall submit any necessary additional compensation for approval prior to designing such elements.

(7) The Consultant shall make as many submittals as may be necessary or desirable to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which would be applicable to services herein and which would be within Consultant's expertise, which assistance shall include, but not be limited to, making Project information available to the City.

(8) The Consultant may rely upon any as-builts provided by the City, but shall reasonably review such as-builts to ascertain the adequacy of such as-builts for the Consultant's design. The Consultant shall bring to the City's attention any discrepancies in the as-builts that are discovered by the Consultant. The City makes no further representations regarding any as-builts.

(9) Services shall be undertaken and completed in a sequence assuring expeditious completion.

(b) Part Two. Design Development Phase – 90% Complete Plans.

After review and acceptance of the schematic design phase, receipt of agency letters of approval, final written City conditions of approval and a final City approved site plan and other requirements set forth under **Exhibit A**, the City shall issue a written Notice to Proceed with this Part Two:

(1) Based upon the City and planning department entitlement approval of the site plan, final formal conditions of approval and all agency letters of approval, the Consultant shall prepare for review and acceptance by the City the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, the Consultant shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents shall be subject to review and acceptance by the City.

(2) The Consultant shall submit a revised estimate of construction cost for any approved alternates for review and acceptance by the City. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, any work which may be let on a segregated bid basis, and any furnishings, equipment or fixtures which may be incorporated in or excluded from the general construction contract as may be necessary including authorized revisions thereto.

(3) The City shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in the Consultant's compensation.

(4) The Consultant shall make as many submittals as may be necessary to obtain the acceptance by the City and shall assist the City in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to the City.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and 1<sup>st</sup> submittal deliverables completed within Seventy (70) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within Fourteen (14) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

(c) Part Three. Construction Document Phase – 100% Bid Issue Plans.

After review and acceptance of the design development phase Proceed with this Part Three:

(1) The Consultant shall prepare from the accepted design development documents, detailed plans setting forth the complete work to be done, and the materials, workmanship, finishes and equipment, fixtures, and site work required. slip-sheeting final documents for printing when requested. The City's Standard Specifications must be used by the Consultant where possible. Final drawings shall be drawn, printed, or reproduced by a process providing a permanent record in black high quality bond copy. General conditions, contract or formats regularly used by the City shall be used by the Consultant unless the Director determines they would be impractical for this Project. The Consultant shall be responsible for assuring that any special conditions, technical specifications and any other documents prepared by the Consultant are consistent with any documents regularly used by the City that are used for this Project.

(2) Upon request of the City, the Consultant shall provide the calculations used to determine the general construction contract quantities, and structural calculations for the purpose of obtaining any building permits.

(3) The Consultant shall make as many submittals as may be necessary to obtain the acceptance by the City and shall assist the City in approval, permit, report, statement, or waiver required by law, which would be applicable to services herein and which would be within Consultant's expertise which assistance shall include, but not be limited to, making Project information available to the City.

(4) The Consultant shall provide the City with four (4) sets of completed plans for review and final acceptance by the City. Should the plans as submitted by the Consultant not be accepted by the City for code compliance, the Consultant shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to the City.

(5) After acceptance of final corrections, if any, the Consultant shall provide the City with one set of accepted reproducible tracings and construction documents for the Project. In addition, the Consultant shall provide the City with one complete set of CAD/System disk files of drawings and complete disk files of any specifications in the following format: .dwg and .pdf.

(6) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within sixty-three (63) calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by the City, shall be submitted to the City within fourteen (14) calendar days from receipt of the City's comments unless an extension of time is approved in writing by the Director.

Part Four. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general

construction contract for the Project and under the direction of the Director through the City's designated Construction Manager for the Project:

(1) The Consultant shall attend the pre-construction conference and, if called upon by the City.

(2) The Consultant shall review and recommend in writing to the City acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor and applicable laws and regulations in a timely manner. The period for the Consultant review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by the City, the Consultant and the general construction contractor.

(3) Pursuant to the services outlined in **Exhibit A** The Consultant shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the construction work. In the event that the Consultant's visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, the Consultant shall immediately advise the City and document, in writing, the work the Consultant deems substandard, and make recommendations where appropriate to reject any work not conforming to the applications and final acceptance, subject to the City's right to overrule the Consultant.

(4) Upon written request by the City, the Consultant shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by the City, the Consultant shall provide such design as may be requested by the City to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions.

(6) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in the Consultant's compensation.

(7) Upon receipt of a final as-grade survey by the City, the Consultant shall provide the City with two sets of original as-grade plans wet-stamped and signed by the Consultant's Engineer of Record for the Project submitted for final approval by the City's Building and Safety Services Division of the Development and Resource Management Department on all projects located outside the Right of Way.

2. The City's responsibilities. The City will:

(a) Provide and comply with all the City Responsibilities and obligations as set forth in **Exhibit A**. Provide, upon request and cooperation of the Consultant, access to, and make all provisions necessary to, enter upon public or private lands as required for the Consultant to perform such services and inspections as are required in development of the Project; provided, however, if the City is unable to obtain access to enter upon public or private lands, the Consultant shall not be relieved from performing its services as to those public and private lands that are accessible where delays occur Consultant shall be afforded more time.

(b) Manage and be responsible for all negotiations with owners in connection with land or easement acquisition and provide all required title reports and appraisals.

(c) With the exception of preparing correspondence required for design, hold all required special meetings, serve all public and private notices, receive and act upon all protests, and perform all services customarily performed by owners as are necessary for the orderly progress of the work and the successful completion of the Project, and pay all costs incidental thereto.

(d) Select the testing laboratory and pay the cost of borings, samplings, and other work involved in soils testing during construction.

(e) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release the Consultant from its responsibility to make periodic site visits under **Exhibit A** for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to the City.

(f) Prepare all change orders during construction in cooperation with the Consultant.

(g) Prepare all Progress Payment Estimates in cooperation with the Consultant following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon the Consultant's best knowledge, information, and belief.

(h) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(i) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements, preliminary title reports and all title services.

(j) Give reasonably prompt consideration to all matters submitted by the Consultant for acceptance to the end that there will be no substantial delays in the Consultant's program of work. For an acceptance, approval, authorization, a request or any direction to the Consultant to be binding upon the City under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by the City and signed on behalf of the City by the Director.

3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$344,300.00, and a contingency amount not to exceed \$50,000 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by the Consultant in performance of such services.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. Such statements shall be for an amount no greater than that attributable to the part upon which the Consultant is then engaged as provided in Section 3(c) below.

(c) For purposes of determining the division of the total compensation to the Consultant as provided in Section 3(a) above, or should performance of any succeeding part not be authorized by the City as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five parts of the Consultant's performance per **Exhibit A** should the contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to the Consultant.

(d) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

4. Termination, Remedies, Force Majeure, and Consolidation of Disputes.

(a) This Agreement shall terminate without any liability of the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days' prior written notice with or without cause by the City to the Consultant; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, The Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, or the City, either party may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that the either party improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) The Consultant shall provide the City with adequate written assurances of future performance, upon the request of the Director or designee, in the event the Consultant fails to comply with any terms or conditions of this Agreement.

(f) The Consultant shall faithfully execute their services unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify the Director or designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or designee of the cessation of such occurrence.

(g) The Consultant agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at the City's option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. The Consultant hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term



Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the skill and care ordinarily provided by consultants practicing in the same or similar locality, at the same time, and under the same or similar circumstances of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards. This standard of care shall govern all obligations under this agreement. Such standard of care is not a warranty or guarantee, and the Consultant shall have no such obligation.

7. Indemnification. To the furthest extent allowed by law, the Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's

fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.8.  
Insurance.

(a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. Any duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the City or is a member of any city council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, procure, this Agreement or any rights/benefits hereunder.

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this

Project. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event the Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Consultant at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) The Consultant's services pursuant to this Agreement shall be provided under the supervision of Tim Simons, and he/she shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Director.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the Consultant shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, the Consultant agrees as follows:

(a) The Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) The Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. The Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to the Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability,

medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Consultant is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. The Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the Consultant's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, the Consultant may be providing services to others unrelated to the City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of

receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law. Consultant shall provide the services required under this Agreement consistent with the standard of care in applying the laws of the United States, including, but not limited to, the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), the State of California and the City, and the regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement, that are applicable to the Project. Consultant may obtain and rely upon the advice of other professionals, building officials, and other qualified persons as to the intent and meaning of such laws and regulations.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. In the event of any dispute between the parties to this Agreement, the parties agree to first negotiate in good faith toward a resolution within fifteen (15) business days with participation by representatives of each party holding sufficient authority to resolve the dispute. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.

[SIGNATURES FOLLOW ON NEXT PAGE.]



IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

NORTHSTAR GENERAL INC.,  
a California Corporation

By: \_\_\_\_\_  
Scott L. Mozier, P.E.,  
Public Works Director  
Public Works Department

By: \_\_\_\_\_  
Name: Tim Simons  
Title: President  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Brandon M. Collet 12/23/19  
Senior Deputy City Attorney Date

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

REVIEWED BY:

By: \_\_\_\_\_  
Deputy Date

Addresses:  
CITY:  
City of Fresno  
Attention: L. Nathan Sanchez  
Project Manager  
2101 G Street, Bldg C  
Fresno, CA 93706  
Phone: (559) 621-1215  
FAX: (559) 498-2746

CONSULTANT:  
Northstar General  
Attention: Tim Simons  
Owner:  
1500 W. Shaw Ave, Suite 406  
Fresno, CA 93711  
Phone: 222-7903  
FAX: 222-7904

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

## EXHIBIT A

### SCOPE OF SERVICES

#### Consultant Service Agreement between City of Fresno (the City) and Northstar General Inc. (the Consultant)

##### Animal Control Facility Project

### PROJECT DESCRIPTION

The services and fee pursuant to Exhibit A pertain to the preliminary site location located on Golden State Blvd., consisting of approximately 3-4 acres of land, for design of new site improvements and one (1) admin and three (3) kennel buildings with temporary access taken from Golden State; of which such services are more fully detailed herein where CITY desires to change the project location, an amendment to the scope of services may be required to increase the Consultant fees herein prior to beginning design services of a new site selection. The CONSULTANT will provide the CITY with Civil Engineering and Architectural design services for the Animal Shelter Project as described herein. CONSULTANT will provide designs based off existing plans with the necessary site modification for the Civil and Architectural designs to accommodate spay, neuter, and surgical services per operational requirements.

### PROPOSED FEE

Schematic Site Design	Part 1	TBD	\$61,300
Design Development	Part 2	10 weeks	\$200,500
Construction Document	Part 3	9 weeks	\$40,500
General Construction Contract	Part 4	TBD	\$42,000
Contingency			\$50,000

### SCOPE OF WORK

The CONSULTANT will coordinate and manage the sub-consultants (Architect and Civil Engineer) based on the initial information set forth in this "Exhibit A". Architectural design services will be provided and shall be considered specific to Construction Documents to construct approximately 43,601 square feet of structure on approximately 4.1 acres of undeveloped land. Civil Engineering shall assist with site plan review and design and prepare plans consistent within industry standards for the Design-Bid project. Services shall be provided consistent with the skill and care ordinarily provided by consultants practicing in the same or similar locality, at the same time, and under the same or similar circumstances. It is understood that the plans will be reviewed by typical local agencies for "development type" projects and conditions and will consist of plans only.

## PART 1 - SCHEMATIC SITE DESIGN PHASE

Upon receipt of a complete topographic, boundary and utility survey from the City. The Architect shall proceed to prepare a site plan for the project based on input from the CITY. The Civil Engineer shall assist in the application to the Agency pertaining to planning approval and development of the site plan; the CONSULTANT shall be the lead person for all planning documents and obtaining approvals. Services under this task will include work or services performed on the project during the planning/entitlement stage and up to the issuance of agency conditions of approval. Services may include the following:

Architect shall perform the following tasks:

- Develop new site plan on property as selected by City of Fresno.
- Discuss program requirements for minor revisions to currently designed facility with City staff as necessary to understand requirements and objectives.
- Reconcile current design package against City requirements.
- Coordinate as required with City staff.
- Provide CITY with Schematic Design exhibits for review and comment.
- Revise changes as required to reflect CITY staff comments.
- Prepare and submit Entitlements.

Civil Engineer shall perform the following tasks:

- Discussions and coordination with the CITY, Contractor, Architect, design team and Agencies pertaining to proposed improvements at the site.
- Review of CITY's site plan pertaining to "civil design" elements.
- Attending the Agency Site Plan Review meeting. Reviewing and responding to Agency Site Plan Review/CUP conditions/requests pertaining to planning and entitlement approval of the project.
- Prepare on-site preliminary utility layout, sufficient for the purposes of establishing major alignments to service buildings from the point of connection(s).
- A preliminary grading plan will not be prepared with this project.
- Prepare an off-site street, street lighting and utility horizontal geometric linework, sufficient to depict proposed horizontal off-site improvements on the site plan.
- Prior to proceeding with PART 2 or beyond, the CITY shall issue a notice to proceed as well as furnish all project Agency and CITY conditions and a final approved site plan with all corrections in place.

## PART 2 – DESIGN DEVELOPMENT DOCUMENTS (90% PLANS) PHASE

Upon receipt of a final agency-approved site plan, the CONSULTANT will proceed to prepare plans consistent to a 90% design level plans without specifications. Plans will be prepared on 24x36 sheets and shall reference the Agency standards and the approved site plan, where design services are to commence prior to the final agency approval of the site and without final site plan corrections in place, the CONSULTANT (at CITY direction) may proceed with Design Development Documents preparation, however, in such cases the City shall be invoking the “at risk” design clause indicated herein. Additional Services may apply for all site plan revisions which would necessitate revisions on the CONSULTANT plans or designs under an “at-risk” design scenario. All reproduction of construction documents shall be invoiced as a reimbursable expense per “EXPENSES AND ADDITIONAL FEES” section.

Architect shall perform the following tasks:

- Submit Entitlement package.
- Further develop approved facility revisions. Additionally, prepare reflected ceiling plan, and interior elevations of revised areas.
- Provide Contractor/City staff with Design Development exhibits for review and comment.
- Revise Design Development exhibits as required to reflect CITY comments.
- Provide General Contractor and design-build sub-contractors with approved Design Development package for use in revising mechanical, plumbing and electrical drawings.

Civil Engineer shall perform the following on-site Design Development tasks:

- Discussions and coordination with the CITY, Contractor, Architect, design team and Agencies pertaining to proposed improvements at the site.
- Grading and Drainage Design & Plan Preparation: to include proposed elevations, storm drainage piping, storm water run-off calculations (if necessary), pavement delineation, and earthwork calculations. It is assumed that site storm water will be conveyed both through a piped connection and surface run-off to an approved drainage facility and without improvements with respect to water quality. A diligent attempt to obtain an earth balanced site will be performed, however, if a shortage (or surplus) of earth fill exists for the new facility it is assumed that this earth material will be taken from an available borrow site (or disposed of) and not performed as a redesign of the facility to obtain an earth balance situation. All demolition plans along with proposed accessible signage, stalls, ramps, trash enclosures and other non-grading site elements, which may be a part of the site plan, shall be detailed on the Architectural plan set (if necessary).

- Storm Water Pollution Prevention Plan [SWPPP] Report and Erosion Control Plan: Consultant shall prepare and furnish a State standard Risk Level 1 SWPPP report as well as on-site erosion control plan as the area of disturbance will exceed 1-acre. Consultant shall act as the Qualified SWPPP Developer or QSD associated with the preparation of the SWPPP. The landowner shall be responsible for prompt payment of State SWPPP fees and certifying (per State law) of the "Notice of Intent" prior to construction as well as filing the "Notice of Termination" with the State at post construction. All services under this task are deemed complete upon issuance of the State WDID permit for the project. All services after the issuance of the WDID permit for reporting, permit maintenance, storm inspections, closeout actions for this project are excluded and shall be performed by others (or may be performed by the Consultant as Additional Services)
- Wet Utility Design & Plan Preparation to include domestic water (including fire hydrants), landscape irrigation point of connection, and sanitary sewer piping. The Architect shall furnish water/sewer demands and pipe size for each building for consultants collection pipe sizing calculations. Site building fire sprinkler systems shall be the responsibility of the CONSULTANT.
- Miscellaneous Details & Plan Preparation where City of Fresno standard details do not apply, the Civil Engineer shall prepare site details pertaining to grading, drainage, utilities, and other elements which apply to the site under the work being design by the Civil Engineer. Where City of Fresno standard details are applicable to the site, they shall be referenced only on the plans. Services related to copying applicable City of Fresno standard details to the project plan set is excluded.
- Estimate of Probable Construction Cost: to include probable costs associated with Consultants work.
- Upon completion, submit 90% design development documents to the CITY. All Part 2 plan corrections will be performed under the Construction Document phase of this project. Unless otherwise noted by the CITY, the CONSULTANT will proceed to Part 3 upon receipt of all plan corrections from the reviewing agencies.

Civil Engineer shall perform the following off-site Design Development tasks:

- FMFCD Project Specifications and Bid Documents: Consultant shall prepare and edit standard construction and pipeline specifications as well as project specific bid documents for the purposes of bidding out the master planned improvements. Specifications and Bid documents will be based on standard FMFCD furnished developer specifications for which Consultant will edit the documents to apply to the project specifics and unique bid descriptions.
- Street Striping and Signing Plan Preparation: to include striping and signing for new street along the frontage of the project.

- **Street Lighting Plan Preparation:** to include delineation of street lights along the frontage of the project utilizing the approved high speed rail street lighting improvement plans as a basis for future street utility connections at the east and west ends of the project. The Contractor shall be responsible to include street lighting power in the project Rule 16 application, as this information (i.e. street lights and building loads) is required to be submitted together to PG&E. Services herein will be developed from the PG&E point of service to the proposed street lights
- **Estimate of Probable Construction Cost:** to include probable costs associated with Consultants work
- Upon completion, submit 90% design development documents to the CITY. All PART 2 plan corrections will be performed under the Construction Document phase of this project. Unless otherwise noted by the City, the CONSULTANT will proceed to PART 3 upon receipt of all plan corrections from the reviewing agencies.

The basis for design to be prepared by CONSULTANT and under this scope assumes that CONSULTANT will be furnished approved high-speed rail, off-site street, utility, and storm drainage plans which will serve as the basis of design for tie-in for off-site project improvements both horizontally and vertically. All documents furnished by the CITY for future high-speed rail improvements shall be final and approved by the CITY, CONSULTANT shall have the right to rely on such information without an independent verification of such information or under the risk of informational changes.

### PART 3 – CONSTRUCTION DOCUMENTS PHASE (100% Plans)

Upon receipt of Agency comments, CONSULTANT shall incorporate minor corrections to the plans/documents, within the scope of this proposal, and resubmit for final 100% approved on-site plans for permit. Services herein do not include corrections by other departments/agencies, late department reviews or corrections after completion of the construction documents during the normal processing of the plans.

Architect shall perform the following tasks:

- Communicate with design team to discuss Design Development revision package approval, schedule, etc.
- Communicate with CITY as required to determine plan check process, fees, time frames, etc.
- Prepare final Architectural Construction Document revisions.
- Obtain final design drawings by "others".
- Provide CITY with final Construction Documents for review and approval prior to submission of Construction Documents for plan check.

- Assist the CITY with submission of final Construction Documents to the Building Department.
- Complete the Entitlement process.

Civil Engineer shall perform the following tasks:

- Communicate with design team to discuss Design Development revision package approval
- Incorporate minor corrections to the plans/documents, within the scope of this "Exhibit A", and resubmit for final 100% approved off-site plans for permit.
- Services herein do not include corrections by other departments/agencies, late department reviews or corrections after completion of the construction documents during the normal processing of the plans

All reproduction of construction documents shall be invoiced as a reimbursable expense per "EXPENSES AND ADDITIONAL FEES" section.

#### PART 4 – CONSTRUCTION PHASE AND GENERAL CONSTRUCTION CONTRACT ADMINISTRATION

During the Construction Administration Phase, Consultant shall provide limited construction phase services for work being constructed based on the plans. It is assumed that the CITY will act as the lead construction manager for the project with respect to the role of the design teams. The following specific services will be furnished as part of construction services:

Architect shall perform the following tasks:

- Act as the Contractor's representative and provide administration of the construction between the CITY and General Contractor.
- Make regular site visits.
- Reviewing the Contractor's submittals
- Rejecting nonconforming work.
- Interpreting the contract documents

Civil Engineer shall perform the following tasks:

- General Construction Administration communication.
- Attend Pre-Construction Meeting.
- Typical permit and site observations to be performed by City inspector. Where City inspector or other party modifies or changes the Consultant's design without

written approval from the Consultant such revisions will not be the responsibility of the Consultant to approve or resolve.

- Perform 2 construction site observations during the duration of the project.
- "Request for Information" (RFI) Review and Response. Prepare Project Clarifications/Amendments pertaining to Consultants drawings where such revisions are initiated by the Consultant.
- Shop Drawing Review and Processing.
- Punch List and Final Inspection.
- Review contractors as-built plan mark up for field changes made to the plans in which a specific instruction bulletin was not issued by the Consultant. This shall also include the City's as-graded survey for verification of all improvements both horizontally and vertically.
- Prepare as-grade drawings for on-site improvements only pertaining to vertical elevation deviations, consistent with the City grading permit closeout procedure. Services herein do not include as-built or as-grade plans for off-site improvements

The following services are not included within this agreement, but may be determined to be required to complete the project; where such services are to be performed Consultant shall be entitled to Additional Fees.

- All surveying, easement/dedication preparations, easement plotting, right of way vacations, boundary plotting, and other surveying elements
- Special testing
- Mechanical, electrical, plumbing & fire protection design build drawings
- Low voltage & A/V design build drawings
- Landscape/hardscape design
- Cal Green commissioning
- CAsp review(s) and/or reports
- "At-Risk" Engineering as defined within this agreement
- All title related services

#### ELECTRONIC AND CADD MEDIA

CADD data delivered to CITY shall not include the professional stamp or signature of an engineer, architect, or surveyor. CITY agrees that CONSULTANT shall not be liable for claims, liabilities, or losses arising out of, or connected with (a) the modification or misuse by CITY, or anyone authorized by CITY, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by CITY, or anyone authorized by CITY, of CADD data for additions to this project, for the completion of this project by others, or for any other



project, excepting only such use as is authorized in writing, by CONSULTANT. By accepting CADD data, CITY agrees to indemnify Contractor, the Engineer and Architect for damages and liability resulting from the modification, use, or misuse of such CADD data.

#### TERMINATIONS, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the project, the Contractor, Engineer and (collectively Design Team), the Architect shall be equitably compensated for services performed. Failure of the City to make payments to the Design Team in accordance with this Agreement shall be considered substantial nonperformance and is sufficient cause for the Design Team to either suspend or terminate services. Either the Design Team or the City may terminate this Agreement after giving no less than seven days written notice if the other party substantially fails to perform in accordance with the terms of this Agreement.

#### EXPENSES AND ADDITIONAL FEES

Each 24 x 36 Cost + 15%

Each 30 x 42 Cost + 15%

Courier Service (per package) Cost + 15%

California Overnight Cost + 15%

Federal Express Cost + 15%

Travel Mileage (per mileage) 0.55

#### ADDITIONAL SERVICES & RIGHT TO RELY

The CITY or Contractor may, at their sole discretion, request that CONSULTANT perform Additional Services. Both parties, prior to proceeding with these services, shall execute a written amendment to the agreement. Services requested as a result of changes in extent, design, or previously accepted documents for the project shall be considered Additional Services. Some services specifically excluded may be performed as Additional Services. Consistent with industry standards, Consultant shall be entitled to rely upon the accuracy of data, electronic files, designs, or other information provided by the City or Contractor and their representatives or sub-consultants without independent review of such information for accuracy.

#### CITY RESPONSIBILITIES

The CITY shall provide full information about the objectives, schedule, constraints and existing conditions of the project, and shall establish a budget with reasonable contingencies that meets the project requirements. The CITY shall employ a contractor

to provide cost-estimating services. The CITY shall furnish for the benefit of the project all legal, accounting, and insurance counseling services.

## ASSUMPTIONS

CITY agrees that in accordance with generally accepted construction practices, the CONSULTANT shall not have control over or charge of, and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction, since these are solely the responsibility of others. The CONSULTANT shall not have the authority to stop or reject the work. The CONSULTANT has no control or responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours.

The CITY shall perform the following:

- Provide all criteria and requirements pertaining to CITY's project.
- Determine the existence or nonexistence of underground storage tanks on the project site, and test and remove any such storage tanks found.
- Apply for and secure approvals and permits from all governmental authorities having jurisdiction over the project and such approvals from other entities or agencies as may be necessary for the project, with the assistance of Consultant or as additionally authorized.
- Contact Underground Service Alert to identify subsurface utilities in the vicinity of the proposed test boring and prior to the start of City furnished survey work. All field USA markings to be furnished by the City as part of the survey.
- Pay for all fees and charges associated with securing permits and approvals pertinent to the project.
- Give prompt notice to CONSULTANT whenever CITY observes or becomes aware of impacts that will affect the scope of services provided by CONSULTANT.
- Retain geotechnical engineer for construction compaction testing and reports.
- Furnish all title related services (preliminary title reports, recordation, grant deeds, etc).
- Contact Underground Service Alert to identify subsurface utilities in the vicinity of the proposed test boring and prior to the start of City furnished survey work. All field USA markings to be furnished by the CITY as part of the survey.
- Provide approved high-speed rail and City of Fresno drawings and other data relating to layout and design of new or future facilities impacting the site (in AutoCAD format) including all existing City facilities, easements, road rights-of-way, etc. that may relate to the project. Consultant is entitled to rely on the

accuracy of the data provided by City and other utility companies without any independent review, evaluation, or verification. Such documents shall be furnished on a basis and rotation which is compatible with the project survey. Furnish CAD topographic, boundary (existing & proposed), abandonments, and easement survey depicting all existing utilities consistent with Consultant's requirements. Survey to be performed on the same datum and basis/bearing as all High Speed Rail designs.

- Furnish all surveying services, including any supplemental information, of any type as required whenever requested by Consultant.
- Perform all CEQA, Air Board Compliance, and SWPPP/NPDES compliance/inspections.
- Perform all construction survey staking for construction.
- Research, solve, measure and plot a design level topographic field survey along with a boundary, easements and other property encumbrances consistent with ALTA 2016 standards; CITY and CONSULTANT shall mutually agree as to the limits of survey prior to CITY proceeding with their work. Furnish all supplemental surveys, indicate all future dedications, planned vacations or abandonments and other field and boundary elements pertaining to the project to make the project boundary "whole" with respect to constructible site, as requested by the CONSULTANT. The CITY furnished survey shall also include the following specifically:
  - Perform a field survey consistent with industry standards on a survey grid basis not to exceed 50' in the field and 25' on hard improvements. Locate visible features such as grade breaks, curbs, gutters, fencing, trees, surface utilities, wells, power poles, wires, boxes, paving, and other visible improvements at the time of survey. All field surveys to be performed on the same basis, rotation as adjacent high-speed rail AutoCAD drawings being furnished by the City to Consultant. All field surveys to be performed on FMFCD/City '29 datum, consistent with FMFCD master plans. All high-speed rail drawings shall be xrefable into the City furnished survey AutoCAD drawings at zero base and rotation.
  - Furnish conversion factor, on project datum, between the '88 and '29 if necessary.
  - Prior to field survey, call for a site and public right of way USA locate, measure, mark and survey all USA located facilities.
  - Perform aboveground and underground utility research for records by USA locate, plot all storm drainage, sewer, water, gas, electrical, communications and other existing facilities found of record of in the field within the limits of project. Plotted utilities shall be indicated by linework displaying an embedded text indicator as to the type of line (i.e. ----W----, or similar).

- Furnish a field survey point file and prepare existing topographic surface model (consistent with AutoCAD Civil 3D) with contours at intervals of 6" with labels.
- Furnish a preliminary title report and furnish all title related services. Plot all existing section, centerlines, OPL's, easements, abandonments, with the project survey limits.
- Plot all future high-speed rail or City right of way dedications, easements, abandonments/vacations or adjusted property lines and other existing or future property encumbrances which are germane to the design of the site. The City shall deliver a complete boundary of the project depicting a developable boundary condition of the site. Where information is unclear or incomplete to the Consultant, the City shall endeavor to resolve all boundary and survey questions and issues.
- Furnish a boundary parcel exhibit (as required for City entitlement/SPR application) consistent with City of Fresno standards for purposes of meeting the CUP/SPR entitlement submittal checklist or as directed by the City of Fresno planning department.

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS**

#### **Consultant Service Agreement between City of Fresno (the City) and Northstart General Inc. (the Consultant)**

##### **Animal Control Facility Project**

### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession.

### **MINIMUM LIMITS OF INSURANCE**

Consultant, or any party the Consultant subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

#### **1. COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

#### **UMBRELLA OR EXCESS INSURANCE**

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Consultant shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Consultant shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing

additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Consultant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not contribute with it. Consultant shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Consultant and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been

given to City. Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

**SUBCONTRACTORS** - If Consultant subcontracts any or all of the services to be performed under this Agreement, Consultant shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, Consultant will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

#### **VERIFICATION OF COVERAGE**

Consultant shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.



**EXHIBIT C**  
**DISCLOSURE OF CONFLICT OF INTEREST**

Animal Control Facility Project

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Address)

☐ Additional page(s) attached.

\_\_\_\_\_  
(City, State, Zip)