



CONSULTING AGREEMENT

This consulting agreement (the "**Agreement**") confirms that the County of Fresno ("**The County**") has engaged Hatching LLC ("**Hatching**") to conduct an organizational assessment and provide advisory support and recommendations for the development of the strategies, plans, and tactics for animal services.

The consulting agreement is effective as of **July 9, 2024**. For the good and adequate consideration and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **SERVICES.** Hatching shall provide The County professional consulting services as outlined in the Statement of Work ("**SOW**") attached hereto as **Exhibit A**. All services shall be completed in accordance with the terms and conditions set forth in this Agreement and the SOW.
2. **TERM.** This Agreement shall commence on the date of last signature of the parties and shall have an initial term of one (1) year from that date. The term may be extended for an additional one (1) year period upon mutual written agreement of the parties. This Agreement may be terminated by either party (1) for convenience at any time upon two (2) months advance written notice, or (2) for breach if the other party fails to cure within thirty (30) days after written notice thereof.
 - 2.1 **Termination and Suspension: *Termination for Non-Allocation of Funds.*** The terms of this Agreement are contingent on the approval of funds by the appropriating government agency. If sufficient funds are not allocated, then the County, upon at least 30 days' advance written notice to the Contractor, may:
 - (A) Modify the services provided by the Contractor under this Agreement; or
 - (B) Terminate this Agreement.
3. **RATE.** In consideration for Hatching's commitment to be available to provide the Consulting Services to be performed under this Agreement, The County shall pay Hatching at rate outlined in the SOW.
 - 3.1 **Payment Terms.** The County agrees to pay Hatching in accordance with the payment terms set forth in the SOW. If not set forth in the SOW, Hatching's normal procedure is to invoice clients on a regular basis with a statement for services rendered. Hatching's invoices are due and payable within forty-five (45) days after receipt of each correctly completed and timely submitted invoice.
4. **INDEPENDENT CONTRACTOR.** Nothing herein shall be construed to create an employer-employee relationship between The County and Hatching. Hatching is an independent contractor and not an employee or agent of The County or any of its subsidiaries or affiliates. The payment specified in Section 3 will be the only compensation provided to Hatching for the Professional Services delivered in accordance with this agreement.
5. **CONFIDENTIALITY.** While performing the Professional Services, the parties recognize that Hatching may come in contact with or become familiar with information which The County or its subsidiaries or affiliates may consider confidential. Except as required by applicable law or pursuant to an order entered or subpoena issued by a court of competent jurisdiction or government regulator Hatching agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate County personnel or their designees, and others that have executed a customary confidentiality agreement.



6. **NOTICE.** Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in first-class mail properly addressed to the appropriate party at the address set forth below, or such other address as a party may notify the other party in writing from time to time:

- Notices to Hatching: 633 Ocean Avenue Apt 26 Santa Monica, CA, 90402
- Notices to The County: 1221 Fulton Street, Fresno, CA 93711 with copies to
 - Main Contact Email(DPHContracts@fresnocountyca.gov)
 - Billing Contact Email (DPHBOAP@fresnocountyca.gov)

7. **MISCELLANEOUS.**

7.1 Entire Agreement and Amendments. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein and supersedes all prior agreements, negotiations, and discussions, whether oral or written. No amendment, modification, or supplement of any provisions of this Agreement shall be valid or effective unless made in writing and signed by both Parties.

7.2 No Warranties. Hatching will provide the consulting services in a professional and workmanlike manner in accordance with industry standards. The County acknowledges that except as explicitly set forth in this agreement Hatching has not made any, and disclaims all, representations, promises, warranties, conditions or guarantees to The County, express or implied, statutory or otherwise, regarding the consulting services or the ultimate outcome of the matters related to the consulting services provided under this agreement. Hatching specifically disclaims any implied warranties of merchantability, fitness or sufficiency for a particular purpose, or non-infringement.

7.3 Limitation of Liability. To the maximum extent permitted by law, neither party will be liable to the other party or anyone else for any incidental, consequential, special or punitive damages, however caused on any theory of liability, even if advised of the possibility of any such loss or damage and notwithstanding the failure of the essential purpose of any remedy. Except with respect to payment obligations, each party's total liability under this agreement will be limited to the fees actually received by Hatching during the three months preceding the cause of action giving rise to a claim.

7.3 Insurance; Indemnification. Hatching is responsible for maintaining insurance coverage as may be required in the operation of its business. Hatching will not provide insurance coverage, nor have any liability whatsoever, with respect to any claims related to the services provided by other parties, including The County's employees or other independent contractors providing services to The County. The County shall indemnify, defend, and hold harmless Hatching, its officers, employees and agents, from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of or in connection with The County's breach of this agreement, The County's implementation of Hatching's recommendations or the failure to follow any protocols or procedures recommended by Hatching in the scope of providing consulting services, or the failure to comply with any applicable state or federal law regulating the implementation of any such protocols or procedures. The Contractor shall indemnify and hold harmless and defend the County (including its officers, agents, employees, and volunteers) against all claims, demands, injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to the



performance or failure to perform by the Contractor (or any of its officers, agents, subcontractors, or employees) under this Agreement. The County may conduct or participate in its own defense without affecting the Contractor's obligation to indemnify and hold harmless or defend the County. This section survives the termination of this Agreement.

7.4 The County Insurance Requirements

Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- A. *Commercial General Liability.* Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- B. *Automobile Liability.* Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- C. *Workers Compensation.* Workers compensation insurance as required by the laws of the State of California with statutory limits.
- D. *Employer's Liability.* Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- E. *Professional Liability.* Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.



Additional Requirements

- A. *Verification of Coverage.* Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.
- i. Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - ii. The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
 - iii. The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
 - iv. The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
- B. *Acceptability of Insurers.* All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- C. *Notice of Cancellation or Change.* For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- D. *County's Entitlement to Greater Coverage.* If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of



insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.

- E. *Waiver of Subrogation.* The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- F. *County's Remedy for Contractor's Failure to Maintain.* If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- G. *Subcontractors.* The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement.

7.5 Binding Effect, Assignment. This Agreement shall be binding and shall inure to the benefit of Hatching and to the company's successors and assigns. Nothing in this agreement shall be construed to permit the assignment by Hatching of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Company.

7.6 Inspections, Audits, and Public Records

Inspection of Documents. The Contractor shall make available to the County, and the County may examine at any time during business hours and as often as the County deems necessary, all of the Contractor's records and data with respect to the matters covered by this Agreement, excluding attorney-client privileged communications. The Contractor shall, upon request by the County, permit the County to audit and inspect all of such records and data to ensure the Contractor's compliance with the terms of this Agreement.

State Audit Requirements. If the compensation to be paid by the County under this Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this Agreement. This section survives the termination of this Agreement.

Public Records. The County is not limited in any manner with respect to its public disclosure of this Agreement or any record or data that the Contractor may provide to the County. The County's public disclosure of this Agreement or any record or data that the Contractor may provide to the County may include but is not limited to the following:

- A. The County may voluntarily, or upon request by any member of the public or governmental agency, disclose this Agreement to the public or such governmental agency.
- B. The County may voluntarily, or upon request by any member of the public or governmental agency, disclose to the public or such governmental agency any record or data that the Contractor may provide to the County, unless such disclosure is prohibited by court order.



- C. This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure under the Ralph M. Brown Act (California Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).
- D. This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure as a public record under the California Public Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning with section 6250) (“CPRA”).
- E. This Agreement, and any record or data that the Contractor may provide to the County, is subject to public disclosure as information concerning the conduct of the people’s business of the State of California under California Constitution, Article 1, section 3, subdivision (b).
- F. Any marking of confidentiality or restricted access upon or otherwise made with respect to any record or data that the Contractor may provide to the County shall be disregarded and have no effect on the County’s right or duty to disclose to the public or governmental agency any such record or data.

Public Records Act Requests. If the County receives a written or oral request under the CPRA to publicly disclose any record that is in the Contractor’s possession or control, and which the County has a right, under any provision of this Agreement or applicable law, to possess or control, then the County may demand, in writing, that the Contractor deliver to the County, for purposes of public disclosure, the requested records that may be in the possession or control of the Contractor. Within five business days after the County’s demand, the Contractor shall (a) deliver to the County all of the requested records that are in the Contractor’s possession or control, together with a written statement that the Contractor, after conducting a diligent search, has produced all requested records that are in the Contractor’s possession or control, or (b) provide to the County a written statement that the Contractor, after conducting a diligent search, does not possess or control any of the requested records. The Contractor shall cooperate with the County with respect to any County demand for such records. If the Contractor wishes to assert that any specific record or data is exempt from disclosure under the CPRA or other applicable law, it must deliver the record or data to the County and assert the exemption by citation to specific legal authority within the written statement that it provides to the County under this section. The Contractor’s assertion of any exemption from disclosure is not binding on the County, but the County will give at least 10 days’ advance written notice to the Contractor before disclosing any record subject to the Contractor’s assertion of exemption from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs or attorney’s fees under the CPRA that results from the Contractor’s delay, claim of exemption, failure to produce any such records, or failure to cooperate with the County with respect to any County demand for any such records.

7.8 Severability. If one or more provisions of this agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

7.7 Dispute Resolution. Any disputes arising under this Agreement shall be resolved through negotiation between the parties. To avoid litigation in the event of any dispute concerning the terms of this agreement, the consulting services rendered, or invoices submitted by Hatching, each party agrees to use best efforts to resolve any disputes arising out of this agreement, including meetings between executives



of The County and Hatching. If after such discussions the parties are unable to resolve the dispute, before resorting to litigation or arbitration, the parties agree to try mediation, and share the cost of the mediation equally. If the parties are unable to resolve the dispute through mediation, any such dispute shall be submitted to binding arbitration. Such arbitration shall be conducted in Los Angeles County, California, before a single neutral arbitrator, and in accordance with the California Arbitration Act, Code of Civil Procedure, Sections 1280, et seq. As a practical matter, by agreeing to arbitrate disputes, each party is waiving its right to a jury trial or appeal. The decision of the arbitrator shall be final and binding on the parties. Judgment on any arbitration award may be entered in accordance with the California Code of Civil Procedure. In the event that legal proceedings are instituted between us for any reason, the prevailing party shall be entitled to an allowance of reasonable attorneys' fees and other costs incurred as a result of the action or proceeding. Any proceeding arising out of or related to the subject matter of this agreement shall be conducted in Los Angeles County, California, and the courts of Los Angeles County shall have exclusive jurisdiction with respect to any court proceeding arising out of or related to this agreement. This agreement shall be governed by and interpreted in accordance with the laws of the State of California without reference to conflicts of laws. No action, regardless of form, arising from or related to this agreement may be brought by either party more than one year after the cause of action has accrued.

7.8 Access. The County shall provide Hatching with (or access to) the facilities, personnel, equipment and other resources specified in the SOW. Prior to any site visit, and upon request, Hatching shall be promptly provided with all documentation relevant to the scope of consulting services, including strategic plans and population statistics. During the term of this agreement, Hatching shall be granted unrestricted free and open access to all areas of each facility, including the right to photograph any such area, and to interview all personnel, including both paid staff and volunteers.

7.9 Right to Use Data. Hatching shall notify The County of its use of data and is given 30 days to object to its use in a report/publication. Hatching shall provide context of The County data use for a report/publication. This shall be in effect for 5 years after the conclusion of this agreement.

7.10 Document Retention. The County agrees that The County will be responsible for providing Hatching with all documents pertinent to the SOW to be provided under this agreement. Even if The County has in effect document retention policies that may result in the scheduled destruction or discarding of documents that may be relevant to the scope of consulting services, please do not destroy or discard any possibly relevant documents. Further, please be advised that Hatching has a file retention policy such that all files and documents related to any Hatching consulting engagement will be destroyed 5 years after the conclusion of such consulting engagement. If The County would like Hatching to provide The County with any files or documents, or believe that any files or documents need to be retained for a longer period, then The County must provide Hatching with written notice within 5 years of the termination of the related consulting services.

7.11 Force Majeure. Neither party shall be liable to the other for a failure or delay of performance hereunder due to acts of nature, including, but not limited to, earthquakes, flood, or storm, governmental action, war, terrorism, insurrection, fire, labor conditions, or any other cause beyond the reasonable control of such party.

7.12 Authority. Each signatory to this consulting agreement represents and warrants that he or she has the full legal authority to execute this agreement and bind the respective party.



Agreed to and accepted:

THE COUNTY

HATCHING LLC

By _____

By Jose Ocaño 6/25/24

Name: Nathan Magsig

Name: Jose Ocaño

Title: Chairman of the Board of Supervisors
of the County of Fresno

Title: CEO, owner

Address: 1221 Fulton Street, Fresno, CA 93721

Address: 633 Ocean Avenue Apt 26 Santa Monica, CA 90402

Main Contact: DPHContracts@fresnocountyca.gov

Main Contact: Jose@Hatching.me, 520.247.2171

Billing Contact: DPHBOAP@fresnocountyca.gov

Billing Email: Angel@Hatching.me, 520.331.4521



Exhibit A

Statement of Work

This Statement of Work ("**SOW**") pursuant to the Agreement between Hatching LLC ("**Hatching**") and the County of Fresno ("**The County**").

This SOW is submitted to conduct an organizational assessment and provide advisory support and recommendations for the development of the strategies, plans, and tactics for animal services. The Services described herein shall be performed by the following:

Jose Ocaño- CEO, Founder, Lead Consultant

Angel Guzmán-COO, Co-Founder, Project Manager/Consultant

Michele Figueroa -Shelter Operations Consultant

Tom Pierre- Data Analyst

Services

Phase 1 - Assessment and Plan

Conduct an organizational assessment and provide advisory support and recommendations for the development of strategies, plans, and tactics for animal services.

Proposed Timeline:

- Early June 2024-A request for information and data to be sent to the County.
- July 2024-Contract for Phase 1 executed.
- July 2024-Data collection, review and analysis
- Early August 2024-Staff Engagement Survey
- Late August 2024-On-site visit
- September 2024-Assessment and findings

Timeline may be changed due to unforeseen circumstances.



Deliverables:

- **Pre-Visit Engagement:**
 - A Request for Information (**RFI**) will be submitted to the County with a goal of gathering key organizational documents, financial reporting, shelter data, contacts and information to establish a strategy and plan for the onsite visit.
 - Information gathered will be reviewed by the Hatching team respectively.
 - The Data Specialist will collaborate with the County and its Contracted Vendor to obtain access to PetPoint and scrub shelter data to ensure accurate analysis and reporting.
 - The County’s vendor staff will receive a pre-visit confidential survey crafted for engagement. The Hatching team will evaluate the responses to inform the strategy for the project.

- **Site Visit Assessment:** Shelter Operations, Life Saving Programs, Budget and Workplace Culture
 - Three Hatching consultants, on site, for five days, to observe operations and meet with staff, volunteers, county officials and stakeholders.
 - At the conclusion of the site visit, we will convene an in-person debrief to collaboratively establish next steps and commitments of engagement.
 - Written report delivered 4-6 weeks post site visit outlining observations, recommendations, and resources. (document)
 - Includes high level staffing impressions and recommendations to be refined in Phase 2.

- First Impression recommendations provided within 48 hours post visit. (virtual meeting)

Compensation and Schedules:

Phase 1 – \$40,000

- Once the agreement is signed, Invoice 1 of 2 will be issued for \$20,000.
- Once the final report is provided to The County, Invoice 2 of 2 will be issued for \$20,000.
- Hatching’s invoices are due and payable within forty-five (45) days after receipt of each correctly completed and timely submitted invoice.

FOR ACCOUNTING USE ONLY:

Acct: 7295
Fund: 0001
Org: 56204762
Subclass: 10000