Council Meeting of
April 5, 2011

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Police – Approve agreement to provide animal licensing services. Expenditure: $36,500 offset by revenue.

RECOMMENDATION

Recommendation of the Chief of Police that City Council approve an agreement with PetData, Inc, to provide animal licensing services in the amount of $36,500 for the term of March 1, 2011 through February 28, 2012.

FUNDING

None.

BACKGROUND

Since 2004, the City of Torrance has contracted with PetData, Inc, of Irving Texas, for the collection and processing of animal licensing fees for the City's Animal Control program. Under the terms of the agreement (Attachment A), PetData is responsible for the daily operations of animal licensing including but not limited to the processing of pet license sales, and maintaining records of animal vaccination and sterilization. This agreement includes four, twelve-month renewal options that may be exercised based on the mutual acceptance of the contractor and the City, this being the second of four extensions. PetData processes an annual average of 10,000 animal licenses for the City and retains a base fee of $3.65 per license. The estimated annual expenditure of $36,500.00 is offset by service fee revenues generated from the City's Animal Control program.

Respectfully Submitted,

JOHN J. NEU
Chief of Police

By: _____
Lieutenant Stephen D'anjou
Traffic & Special Events Division Commander

CONCUR:

_____
John J. Neu
Chief of Police

_____
LeRoy J. Jackson
City Manager

Attachment A: Agreement for Animal Licensing Services

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ATTACHMENT A

AGREEMENT FOR ANIMAL LICENSING SERVICES

THIS AGREEMENT is made and entered into by and between the CITY OF TORRANCE, a municipal corporation, 3031 Torrance Boulevard, Torrance, California 90503, hereinafter called "CITY OF TORRANCE," and PETDATA, INC., a Texas corporation, hereinafter called "CONTRACTOR."

1. DESCRIPTION OF WORK

For the consideration set forth below, CONTRACTOR shall provide to the CITY OF TORRANCE certain animal licensing services (the "Services." Please see Exhibit A for Scope of Services). The Services are to be performed in a good and workmanlike manner. If a separate bid or proposal has previously been submitted by CONTRACTOR in connection with the Services ("Proposal"), the Services shall generally conform to the Proposal, the terms of which are incorporated into this Agreement by reference; provided however, that in case of a conflict in the language of the Proposal and this Agreement, the terms and conditions of this Agreement shall be final and binding on the parties to this Agreement.

The CITY OF TORRANCE warrants that all historical data, consisting of licenses older than ninety days, has been entered into a CITY OF TORRANCE' database and is available in a readily importable format. Furthermore, CONTRACTOR may be provided with remaining animal licensing supplies by the CITY OF TORRANCE, and if so, CONTRACTOR shall assume responsibility for the reasonable cost of shipping said supplies.

2. OVERSIGHT AND COORDINATION

All Services under this Agreement shall be coordinated under, and performed to the reasonable satisfaction of the Police Chief of the CITY OF TORRANCE or his or her designated representative.

3. CONTRACTOR ACKNOWLEDGEMENT

CONTRACTOR acknowledges that, prior to signing this Agreement, CONTRACTOR has become thoroughly acquainted with all matters relating to the performance of this Agreement and all of the terms and conditions of this Agreement.

4. FEES*

1. Base Fees

CONTRACTOR shall receive a base fee of $3.65 per license or replacement tag. Such base fees shall be payable to CONTRACTOR for all licenses processed during the term of this Agreement, regardless of whether they are processed by CONTRACTOR or the CITY OF TORRANCE.
_____ **INITIAL HERE**

Note: Postal Surcharge. Since postage represents a major expense in administering animal licenses, CONTRACTOR reserves the right to increase its base fee a corresponding amount in the event that postal rates increase during the term of this Agreement.

2. Incentive Fee

CONTRACTOR shall receive an additional incentive fee of $1.50 per license after the base level is exceeded in any year of the contract. A base level is determined by averaging the licensing volume of

the previous three fiscal years prior to beginning of the outsourcing, or another method as agreed upon by CONTRACTOR and the CITY OF TORRANCE.

3. Late Fees

CONTRACTOR shall be entitled to retain $2.50 of each late fee collected during the term of this Agreement.

4. Lock Box Fees

The cost of all lock boxes utilized in connection with the performance of the Services shall be borne solely by the CITY OF TORRANCE.

5. Bank/ Bank Deposit Fees

In the event that CONTRACTOR is required to deposit money into a CITY OF TORRANCE bank account other than at a local branch in Irving, TX, the cost to mail the deposits to Animal Services bank will be added to the invoice submitted to the CITY OF TORRANCE.

6. Credit Card Processing Fee

In the event that the Contractor provides the citizens of the CITY OF TORRANCE with the option to pay for their animal licenses with a credit card, CONTRACTOR is permitted to charge the licensee a fee of $1.75 for this service. The fee may be adjusted over time and is paid directly by the licensee, not the City of Torrance.

*** Not all fees may apply.**

5. ADDITIONS/DELETIONS OF SERVICE

The CITY OF TORRANCE reserves the right to add and/or delete services to this Agreement. Should additional services be required from this Contract, prices for such additions will be negotiated between the CONTRACTOR and the CITY OF TORRANCE. Should a service requirement be deleted from this Agreement, no adjustments for such deletions will be made during the initial term of this Agreement.

6. REPORTS

Within 15 business days after the end of each calendar month during the term hereof, CONTRACTOR shall submit an animal licensing report to the CITY OF TORRANCE and shall reveal data for each city licensed by the CITY OF TORRANCE. The report shall list all registrations for such month, the amount of each registrant's payment and the tag number assigned to each registrant. The report shall list which licenses were made through CONTRACTOR and which were made directly with the CITY OF TORRANCE.

7. PAYMENT

CONTRACTOR shall deposit all animal license fees into a CITY OF TORRANCE bank account on a weekly basis. Deposit slips and an endorsement stamp will be provided to CONTRACTOR. In the event any animal license fees are paid directly to the Animal Services by a citizen or veterinarian, Animal Services shall deposit these fees into Animal Services' account and report the collected fees to CONTRACTOR.

CONTRACTOR will submit to ANIMAL SERVICES a monthly invoice for the amount due for services rendered under the contract. Payment will be due to CONTRACTOR within fifteen days.

8. TERM

The initial term of this Agreement shall commence on March 1, 2011 and shall expire on February 28, 2012, unless this Agreement is sooner terminated in accordance with the other provisions of this Agreement. Four twelve-month renewal options, at the then-prevailing market rates, may be exercised based on the mutual acceptance of CONTRACTOR and the CITY OF TORRANCE.

IMPORTANT: TRANSITION PHASE

CONTRACTOR requires that the CITY OF TORRANCE provide it with certain supplies, data, feedback, process information and approvals for such items as form designs ("Deliverables") in order for CONTRACTOR to begin servicing this contract in a timely manner. CONTRACTOR requests that the Deliverables be provided within thirty days from the date the contract is signed or the date the contract receives final approval as necessary. Any delays in providing Deliverables will result in delays in implementing this contract. Regardless of any delays, the CITY OF TORRANCE will be required to adhere to all terms of the contract, including the payment to PetData for the processing of all licenses including those at its own shelters or by its agents, during the term of the contract. Representations made in Exhibit A, "Scope of Services" with regards to processing time for data entry and tag mailings begins thirty business days after all Deliverables have been provided to CONTRACTOR.

9. PERMITS

CONTRACTOR shall obtain the necessary permits(s), if any, required by the CITY OF TORRANCE or its governing ordinances for the performance of the Services. The CITY OF TORRANCE agrees to provide CONTRACTOR with a list of any and all such permits and to work with CONTRACTOR in good faith to aid it in obtaining any such permits in a timely fashion.

10. INDEPENDENT CONTRACTOR

CONTRACTOR'S status shall be that of an independent contractor and not an agent, servant, employee, or representative of the CITY OF TORRANCE in the performance of the Services. No term or provision of, or act of CONTRACTOR or CITY OF TORRANCE under this Agreement shall be construed as changing that status.

11. INDEMNITY

CONTRACTOR will indemnify, defend, and hold harmless CITY OF TORRANCE, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss, arising out of Contractor's errors or omissions hereunder. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY OF TORRANCE, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY OF TORRANCE, its officers, employees or agents. Payment by CITY OF TORRANCE is not a condition precedent to enforcement of this indemnity.

12. COMPLIANCE WITH CODES

CONTRACTOR shall, during the performance of the Services, comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

13. INSURANCE REQUIREMENTS

A. CONTRACTOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Workers' Compensation with limits as required by the State of Texas.

B. The insurance provided by CONTRACTOR will be primary and non-contributory.

C. CITY OF TORRANCE must be named as additional insured under the automobile and general liability policies.

D. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY OF TORRANCE.

14. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY OF TORRANCE, the CONTRACTOR agrees that the minimum limits of any insurance policies required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY OF TORRANCE within 10 days of receipt of notice from the Risk Manager.

15. ASSIGNMENT

CONTRACTOR shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the CITY OF TORRANCE; and as a condition of such consent, CONTRACTOR shall still remain liable for completion of the Services in the event of default by the successor contractor or assignee.

16. TERMINATION

A. Termination by CITY OF TORRANCE for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY OF TORRANCE's convenience and without cause.

2. Upon receipt of written notice from CITY OF TORRANCE of such termination for CITY OF TORRANCE's convenience, CONTRACTOR will:

   a. cease operations as directed by CITY OF TORRANCE in the notice;
   b. take actions necessary, or that CITY OF TORRANCE may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY OF TORRANCE's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause by the nondefaulting party; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY OF TORRANCE may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY OF TORRANCE in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY OF TORRANCE. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY OF TORRANCE, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited

with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of either party against the other or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to either party under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY OF TORRANCE determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY OF TORRANCE reserves the unilateral right to terminate this Agreement. The CITY OF TORRANCE will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

16. <u>UNFORSEEN CIRCUMSTANCES</u>

CONTRACTOR shall not be responsible for any delay or omission caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond CONTRACTOR's reasonable control, provided CONTRACTOR gives written notice to the CITY OF TORRANCE of the cause of the delay or omission within ten (10) days after the occurrence of the event causing such delay or omission.

17. <u>NOTICES</u>

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Notices for the CITY OF TORRANCE shall be addressed to:

Torrance Police Department
Attn: Lieutenant Steve D'anjou
3300 Civic Center Drive
Torrance, CA 90503
Fax: (310) 618-2318

With a Copy To: City Clerk
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90509-2970
Fax: (310) 618-2931

Notices for CONTRACTOR shall be addressed to:

Chris Richey, President
PetData, Inc.
1850 Crown Dr, Ste 1110
Farmers Branch, TX 75234
Fax: 214-821-3106

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

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

18. <u>MISCELLANEOUS</u>

(a) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

(b) Entire Agreement

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without the written agreement of the parties.

(c) Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(d) Successors and Assigns

This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

(e) Captions

The captions to the various clauses of this Agreement are for information purposes only and shall not alter the substance of the terms and conditions of this Agreement.

(f) Authorization

Each of the parties represents and warrants to the other that this Agreement has been duly authorized by all necessary corporate or governmental action on the part of the representing party and that this Agreement is fully binding on such party.

(g) Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

19. <u>CONFLICT OF INTEREST</u>

A. No officer or employee of the CITY OF TORRANCE may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. <u>NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES</u>

No officer or employee of CITY OF TORRANCE will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY OF TORRANCE or for any amount that may become due to CONTRACTOR.

21. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

22. ATTORNEY'S FEES

Except as provided for in Paragraph 11, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

23. CONSULTANT'S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

EXECUTED this ___ day of _____, 2011, by the CITY OF TORRANCE and by CONTRACTOR.

CITY OF TORRANCE
a Municipal Corporation

By: _____
Frank Scotto, Mayor

PETDATA, INC.
a Texas Corporation

By: _____
Chris Richey, President

ATTEST:

By: _____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

ATTACHMENT A

Exhibit A – Scope of Services

1. Manage the daily operations of animal licensing including the processing of licensing mail from pet owners, processing license sales and vaccination reports from your agency and from veterinarians, entering licensing and vaccination data, providing customer service and depositing money.

2. Provide veterinarians and other authorized registrars with supplies (reporting forms, vaccination certificates, citizen mailing envelopes, etc.) necessary to sell license tags and/or report information on citizens vaccinating their animals against rabies to the Animal License Program.

3. PLEASE NOTE: THE CITY OF TORRANCE IS RESPONSIBLE FOR PURCHASING LICENSE TAGS AND SHIPPING THEM TO CONTRACTOR.

4. Notify all veterinarians who are delinquent in submitting their monthly vaccination and/or sales reports.

5. Enter all new and renewal licenses into PetData's proprietary database provided that all information has been submitted to PetData in a complete and accurate format.

6. Process and mail license tags within ten business after receipt of the licensing payment and complete documentation as required by local ordinance.

7. Issue replacement tags to citizens whose license tags have been lost, stolen or damaged.

8. Deposit all receipts collected for license fees into a city of Torrance account at a local branch in Irving. PetData will submit a monthly invoice for the amount due for services and payment is due within fifteen days of receipt. The invoice may be sent via email, fax or mail.

9. Provide a monthly report of animals licensed detailed by species, sterilization status, cost and vendor.

10. Provide statistical reports as requested within a timely manner. Depending on the information requested, PetData can provide most reports in two to five business days.

11. Respond to and communicate with animal control officer inquiries or animal owners' requests in a timely fashion. Typically, PetData tries to respond to inquiries within five minutes although there are times when it may take longer.

12. Communicate with citizens by phone, mail and email as needed.

13. Comply with all state and local laws governing animal licensing.