

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") is entered into between the City of San Antonio ("City"), a Texas Municipal Corporation, on behalf of San Antonio Animal Care Services ("ACS") pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, and Best Friends Animal Society ("Best Friends") a Utah non-profit corporation.

### RECITALS

**WHEREAS**, Best Friends owns and manages an animal sanctuary in Kanab, Utah, and from this headquarters location is also engaged in a wide range of activities all oriented around the theme of "No More Homeless Pets."® These activities include, among other things, (a) national public awareness campaigns, (b) extensive animal rescue operations, including public-private partnerships, and (c) the promotion and sponsorship of local and regional projects oriented around the goal of bringing about a day of No More Homeless Pets, including high volume spay and neuter clinics, trap-neuter-return (TNR), and other non-lethal projects intended to address management issues associated with community cats; and

**WHEREAS**, ACS is a department of the City of San Antonio working on collaborative solutions to end pet overpopulation and reduce the euthanasia of dogs and cats in the City of San Antonio and Bexar County, Texas. ACS's focus is to promote the adoption of homeless pets and to initiate and support effective spay and neuter projects. The guiding principle behind ACS projects is to foster cooperation between the companion animal rescue groups, TNR organizations, humane societies, and other animal control agencies serving the greater San Antonio area; and,

**WHEREAS**, in January of 2012, Best Friends and the City, on behalf of ACS, entered into a Memorandum of Agreement pursuant to which the parties began cooperating on a project located in San Antonio and Bexar County, aimed at community cats, known as the Partners for Cats Project (the "Project").

**WHEREAS**, the January 2012 Memorandum of Agreement expires on April 15, 2013 and Best Friends and ACS desire to continue cooperating on the Project under the revised terms and conditions set forth herein.

**WHEREAS**, the purpose of this Agreement is to reduce to writing the terms and conditions of Best Friend's and the City's participation in the Project, and to define the obligations, expectations, and responsibilities of Best Friends and ACS, **NOW THEREFORE:**

### I. TERM

1.1 This Agreement shall be for a term of twenty-four months, beginning April 16, 2013 and ending April 15, 2015.

1.2 The parties agree that any monetary obligation of Best Friends to fund the Project and all other obligations of the parties set forth herein will automatically terminate April 15, 2015, unless renewed pursuant to a further written agreement of the parties.

## II. JOINT ACKNOWLEDGEMENTS

2.1 The fourteen ZIP codes included within the Project's Target Area are:

2.1.1 78227, 78237, 78228, 78245, 78223, 78207, 78201, 78210, 78251, 78250, 78213, 78242, 78221, and 78229;

2.1.2 ZIP codes may be added to or deleted from the Target Area during the course of the Project as determined by Best Friends, upon consultation with ACS.

2.2 The Parties agree that the primary goals of the Project, are as follows:

2.2.1 To spay/neuter and return (or transfer for adoption or relocate) a combined total of no fewer than 12,000 of the following described cats:

2.2.1.1 Up to 4,000 cats intaked to ACS from the Target Area (including each year of the Project);

2.2.1.2 To make a good faith effort to spay/neuter all stray and healthy appearing cats in colonies to which Project cats transferred from ACS are returned, in an amount no fewer than 8,000. A "Project cat" is defined as a cat that is currently living outdoors, that appears healthy, of appropriate age and weight to be sterilized, and eligible to be returned.

2.2.3 To reduce annual ACS cat euthanasia in the Target Area by no less than 25% (compared to 2011 baseline) throughout agreement term;

2.2.4 To reduce ACS cat intake in the Target Area (compared to 2011 baseline of 3502) by at least 10% by March 31, 2014 and sustain annual reduction throughout remainder of agreement term;

2.2.5 To increase ACS cat live release rate in Target Area (compared to 2011 baseline of 30.9%) by at least 35% by the end of the Project:

2.2.5.1 The live release rate will be calculated by dividing cat intake by the total of adoptions, transfers without euthanasia as the final outcome, and returns to owner.

2.2.6 To help heighten the status of community cats and promote non-lethal approaches to their management.

## III. OBLIGATIONS OF BEST FRIENDS ANIMAL SOCIETY

3.1 In conjunction with the implementation of the Project during the term covered by this Agreement, Best Friends will do the following at its own expense:

- 3.1.1 Hire a minimum of 1 full-time employee Project Coordinator, and one part-time employee Project Coordinator to be employed by Best Friends who will oversee Project.
- 3.1.2 Best Friends shall have sole control over the work hours and other terms and conditions of the Project Coordinators' employment.
- 3.1.3 Provide key ACS staff with the opportunity to attend onsite and off-site trainings;
- 3.1.4 Provide one transport van and some supplies necessary for Project Coordinators to implement work plan. Maintenance, upkeep, management and operation of the transport van will be solely the responsibility of Best Friends or its employees;
- 3.1.5 Collaborate with other key stakeholders to effectively implement work plan;
- 3.1.6 Facilitate trapping, transport to spay/neuter provider, and return of eligible Project cats;
- 3.1.7 Total Project costs incurred by Best Friends will not exceed \$721,000.00 (up to \$400,000.00 of which may be in-kind program support from Best Friends) during agreement term. ACS is only eligible to receive monies directly for:
  - a) Spay/neuter /rabies services performed on Project cats exceeding the 500 free spay/neuter/rabies services described in 4.1.4.1
  - b) Spay/neuter /rabies services performed on Project cats exceeding the 1,000 free spay/neuter/rabies services described in 4.1.4.2
  - c) Other veterinary services provided to Project cats by ACS clinic which are pre-approved by Project Coordinator.
  - d) Other costs pre-approved in writing by Best Friends Community Cats Program Manager.

#### **IV. OBLIGATIONS OF ACS**

4.1 To facilitate the success of the Project, ACS agrees that it will:

- 4.1.1 Provide a suitable work space for use by the Best Friends Project Coordinators;
- 4.1.2 Designate a member of the ACS staff to function as primary liaison with the Best Friends Project Coordinator and spay/neuter provider(s) and work with the Project Coordinator, and other key stakeholders to ensure program success;
- 4.1.3 Use its best efforts to ensure all eligible cats within the Target Area are transferred to the custody of, i.e. outcomed to Best Friends in a timely fashion;

- 4.1.4 Act as one of the spay/neuter providers for the Project. During the term covered by this Agreement, ACS will:
  - 4.1.4.1 Provide up to 500 s/n surgeries between April 16, 2013 and April 15, 2014 at no charge primarily for animals outcomed to Best Friends or other Project cats Best Friends needs sterilized;
  - 4.1.4.2 Provide up to 1000 s/n surgeries between April 16, 2014 and April 15 2015 at no charge primarily for animals outcomed to Best Friends or other Project cats Best Friends needs sterilized;
  - 4.1.4.3 ACS and Best Friends each reserves the right to utilize other spay/neuter providers as each sees fit to meet Project goals.
  - 4.1.4.4 Upon completion of the free cat surgeries as described in 4.1.4.1 and 4.1.4.2, ACS shall charge Best Friends no more than \$40.00 per surgery performed under the Project, including rabies vaccinations;
- 4.1.5 ACS will submit invoices to Best Friends for payment on a monthly basis. Monthly invoices to Best Friends detailing spay/neuter services performed by ACS Spay/Neuter Clinic as part of the Project, broken down by the number of neuters, spays, in heat, and pregnant;
  - 4.1.5.1 These invoices shall be paid by Best Friends (where applicable, after completion of free surgeries described in 4.1.4.1 and 4.1.4.2) within 30 days of receipt.
  - 4.1.5.2 ACS will provided a completed voucher to Best Friends (vouchers are provided by Best Friends) for any cat it to whom it provide s/n services under this Project that is not brought in directly by a Best Friends staff member.
- 4.1.6 Vaccinate for FVCRP all cats entering the shelter upon impound;
- 4.1.7 ACS TNR program will not pull cats from inside the Best Friends Target Area unless requested in writing by the Best Friends program coordinator;
- 4.1.8 Provide the Project Coordinator with the location of impound along with any relevant case information which includes cat description and photo if available;
- 4.1.9 Provide adequate recovery space/housing for all Project cats until they can be returned or otherwise outcomed;
  - 4.1.9.1 ACS shall use its best efforts to obtain and provide recovery space/housing for Project cats that require more than average recovery time.

- 4.1.10 Continue other efforts to increase adoption and lower intake of cats entering shelter;
- 4.1.11 Work to communicate the Project's successes to the San Antonio City Council, Mayor, etc., including ACS's cost savings associated with the decrease in cat intake and euthanasia;
- 4.1.12 Ensure that community cats spayed/neutered under the Project are additional surgeries performed by the ACS clinic and will not replace surgeries that would be performed as part of ACS's normal business operations.

4.2 ACS acknowledges and agrees that successful implementation of the Project will require the time and effort of ACS employees. Although Best Friends may elect to use its funds for implementation of the Project, Best Friends is not responsible for costs or expenditures related to the ACS's employees except as expressly agreed by Best Friends.

4.3 The Parties further acknowledge and agree that the nature of the Project may require the modification of the Parties' responsibilities depending on the exact nature of the work plan adopted. The Parties will use their respective best efforts to reach agreement in the event such modification of responsibilities is required.

## **V. ACS DATA TRACKING & REPORTING REQUIREMENTS**

5.1 IF REQUESTED BY BEST FRIENDS, MONTHLY AND QUARTERLY REPORTS TO BEST FRIENDS. ACS agrees that it will gather, track, and provide reports to Best Friends on any intake and outcome as requested by Best Friends.

5.2 REPORTS TO NEW URBAN RESEARCH. ACS agrees that it will provide the following raw form data from the Target Areas directly to New Urban Research on a quarterly basis:

5.2.1 Cat intake data, to include:

- a) Total cats, including adults and kittens;
- b) Kittens (6 mos. or younger only);
- c) Cats and kittens which have been intaked more than once, and the outcome for each occasion of intake.

5.2.2 Cat euthanasia data, to include:

- a) Total cats, including adults and kittens;
- b) Kittens (6 mos. or younger only)
- c) "Euthanasia" to include sick, injured, aggressive, owner requested or any other cause.

5.2.3 Cat adoptions data, to include:

a) Total cats, including adults and kittens.

5.2.4 Cats transferred to other animal welfare organizations data, to include:

a) Total cats, including adults and kittens.

b) Outcomes include adoption, euthanasia or additional transfer

5.2.5 Cats transferred for TNR/returned to field data, to include:

a) Total cats, including adults and kittens.

5.2.6 Cats returned to owner data, to include:

a) Total cats, including adults and kittens.

5.3 POST-PROJECT DATA. ACS will provide Best Friends with post-Project data to include all the types of data listed above in Section 5.1, with respect to calendar year 2015, 2016, and 2017 calendar years, respectively.

5.3.1 In the event the Project is terminated early, ACS will provide post-Project data for the two calendar years subsequent to the termination of the Project.

5.4 ACS agrees that upon written request of Best Friends it will allow Best Friends access to all data provided by ACS to New Urban Research.

## **VI. MARKETING, PROMOTION AND PUBLICITY**

6.1 Best Friends shall have the right to publicize the Project and all marketing, promotion and publicity of the Project shall be coordinated by Best Friends, in coordination with City. ACS agrees to cooperate with Best Friends and facilitate Best Friends' promotion of the Project. Said promotion may take place through Best Friends' website, newsletters, electronic news distributions, press releases, and other media outlets. Any such publicity efforts proposed by Best Friends shall be submitted by Best Friends to City for review and approval not less than 48 hours in advance of the proposed dissemination date. Materials may not be disseminated without the express approval of the City, which approval will not be unreasonably withheld.

6.2 ACS acknowledges and agrees that the Project will be co-branded with PetSmart Charities' name, mark, and logos. ACS may not use PetSmart Charities' name, logo, trademarks or copyrighted material without the express approval and consent of Best Friends and PetSmart Charities (as obtained by Best Friends).

6.3 ACS agrees that the Project will be referred to by a name to be agreed upon between Best Friends and PetSmart Charities, in consultation with the City, and that it shall refer to the Project by that name.

6.4 To facilitate the performance of Best Friends' obligations to PetSmart Charities regarding Project branding and promotion, all press, news, or other media releases and other forms of

publicity relating to the Project, including web-based communications and social media posts must be pre-approved by Best Friends. Any such publicity efforts proposed by ACS shall be submitted by ACS to Best Friends (Project Coordinator and Holly Sizemore) for review and approval not less than 48 hours in advance of the proposed dissemination date. Materials may not be disseminated without the express approval of Best Friends.

6.5 ACS shall use its best efforts to provide Best Friends with the opportunity to photograph, video, and audio record events related to the Project, consistent with the City of San Antonio's policies and procedures for such event(s). Best Friends shall be permitted to use these photographs and video/audio recordings for publicity purposes subject to release.

6.6 Neither party may use each other's logos, trademarks, or other intellectual property without express permission.

## VII. ASSIGNMENT

7.1 The terms of this Agreement shall bind the respective successors and assigns of each party.

## VIII. TERMINATION

8.1 Termination by the City. The City may terminate this Agreement upon written notice to Best Friends in the event of the following events of default and where Best Friends fails to cure said default within 15 calendar days after receipt of notice thereof:

- (i) Best Friends fails to make any payment as set out within this Agreement; or
- (ii) by its actions or statements, Best Friends materially harms the reputation of the City, as determined by the City in its reasonable judgment; or
- (iii) any court, judicial body, or administrative agency makes a final determination that, following the Effective Date, Best Friends or PetSmart Charities has violated any laws, ordinances, or governmental regulations pertaining to animal welfare, which violation constitutes abuse, mistreatment, or gross or repeated neglect of animals; or
- (iv) Best Friends or PetSmart Charities files for bankruptcy, or sells, assigns or transfers the majority of its assets to another entity, or ceases to operate as an animal supply and services company.

8.2 Termination by Best Friends.

8.2.1 Best Friends may terminate this Agreement upon written notice to the City in the event of the following events of default and where the City fails to cure said default within 15 calendar days after receipt of notice thereof:

- (i) The City fails to carry out its obligations as set out within this agreement; or
- (ii) by its actions or statements, the City materially harms the reputation of Best Friends, as determined by Best Friends in its reasonable judgment; or

8.2.2 Best Friends may immediately terminate this Agreement without penalty or any further obligation upon written notice to the City in the event the grant from PetSmart Charities to Best Friends, upon which Best Friends relies to fund the Project, is for any reason, not finalized or is terminated after the Project is commenced.

8.3 Termination for Convenience. Either party may terminate this Agreement ninety days in advance of the conclusion of the Initial Term or any subsequent one-year renewal upon written notice to the other party, consistent with the notice requirements of this Agreement below.

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Best Friends shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Animal Care Services Department, which shall be clearly labeled “*Partners for Cats Project*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Animal Care Services Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

9.3 Best Friends financial integrity is of interest to the City; therefore, subject to Best Friends right to maintain reasonable deductibles in such amounts as are approved by the City, Best Friends shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Best Friends sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000



<p>3. Broad form Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> <p>\$100,000</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence</p>

9.4 Best Friends agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Best Friends herein, and provide a certificate of insurance and endorsement that names Best Friends and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Best Friends shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Best Friends shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Animal Care Services Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

9.6 Best Friends agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and

activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Best Friends shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Best Friends to stop work hereunder, and/or withhold any payment(s) which become due to Best Friends hereunder until Best Friends demonstrates compliance with the requirements hereof.

9.9 Nothing herein contained shall be construed as limiting in any way the extent to which Best Friends may be held responsible for payments of damages to persons or property resulting from Best Friend's or its subcontractors' performance of the work covered under this Agreement.

9.10 It is agreed that Best Friends's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

9.12 Best Friends and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **X. NOTICE**

10.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

Vincent Medley  
Animal Care Services  
4710 State Highway 151  
San Antonio, TX 78227  
Email: vincent.medley@sanantonio.gov

If to Best Friends:

Holly Sizemore  
Best Friends Animal Society  
5001 Angel Canyon Road  
Kanab, UT 84741  
Email: hollys@bestfriends.org

## **XI. RELATIONSHIP OF PARTIES**

11.1 Nothing in this Agreement shall be construed or interpreted as creating a joint venture or legal partnership relationship between the parties. Except as expressly provided by this Agreement, neither party shall have, nor shall it hold itself out as having any right, power, or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the other party, or to pledge the other party's credit or extend credit in the other party's name, unless the other party consents thereto in advance in writing. Subject to Article VI, above, neither party shall disseminate any written or oral press releases, advertisements or other communications representing itself as an authorized representative of the other party. Except as expressly provided herein, neither party shall have the right to exercise any control whatsoever over the activities or operations of the other party.

## **XII. AUTHORITY**

12.1 By affixing their signatures below, the individuals signing on behalf of the Parties warrant they are authorized to enter into this Agreement and intend to be bound by same.

## **XIII. SEVERABILITY**

13.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XIV. ENTIRE AGREEMENT**

14.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of

this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the City and Best Friends.

**XV. COUNTERPARTS**

15.1 For convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

**City of San Antonio**

**Best Friends Animal Society**

\_\_\_\_\_  
San Antonio Animal Care Services

  
\_\_\_\_\_  
BEST FRIENDS ANIMAL SOCIETY

By: \_\_\_\_\_

By: GREGORY CASTLE

Title: \_\_\_\_\_

Title: CEO

Approved as to form:

\_\_\_\_\_  
City Attorney