

AN ORDINANCE **2016-10-13-0800**

**AUTHORIZING MEMORANDUMS OF AGREEMENT FOR
LOW-COST VACCINATION & WELLNESS CLINICS WITH
WELLNESS ON WHEELZ AND PET SHOTZ, INC. FOR A
TWO-YEAR TERM WITH THE OPTION TO RENEW FOR
TWO ADDITIONAL ONE-YEAR TERMS.**

* * * * *

WHEREAS, on July 20, 2016, the City released a Request for Proposal (RFP) to obtain proposals from respondents to provide low-cost vaccination & wellness clinics on-site at Animal Care Services and at various off-site locations in the community; and

WHEREAS, based on the proposal submissions, staff recommends entering into agreement with both Wellness on Wheelz and Pet Shotz, Inc. to provide low-cost vaccinations and wellness clinics; **NOW THEREFORE:**


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

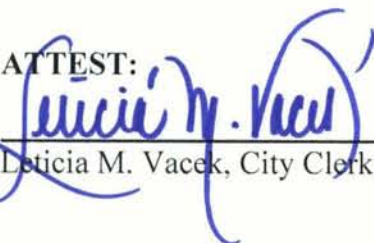
SECTION 1. The City Manager or her designee or the Director of the Animal Care Services Department or his designee is authorized to execute Memorandums of Agreement for low-cost vaccination & wellness clinics with Wellness on Wheelz and Pet Shotz, Inc. for a two-year term with the option to renew for two additional one-year terms. A copy of the agreements in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment I and II.**


SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 13th day of October, 2016.


M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

City Attorney

| Agenda Item: | 16 (in consent vote: 4, 5, 6, 7A, 7B, 7C, 8A, 8B, 8C, 8D, 9, 10, 11A, 11B, 12, 14, 15, 16, 20, 22, 23, 24, 25, 26) | | | | | | |
|---------------------|--|-------------|-----|-----|---------|--------|--------|
| Date: | 10/13/2016 | | | | | | |
| Time: | 09:20:49 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance authorizing memorandum of agreements for low-cost vaccination & wellness clinics with Wellness on Wheelz and Pet Shotz, Inc. for a two-year term with the option to renew for two additional one-year terms. [Maria D. Villagomez, Assistant City Manager; Heber Lefgren, Director, Animal Care Services] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ivy R. Taylor | Mayor | x | | | | | |
| Roberto C. Treviño | District 1 | | x | | | | |
| Alan Warrick | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | x | | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | x |
| Joe Krier | District 9 | | x | | | x | |
| Michael Gallagher | District 10 | | x | | | | |

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through the Director of the Animal Care Services Department and Wellness on Wheelz by and through its Owner/Medical Director, Amber M. Valinski, DVM (“Contractor”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Contractor” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of City’s Animal Care Services (“ACS”) Department.

“Rabies vaccination” shall mean a protective inoculation by a licensed veterinarian with a rabies vaccine recognized and approved by the United States Department of Agriculture given in an amount sufficient to provide an immunity that satisfies the requirement of state law.

“Vaccination certificate” shall mean a document showing on its face that the animal described thereon has received a current inoculation of rabies vaccine in an amount sufficient to produce an immunity that satisfies the requirement of state law, inscribed with the date of the inoculation, the duration of immunity approved for that vaccine, the name and address of the animal's owner, all other information required by state law and signed by a licensed veterinarian.

II. TERM

2.01. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 1, 2016 and terminate on October 31, 2018.

2.02. This Agreement may be renewed by mutual consent of the parties for up to two (2) successive, one (1) year terms (each, a “Renewal Term”). Any renewals shall be in writing, and signed by the parties. The Director of the Animal Care Services Department shall have the authority to execute renewals on behalf of the City without further City Council action.

III. CONTRACTOR OBLIGATIONS

3.01. Contractor agrees to enter into a nonexclusive agreement to provide the services described in this Article III. Contractor shall be responsible for providing low-cost vaccination & wellness clinic services in accordance with the following:

3.01.01. Contractor shall provide a minimum of three on-site low-cost vaccination & wellness clinic events at the ACS facility (located at 4710 State Highway 151) per month.

a) Dates and times of vaccination & wellness clinic events shall be determined by mutual agreement of both parties. Changes in dates or hours of the vaccination and wellness clinic events shall be submitted to and subject to agreement by ACS.

b) Additional vaccination & wellness clinic events at the ACS facility may be scheduled, subject to mutual agreement of both parties.

c) Based upon demand for such services, Contractor can request, or ACS may require, that Contractor make reasonable adjustments to the vaccination and wellness clinic event schedule to accommodate for change in demand.

3.01.02. Contractor shall provide a minimum of ten off-site low-cost vaccination & wellness clinic events.

a) Dates, times, and locations of off-site vaccination & wellness clinic events will be determined by ACS with at least one month advance notice provided to Contractor.

b) Additional off-site low-cost vaccination and wellness clinic events may be scheduled, subject to mutual agreement of both parties.

3.01.03. At each on-site and off-site low-cost vaccination and wellness clinic event Contractor shall:

a) Provide low-cost vaccinations for dogs and cats of owners who attend the vaccination and wellness clinic events to include but not limited to: Rabies, Bordetella, Distemper/Hepatitis/Parvovirus/Parainfluenza (DHPP), and Feline Viral Rhinotracheitis/Calicivirus/Panleukopenia (FVRCP).

i. Price assessed to pet owner for rabies vaccination (to include vaccination, tag, and certificate) shall be at a rate mutually agreed upon in writing by both parties.

ii. City may provide rabies vaccinations for administration by Contractor; at which no charge is assessed to the pet owner.

b) Be responsible for providing veterinary services to include, evaluating animals to determine suitability for vaccination and performance of vaccinations as set out in this Agreement.

- c) Provide each pet owner a vaccination certificate(s) for each pet vaccinated.
- d) Maintain accurate medical records and supporting documentation verifying vaccinations and services performed, as determined by City.
- e) Provide low-cost wellness goods & services to include but not limited to: nail clipping, heartworm testing, deworming, monthly flea/tick prevention, and monthly heartworm prevention.
- f) Provide, implant, and register life-time registered microchips to dogs and cats owned by residents of the City.
 - i. Price assessed to pet owner may be no more than the actual purchase cost of microchip, tag, and registration by Contractor (proof of purchase cost must be provided to the City) rounded up to the nearest dollar. Contractor is responsible for registering microchips provided by the Contractor.
 - ii. City may provide microchips for implanting by Contractor; at which no charge is assessed to the pet owner.
- g) Provide adequate staffing to ensure excellent customer service, proper animal handling and care, quick customer check-in, answering pet owner inquiries, and minimizing total wait time for the pet owner. ACS will not provide any staffing for vaccination and wellness clinic events, unless requested by Contractor and agreed upon by ACS.
- h) Provide for all equipment and supplies required to conduct each vaccination and wellness clinic event, including but not limited to, microchips, vaccines and wellness products.
- i) Provide adequate shading structures and drinking water (if water fountain is not available at location) for pet owners and pets when they are required to wait outside to obtain services.
- j) Ensure vaccination & wellness clinic location is properly cleaned at the end of every clinic event to include but not limited to: return of any tables/chairs to classroom-style setup (as determined by ACS), sweeping, mopping, table wipe-down, and proper clean-up of pet urine/feces which may have occurred during the vaccination & wellness clinic event.
- k) Remove any temporary signage Contractor may have used during the vaccination and wellness event. Contractor signage may not be affixed in a manner that causes permanent markings or damage to include tape residue or large hole punctures.
- l) Contractor may charge pet owners low-cost fees associated with the vaccination & wellness clinic event in accordance with fee schedule provided to ACS and incorporated herein for all purposes. Any future fee changes shall be

subject to approval in writing by the ACS Director or his/her designee.

m) Retain all revenue collected from vaccination & wellness clinic events.

n) Maintain a good-standing working relationship with City to include, but not limited to, working with ACS staff and aiding in the education of animal-related State laws and City ordinances.

o) Inform ACS prior to any potential media relating to the collaboration between Contractor and ACS.

p) Perform all services in a manner consistent with or that exceeds the prevailing standard for veterinary care in Bexar County, Texas.

3.01.04. All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director.

IV. CITY OBLIGATIONS

4.01. City shall provide access to a location at the ACS facility for Contractor to conduct vaccination and wellness clinics events one-hour prior to the clinic start time for set-up and one-hour past clinic end time for teardown and cleanup. Tables and chairs will be made available to Contractor by ACS for the on-site vaccination & wellness clinic events.

4.02. City shall assist in the marketing and advertising of vaccination & wellness clinic events to include, but not limited to: ACS social media outlets, ACS website & event calendar, flyers distributed on the ACS campus and at ACS Education & Outreach events.

4.03. City shall not be responsible for funding this Agreement or for payment of any financial obligations under this Agreement to any party, or any agreement associated with it, unless such obligations are mutually agreed upon by the parties and set out in a subsequent written agreement or amendment to this Agreement.

V. OWNERSHIP OF DOCUMENTS

5.01. Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing; document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.02. Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.03. Veterinary records shall be owned and maintained in accordance with Texas Administrative Code section 573.52, Patient Record Keeping. Contractor shall make such records available to City in accordance with Article VI.

VI. RECORDS RETENTION

6.01. Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.02. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.03. Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.01. For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.02. Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.03. Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

- i) The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.04. Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- i) Bankruptcy or selling substantially all of company's assets
- ii) Failing to perform or failing to comply with any covenant herein required
- iii) Performing unsatisfactorily as determined by Director

7.05. Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.06. Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.07. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.08. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.09. Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Director
Animal Care Services Department
4710 Highway 151
San Antonio, Texas 78227

If intended for CONTRACTOR, to:

Wellness on Wheelz
Attn: Amber Valinski, DVM
6204 N 17th Street
McAllen, Texas 78504

IX. CONFIDENTIALITY

In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (Including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other Information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information, is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

X. INSURANCE

10.01. Prior to the commencement of any work under this Agreement, Contractor 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 "Low-Cost Vaccination & Wellness Clinic" 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 be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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.

10.02. 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.

10.03. A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's 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 | \$1,000,000/\$1,000,000/\$1,000,000 |
| 3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury | 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 |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | <u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence |
| 5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service. | \$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. |

10.04. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by

subcontractors will be determined as a business decision of Contractor. Contractor 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.

10.05. 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

10.06. Contractor 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 and professional liability policies;
- 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.07. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor 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.

10.08. 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 Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

10.10. It is agreed that Contractor'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.

10.11. 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.

10.12. Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.01. CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising, out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.03. Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.04. Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.01. Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.02. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

12.03. Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.04. Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from

any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.01. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

14.02. Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor.

XVI. SEVERABILITY

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.

XVII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.01. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.02. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. ENTIRE AGREEMENT

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 Article XV. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

WELLNESS ON WHEELZ

Printed Name: Heber Lefgren
Title: Director, Animal Care
Services Department
Date: _____

Printed Name: Amber M. Valinski, DVM
Title: Owner/Medical Director
Date: _____

Approved as to Form:

City Attorney

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through the Director of the Animal Care Services Department and Pet Shutz, Inc., by and through its Owner, Fretorry Rogers, DVM (“Contractor”), both of which may be referred to herein collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Contractor” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of City’s Animal Care Services (“ACS”) Department.

“Rabies vaccination” shall mean a protective inoculation by a licensed veterinarian with a rabies vaccine recognized and approved by the United States Department of Agriculture given in an amount sufficient to provide an immunity that satisfies the requirement of state law.

“Vaccination certificate” shall mean a document showing on its face that the animal described thereon has received a current inoculation of rabies vaccine in an amount sufficient to produce an immunity that satisfies the requirement of state law, inscribed with the date of the inoculation, the duration of immunity approved for that vaccine, the name and address of the animal's owner, all other information required by state law and signed by a licensed veterinarian.

II. TERM

2.01. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on November 1, 2016 and terminate on October 31, 2018.

2.02. This Agreement may be renewed by mutual consent of the parties for up to two (2) successive, one (1) year terms (each, a “Renewal Term”). Any renewals shall be in writing, and signed by the parties. The Director of the Animal Care Services Department shall have the authority to execute renewals on behalf of the City without further City Council action.

III. CONTRACTOR OBLIGATIONS

3.01. Contractor agrees to enter into a nonexclusive agreement to provide the services described in this Article III. Contractor shall be responsible for providing low-cost vaccination & wellness clinic services in accordance with the following:

3.01.01. Contractor shall provide a minimum of four on-site low-cost vaccination & wellness clinic events at the ACS facility (located at 4710 State Highway 151) per month. At the request of the City, Contractor may provide off-site low-cost vaccination & wellness events.

a) Dates and times of vaccination & wellness clinic events shall be determined by mutual agreement of both parties. Changes in dates or hours of the vaccination and wellness clinic events shall be submitted to and subject to agreement by ACS.

b) Additional vaccination & wellness clinic events at the ACS facility may be scheduled, subject to mutual agreement of both parties.

c) Based upon demand for such services, Contractor can request, or ACS may require, that Contractor make reasonable adjustments to the vaccination and wellness clinic event schedule to accommodate for change in demand.

3.01.02. At each low-cost vaccination and wellness clinic event Contractor shall:

a) Provide low-cost vaccinations for dogs and cats of owners who attend the vaccination and wellness clinic events to include but not limited to: Rabies, Bordetella, Distemper/Hepatitis/Parvovirus/Parainfluenza (DHPP), and Feline Viral Rhinotracheitis/Calicivirus/Panleukopenia (FVRCP).

i. Price assessed to pet owner for rabies vaccination (to include vaccination, tag, and certificate) shall be at a rate mutually agreed upon in writing by both parties.

ii. City may provide rabies vaccinations for administration by Contractor; at which no charge is assessed to the pet owner.

b) Be responsible for providing veterinary services to include, evaluating animals to determine suitability for vaccination and performance of vaccinations as set out in this Agreement.

c) Provide each pet owner a vaccination certificate(s) for each pet vaccinated.

d) Maintain accurate medical records and supporting documentation verifying vaccinations and services performed, as determined by City.

e) Provide low-cost wellness goods & services to include but not limited to: nail clipping, heartworm testing, deworming, monthly flea/tick prevention, and monthly heartworm prevention.

- f) Provide, implant, and register life-time registered microchips to dogs and cats owned by residents of the City.
 - i. Price assessed to pet owners may be no more than the actual purchase cost of microchip, tag, and registration by Contractor (proof of purchase cost must be provided to the City) rounded up to the nearest dollar. Contractor is responsible for registering microchips provided by the Contractor.
 - ii. City may provide microchips for implanting by Contractor; at which no charge is assessed to the pet owner.

- g) Provide adequate staffing to ensure excellent customer service, proper animal handling and care, quick customer check-in, answering pet owner inquiries, and minimizing total wait time for the pet owner. ACS will not provide any staffing for vaccination and wellness clinic events, unless requested by Contractor and agreed upon by ACS.

- h) Provide for all equipment and supplies required to conduct each vaccination and wellness clinic event, including but not limited to, microchips, vaccines and wellness products. ACS will not provide any supplies for vaccination and wellness clinic events, unless requested by Contractor and agreed upon by ACS.

- i) Provide adequate shading structures and drinking water (if water fountain is not available at location) for pet owners and pets when they are required to wait outside to obtain services.

- j) Ensure vaccination & wellness clinic location is properly cleaned at the end of every clinic event to include but not limited to: return of any tables/chairs to classroom-style setup (as determined by ACS), sweeping, mopping, table wipe-down, and proper clean-up of pet urine/feces which may have occurred during the vaccination & wellness clinic event.

- k) Remove any temporary signage Contractor may have used during the vaccination and wellness event. Contractor signage may not be affixed in a manner that causes permanent markings or damage to include tape residue or large hole punctures.

- l) Contractor may charge pet owners low-cost fees associated with the vaccination & wellness clinic event in accordance with Fee Schedule provided to ACS and incorporated herein for all purposes. Any future fee changes shall be subject to approval in writing by the ACS Director or his/her designee.

- m) Retain all revenue collected from vaccination & wellness clinic events.

- n) Maintain a good-standing working relationship with City to include, but not limited to, working with ACS staff and aiding in the education of animal-related State laws and City ordinances.

o) Inform ACS prior to any potential media relating to the collaboration between Contractor and ACS.

p) Perform all services in a manner consistent with or that exceeds the prevailing standard for veterinary care in Bexar County, Texas.

3.01.03. All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director.

IV. CITY OBLIGATIONS

4.01. City shall provide access to a location at the ACS facility for Contractor to conduct vaccination and wellness clinics events one-hour prior to the clinic start time for set-up and one-hour past clinic end time for teardown and cleanup. Tables and chairs will be made available to Contractor by ACS for the on-site vaccination & wellness clinic events.

4.02. City shall assist in the marketing and advertising of vaccination & wellness clinic events to include, but not limited to: ACS social media outlets, ACS website & event calendar, flyers distributed on the ACS campus and at ACS Education & Outreach events.

4.03. City shall not be responsible for funding this Agreement or for payment of any financial obligations under this Agreement to any party, or any agreement associated with it, unless such obligations are mutually agreed upon by the parties and set out in a subsequent written agreement or amendment to this Agreement.

V. OWNERSHIP OF DOCUMENTS

5.01. Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing; document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.02. Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.03. Veterinary records shall be owned and maintained in accordance with Texas Administrative Code section 573.52, Patient Record Keeping. Contractor shall make such records available to City in accordance with Article VI.

VI. RECORDS RETENTION

6.01. Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.02. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.03. Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.01. For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.02. Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.03. Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

- i) The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.04. Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article

VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- i) Bankruptcy or selling substantially all of company's assets
- ii) Failing to perform or failing to comply with any covenant herein required
- iii) Performing unsatisfactorily as determined by Director

7.05. Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.06. Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.07. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.08. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.09. Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Director
Animal Care Services Department
4710 Highway 151
San Antonio, Texas 78227

If intended for CONTRACTOR, to:

Pet Shotz, Inc.
Attn: Fretorry Rogers, DVM
438 Shadbush Street
San Antonio, Texas 78245

IX. CONFIDENTIALITY

In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other Information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information, is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

X. INSURANCE

10.01. Prior to the commencement of any work under this Agreement, Contractor 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 "Low-Cost Vaccination & Wellness Clinic" 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 be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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.

10.02. 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.

10.03. A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's 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 | \$1,000,000/\$1,000,000/\$1,000,000 |
| 3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury | 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 |
| 4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | <u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence |
| 5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service. | \$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. |

10.04. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by

subcontractors will be determined as a business decision of Contractor. Contractor 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.

10.05. 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 required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

10.06. Contractor 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 and professional liability policies;
- 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.07. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor 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.

10.08. 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 Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

10.10. It is agreed that Contractor'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.

10.11. 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.

10.12. Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.01. CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising, out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.03. Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.04. Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.01. Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.02. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

12.03. Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

12.04. Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from

any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.01. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

14.02. Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor.

XVI. SEVERABILITY

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.

XVII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.01. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.02. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. ENTIRE AGREEMENT

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 Article XV. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

WELLNESS ON WHEELZ

Printed Name: Heber Lefgren
Title: Director, Animal Care
Services Department
Date: _____

Printed Name: Fretorry Rogers, DVM
Title: Owner
Date: _____

Approved as to Form:

City Attorney