

## HIGH VOLUME PET PARTNERSHIP 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”) and SAN ANTONIO PETS ALIVE! (SAPA!), 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.

**WHEREAS**, the City’s Animal Care Services (“ACS”) Strategic Plan Update identified the need for the City to partner with a High Volume Pet Partner to increase ACS’ live release rate; and

**WHEREAS**, ACS staff is committed to the Strategic Plan Update in order to increase adoptions, rescues, and returns to owner; and

**WHEREAS**, SAPA! is a non-profit organization that is dedicated to protecting and improving the lives of dogs and cats by providing shelter, care, adoption, rescue, spay/neuter, and community education and can commit to providing assistance and management with a high volume of animals from ACS; and

**WHEREAS**, SAPA! and the ACS desire to cooperate on a project aimed at increasing ACS’ live release rate through SAPA! rescues from ACS; and

**WHEREAS**, the purpose of this agreement is to define the terms and conditions of SAPA! and the City’s participation in the project and to define the obligations and expectations of SAPA! and the City; **NOW THEREFORE**:

### I. DEFINITIONS

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

**“HVPP Building”** shall mean the building/space provided to SAPA! by ACS located at the ACS facility. This space will be used by SAPA! solely for the operation of activities under this Agreement.

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

**“Director”** shall mean the director of City’s Animal Care Services.

**“Animal”** shall mean both cats and dogs.

***“Qualifying Animal”*** shall mean those animals rescued by SAPA! above the SAPA! Baseline since October 1<sup>st</sup> of the current fiscal year.

***“Rescue”*** shall mean the permanent transfer of physical custody and ownership of an animal to SAPA! or its affiliates from ACS.

***“SAPA!”*** is defined in the preamble of this Agreement and includes its successors.

***“SAPA! Baseline”*** shall mean the number of animals SAPA! must Rescue from ACS in a given fiscal year as determined by ACS, before SAPA! achieves a Qualifying Animal. For FY 2017 the SAPA! Baseline shall mean zero animals.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2016 and terminate on September 30, 2017.

2.2. This Agreement may be renewed by City for three successive one year periods on the same terms and conditions. Renewals shall be in writing and signed by the Director of ACS without further action by the San Antonio City Council.

## **III. SCOPE OF SERVICES**

### **3.1 Obligations of SAPA!:**

3.1.0 SAPA! will rescue 3,100 Qualifying Animals from ACS during the term of this Agreement.

(a) For all animals Rescued by SAPA! under this Agreement, SAPA! will provide at its expense humane housing and proper care of all animals to include but not limited to, providing food, water, shelter and appropriate veterinary care for so long as such animals remain under the care and control of SAPA!. Humane housing includes shelter from sun, wind, extreme temperatures and rain. In addition, animals must not be commingled or overcrowded unless it is appropriate to do so. Animals must be able to freely move around their enclosure and be able to eat away from fecal matter/debris. Animals must receive adequate stimulation, and appropriate veterinary care to include sterilization and plenty of exercise. SAPA! shall obtain and maintain all appropriate permits and licensing as may be required in order to remain in good standing with ACS.

(b) SAPA! will insure that each Rescued animal is sterilized prior to the animal leaving the care and control of SAPA!. However, subject to ACS funding availability, as determined by ACS, animals rescued by SAPA! may be sterilized by ACS. SAPA! agrees and understands ACS may choose to not do sterilization surgeries for SAPA! Rescued animals.

(c) SAPA! will take sole responsibility for the care of the animals housed in the HVPP building.

(d) SAPA! agrees to do all possible to ensure that no damage is done to ACS' property outside of that considered normal wear and tear. SAPA! shall be responsible for any damage outside of normal wear and tear.

(e) SAPA! agrees it will not make alterations, improvements or changes to the HVPP Building.

(f) SAPA! will be responsible for the daily cleaning of the HVPP Building and maintain it in a clean and safe condition.

(g) Any publicity efforts by SAPA! related to its collaboration with ACS or activities at an ACS facility shall be submitted by SAPA! to ACS 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 ACS, which approval will not be unreasonably withheld.

(h) While on the premises, SAPA! staff and volunteers will wear identifying apparel or badges while performing activities under this Agreement.

(i) SAPA! will inform ACS of any disease outbreaks at the HVPP Building or at SAPA! facilities.

(j) SAPA! shall provide a report every month which shall include the total number of animals Rescued and the current status of those animals. All animals Rescued should be categorized as either: 1) currently in SAPA!'s care; 2) adopted; 3) transferred to other rescue organization; 4) returned to ACS; or 5) died/euthanized in SAPA!'s care. The following specific data regarding Rescued animals are to be made available to ACS as requested: animal ID, outcome type (as indicated in this section), and zip code location of outcome. The scope of this Agreement does not encompass internal SAPA! communications or other Rescued animals not covered under this Agreement.

(k) If a SAPA! Qualifying Animal is returned to ACS, SAPA! shall accept the return of such animals and transfer the animals into SAPA!'s care within 24 hours from the time the animal is returned to ACS unless the parties agree otherwise.

(l) Upon expiration of the term of this Agreement, SAPA! shall deliver all keys, key cards, and other access devices to the HVPP Building.

(m) SAPA! shall allow ACS to inspect SAPA!'s facility(ies), all Rescue animals and allow ACS to perform unannounced inspections.

### 3.2 **Obligations of City:**

- (a) ACS will make animals available to SAPA! for Rescue unless unavailable for Rescue as determined by ACS.
- (b) ACS will provide SAPA! access to the HVPP Building for the operation of activities under this Agreement.
- (c) ACS agrees that SAPA! will incur no charge for rent, maintenance, or property insurance for the use of HVPP Building, save that for designated staff, volunteers and supplies.
- (d) ACS will provide basic supplies needed to clean the kennels in the HVPP Building.
- (e) ACS will be responsible for the facility upkeep of the HVPP Building.
- (f) ACS agrees no other organizations, rescue groups or shelters may have use of HVPP Building during the course of this Agreement without prior approval of the Director or Director of Operations of SAPA!. SAPA! agrees ACS may terminate SAPA! use of the HVPP Building without terminating this Agreement to allow SAPA! to Rescue animals from ACS kennels.
- (g) ACS will re-key and restrict access to the HVPP Building to key staff at ACS and SAPA! staff and volunteers working at ACS for the purposes of animal intake.
- (h) Any publicity efforts by ACS related to its collaboration with SAPA! shall be submitted by ACS to SAPA! 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 SAPA!, which approval will not be unreasonably withheld.
- (i) ACS agrees to seek SAPA!'s pre-approval before placing other animals in the HVPP Building.
- (j) ACS will endeavor to ensure that it is practicing established best practices for shelter medicine and sanitation and will inform SAPA! of disease outbreaks in ACS kennels.
- (k) ACS will provide all animals transferred from ACS kennels a distemper/parvo vaccine and intra nasal bordatella. If an animal has not received these vaccines, SAPA! will be notified prior to accepting said animal.

3.4 All work performed by SAPA! 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 be under no obligation to pay for any work performed by SAPA!, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should SAPA!'s work not be

satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

### **III. COMPENSATION TO SAPA!**

4.1 In consideration of SAPA!'s performance in a satisfactory and efficient manner of all services and activities set forth in this Agreement, City agrees to pay SAPA! an amount up to three hundred five thousand dollars (\$305,000.00) as total compensation, to be paid to SAPA! as follows:

4.1.1 SAPA! shall be paid up to one hundred twenty-four thousand dollars (\$124,000.00) at a rate of \$40.00 per Qualifying Animal for a maximum of 3,100 qualifying animals Rescued from ACS.

4.1.1.1 City shall pay SAPA! \$40,000.00 within 30 days of the execution of this contract. This payment shall be a prepayment for the first 1,000 SAPA! Qualifying Animals. In the event this Agreement is terminated by SAPA! or City prior to SAPA! achieving 1,000 Qualifying Animals, SAPA! shall immediately return all prepaid unearned funds to City when the notice of termination is submitted by the terminating party. After SAPA! achieves the initial 1,000 Qualifying Animals, SAPA! will be compensated \$40.00 per Qualifying Animal for which SAPA! will invoice the City monthly as set out in section 4.2.

4.1.2 SAPA! shall be paid up to an additional one hundred eighty-one thousand dollars (\$181,000.00) to offset expenses related to SAPA!'s rescue of Qualifying Animals also identified and outcomed by ACS as "treatable" or "unhealthy." SAPA! agrees and understands ACS will determine which Qualifying Animals are "treatable" or "unhealthy." SAPA! shall be paid for these Qualifying Animals per animal as outlined below:

Pets identified and outcomed by ACS as "treatable"	\$70.00
Pets identified and outcomed by ACS as "unhealthy"	\$125.00

Qualifying Animals Rescued as outlined in section 4.1.2 are not capped by a maximum amount of animals Rescued, rather are capped by the maximum amount of compensation identified in section 4.1.2.

4.2 SAPA! shall submit a monthly invoice to City, in a form acceptable to City and with appropriate documentation as required by City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Animal Care Services Department P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 No additional fees or expenses of SAPA! shall be charged by SAPA! nor be payable by City. The parties hereby agree that all compensable expenses of SAPA! have been provided for in the total payment to SAPA! as specified in Section 4.1 above. Total payments to SAPA! cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement

of all parties, evidenced in writing and approved by the City.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to SAPA! following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than SAPA!, for the payment of any monies or the provision of any goods or services.

4.5 **NECESSITY OF TIMELY INVOICE/WAIVER OF PAYMENT.** NOTWITHSTANDING THE FORGOING, CITY CANNOT PAY FOR ANY SERVICES WITHOUT AN INVOICE. CONTRACTOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE SERVICES ARE RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 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.

## **V. OWNERSHIP OF DOCUMENTS/INTELLECTUAL PROPERTY**

5.1 Records, receipts, data, finished reports, or information produced by, or on behalf of, SAPA!, and any related responses, inquiries, (hereinafter referred to as “documents”) pursuant to the provisions of this Agreement are the exclusive property of City; and no such documents shall be the subject of any copyright or proprietary claim by SAPA!.

5.2 SAPA! understands and acknowledges that as the exclusive owner of such documents, City has the right to use all such documents as City desires, without restriction or further compensation to SAPA!. SAPA! shall deliver, at SAPA!’s sole cost and expense, all Agreement related documents and reports to the City in accordance with the dates established under this Agreement, and in a timely and expeditious manner, and if a delivery date is not specified, then upon termination of the Agreement.

5.3 SAPA! shall notify City immediately of any requests for information from a third party which pertain to documents obtained and/or generated pursuant to this Agreement. SAPA! understands and agrees that City will process and handle all such requests.

5.4 Both parties agree to display the name, emblem, or trademarks of the SAPA! and City only in the case of defined projects and only with the prior express written consent of the other party.

## **VI. RECORDS RETENTION**

6.1 SAPA! 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.

6.2 SAPA! 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, SAPA! shall retain the records until the resolution of such litigation or other such questions. SAPA! 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 SAPA! to return the documents to City at SAPA!'s expense prior to or at the conclusion of the retention period. In such event, SAPA! may retain a copy of the documents.

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

## **VII. TERMINATION**

7.1 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.

7.2 Termination Without Cause. This Agreement may be terminated by City or SAPA! upon 30 days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 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:

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

7.3.2 By its actions or statements, SAPA! materially harms the reputation of the City, as determined by the City in its reasonable judgment.

7.3.3 Any court, judicial body, or administrative agency makes a final determination that, following the Effective Date, SAPA! has violated any laws, ordinances, or governmental regulations pertaining to animal welfare, which violation constitutes abuse, mistreatment, or gross or repeated neglect of animals.

7.4 Defaults With Opportunity for Cure. Should SAPA! default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. SAPA! shall have 15 calendar days after receipt of the written notice, in accordance with Article

VIII. Notice, to cure such default. If SAPA! 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 SAPA!'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.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily as determined by Director

7.5 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.

7.6 Regardless of how this Agreement is terminated, SAPA! shall effect 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 SAPA!, or provided to SAPA!, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SAPA! 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 SAPA! sole cost and expense. Payment of compensation due or to become due to SAPA! is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAPA! 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 SAPA! 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 SAPA! of any and all right or claims to collect moneys that SAPA! may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 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 SAPA! 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  
Animal Care Services Department  
Attn: Director  
4710 State Highway 151  
San Antonio, TX 78227

If intended for SAPA!, to:

San Antonio Pets Alive!  
Attn: Executive Director  
P.O. Box 830006  
San Antonio, TX 78283

## **IX. INSURANCE**

9.1 Prior to the commencement of any work under this Agreement, SAPA! 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 "SAPA HVPP Agreement" 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.

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 SAPA!'s financial integrity is of interest to the City; therefore, subject to SAPA!'s right to maintain reasonable deductibles in such amounts as are approved by the City, SAPA! shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAPA!'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

9.4 SAPA! agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of SAPA! herein, and provide a certificate of insurance and endorsement that names the SAPA! and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of SAPA!. 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 required endorsements. SAPA! shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. SAPA! 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

9.6 SAPA! 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.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAPA! shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend SAPA!'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 SAPA!'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 SAPA! to stop work hereunder, and/or withhold any payment(s) which become due to SAPA! hereunder until SAPA! demonstrates compliance with the requirements hereof.

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

9.10 It is agreed that SAPA!'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 SAPA! and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **X. INDEMNIFICATION**

**10.1 SAPA! 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 SAPA!'s activities under this Agreement, including any acts or omissions of SAPA!, any agent, officer, director, representative, employee, consultant or subcontractor of SAPA!, 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 SAPA! 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.**

10.2 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. SAPA! shall advise the City in writing within 24 hours of any claim or demand against the City or SAPA! known to SAPA! related to or arising out of SAPA!'s activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAPA!'s cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAPA! of any of its obligations under this paragraph.

10.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by SAPA! in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. SAPA! 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 SAPA! fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and SAPA! 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.

10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of SAPA!, 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 SAPA! or any subcontractor under worker's compensation or other employee benefit acts.

## **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 Except as otherwise stated herein, SAPA! 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, SAPA! 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.

11.2 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 SAPA! 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 SAPA! 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 SAPA! shall in no event release SAPA! from any obligation under the terms of this Agreement, nor shall it relieve or release SAPA! from the payment of any damages to City, which City sustains as a result of such violation.

## **XII. INDEPENDENT CONTRACTOR**

SAPA! covenants and agrees that it is an independent Contractor and not an officer, agent, servant or employee of City; that SAPA! 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 SAPA!, 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 SAPA!. 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 SAPA! under this Agreement and that SAPA! has no authority to bind the City.

## **XIII. CONFLICT OF INTEREST**

15.1 SAPA! 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 Part B, Section 10 of 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.

15.2 Pursuant to the subsection above, SAPA! 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. SAPA! further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

## **XIV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and SAPA! and evidenced by the passage of a subsequent City ordinance, as to the City’s approval; provided, however, during the term of the Agreement and subject to funding availability, the Director of the Animal Care Services Department shall have the authority to execute amendments of this Agreement without further action by the San Antonio City Council,

1) to modify the amount of funding under this Agreement for adjustments to the number of Qualifying Animals rescued and 2) to adjust the amount SAPA! is paid per Qualifying Animal.

## **XV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

Non-discrimination. As a condition of entering into this Agreement, SAPA! represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IILC.1 of the SBEDA Ordinance. As part of such compliance, SAPA! shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall SAPA! retaliate against any person for reporting instances of such discrimination. SAPA! shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. SAPA! understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of SAPA! from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. SAPA! shall include this nondiscrimination clause in all subcontracts for the performance of this Agreement.

## **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**

SAPA! warrants and certifies that SAPA! 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**

SAPA! 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 by the City, as described in Article XIV. 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**

**20.1 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.**

20.2 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 SAPA! represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of SAPA! and to bind SAPA! 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. 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 XIV. Amendments.

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

**CITY OF SAN ANTONIO**

**SAN ANTONIO PETS ALIVE!**

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

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