

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Memorandum of Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”), acting by and through its City Manager, or her designee (hereinafter referred to as “Manager”), on behalf of the City’s Department of Animal Care Services (hereinafter referred to as “ACS”) pursuant to Ordinance No. _____, and the San Antonio Humane Society (hereinafter referred to as “SAHS”), both of which may be referred to herein collectively as the “Parties.”

I. DEFINITIONS

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

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

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

“Stray animal” shall mean a dog or cat initially impounded at the ACS facility and then transferred by SAHS during the stray hold period to a SAHS facility to be held for the appropriate stray hold period, consistent with Chapter 5 of the City Code for the City of San Antonio.

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

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, 2017 and will continue until September 30, 2018 or terminated by either party in accordance with this Agreement.

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

III. SAN ANTONIO HUMANE SOCIETY OBLIGATIONS

3.1 The SAHS shall undertake the following activities during the term of the Agreement as set out below:

3.1.1 Unless unavailable as determined by ACS, SAHS will select stray animals brought to ACS both over the counter, in the trucks or by any other means impounded by ACS and provide safe, healthy housing at SAHS’s facilities for all selected ACS impounded stray animals in SAHS’s care for a “stray hold period” consistent with Article VII of Chapter 5 of the City Code, as may be amended, attached hereto and incorporated herein for all purposes as

Attachment I. During the stray hold period, SAHS shall be the designated caretaker of all stray animals transferred from ACS.

- 3.1.2 Assist in contacting owners when identification such as a tag or microchip is found on the stray animal in SAHS's care and finalize return to owner transactions as applicable.
- 3.1.3 Follow all relevant laws and regulations regarding Chapter 5 of the City Code, as may be amended, including but not limited to Article VII, attached hereto as Attachment I, which includes ensuring all reclaimed animals have a current rabies vaccination and microchip.
- 3.1.4 Provide proper medical care that may be required for the stray animals in SAHS's care to include but not limited to, vaccinations and sterilization surgeries.
- 3.1.5 Boarding, vaccination and any other reclamation fees pursuant to SAHS's established fees will be paid by the owner to SAHS at the SAHS facility. SAHS agrees and understands any citation fees and/or fines related to the stray animals will be processed through the relevant court.
- 3.1.6 All stray animals housed at SAHS's location which are not reclaimed by their owners within City's required stray hold period shall become the property of SAHS at the end of the stray hold period and shall thereafter be considered a rescued animal and be admitted into SAHS's rescue program for further disposition.
- 3.1.7 Communicate with ACS shelter manager or their designee whenever a stray animal on stray hold at SAHS's location is reclaimed by its owner.
- 3.1.8 SAHS shall maintain records and documentation pertaining to the disposition of all animals housed by SAHS under this Agreement. Information to be maintained by SAHS shall include, but is not limited to, information and documentation related to the stray animals' care, reclamation, adoption and sterilization. Upon ACS' request, SAHS shall make such records available to ACS. City shall have the right to modify the required documentation to be maintained by SAHS.
- 3.1.9 SAHS will provide data to ACS to ensure proper adherence and compliance with this Agreement, if requested by ACS.

IV. CITY OBLIGATIONS

- 4.1 ACS shall undertake the following activities during the duration of this Agreement:
 - 4.1.1 Ensure adherence of SAHS to applicable City laws and regulations and program guidelines.

- 4.1.2 Review and approve all documentation evidencing SAHS's performance of services as set forth in this Agreement and monitor SAHS's compliance with the Agreement.
- 4.1.3 Ensure all stray animals are properly impounded and entered into the ACS Chameleon system. ACS shall also note the stray animal's location as "San Antonio Humane Society" and listed as "available" to ensure that photos are loaded onto website(s) for viewing by a possible owner or adopter.
- 4.1.4 Ensure that, at the end of the stray hold period, all stray animals being housed at SAHS's location that are not reclaimed by an owner, are considered as rescues to SAHS.
- 4.1.5 Communicate to SAHS when an owner contacts ACS to reclaim a stray animal being housed at SAHS's location.

4.2 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

5.1 Any and all writings, documents or information in whatsoever form and character produced by SAHS 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 SAHS.

5.2 SAHS 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.

VI. RECORDS RETENTION

6.1 SAHS 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.

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

6.3 SAHS shall notify City, immediately, in the event SAHS receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAHS 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 Contract term as stated above, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated without cause by either party upon thirty (30) calendar days written notice to the other party, which notice shall be provided in accordance with this Agreement.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with this Agreement, either party 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 this Agreement.
- 7.3.2 The commission of fraud or any illegal act, or such other material breach which cannot be immediately cured.
- 7.3.3 Failure to comply with Chapter 5 of the City Code for the City of San Antonio, or any other action or omission inconsistent with the mission of the City and ACS.

7.4 Defaults With Opportunity for Cure. Should SAHS default in the performance of this Agreement in a manner stated below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. SAHS shall have ten (10) calendar days after receipt of the written notice, to cure such default. If SAHS fails to cure the default within such ten-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.

- 7.4.1 Failing to perform or failing to comply with any covenant herein required.
- 7.4.2 Performing unsatisfactorily as determined by the City.

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

7.8 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 SAHS for any default hereunder or other action.

VIII. NOTICE

8.1 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 SAHS, to:

San Antonio Humane Society
Attn: Nancy May, President/CEO
4804 Fredericksburg Road
San Antonio, Texas 78229

IX. INSURANCE REQUIREMENTS

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

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

9.3 SAHS's financial integrity is of interest to the City; therefore, subject to SAHS's right to maintain reasonable deductibles in such amounts as are approved by the City, SAHS shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAHS'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 2. Employers' Liability	Statutory \$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. Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	\$100,000.00

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

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

9.5 SAHS 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, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

9.7 In addition to any other remedies the City may have upon SAHS'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 SAHS to stop work hereunder, and/or withhold any payment(s) which become due to SAHS hereunder until SAHS demonstrates compliance with the requirements hereof.

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

9.9 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.

9.10 SAHS and any subcontractors are responsible for all damage to their own equipment and/or property.

X. CONFIDENTIALITY

10.1 Both Parties acknowledge that in connection with the services to be performed under this Agreement, the Parties may be acquiring and making use of certain confidential information which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/records, and other materials or records of a proprietary nature (hereinafter referred to as "Confidential Information"). Therefore, in order to protect the Confidential Information, the Parties shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the other Party consents in writing to such use or

divulgence or disclosure is required by law. In the event that either Party receives a request or demand for the disclosure of Confidential Information, the Party shall immediately provide written notice to the other Party of such request or demand, including a copy of any written element of such request or demand.

XI. INDEMNIFICATION

11.1 SAHS 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 or 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 SAHS's activities under this AGREEMENT, including any acts or omissions of SAHS, any agent, officer, director, representative, employee, consultant or subcontractor of SAHS, and their respective officers, agents, employees, directors and representatives while in the exercise of rights or performance of the duties under this AGREEMENT, including the acts or omissions of Consultant. 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 SAHS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

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

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Except as otherwise stated herein, SAHS 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 Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, SAHS shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor, assignee, transferee, or subcontractor.

12.2 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 SAHS 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 SAHS shall thereupon cease and terminate, in accordance with this Agreement, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by SAHS shall in no event release SAHS from any obligation under the terms of this Agreement, nor shall it relieve or release SAHS from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 SAHS covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that SAHS 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, consultants, subcontractors and contractors; that the doctrine of respondeat superior shall not apply as between City and SAHS, its officers, agents, employees, consultants, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SAHS. 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 SAHS or its Consultant under this Agreement and that the SAHS has no authority to bind the City.

XIV. AMENDMENTS

14.1 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 SAHS.

XV. SEVERABILITY

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

similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. COMPLIANCE

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

XVII. NONWAIVER OF PERFORMANCE

17.1 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. 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.

XVIII. LAW APPLICABLE

18.1 **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.**

18.2 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.

XIX. LEGAL AUTHORITY

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

XX. PARTIES BOUND

20.1 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.

XXI. CAPTIONS

21.1 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.

XXII. ENTIRE AGREEMENT

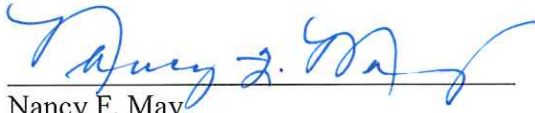
22.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the City and SAHS.

EXECUTED and **AGREED** to this the 27th day of _____, 2017.

CITY OF SAN ANTONIO:

Heber Lefgren
Director, Animal Care Services

SAN ANTONIO HUMANE SOCIETY:



Nancy F. May
President/CEO

Approved as to Form:

City Attorney

