

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 Animal Care Services Department (hereinafter referred to as "ACS") and Lost Dogs of Texas (hereinafter referred to as "LDOT"), both of which may be referred to herein collectively as the "Parties."

WHEREAS, LDOT is a nonprofit engaged in a wide range of activities oriented around reuniting pet owners with their lost pets; and,

WHEREAS, ACS is a department of the City of San Antonio working on collaborative solutions to end stray animal population and reducing the euthanasia of dogs and cats in the City of San Antonio and Bexar County, Texas; and

WHEREAS, ACS aims to foster cooperation between companion animal rescue groups, humane societies, and other animal control agencies serving the greater San Antonio area; and,

WHEREAS, the Parties' objective is to maximize the opportunities to reunite stray animals with their owners after being impounded by ACS; and

WHEREAS, LDOT desires to provide services to ACS pertaining to lost pets in order to reunite pets with their owners (the "Project"); and

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

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;

"LDOT" 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 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. LOST DOGS OF TEXAS' OBLIGATIONS

3.1 The LDOT shall undertake the following activities as set out under the terms of this Agreement:

- 3.1.1 LDOT will provide services to ACS for the sole purpose of assisting ACS in the contacting of owners of animals impounded at ACS.
- 3.1.2 LDOT will utilize information provided by ACS and search public databases, social media sites and various online resources in order to seek further or more current information on impounded animal owners. LDOT shall further research the information and look for new information.
- 3.1.3 LDOT contact with pet owners shall be limited to relaying, via email, mail or phone, reclaim information and/or a point of contact at ACS for the owner, to include the following reclaim and contact information:
 - a) Pets must be reclaimed by 11a.m. on their live release date or can be dispositioned to another adopter, rescue or euthanized.
 - b) Owners must go to the ACS facility at 4710 Highway 151 during business hours (Monday-Friday, 11am-7pm & Saturday-Sunday 11am-5pm).
 - c) Proof of ownership must be shown – Pictures or medical records.
 - d) Owners may email ACS at acscustomnerservice@sanantonio.gov with the animal identification number (AID) with any questions, quotes on fees, concerns or to owner surrender pets.
- 3.1.4 LDOT shall not discuss reclaim fees, circumstances under which the animals were found, an animal's medical or physical condition, or any other information not specifically set out above.
- 3.1.5 LDOT will not physically visit any address to speak to owners or potential owners.

- 3.1.6 If a new address is found by LDOT, LDOT will notify ACS and ACS will handle sending information via a 'door-knocker' to the house.
- 3.1.7 LDOT will provide any data to ACS as may be required by ACS to ensure proper adherence and compliance with this Agreement.
- 3.1.8 City policies regarding access to confidential information will be followed by LDOT. LDOT assumes full responsibility for any breach of confidence with regard to activities under this Agreement.

IV. CITY OBLIGATIONS

- 4.1 ACS shall undertake the following activities during the duration of this Agreement:
 - 4.1.1 ACS will provide any information obtained on the owners from ACS records of previous transactions, given to ACS by third parties, or obtained through ACS own searches of public records, utility records and social media outlets.
 - 4.1.2 ACS will provide basic information on the animals to include animal identification number for ACS tracking, microchip number, breed, color and gender.
 - 4.1.2 Review and approve all documentation evidencing LDOT's performance of services as set forth in this Agreement and monitor LDOT's compliance with the Agreement.
- 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 LDOT 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 LDOT.
- 5.2 LDOT 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 LDOT 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 LDOT 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, LDOT shall retain the records until the resolution of such litigation or other such questions. LDOT 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 LDOT to return the documents to City prior to or at the conclusion of the retention period.

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

7.2 Termination Without Cause. This Agreement may be terminated without cause by the City 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, 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 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 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.

7.5 Upon the effective date of expiration or termination of this Agreement, LDOT shall cease all operations of work being performed by LDOT 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 LDOT 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 HWY 151
San Antonio, Texas 78227

If intended for LDOT, to:

Lost Dogs of Texas
Attn: Marilyn Knapp Litt
15842 Portillo Drive
Corpus Christi, Texas 78418

IX. INSURANCE REQUIREMENTS

LDOT shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability. In no event shall the CITY be required to maintain any insurance coverage for the LDOT or held liable for the actions or injuries whether it be property or bodily as a result caused by the contracted.

X. CONFIDENTIALITY

10.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by LDOT under this Agreement shall be disclosed or made available to any individual or organization by LDOT without the express prior written approval of the City. If LDOT receives inquiries regarding documents within their possession pursuant to this Agreement, LDOT shall immediately forward such requests to City for disposition.

LDOT shall comply with laws, regulations and rules pertaining to confidentiality and shall establish a method to secure the confidentiality of documents and information that LDOT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.

10.2 LDOT and its permitted subcontractors shall make no use of the information supplied by the City hereunder, or assembled by LDOT under this contract, except for the purpose of providing services pursuant to this Agreement. LDOT and its subcontractors further shall not sell, transfer, assign or otherwise make available to any other party, whether for consideration or for no consideration, the information supplied by the City hereunder without the express prior written consent of the City.

XI. INDEMNIFICATION

11.1 LDOT 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 LDOT's activities under this AGREEMENT, including any acts or omissions of LDOT, any agent, officer, director, representative, employee, consultant or subcontractor of LDOT, 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 LDOT 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. LDOT shall advise the City in writing within 24 hours of any claim or demand against the City or LDOT, related to or arising out of LDOT's activities under this Agreement and shall see to the investigation and defense of such claim or demand at LDOT's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving LDOT 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 LDOT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. LDOT 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 LDOT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and LDOT 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, LDOT 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, LDOT 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 LDOT 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 LDOT 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 LDOT shall in no event release LDOT from any obligation under

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

XIII. INDEPENDENT CONTRACTOR

13.1 LDOT covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that LDOT 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 LDOT, 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 LDOT. 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 LDOT under this Agreement and that the LDOT 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 LDOT.

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 LDOT 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 LDOT represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of LDOT and to bind LDOT 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 LDOT.

EXECUTED and **AGREED** to this the 26 day of October, 2017.

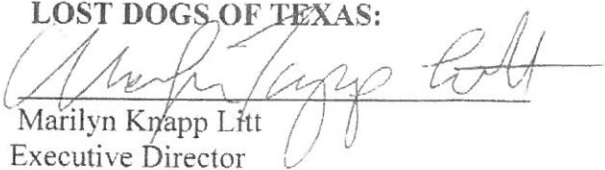
CITY OF SAN ANTONIO:

Heber Lefgren
Director
Animal Care Services

Approved as to Form:

City Attorney

LOST DOGS OF TEXAS:



Marilyn Knapp Litt
Executive Director