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AMENDMENT TO FUNDING AGREEMENT FOR THE STRAY ANIMAL KENNELS PROJECT

This Amendment to the Funding Agreement for the Stray Animal Kennels Project is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City” or “Grantor”) and the Animal Defense League of Texas (“ADL” or “Grantee”), collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS, pursuant to City Ordinance No. 2013-05-30-0355, the Parties entered into a Funding Agreement (“Agreement”) for a 25 year term whereby the City granted ADL an amount not exceed \$2,200,000.00 for a Stray Animal Kennels Project (“Project”) at 11300 Nacogdoches Drive (“Project Site”), as described in *Exhibit I*. attached and incorporated herein for all purposes; and

WHEREAS, in accordance with Article XVIII. Changes and Amendments of the Agreement, the Parties would like to amend this Agreement to: (1) specify animals eligible for reimbursement to include rescues from local residents and exclude returned animals; (2) set an annual number requirement of animals to be rescued from the City’s ACS facility; (3) require City approval and coordination of the animal intake process at the Project Site; (4) provide ADL with an option to defer its animal rescue commitment by one year but not more than five (5) years in order to maximize the number of pets being rescued under the agreement; (5) stipulate that the transfer of ownership of the kennel facility shall be deferred until ADL meets its minimum animal rescue obligations; and (6) provide the City Manager or designee discretion to amend the Funding Agreement to adjust the number of animals required to be rescued directly from the ACS Facility; **NOW THEREFORE**, The Parties agree to amend the Agreement as follows:

1. Section 4.02 of the Agreement is amended to read as follows:

4.02 Grantee shall provide the following services from the completed Project throughout the term of this Agreement:

(A) Minimum Animal Rescue Obligation. Grantee shall rescue of a minimum of 3,184 dogs and cats per year. Any shortage shall be reflected as unmet animal rescue obligation under this Agreement. For the purposes of this Agreement, “Rescue” shall mean the permanent transfer of physical custody and ownership of a dog or cat from the City to Grantee.

- i. *Eligible Animals.* Solely dogs or cats rescued from the City’s ACS facility; dogs or cats surrendered to City at Project Site, by such animals’ lawful owner(s) so long as the owner provides proof of residency in the City of San Antonio; and stray dogs or cats dropped off at Project Site and impounded by City count in the minimum animal rescue obligation.
- ii. *Excluded Animals.* Dogs or cats previously rescued by Grantee and adopted that are returned to ACS within 365 days of the adoption though Grantee will not count as an additional rescue animal in the minimum animal rescue obligation.

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- (B) Rescues from ACS. Grantee shall rescue at least 3,100 eligible animals per year directly from the City's ACS facility under this Agreement and any other contract arrangement with the City.
- i. Grantee shall cooperate with City in evaluating the feasibility of implementing transfer procedures to allow ACS to drop off rescue animals at the Project's facility/Project Site or any other facility managed by Grantee. If found to be beneficial, both Parties may implement said transfer procedures upon mutual agreement without further action by the San Antonio City Council action.
 - ii. As necessary throughout the term hereof the City Manager or designee shall have the authority to execute amendments to this Agreement on behalf of the City to adjust the number of animals specifically required to be rescued directly from the City's ACS facility and upon mutual agreement by both Parties without further action by the San Antonio City Council.
- (C) Rescues from Local Residents. Grantee may accept and intake dogs or cats surrendered to City at the Project Site by residents of the City of San Antonio.
- i. *Project Site Intakes.* Grantee understands and agrees that Grantee shall obtain the ACS Director's prior written approval of the intake process to accept dogs or cats at the Project Site from residents of the City of San Antonio, in order for such animal to count in the minimum animal rescue obligation. ACS will submit any media plans and press releases relating to Grantee's public intake process to Grantee for approval prior to release or implementation by ACS.
 - ii. *Owner Surrendered Animals.* Upon transfer of physical custody of an eligible animal at the Project Site by a local resident, Grantee shall obtain the following:
 - (1) proof of animal ownership;
 - (2) proof of residency in the City of San Antonio from the animal's owner; and,
 - (3) documentation establishing transfer of ownership of said animal to the City.
 - iii. *Stray Animals.* In the event a stray animal from a local resident is dropped off at the Project Site, Grantee shall obtain proof of residency from the person who dropped off the animal and obtain the ACS Director's prior written approval to coordinate with the City's ACS animal control officers to impound such animals. The ACS Director shall have the discretion to approve whether said animals to count in the minimum animal rescue obligation.
- (D) Grantee shall maintain a minimum of 90% Live Release rate for all rescued animals subject to this Agreement.

2. Section 5.04 of the Agreement is amended to read as follows:

- 5.04 At the end of Grantee's 25-year lease of the new kennel facility from City, ownership of the kennel facility shall transfer to Grantee at no additional cost to Grantee, unless Grantee exercises the option to defer, as described in Section 5.05 (B) of this Agreement and in such event ownership of the kennel facility may not transfer to Grantee until

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Grantee has met its obligations due under this Agreement or this Agreement is otherwise terminated.

3. Section 5.05 the Agreement is amended to read as follows:

5.05 In the event Grantee is unable to meet the annual minimum animal rescue commitment as prescribed in Section 4.02 of this Agreement, at any time during its lease term, Grantee shall annually reimburse City in an amount calculated as follows:

$$\text{Reimbursement Amount} = \frac{(3,184) - (\text{\#of actual eligible animals rescued per year})}{3,184} \times \frac{\$2,134,000.00}{25}$$

- (A) In the event of a natural disaster or a catastrophic occurrence which is, in the sole determination of the ACS Director, which shall be reasonably exercised, (a) beyond Grantee's control and not due to Grantee's fault or negligence, and (b) which materially adversely affects Grantee's ability to perform animal intake for more than two weeks, the annual animal rescue commitment and thus the reimbursement amount may be adjusted.
- (B) Option to Defer. Grantee shall have the option to defer its unmet animal rescue commitment to the following year provided that Grantee is in compliance with Section 4.02 (B) of this Agreement and that Grantee informs City thirty (30) days prior to Annual Report due date, prescribed in Section 2.09 of this Agreement.
 - i. If Grantee is unable to meet the Minimum Animal Rescue Obligation prescribed in Section 4.02 of this Agreement or Reimbursement Amount due as provided in Section 5.05 above, this Agreement may extend under mutual agreement by both Parties and, subject to City Council approval under the same terms and conditions for one year, but not more than five (5) years after the initial term.
 - ii. In the event, deferred obligations remain outstanding ninety (90) days prior to expiration of the Agreement, Grantee shall pay City for the outstanding unmet animal rescue obligations, at a rate of \$27.00 per animal no later than thirty (30) days prior to the termination of the mutually agreed upon extension period.
 - iii. Grantee agrees and understands that the transfer of ownership for the kennel facility shall be deferred until Grantee meets its obligations under this Agreement.
 - iv. This section shall not be interpreted to mean that Grantee shall rescue an additional 3,184 animals for each year the Agreement is extended, only that Grantee shall be provided an extension period to rescue animals as part of their deferred obligations from the initial term of this Agreement.

Signatures on the following page

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3. This Amendment shall be effective upon the execution of the Parties.

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

CITY OF SAN ANTONIO

GRANTEE: Animal Defense League of Texas

Erik Walsh
City Manager

Date:_____

Joel McLellan
Executive Director

Date:_____

ATTEST

City Clerk

APPROVED AS TO FORM

City Attorney