

HIGH-VOLUME PET PARTNERSHIP AGREEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

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This High-Volume Pet Partnership Agreement (“Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) and San Antonio Pets Alive! (SAPA!), collectively referred to as the “Parties” and individually as a “Party”.

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

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’s live release rate; and

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

WHEREAS, SAPA! is a non-profit organization that is dedication 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 assistance with the management of a high-olume of animals from ACS; and

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

WHEREAS, the purpose of this Agreement is to outline the collaboration of the Parties regarding the rescue of stray animals held at the ACS Campus and define the obligations and expectations of the Parties;
NOW THEREFORE:

I. DEFINITIONS

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

- 1.1 **Animal** - For the purposes of this agreement shall mean both cats and dogs.
- 1.2 **ACS** - The City’s Animal Care Services Department.
- 1.3 **HVPP Building** - The building/space provided to SAPA! by ACS located at the ACS facility to be used by SAPA! solely for the operation of activities under this Agreement.
- 1.4 **City** - The City of San Antonio as described in the preamble of this Agreement and includes its successors and assigns.
- 1.5 **Director** - The Director of the City’s Animal Care Services Department or director’s designee.
- 1.6 **Rescue** - The permanent transfer of physical custody and ownership of an animal to SAPA! or its affiliates from ACS.
- 1.7 **SAPA!** - San Antonio Pets Alive! as described in the preamble of this Agreement and includes its successors.

- 1.8 ***SAPA! Baseline*** - 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 City Fiscal Year 2021 the SAPA! Baseline shall mean 100 animals.
- 1.9 ***Stray Animals*** – Dog or cat initially impounded at the ACS facility and then transferred by SAPA! during the stray hold period to the HVPP Building to be held for the appropriate stray hold period, consistent with Chapter 5 of the City Code for the City of San Antonio.
- 1.10 ***Qualifying Animal*** – Dog or cat rescued by SAPA! above the SAPA! Baseline since October 1st of the current City fiscal year.

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on October 1, 2020 and terminate on September 30, 2021.
- 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 SAPA!’S OBLIGATIONS.

SAPA! agrees to undertake the following activities during the term of this Agreement:

- 3.1.1 SAPA! will rescue Qualifying Animals from ACS during the term of this Agreement.
- 3.1.2 Upon availability, as solely determined by ACS, SAPA! may select stray animals brought to ACS over the counter, in trucks or by other means impounded by City. SAPA! will provide safe housing and care for selected stray animals at the HVPP Building on the ACS campus for a “stray hold period” consistent with Article VII of Chapter 5 of the City Code, as may be amended from time to time.
- a. During the stay hold period of impounded animals, SAPA! shall be designated the caretaker of all selected stray animals in SAPA!’s care!
 - b. SAPA! shall be responsible for removing the animals from ACS kennels no later than one (1) hour after the animal transfer is approved by ACS.
 - c. SAPA! shall ensure that animals transferred from ACS to SAPA! remain at the HVPP Building until the end of their stray hold period.
 - d. SAPA! shall assist City in contacting animal owners when identification such as a tag, microchip is found on the stray animal in SAPA!’s care and finalize return to owner transactions as applicable. SAPA! will notify ACS if owner information is found that differs from information in ACS records.
 - e. SAPA! ensure that all reclaimed animals in SAPA!’s care have a current rabies vaccination and microchip in accordance with Chapter 5 of the City Code Article VII of Chapter 5 City Code.

- f. SAPA! shall take ownership of all selected stray animals which are not reclaimed by their owners within the required stay hold period. Thereafter, said stray animals will be considered rescued animals and admitted into SAPA!'s rescue program for placement.
 - g. SAPA! may not return to City any stray animal(s) selected during the stray hold period of such animal(s).
 - h. Boarding, vaccination and any other reclamation fee of rescue animals will be payable by the animal owner to SAPA! at SAPA!'s facility pursuant to SAPA!'s established fees, except for any citation fees and/or fines related to the stray animals, which will be processed through the relevant court.
 - i. SAPA! staff and volunteers shall wear identifying apparel or badges while performing activities under this Agreement.
 - j. SAPA! staff and volunteers shall follow all relevant laws and regulations.
- 3.1.3 SAPA! will provide humane housing and proper care of all rescue animals subject to this Agreement at its expense. Humane housing shall include shelter from sun, wind, extreme temperatures and rain. In addition, animals must not be commingled or overcrowded unless it is appropriate to do so. SAPA! understands and agrees to the following:
- a. SAPA! will provide food, water, shelter, and appropriated veterinary care for as long as such animals remain under the care and control of SAPA!
 - b. SAPA! will make sure animals subject hereto receive adequate stimulation, and appropriate veterinary care to include sterilization and plenty of exercise.
 - c. SAPA! will provide all rescue animals proper medical care as may be required, including vaccinations and sterilization.
 - d. SAPA! will ensure that each rescue animal is sterilized prior to the animal leaving the care and control of SAPA!. However, subject to ACS funding availability as determined by Director, animals rescued by SAPA! will be sterilized through ACS. SAPA! agrees that ACS may choose to not do sterilization surgeries for SAPA! rescued animals.
 - e. SAPA! will obtain and maintain all appropriate permits and licenses as may be required in order to remain in good standing with City.
 - f. SAPA! will inform ACS of any disease outbreak at the HVPP Building or any SAPA! facilities upon confirmation of an outbreak.
 - g. SAPA! shall take sole responsibility for the care of all animals kept in the HVPP Building.
 - h. No animal subject to this Agreement shall be euthanized for reason of lack of space at the HVPP Building or for any other reason, except only in the event of an animal's severe or non-treatable illness.

- 3.1.4 SAPA! will keep the HVPP Building in a clean and safe condition.
- a. SAPA! will be responsible for any damage outside of normal wear and tear.
 - b. SAPA! shall not make alterations, improvements or changes to the HVPP Building.
 - c. SAPA! shall deliver all keys, key cards, and other access devices to the HVPP Building upon expiration of the term of this Agreement.
- 3.1.5 MONTHLY REPORTS. SAPA! shall provide City a report every month, which shall be due on the 10th day of the month. Monthly reports shall include the number of animals rescued and the current status of those animals..
- a. The status outcome of all rescue animals shall be categorized as either:
 - (1) currently in SAPA!'s care;
 - (2) adopted;
 - (3) transferred to another rescue organization;
 - (4) returned to ACS; or
 - (5) died/euthanized in SAPA!'s care.
 - b. Upon request, SAPA! will make available to City specific data regarding rescue animals, animal identification, status outcome, as described above in Section 3.1.4 a., and the zip code location of any rescue animal. This does not encompass internal SAPA! communications or other animals not covered under this Agreement.
 - c. Any previous rescue animal that is returned to ACS will not be counted as a Qualifying Animal under this Agreement and subsequently SAPA! shall not receive additional fiscal compensation for said previously rescued animal.
 - d. SAPA! will maintain documentation pertaining to the disposition of all animals, subject to this Agreement, including but not limited to, information and documentation related to the stray animal's care, reclamation, adoption and sterilization. Upon ACS's request, SAPA! will make such documents and information available to ACS. City shall have the right to modify the required documentation to be maintained by SAPA!.
 - e. SAPA! will maintain documentation pertaining to the disposition of all animals, subject to this Agreement, including but not limited to, information and documentation related to the stray animal's care, reclamation, adoption and sterilization. Upon ACS's request, SAPA! will make such documents and information available to ACS. City shall have the right to modify the required documentation to be maintained by SAPA!.
- 3.1.6 SAPA! will submit to City for review and approval not less than 48 hours in advance of the proposed dissemination date of any publicity related to SAPA!'s collaboration with City or activities at an ACS facility. Publicity information and materials may not be disseminated or published without the express approval of Director.
- 3.1.7 SAPA! shall allow City staff access to conduct random unannounced inspections of the HVPP Building, all animals, animal records, and information related to selected rescue animals as necessary to assess compliance with this Agreement.

3.2 **CITY'S OBLIGATIONS.**

City agrees to undertake the following activities during the duration of this Agreement:

- 3.2.1 City will ensure all stray animals are properly impounded and entered into the ACS Chameleon system. ACS will note the stray animal's location as "SAPA!" and list the stray animal as "available" to ensure photos are loaded onto the Parties website(s) for viewing by a possible owner or adopter.
- 3.2.2 City agrees to make animals available to SAPA! for rescue unless unavailable as determined by ACS.
 - a. ACS will communicate to SAPA! when an owner of a stray animal contacts ACS to reclaim a his/her animal.
 - b. ACS will certify that at the end of the City stray hold period all stray animals in SAPA!'s care that are not reclaimed by an owner are eligible considered rescue animals of SAPA!
 - c. ACS will provide all animals transferred from ACS kennels a distemper/parvo vaccine and intra nasal Bordetella. If an animal has not received these vaccines SAPA! will be notified prior to accepting such animal.
 - d. ACS will communicate to SAPA! when an owner of a stray animal contacts ACS to reclaim a his/her animal.
 - e. ACS will utilize established best practices for shelter medicine and sanitation and will inform SAPA! of disease outbreaks in ACS kennels.
- 3.2.3 City agrees to provide SAPA! access to the HVPP Building for the operation of activities described under this Agreement. No other organization, rescue group, or shelter may have use of the HVPP Building during the term of this Agreement without prior approval of the ACS Director and Director of Operations of SAPA!
 - a. ACS will seek SAPA!'s pre-approval before placing other animals in the HVPP Building.
 - b. ACS will be responsible for the facility upkeep of the HVPP Building. SAPA! will incur no charge for rent, maintenance or property insurance for the use of the HVPP Building, save for designated staff, volunteers, and supplies.
 - c. ACS will provide basic supplies needed to clean the kennels in the HVPP Building
 - d. City will re-key and restrict access to HVPP Building to key staff and SAPA! staff volunteers working at ACS for the purpose of animal intake.
- 3.2.4 ACS will review and approve all documentation pertaining to the disposition of all animals housed by SAPA! subject to this Agreement..
- 3.2.5 Any publicity efforts by ACS related to its collaboration with SAPA! shall be submitted to SAPA! for review and approval not less than 48 hours in advance of the proposed dissemination date. Publicity information and materials may not be disseminated or published without the express approval of SAPA!.

- 3.2.6 ACS will assess SAPA!'s compliance with this Agreement and adherence with applicable laws and regulations.
- 3.3. All work performed by SAPA! under this Agreement shall be performed to the satisfaction of Director. The Director's determination shall be final, binding and conclusive on the Parties. 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 in this Agreement, even should City not elect to terminate.

IV. COMPENSATION

- 4.1 In consideration of SAPA!'s satisfactory and efficient performance, as determined solely by Director, of all services and activities set forth in this Agreement, the City agrees to pay SAPA! an amount not to exceed Three Hundred Thirty Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$330,750.00), in total compensation to be paid as follows:
- 4.1.1 RATE: City will pay SAPA! at a rate of \$75.00 per Qualifying Animal for a maximum of 4,410 Qualifying Animals.
- 4.1.2 Within 30 days of this contract, City will pay SAPA! \$105,000.00. This payment shall be a prepayment for the first 1,400 Qualifying Animals. In the event this Agreement is terminated prior to SAPA! achieving 1,400 Qualifying Animals, SAPA! shall immediately return all pre-paid unearned funds to City when the notice of termination is submitted by the terminating Party.
- 4.1.3 After SAPA! achieves the initial 1,400 Qualifying Animals, SAPA! will be compensated \$75.00 per Qualifying Animal for which SAPA! will invoice the City monthly as set out below in Section 4.2 of this Agreement.
- 4.2 INVOICES. 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 either in .pdf format electronically to accountspayable@sanantonio.gov with a carbon copy to ACS Rescue/Foster Supervisor or mail 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 fee or expense of SAPA! shall be charged by SAPA! nor be payable by City. The Parties 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 the Parties, evidenced in writing and approved by 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 The 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 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 request 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 thirty 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 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 fifteen calendar days after receipt of the written notice, in accordance with Article 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 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 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 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 3 calendar 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 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. NON-DISCRIMINATION

As a party to this contract, SAPA! understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

X. INSURANCE

- 10.1 Prior to the commencement of any work under the Agreement, SAPA! shall furnish copies of a completed Certificate(s) of Insurance to City's Government and Public Affairs Department, which shall be clearly labeled "**SAPA HVPP Agreement**", in the Description of Operations block of the certificate. Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. 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. City shall have no duty to pay or perform under the Agreement until such certificate and endorsements have been received and approved by the City's Government and Public Affairs Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.
- 10.2 City reserves the right to review the insurance requirements of this Article during the effective period of the Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions; or circumstances surrounding the Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- 10.3 SAPA!'s financial integrity is of interest to City; therefore, subject to SAPA!'s right to maintain reasonable deductibles in such amounts as are approved by City, SAPA! shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at SAPA!'s sole expense, 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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,00
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage \$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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

- 10.4 SAPA! agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of SAPA! under this Agreement and provide a certificate of insurance and endorsement that names SAPA! and City as additional insureds. SAPA! shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based

upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- 10.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies; declaration page and all endorsements 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 or the underwriter of any such policies). SAPA! shall be required to comply with any such request and shall submit a copy of the replacement certificate of insurance to City at the address provided for City in Article VIII of this Agreement within ten days of the requested change. SAPA! shall pay any cost incurred resulting from said changes. All notices under this Article shall be given to City at the address listed for the City in Article VIII. of this Agreement.
- 10.6 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 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 calendar days advance notice for nonpayment of premium.
- 10.7 Within five 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 the Agreement.
- 10.8 In addition to any other remedies 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, City shall have the right to order SAPA! to stop work and/or withhold any payment(s) which become due, to SAPA! until SAPA! demonstrates compliance with the requirements hereof.
- 10.9 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 the Agreement.
- 10.10 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.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

- 10.12 SAPA! and any subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **SAPA! covenants and agrees to: FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of 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, SAPA! 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 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 and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SAPA! shall advise 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. 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.
- 11.3 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 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.
- 11.4 EMPLOYEE LITIGATION. In any and all claims against any Party indemnified under this Agreement, 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 in this Agreement 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.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1 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.

- 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 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.

XIII. INDEPENDENT CONTRACTOR

SAPA! covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that SAPA! shall have exclusive control and exclusive right to control the details of the work performed under this Agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between City and SAPA!, its officers, agents, employees, contractors, subcontractors and contractors, and nothing in this Agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and SAPA!. The Parties understand and agree that 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.

XIV. CONFLICT OF INTEREST

- 14.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 14.2 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 City. SAPA! further warrants and certifies that it has tendered to City a Contracts Disclosure Statement in compliance with City’s Ethics Code.

XV. 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.

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 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 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 under this Agreement 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 under this Agreement.

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 term, covenant or guarantee 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, 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 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 Council, as described in Article XVI. 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 or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE & LEGAL FEES

- 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 the terms, conditions, provisions and obligations contained in this Agreement.

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to bind the Parties, unless in writing, dated subsequent to the date hereto and duly executed by the Parties, in accordance with Article XV. Amendments.

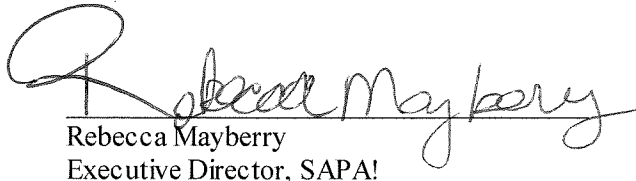
EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

SAN ANTONIO PETS ALIVE!

Heber Lefgren
Director, Animal Care Services

Date: _____



Rebecca Mayberry
Executive Director, SAPA!

Date: August 19, 2020

APPROVED AS TO FORM

City Attorney