

AN ORDINANCE      2012-01-19-0023

**APPROVING A CONTRACT WITH SAN ANTONIO PETS ALIVE, A HIGH VOLUME PET PARTNER, TO INCREASE THE ANIMAL CARE SERVICES DEPARTMENT'S LIVE RELEASE RATE BY UP TO 4,000 RESCUES/ADOPTIONS IN AN AMOUNT UP TO \$200,000.00 FOR A PERIOD OF UP TO ONE YEAR.**

\* \* \* \* \*

**WHEREAS**, the Animal Care Services Strategic Plan revised in late FY 2011 identified three main objectives: (1) enhance enforcement; (2) controlling the stray animal population; and (3) improving the live release rate; and

**WHEREAS**, in an effort to increase the City's live release rate, the Strategic Plan recommended identifying a High Volume Pet Partner (HVPP) that would rescue minimally 6,000 animals per year by FY 2015; and

**WHEREAS**, the HVPP concept has proven successful in other cities throughout the country who are currently achieving live release rates of 90% or greater such as Austin, TX and Washoe County, NV; and

**WHEREAS**, staff has formulated three distinct approaches to facilitating a HVPP; and

**WHEREAS**, one approach involves enhancing an existing relationship with San Antonio Pets Alive (SAPA), an animal rescue agency with a proven record of facilitating high volume rescues and adoptions which would result in the rescue/adoptions of up to 4,000 additional animals; and

**WHEREAS**, ACS has increased its live release rate primarily due to the added animal rescues from the San Antonio Humane Society and San Antonio Pets Alive which will continue as these agreements are formalized; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee or the Director of the Animal Care Services Department or his designee is authorized to execute a contract with San Antonio Pets Alive, a High Volume Pet Partner, to increase the Animal Care Services Department's (ACS) live release rate by up to 4,000 rescues/adoptions in an amount up to \$200,000.00 for a period of up to one year. A copy of the contract in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** Funding in the amount of \$200,000.00 for this ordinance is available in Fund 11001000, Cost Center 3703010005 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

**SECTION 3.** Payment not to exceed \$200,000.00 is authorized to San Antonio Pets Alive and should be encumbered with a purchase order.

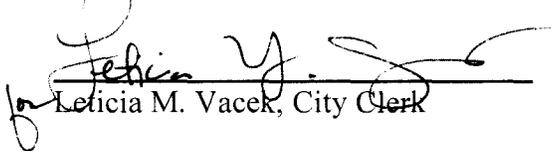
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

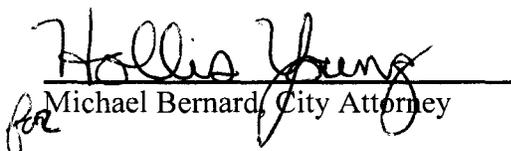
PASSED AND APPROVED this 19th day of January, 2012.

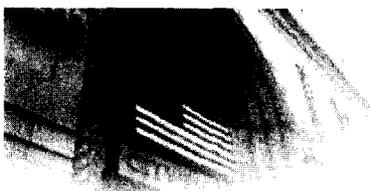
  
M A Y O R  
Julián Castro

**ATTEST:**

  
Leticia M. Vacek, City Clerk

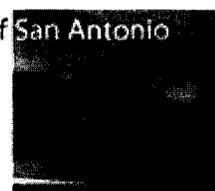
**APPROVED AS TO FORM:**

  
Michael Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 6B

<b>Name:</b>	6A, 6B						
<b>Date:</b>	01/19/2012						
<b>Time:</b>	09:57:26 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving a contract with San Antonio Pets Alive, a High Volume Pet Partner, to increase ACS's live release rate by up to 4,000 rescues/adoptions in the amount of up to \$200,000.00 for a period of up to one year.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

HIGH VOLUME PET PARTNERSHIP AGREEMENT

STATE OF TEXAS §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through the City Manager or designee, and San Antonio Pets Alive by and through Ellen Jefferson, its Executive Director ("SAPA"), both of which may be referred to herein collectively as the "Parties".

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

WHEREAS, the City's Animal Care Services ("ACS") Strategic Plan Update identified the need for the City to collaborate with a High Volume Pet Partner to increase ACS' live release rate; and

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

WHEREAS, SAPA is a non-profit organization that can commit to providing assistance with rescues and adoptions of a high volume of animals from ACS; and

WHEREAS, SAPA and the ACS desire to cooperate on a project aimed at increasing ACS' live release rate through SAPA's assistance in increasing rescues and adoptions from ACS; and

WHEREAS, the purpose of this Agreement is to define the terms and conditions of SAPA and the City's participation in the project and to define the obligations and expectations of SAPA and the City;

NOW THEREFORE:

I. DEFINITIONS

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

"ACS 2012 Target Adoption Baseline" shall mean the total number of animals targeted to be adopted by ACS as of the end of the calendar month prior to the date of calculation. The target adoption baseline for each calendar month shall be established by ACS and agreed to by SAPA, and the sum of twelve monthly target adoption baselines shall equal 4,345 animals.

*“Adopted”* or *“Adoption”* shall mean the permanent adoption of an animal under the care and control by ACS to a member of the public from an ACS facility or ACS-approved offsite adoption facility.

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

*“Community Rescue Baseline”* shall mean the total number of rescued animals from ACS in FY 2011, other than as a result of SAPA’s Rescues which is 2,352 animals.

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

*“Positive Alternative to Shelter Surrender (PASS) Animal”* shall mean an animal that comes into the ACS facility and is alternatively placed by SAPA.

*“Qualifying Animal”* shall mean (i) those animals Rescued by SAPA above the SAPA 2012 Baseline, (ii) all PASS Animals, and (iii) and those animals Adopted by ACS in excess of the ACS 2012 Target Adoption Baseline applicable as of the calculation date.

*“Rescue”* shall mean the permanent transfer of an animal into the care of SAPA or its affiliates.

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

*“SAPA 2012 Target”* shall mean 4,041 animals.

*“SAPA 2012 Baseline”* shall mean 41 animals.

## II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on January 1, 2012 and terminate on December 31, 2012.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

## III. SCOPE OF SERVICES

### 3.1 Obligations of SAPA:

3.1.0 SAPA will Rescue, assist with PASS animals or facilitate the Adoption of up to 4,000 animals from ACS during the term of this Agreement.

3.1.1 Rescued Animals:

(a) For all animals Rescued by SAPA under this Agreement SAPA will provide at its expense proper care of all animals to include but not limited to, providing food, water, shelter and appropriate veterinary care for so long as such animals remain under the care and control of SAPA. SAPA will perform and pay for sterilization surgery for each Rescued animal prior to the animal leaving the care and control of SAPA.

(b) SAPA will provide ACS with the list of animals it intends to Rescue by 9:00 a.m., Monday through Saturday. Animals shall be transferred from the ACS facility to SAPA-controlled facilities by SAPA by no later than the end of ACS' business day.

3.1.2 Adopted Animals:

(a) In order to assist with and facilitate the Adoption of animals from ACS, SAPA will provide paid staff members and qualified volunteers at both ACS and off-site adoption centers.

(b) SAPA will abide by and enforce all ACS adoption approval protocols in connection with the Adoption of animals at ACS sites.

3.1.3 PASS Animals:

(a) SAPA shall assist with placement of PASS Animals from ACS.

(b) SAPA will abide by and enforce all ACS PASS Animal protocols.

3.1.4 Additional SAPA obligations:

(a) SAPA will provide positive press at all times regarding ACS. Any publicity efforts by SAPA related to its collaboration with ACS or activities at an ACS facility shall be submitted by SAPA to ACS for review and approval not less than 48 hours in advance of the proposed dissemination date. Materials may not be disseminated without the express approval of ACS, which approval will not be unreasonably withheld.

(b) From time to time as reasonably requested, SAPA will provide to ACS consultation services and recommendations related to creative use of cage space, including recommendations on modification of existing cage formations to ensure that all cages are used efficiently, matters related to disease control, and evaluation of animals within the ACS facility.

(c) In coordination with ACS, SAPA will provide increased marketing opportunities for animals, including without limitation online advertising, media coverage of adoptable animals, augmenting signage and cage cards.

(d) SAPA will collaborate and advise ACS with respect to the creation of large-scale foster, volunteer, *PASS* Animals, and lost and found programs.

(e) SAPA shall maintain records and documentation pertaining to the disposition of all animals Rescued by SAPA under this Agreement. Information to be maintained by SAPA shall include, but is not limited to, whether the animals were adopted out or transferred to rescue groups/organizations, adopter/rescue organization information and sterilization documentation. Upon ACS' request, SAPA shall make such records available to ACS. City shall have the right to modify the required documentation to be maintained by SAPA.

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

### 3.2 Obligations of City:

#### 3.2.0 Animal Care, Access and Information Obligations:

(a) ACS will make animals available to SAPA for Rescue or Adoption before they are euthanized unless unavailable for rescue or adoption as determined by ACS. SAPA acknowledges ACS will euthanize animals as needed to accommodate intake. Final disposition of all animals shall be determined by ACS.

(b) ACS will provide SAPA access to kennels and adoption areas whenever supervisor is present, excluding rabies quarantine areas at both ACS locations on Highway 151 and at Brooks City Base. ACS will allow SAPA access to cages at Brooks City Base for the holding of animals to be transferred by SAPA.

(c) ACS will allow SAPA access to Chameleon to view animal records.

(d) ACS will provide SAPA the following daily reports to enable SAPA to promote the animals at ACS immediately upon arrival:

(i) Daily Intake List- A list with owner surrender and stray notes.

(ii) Daily "Available" list- A list of animals belonging to the City which have no adopter hold on them and includes owner surrender and stray notes.

(iii) Daily euthanasia List- A list of animals scheduled for euthanasia on a given day.

#### 3.2.1 Additional Obligations:

(a) ACS will provide SAPA office space at ACS for the provision of services under this Agreement.

(b) Subject to availability as determined by ACS, ACS may allow SAPA local use of the ACS Adoption Vehicle and/or the ACS Spay/Neuter Van for local adoption events.

(c) Subject to availability of space, ACS may allow SAPA to house additional veterinary operations staffed by SAPA as needed on the premises.

3.2.2 City Code Obligations: To facilitate the project, ACS will provide the following in accordance with ACS policies and/or applicable City Code ordinances:

- (a) Food and bedding for sheltered animals at ACS.
- (b) Vaccinations (other than rabies) before animals enter the ACS facility.
- (c) Rabies vaccination, microchipping, and sterilization (or proof of subsequent sterilization) for animals adopted with SAPA facilitation.
- (d) Veterinary care and related supplies for animals at the ACS facility.
- (e) Waiver or reduction of adoption fees for animals adopted from the ACS facility.

3.3 Work Quality. All work performed by SAPA hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall 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.

#### IV. COMPENSATION TO SAPA

4.1 In consideration of SAPA's performance in a satisfactory and efficient manner of all services and activities set forth in this Agreement, City agrees to pay SAPA an amount up to \$200,000.00 as total compensation. SAPA shall invoice the City in accordance with the following:

4.1.0 Initial Payment. Upon execution of the Agreement, City shall pay SAPA \$60,000.00. This payment shall be a prepayment for the first 1,200 Qualifying Animals. In the event this Agreement is terminated by SAPA prior to SAPA achieving 1,200 Qualifying Animals, SAPA shall return all prepaid unearned funds to City when SAPA submits its notice of termination to City.

4.1.1 Subsequent Payments. After SAPA achieves the initial 1,200 Qualifying Animals, SAPA will be compensated \$50.00 per Qualifying Animal as follows:

(a) If the Community Rescue Baseline has not been reached, payment shall be in two payments, \$30.00 per Qualifying Animal, and the balance of \$20.00 per Qualifying Animal shall be paid once the Community Rescue Baseline is achieved.

(b) If the Community Rescue Baseline has been reached, payment to SAPA shall be in one payment of \$50.00 per Qualifying Animal.

(c) If the Community Rescue Baseline has not been achieved when SAPA reaches 4,000 Qualifying Animals, additional Qualifying Animals facilitated by SAPA shall count towards achieving the Community Rescue Baseline in order to provide payment of the balance fee of \$20.00 per Qualifying Animal to SAPA. However, no compensation shall be provided for these additional Qualifying Animals.

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

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

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

## V. RECORDS RETENTION

5.1 SAPA 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.

5.2 SAPA shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, SAPA shall retain the records until the resolution of such litigation or other such questions. SAPA acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require SAPA to return the documents to City at SAPA's expense prior to or at the conclusion of the retention period. In such event, SAPA may retain a copy of the documents.

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

## VI. OWNERSHIP OF DOCUMENTS

6.1 Any and all records, data, finished or unfinished documents, writings, reports, charts, schedules, or information produced by, or on behalf of, SAPA related to the services provided by SAPA hereunder, and any related responses, inquiries, correspondence and materials which has come into SAPA's custody, even if not produced by, or on behalf of, SAPA, in whatsoever form and character (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.

6.2 SAPA understands and acknowledges that as the exclusive owner of any and all such documents related to the services provided by SAPA hereunder, 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 documents and reports related to the services provided by SAPA hereunder 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.

## VII. TERMINATION

7.1 For purposes of this Agreement, "*termination*" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

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

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

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

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

7.3.2 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 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAPA fails to cure the default within such thirty-day cure period, City shall have the right, without further notice, to terminate this Agreement 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.

7.4.0 Bankruptcy or selling substantially all of company's assets

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

7.4.2 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 V. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at SAPA's sole cost and expense. Payment of compensation due or to become due to SAPA is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAPA shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by SAPA to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by SAPA of any and all right or claims to collect moneys that SAPA may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue SAPA for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Animal Care Services Department  
Attn: Director or Interim Director  
4710 State Hwy 151  
San Antonio, TX 78227

If intended for SAPA, to:

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

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, SAPA shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Animal Care Services Department, which shall be clearly labeled "*High Volume Pet Partnership Agreement*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must 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 SAPA's financial integrity is of interest to the City; therefore, subject to SAPA's right to maintain reasonable deductibles in such amounts as are approved by the City, SAPA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAPA's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Employers' Liability	\$500,000/\$500,000/\$500,000
2. Broad form Commercial General Liability Insurance to include coverage for the following: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed Operations (d) Personal Injury (e) Contractual Liability (f) Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000
3. 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

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). SAPA 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. SAPA 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 SAPA agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the professional liability policy;
- 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;
- 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, 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 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 SAPA’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order SAPA to stop work hereunder, and/or withhold any payment(s) which become due to SAPA hereunder until SAPA demonstrates compliance with the requirements hereof.

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

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

## **X. INDEMNIFICATION**

10.1 SAPA covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to SAPA’S activities under this Agreement, including any acts or omissions of SAPA, any agent, officer, director, representative, employee, consultant or

subcontractor of SAPA, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT SAPA AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SAPA shall advise the City in writing within 24 hours of any claim or demand against the City or SAPA known to SAPA related to or arising out of SAPA's activities under this Agreement, and shall see to the investigation and defense of such claim or demand at SAPA's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAPA of any of its obligations under this paragraph.

10.3 The 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 the City, unless such right is expressly waived by the City in writing. SAPA shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If SAPA fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and SAPA shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.4 Employee Litigation. In any and all claims against any party indemnified hereunder by any employee of SAPA, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for SAPA or any subcontractor under worker's compensation or other employee benefit acts.

## **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 Except as otherwise stated herein, SAPA may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City. As a condition of such consent, if such consent is granted, SAPA shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

11.2 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should SAPA assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its

right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of SAPA shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by SAPA shall in no event release SAPA from any obligation under the terms of this Agreement, nor shall it relieve or release SAPA from the payment of any damages to City, which City sustains as a result of such violation.

## **XII. INDEPENDENT CONTRACTOR**

SAPA covenants and agrees that it is an independent Contractor and not an officer, agent, servant or employee of City; that SAPA shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "*respondeat superior*" shall not apply as between City and SAPA, its officers, agents, employees, Contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SAPA. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by SAPA under this Agreement and that SAPA has no authority to bind the City.

## **XIII. CONFLICT OF INTEREST**

13.1 SAPA acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, SAPA warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. SAPA further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XIV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and SAPA and evidenced by the passage of a subsequent City ordinance, as to the City's approval; provided, however, during the term of the Agreement and subject to funding

availability, the Director of the Animal Care Services Department shall have the authority to execute amendments of this Agreement without further action by the San Antonio City Council, to increase the amount of funding under this Agreement for additional Qualifying Animals.

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

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

#### **XVI. SEVERABILITY**

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

#### **XVII. LICENSES/CERTIFICATIONS**

SAPA warrants and certifies that SAPA and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

#### **XVIII. COMPLIANCE**

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

## **XIX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City, as described in Article XIV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XX. LAW APPLICABLE**

**20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXI. LEGAL AUTHORITY**

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

## **XXII. PARTIES BOUND**

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

## **XXIII. ENTIRE AGREEMENT**

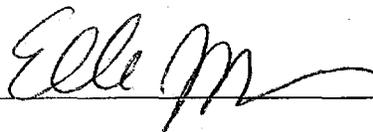
This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall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

This **HIGH VOLUME PET PARTNERSHIP AGREEMENT** is **EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**SAN ANTONIO PETS ALIVE**

\_\_\_\_\_

  
\_\_\_\_\_

Printed Name: Erik Walsh  
Title: Deputy City Manager  
Date: \_\_\_\_\_

Printed Name: Ellen Jefferson  
Title: Executive Director  
Date: 1/13/12

Approved as to Form:

\_\_\_\_\_  
Michael D. Bernard