

## AMENDED AND RESTATED TEMPORARY LICENSE AGREEMENT

THIS AMENDED AND RESTATED TEMPORARY LICENSE AGREEMENT (this "*Agreement*") is made this \_\_\_ day of May, 2012 (the "*Effective Date*") between the CITY OF AUSTIN, a Texas home-rule city and municipal corporation (the "*City*") and AUSTIN PETS ALIVE, a Texas non-profit corporation ("*APA*"). The City and APA are hereinafter sometimes collectively referred to as the "*Parties*."

### RECITALS

WHEREAS, in March 2010, the Austin City Council approved the No Kill Implementation Plan, a component of which included partnering with a non-profit organization to operate the Davenport Building on the Town Lake Animal Center site, located at 1156 W. Cesar Chavez, Austin, Texas (the "*TLAC*"), as an adoption center and keeping the entire TLAC site open for a minimum of six months;

WHEREAS, on June 23, 2011, the City Council adopted certain operating criteria established by the Austin Animal Advisory Commission for the non-profit entity selected to temporarily operate the TLAC, which criteria were set forth in City Council Resolution No. 20110623-096;

WHEREAS, APA was subsequently selected to temporarily operate the TLAC during Austin Animal Services' ("*AAS*") transition of the City's animal shelter operations from the TLAC to the newly-constructed Austin Animal Center;

WHEREAS, the City and APA entered into that certain Temporary License Agreement dated November 10, 2011 (the "*Temporary License Agreement*") authorizing APA to occupy and use the TLAC for the purposes described in the Temporary License Agreement; and

WHEREAS, on April 26, 2012, the City Council voted to extend the term of the Temporary License Agreement and to expand APA's permitted use of the TLAC;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and APA agree as follows:

### AGREEMENT

1.0 Amendment and Restatement. This Agreement amends, restates and supersedes the Temporary License Agreement in its entirety.

2.0 License Grant. The City hereby grants to APA and APA hereby accepts from the City a temporary license to operate the portion of the TLAC depicted on Exhibit A (the "*Premises*") subject to the terms of this Agreement.

3.0 License Term. The term of this Agreement (the "*Term*") shall commence on the Effective Date and shall terminate on May 23, 2015 unless terminated earlier according to the terms of this Agreement. Each Party may terminate this Agreement at any time upon ninety (90) days' written notice to the other Party. If APA remains on the Premises without the City's written consent after the expiration of the Term, APA's continued occupancy will not be deemed to extend or renew the Term, and during the period of continuing occupancy, a license fee payable by APA to the City will accrue at the rate of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per week. The acceptance of the license fee from APA does not constitute the City's consent to APA's continued occupancy of the Premises after the expiration of the Term.

4.0 License Fee. Except for the license fee described in Section 3.0, APA will not be required to pay a license fee for its use of the Premises, such fee being waived by City of Austin Ordinance No. 20120524-022. In lieu of a license fee, APA agrees to use the Premises solely for the Permitted Use (defined below), which Permitted Use promotes a public purpose of the City.

5.0 Premises Conveyed As-Is. APA acknowledges that it has had the opportunity to inspect the Premises and to conduct any inspections and testing of the Premises as it deemed necessary or desirable. In reliance solely on its inspections and testing of the Premises, APA accepts the Premises in their "AS IS," "WHERE IS" condition, "WITH ALL FAULTS," and with all latent and patent defects, if any; and the City makes no representations or warranties of any kind, express or implied, with respect to the Premises, including, without limitation, warranties as to habitability, fitness or suitability of the Premises for a particular purpose or for compliance with Governmental Regulations (defined below), or as to the presence or absence of any hazardous substances, including, but not limited to, asbestos and asbestos-containing materials.

6.0 Permitted Use of the Premises. APA may use the Premises solely for operating an animal rescue and adoption center and uses ancillary thereto, including medical treatment, behavioral training, and fundraising and outreach events, and for no other purpose (the "*Permitted Use*"). APA may not occupy or use the Premises for any unlawful use or purpose, and APA shall conduct its business in such a manner as not to create a nuisance.

7.0 Operation and Maintenance.

7.1 APA shall maintain the Premises during the Term in a clean, healthful and safe condition and in substantially the same condition as the Premises existed on the Effective Date, all at APA's sole cost and expense. APA shall be responsible at its sole cost for the repair, maintenance, operation and security of the Premises, including, without limitation, (a) repairs and maintenance of all electrical, mechanical, HVAC and plumbing fixtures and equipment serving the Premises, (b) all structural and non-structural repairs to the Premises required during the Term, including those required due to fire, casualty or acts of God, (c) utility services, (d) janitorial services, and (e) fire safety

services and equipment. APA acknowledges that the City has no maintenance, repair, operation or security obligations with respect to the Premises except as otherwise expressly provided in Section 9.1 of this Agreement.

7.2 APA shall conduct all its operations on the Premises in compliance with all applicable municipal, county, state and federal laws, codes, rules and regulations (collectively, "***Governmental Regulations***") at APA's sole cost and expense.

7.3 APA shall provide the City with copies of any key cards or keys to the Premises to enable the City's employees, representatives, agents and contractors to access the Premises for the purposes permitted under this Agreement and to permit the City to exercise its municipal functions.

7.4 APA will make no improvements, alterations or changes to the Premises without the City's prior written approval, which approval the City may withhold or condition at its sole and absolute discretion. Notwithstanding the foregoing, APA may make cosmetic improvements to the Premises, including painting the Premises.

7.5 APA will repair at its sole cost and expense all damage to the Premises caused by the actions or omissions of APA or APA's employees, agents, licensees, invitees, volunteers or contractors.

7.6 Upon the expiration of the Term or earlier termination of this Agreement, APA shall deliver the Premises to the City, with all improvements located thereon, in substantially the same condition in which it existed as of the Effective Date, reasonable wear and tear excepted, together with all keys, key cards and other access devices for the Premises. All furniture, removable trade fixtures and equipment installed by APA must be removed by APA upon the expiration of the Term or earlier termination of this Agreement, and APA agrees to repair any damage to the Premises caused by the removal of such items. If APA fails to timely remove any such furniture, removable trade fixtures or equipment installed by APA, those items will be deemed abandoned by APA, and the City may dispose of such items in the manner it deems appropriate without liability to APA. This Section 7.6 will survive the termination of this Agreement.

#### 8.0 APA Covenants.

8.1 Only animals sourced by AAS or originating from a source located in Bastrop, Caldwell, Hays, Travis or Williamson Counties may be housed on the Premises.

8.2 AAS will provide APA with a list of animals most at risk for euthanasia each day (the "*At-Risk List*"). APA may select from the At-Risk List the animals it desires to house on the Premises; provided, however APA must:

(a) select a sufficient number of animals from the At-Risk List so that at the end of each year of the Term APA will have selected from the At-Risk List the greater of (i) 3,000 animals, or (ii) 12% of the total number of animals taken in by AAS during the preceding year (the "*Minimum Animal Inventory*");

(b) accept from the City all treatable "parvo puppies" and "bottle kittens" on the At-Risk List that AAS requests APA to take as part of the Minimum Animal Inventory;

(c) accept from the City all small dogs on the At-Risk List that AAS requests APA to take as part of to the Minimum Animal Inventory; and

(d) accept from the City at least five (5) behaviorally challenged large dogs each month during the Term.

8.3 Once APA receives an animal from AAS, ownership of the animal will vest in APA; provided, however, if an animal APA receives from AAS subsequently becomes a poor adoption candidate due to the deterioration of the health or behavior of the animal, APA and AAS will collaborate in good faith to assess the condition of the animal in question, and if AAS and APA mutually agree that the best course of action is to return the animal to the custody of AAS, APA may return the animal to AAS.

8.4 APA must provide monthly reports to the City describing beginning and ending animal inventory, intakes, outcomes and live release rates. The report will be in substantially the form attached hereto as Exhibit B (the "*Monthly Report*"). The City will have the right to modify the required content of the Monthly Report from time to time. Additionally, APA will provide quarterly status briefings to the Austin Animal Advisory Commission.

8.5 APA will develop and implement a program to rehabilitate behaviorally challenged dogs.

8.6 At APA's sole cost and expense, APA will repair and refurbish the kennels and cages located on the Premises in accordance with all Governmental Regulations.

8.7 APA will conduct its operations on the Premises in compliance with the "Guidelines for Standards of Care in Animal Shelters" established by the Association of

Shelter Veterinarians as amended from time to time unless compliance would require APA to violate any Governmental Regulations or make any capital improvements to the TLAC.

8.8 APA will use kennels 101 through 154 as identified on Exhibit A solely for animals sourced by AAS.

9.0 City Covenants. During the period commencing on the Effective Date and ending on November 9, 2012, the City will (a) pay for electric, water and wastewater utility charges for the Premises and (b) contribute to APA an amount not to exceed \$12,000 per month (the "**City Contribution Amount**"), which amount will be used by APA solely for operating expenses for the Premises and APA's off-site adoption efforts for animals housed on the Premises that were sourced by AAS. APA will maintain reasonably detailed, written records and receipts of its expenditure of the City Contribution Amount, and will make such records and receipts available for review by the City upon the City's written request. Commencing on November 10, 2012, the City will no longer pay the City Contribution Amount, and the City and APA will share equally the cost of all utilities consumed at the TLAC. APA will reimburse the City for APA's share of utility costs within thirty (30) days after APA receives an invoice for the utility costs from the City.

10.0 Hazardous Materials. APA shall comply in all respects with all Governmental Regulations relating to the protection of environment and natural resources, now existing or hereafter enacted (collectively for purposes of this Section 10.0, "**Environmental Laws**"), including, without limitation: (a) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time, (b) the federal Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984, as amended from time to time, (c) the federal Water Pollution Control Act of 1972, as amended from time to time, (d) the federal Spill Compensation and Control Act of 1976, as amended from time to time, and (e) any and all other federal, state, county, and municipal laws, ordinances, codes and regulations which relate in any way to the matters regulated by any of the above-mentioned federal legislation. APA shall immediately notify the City if APA becomes aware of any actual or potential environmental hazard or any actual or alleged violation of one or more Environmental Laws. APA is responsible for any and all liabilities, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including, without limitation, all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, any violation or alleged violation by APA or any party accessing the Premises by or through APA (whether before or after the Effective Date) of any one or more of the Environmental Laws. This Section 10.0 shall survive the expiration or termination of this Agreement.

11.0 Assignment and Sublicensing. APA shall not (a) mortgage, assign, pledge or transfer this Agreement to any party; (b) sublicense the Premises or any part thereof; (c) grant any concession or other right of occupancy of any portion of the Premises; or (d) permit the use of the Premises by any parties other than APA, its agents, employees, and

volunteers without the express prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

12.0 Indemnity. THE CITY WILL NOT BE LIABLE TO APA, AND APA HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, FOR ANY DAMAGE TO OR LOSS OR THEFT OF ANY PROPERTY OR FOR ANY BODILY OR PERSONAL INJURY, ILLNESS OR DEATH OF ANY PERSON IN, ON, ABOUT OR OFF THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE, INJURY, ILLNESS OR DEATH ARISING FROM OR RELATED TO ANY ANIMAL IN APA'S CUSTODY OR RELEASED FROM APA'S CUSTODY. APA HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, ARISING FROM OR RELATED TO ANY ANIMAL IN APA'S CUSTODY OR RELEASED FROM APA'S CUSTODY, ANY USE OR OCCUPANCY OF THE PREMISES, ANY CONDITION OF THE PREMISES, ANY DEFAULT IN THE PERFORMANCE OF APA'S OBLIGATIONS UNDER THIS AGREEMENT, ANY DAMAGE TO ANY PROPERTY, OR ANY BODILY OR PERSONAL INJURY, ILLNESS OR DEATH OF ANY PERSON OCCURRING IN, ON, ABOUT OR OFF THE PREMISES OR ANY PART THEREOF, ARISING AT ANY TIME, AND FROM ANY CAUSE WHATSOEVER. THIS SECTION 12.0 WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

13.0 Insurance Requirements. APA will obtain and maintain throughout the Term the types and in the amounts of insurance described on Exhibit C.

14.0 City's Right of Entry and Inspection; Use of Davenport Conference Room. The City and its officers, agents and representatives shall have the right (but not the obligation) from time to time to enter into and upon any and all parts of the Premises at all reasonable hours (or, in an emergency, at any hour) to inspect, clean, or make repairs, alterations or additions to the Premises that the City may deem necessary or desirable; to observe APA's operations; to plan for future uses of the Premises; to store and retrieve equipment and supplies; for ingress and egress to and from other portions of the TLAC; and to conduct other municipal functions. Additionally, the City and its animal rescue partners will have the right to use the Davenport Conference Room located on the Premises from time to time for animal adoption events. The City and APA will cooperate in good faith to schedule the use of the conference room. The City retains the exclusive right to use all portions of the TLAC that are not included in the Premises and the right to use together with APA all portions of the TLAC that are identified as "shared areas" on Exhibit A.

15.0 Condemnation.

15.1 If at any time during the Term all or substantially all of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, this Agreement shall terminate on the date of such

taking. If less than all of the Premises shall be so taken and in the City's reasonable opinion the remaining portion of the Premises is insufficient for fulfilling the purposes of this Agreement, the City may terminate this Agreement by delivering written notice to the APA within sixty (60) days after the date the City received notice of the taking. If the City exercises its option to terminate, this Agreement shall end on the date specified in the City's notice.

15.2 If less than all of the Premises shall be taken and, in the City's reasonable opinion communicated by written notice to APA within sixty (60) days after the date the City received notice of the taking, the remaining portion of the Premises is sufficient for fulfilling the purposes of this Agreement, this Agreement shall remain in effect.

15.3 The City shall be entitled to receive the entire award or awards in any condemnation proceeding involving the Premises, and APA shall receive no part of such award or awards from the City or in the condemnation proceedings. APA hereby assigns to the City any and all of APA's right, title and interest in or to such award or awards or any part thereof. This Section 15.3 will survive the termination of this Agreement.

15.4 Taking by condemnation or eminent domain hereunder shall include the exercise of any similar governmental power and any sale, transfer or other disposition of the Premises in lieu of or under threat of condemnation.

16.0 Fire and Other Casualty. If all or any portion of the Premises is damaged or destroyed by fire or other casualty, the City will have the right to terminate this Agreement by providing written notice to APA. If the City exercises its option to terminate, this Agreement shall end on the date specified in the City's notice. The City will have no obligation to repair, restore or rebuild the Premises following damage or destruction due to fire or other casualty.

17.0 City's Remedies Following APA Default. Any failure of APA to comply with the terms and conditions of this Agreement will be deemed a default of this Agreement if APA has not remedied such failure within thirty (30) days after receiving written notice of such failure from the City. If APA is deemed to have committed a default, the City may (but is not obligated to) terminate this Agreement upon ten (10) days prior written notice to APA, and the City may seek any other remedies available to it at law or in equity.

18.0 Non-Waiver.

18.1 Any act of forbearance by the City to enforce any provision of this Agreement shall not be construed as a modification of this Agreement or as a waiver of any breach or default of APA which then exists or may subsequently exist. The failure of the City to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

18.2 All rights of the City under this Agreement are specifically reserved. Any payment, act or omission by a party shall not impair or prejudice any remedy or right of that party under this Agreement. Any right or remedy stated in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement, the law or at equity. Any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.

19.0 Entire Agreement. This Agreement constitutes the entire agreement between the City and APA with regard to the Premises. Any other statement, representation, agreement or promise, either oral or written, relating to the subject matter of this Agreement that is not contained herein shall not be binding on the Parties. All exhibits, schedules, addenda and other documents attached to this Agreement are intended to be a part of this Agreement and are hereby incorporated into this Agreement for all purposes.

20.0 Governing Law and Venue. This Agreement and the rights and duties of the City and APA will be governed by Texas law. All obligations under this Agreement are performable in Travis County, Texas, and venue for any litigation arising under or in connection with this Agreement shall lie exclusively in Travis County, Texas.

21.0 Notices.

(a) Any notice given hereunder by either Party to the other shall be in writing and may be delivered by personal delivery or by registered or certified mail, return receipt requested, when mailed to the proper Party, at the following addresses:

If to the City: Abigail Smith  
Chief Animal Services Officer  
City of Austin Office of Animal Services  
P.O. Box 1088  
Austin, Texas 78767

with a copy to: Lauraine Rizer  
Officer  
City of Austin Office of Real Estate Services  
P.O. Box 1088  
Austin, Texas 78767

and a copy to: Judd L. Leach  
Assistant City Attorney  
City of Austin Law Department  
301 West Second Street, 4<sup>th</sup> Floor  
Austin, Texas 78701



If to APA: Ellen Jefferson, DVM  
Executive Director  
Austin Pets Alive  
1156 West Cesar Chavez Street  
Austin, Texas 78703

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Either Party may change its address for purposes of this Section 21.0 by written notice delivered in accordance herewith.

22.0 Force Majeure. The computation for any period for performance under this Agreement shall exclude any delays due to acts of God, war, riot, terrorism, civil commotion, sovereign conduct, or governmental laws, regulations or restrictions.

23.0 Severability. If any clause or provision of this Agreement is ruled illegal, invalid or unenforceable in any respect by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and binding. It is also the intention of the Parties to this Agreement that in lieu of each clause or provision of this Agreement that is ruled illegal, invalid or unenforceable, there be added as a part of this Agreement a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as is possible.

24.0 Amendments and Binding Effect. This Agreement may not be amended, except in writing signed by both Parties. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, assigns and legal representatives.

25.0 Gender and Number. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, unless the context otherwise requires.

26.0 Captions. The captions in this Agreement are for convenience of reference only and shall not in any way limit or enlarge the terms and conditions of this Agreement.

[The signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF AUSTIN, a Texas home-rule city and municipal corporation

By: Lauraine Rizer  
Lauraine Rizer, Officer  
Office of Real Estate Services

APA:

AUSTIN PETS ALIVE, a Texas non-profit corporation

By: Ellen Jefferson  
Ellen Jefferson, DVM, Executive Director

APPROVED AS TO FORM:

Judd L. Leach  
Judd L. Leach, Assistant City Attorney

Date: 05/30/2012

APPROVED AS TO CONTENT:

Abigail Smith  
Abigail Smith, Chief Animal Services Officer

Date: 05/30/2012

EXHIBIT A

Description of Premises

[illegible]

	AAC	APA
	<u>Not part of the premises</u>	<u>Part of the premises</u>

Davenport  
Building A  
SHARED

EXHBIT B

Form of Monthly Report

## EXHIBIT C

### Insurance Requirements

## Insurance Requirements

Section 1 During the term of the License Agreement, Austin Pets Alive ("APA") shall carry insurance in the following types and amounts:

- 1.1 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:
  - 1.1.1 Blanket Contractual liability coverage for liability assumed under the License Agreement;
  - 1.1.2 Products and completed operations coverage;
  - 1.1.3 Independent contractors coverage;
  - 1.1.4 Personal and Advertising injury coverage;
  - 1.1.5 Additional Insured endorsement (Form CG 2010);
  - 1.1.6 Waiver of Subrogation endorsement (Form CG 2404); and
  - 1.1.7 30-Day Notice of Cancellation endorsement (Form CG 0205).
- 1.2 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
  - 1.2.1 Additional Insured endorsement (Form TE 9901B);
  - 1.2.2 Waiver of Subrogation endorsement (Form TE 2046A); and
  - 1.2.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 1.3 Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the License Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the License Agreement and for not less than twenty-four (24) months following the end of the License Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the License Agreement. APA shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

Section 2 During the term of the License Agreement, APA shall cause any contractor or subcontractor constructing improvements to the Property to carry insurance in the following types and amounts:

- 2.1 Employers Liability and Workers' Compensation Insurance. Minimum policy limits for Employers' Liability shall be \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. Workers' Compensation coverage shall be consistent with statutory benefits described in the Texas Workers' Compensation Act, Section 401. Coverage shall apply to the State of Texas. The policy shall contain the following endorsements in favor of the City:
  - 2.1.1 Waiver of Subrogation (Form WC 420304); and
  - 2.1.2 30-Day Notice of Cancellation (Form WC 420601).
- 2.2 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:
  - 2.2.1 Blanket Contractual liability coverage for liability assumed under the contract with the contractor or subcontractor in question;
  - 2.2.2 Products and completed operations coverage;
  - 2.2.3 Independent contractors coverage;
  - 2.2.4 Personal and Advertising injury coverage;
  - 2.2.5 Additional Insured endorsement (Form CG 2010);
  - 2.2.6 Waiver of Subrogation endorsement (Form CG 2404); and
  - 2.2.7 30-Day Notice of Cancellation endorsement (Form CG 0205).
- 2.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
  - 2.3.1 Additional Insured endorsement (Form TE 9901B);
  - 2.3.2 Waiver of Subrogation endorsement (Form TE 2046A); and
  - 2.3.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 2.4 Builders' Risk Insurance on an all risk physical loss form in the amount of the maximum contractor amount for any improvements made to the Property. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a final certificate of occupancy is issued with respect to the improvements. The City shall be a mortgagee/loss payee on the policy. If off-site storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.



Section 3 APA shall provide the City at least thirty (30) calendar days written notice of erosion of the aggregate limit below the minimum required combined single limit of coverage.

Section 4 APA shall not acquire any property or commence work under the License Agreement until it has obtained all required insurance and until the Risk Management Division of the City has reviewed and approved such insurance coverage.

Section 5 All insurance required to be obtained under this Exhibit C must be written by a company licensed to do business in the State of Texas at the time the policy is issued, and the company must be rated by A.M. Best at B+ VII or better and reasonably acceptable to the City. Employers Liability and Workers' Compensation Insurance policies written by the Texas Workers' Compensation Fund are acceptable.

Section 6 All endorsements, waivers, notices of cancellation, notices of non-renewal or any other endorsements as well as the Certificate of Insurance shall:

6.1 Name the City at the following notice address:

City of Austin, Texas  
Attn: Lauraine Rizer, Office of Real Estate Services  
P.O. Box 1088  
Austin, Texas 78767-1088

6.2 Obligate the insurance company to notify in writing the City at its notice address of any non-renewal, cancellation or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

Section 7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on the policy. It is intended that the policies required in the License Agreement shall be considered primary coverage.

Section 8 APA shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the License Agreement or the twenty-four month period following completion, in the case of a claims-made policy.

Section 9 The City reserves the right to review the insurance requirements described in this Exhibit C during the Term and to make reasonable adjustments to insurance coverages, and their limits, when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history or financial condition of the insurance company or APA.

Section 10 The City shall be entitled, upon request, and without expense to the City, to receive copies of the requisite insurance policies and all endorsements thereto and to make any reasonable requests for deletion or 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 on any of such policies).

FIRST AMENDMENT TO AMENDED AND RESTATED  
TEMPORARY LICENSE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED TEMPORARY LICENSE AGREEMENT (this “**Amendment**”) is entered into effective as of the 27<sup>th</sup> day of May, 2015 (the “**Effective Date**”), by and between **CITY OF AUSTIN**, a Texas home-rule city and municipal corporation, located in Travis, Williamson, and Hays Counties, Texas (the “**City**”) and **AUSTIN PETS ALIVE**, a Texas non-profit corporation (“**APA**”).

R E C I T A L S

**WHEREAS**, the City and APA are parties to that certain Amended and Restated Temporary License Agreement, dated as of May 30, 2012 (as amended, the “**License Agreement**”); and

**WHEREAS**, pursuant to Ordinance No. 20141120-092 the City Council of the City directed the City Manager to negotiate and execute a modification to the License Agreement to extend the term of the License Agreement and allow for alterations to the Premises to ensure protection of the health and safety of animals housed at the Premises; and

**WHEREAS**, the City and APA desire to amend the License Agreement upon the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and APA hereby agree as follows:

1. **Term**. The Term of the License Agreement is hereby extended for a period of twenty-four (24) months, expiring on May 23, 2017, unless terminated earlier in accordance with the terms of the License Agreement. APA will have the right to extend the Term for three (3) additional twelve (12) month periods (individually, an “**Extension Term**”, and, collectively, the “**Extension Terms**”). To exercise an Extension Term, APA must give written notice of its election to exercise the Extension Term to the City at least ninety (90) days before the expiration of the then-current Term or Extension Term, and APA must not be in default under the terms of the License Agreement at the time the notice is given or at the time that the new Extension Term becomes effective. Notwithstanding the foregoing, either Party may terminate the License Agreement at any time, during either the Term or an Extension Term, upon ninety (90) days’ prior written notice to the other Party.

2. **Alterations**. Section 7.0 of the License Agreement is hereby amended to add the following as a new Section 7.7:

“7.7 Notwithstanding the foregoing, APA may make repairs to the Premises to ensure protection of the health and safety of animals housed at the Premises

during the Term and any Extension Term. Any and all alterations and improvements made in or to the Premises (i) are subject to the City's prior written consent, (ii) shall be in compliance with applicable Texas Health and Safety Code and Texas Administrative Code requirements, (iii) shall be made at APA's sole cost and expense, and (iv) shall be made by APA as follows:

(a) APA shall obtain all required permits for the work. APA shall engage licensed contractor(s) to perform all work subject to the City's prior approval. APA shall perform all work in a good and workmanlike manner, in full compliance with any and all federal, state or local laws, regulations, ordinances, or governmental or judicial rule or order now in force or which may hereafter be enacted, which is applicable to APA, APA's business or the Premises ("**Applicable Laws**"). Under no circumstances shall the City be liable to APA for any damage, loss, cost or expense incurred by APA on account of the design or construction of any work. APA hereby acknowledges that the City's review and approval of any work is administrative only and does not constitute architectural or engineering advice and creates no warranty as to the soundness, completeness or safety of the design, construction, or engineering of the work in question.

(b) APA shall give written notice to the City at least five (5) days before the date on which construction of any work will be commenced. APA shall pay for all work (including the cost of all permits, fees, taxes, and property and liability insurance premiums in connection therewith) required for completing the alterations and improvements. APA shall keep the Premises free from mechanics', materialmen's, and all other liens arising out of any work performed, labor supplied, materials furnished or other obligations incurred by APA. APA shall promptly and fully pay and discharge all claims on which any such lien could be based, or provide other security (reasonably acceptable to the City) that such lien will be removed.

(c) In connection with the construction of any alterations and improvements, APA shall comply, and shall cause its contractors and subcontractors to comply, with all Applicable Laws regarding construction of improvements on public property, including but not limited to providing payment and performance bonds satisfactory to the City (including the City of Austin Law Department) in the full contract price for all such construction.

(d) APA shall comply, and require its contractors and subcontractors, and its consultants and subconsultants, to comply, with applicable City ordinances relating to wage rates and compensation policies, and with City Code Chapter 2-9(A) for construction projects and City Code Chapter 2-9(B) for professional services projects in connection with the Premises and/or APA's use thereof, as from time to time in effect during the Term or Extension Term, regarding participation goals for use of certified minority and women owned business enterprises in connection with such work. A list of certified firms by scope of work may be found at [www.austin.gov/snbr](http://www.austin.gov/snbr)."

3. Capitalized Words. All capitalized words used in this Amendment and not otherwise defined herein shall have the respective meanings given to such words in the License Agreement. The License Agreement is incorporated herein by reference for all purposes.

4. Ratification and Compliance. Except as expressly amended or modified by this Amendment, the License Agreement shall continue in full force and effect. The City and APA each hereby ratify, affirm, and agree that the License Agreement, as herein modified, represents the valid, binding and enforceable obligations of the City and APA respectively. The City and APA each promise and agree to perform and comply with the terms, provisions and conditions of and the agreements in the License Agreement, as modified by this Amendment. In the event of any conflict or inconsistency between the provisions of the License Agreement and this Amendment, the provisions of this Amendment shall control and govern.

5. Entire Agreement and Amendments. The License Agreement, as expressly modified by this Amendment, constitutes the sole and only agreement of the parties to the License Agreement, and supersedes any prior agreements between the parties concerning the License Agreement of the Premises. The License Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

6. APA Authority. APA and the person signing on behalf of it jointly and severally warrant and represent to the City that (i) APA has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize APA to enter into this Amendment and to carry out APA's obligations hereunder has been taken, and (iii) the person signing on behalf of APA has been duly authorized by APA to sign this Amendment on its behalf.

7. City Authority. The City and the person signing on behalf of the City jointly and severally warrant and represent to APA that (i) the City has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize the City to enter into this Amendment and to carry out the City's obligations hereunder has been taken, and (iii) the person signing on behalf of the City has been duly authorized by the City to sign this Amendment on its behalf.

8. Binding. This Amendment shall be binding on and inure to the benefit of the City, APA, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

9. Governing Law. This Amendment shall be construed and governed by the laws of the State of Texas in effect from time to time.

10. Section Headings. The section headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof.

11. Construction. Each party acknowledges that it and its counsel have had the

opportunity to review this Amendment; that the normal rule of construction shall not be applicable; and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Amendment.

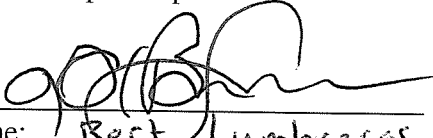
12. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties to this Amendment may execute the Amendment by signing any of the counterparts. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Amendment had been delivered. The City and APA (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Amendment based on the foregoing forms of signature.

[Signature Page follows]

IN WITNESS WHEREOF, the City and APA have executed this Amendment through their duly authorized representatives to be effective as of the Effective Date.

**CITY:**

**CITY OF AUSTIN,**  
a Texas home-rule city  
and municipal corporation

By:   
Name: Bert Lumbraeras  
Title: Assistant City Manager

APPROVED AS TO FORM:

By:   
Assistant City Attorney

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Chris Noble, Interim Chief Animal  
Services Officer

**APA:**

**AUSTIN PETS ALIVE,**  
a Texas non-profit corporation

By: \_\_\_\_\_  
Name: Ellen Jefferson, DVM  
Title: Executive Director

IN WITNESS WHEREOF, the City and APA have executed this Amendment through their duly authorized representatives to be effective as of the Effective Date.

**CITY:**

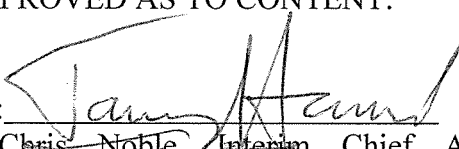
**CITY OF AUSTIN,**  
a Texas home-rule city  
and municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Assistant City Attorney

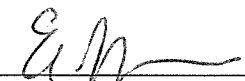
**APPROVED AS TO CONTENT:**

By:  \_\_\_\_\_  
~~Chris Noble~~, ~~Interim~~ Chief Animal  
Services Officer

I approve of  
map/use modifications  
JLH

**APA:**

**AUSTIN PETS ALIVE,**  
a Texas non-profit corporation

By:  \_\_\_\_\_  
Name: Ellen Jefferson, DVM  
Title: Executive Director

SECOND AMENDMENT TO AMENDED AND RESTATED  
TEMPORARY LICENSE AGREEMENT

THIS SECOND AMENDMENT TO AMENDED AND RESTATED TEMPORARY LICENSE AGREEMENT (this "**Amendment**") is entered into effective as of the 16 day of February, 2015<sup>2016</sup> (the "**Effective Date**"), by and between CITY OF AUSTIN, a Texas home-rule city and municipal corporation, located in Travis, Williamson, and Hays Counties, Texas (the "**City**") and AUSTIN PETS ALIVE, a Texas non-profit corporation ("**APA**").

RECITALS

**WHEREAS**, the City and APA are parties to that certain Amended and Restated Temporary License Agreement, dated as of May 30, 2012 (as amended, the "**License Agreement**"); and

**WHEREAS**, the City and APA are parties to that certain First Amendment to Amended and Restated Temporary License Agreement, dated as of May 27, 2015; and

**WHEREAS**, the City and APA desire to amend the License Agreement upon the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and APA hereby agree as follows:

1. Source of Animals. Section 8.1 of the License Agreement is hereby revised to read in its entirety as follows:

"8.1 Only animals sourced by AAS or originating from a source located in Bastrop, Caldwell, hays, Travis, or Williamson Counties may be housed on the Premises. Animals outside of this area may be temporarily housed on the Premises at the discretion of the Chief Animal Services Officer. The temporary housing of animals under this section shall not exceed 21 days."

2. At-Risk List. Section 8.2 of the License Agreement is hereby revised to add the following sentence to the end of the section:

"The Chief Animal Services Officer may waive any of the above requirements at her discretion."

3. Kennel Usage.

a. Section 8.8 of the License Agreement is hereby revised to read in its entirety as follows:



“8.8 APA will use kennels as depicted on Exhibit A solely for animals sourced by AAS. Notwithstanding the foregoing, the parties may reassign kennel uses as they deem necessary without amending this License Agreement.”

b. Exhibit A to the License Agreement (Description of Premises) is replaced with Exhibit A attached hereto.

4. Capitalized Words. All capitalized words used in this Amendment and not otherwise defined herein shall have the respective meanings given to such words in the License Agreement. The License Agreement is incorporated herein by reference for all purposes.

5. Ratification and Compliance. Except as expressly amended or modified by this Amendment, the License Agreement shall continue in full force and effect. The City and APA each hereby ratify, affirm, and agree that the License Agreement, as herein modified, represents the valid, binding and enforceable obligations of the City and APA respectively. The City and APA each promise and agree to perform and comply with the terms, provisions and conditions of and the agreements in the License Agreement, as modified by this Amendment. In the event of any conflict or inconsistency between the provisions of the License Agreement and this Amendment, the provisions of this Amendment shall control and govern.

6. Entire Agreement and Amendments. The License Agreement, as expressly modified by this Amendment, constitutes the sole and only agreement of the parties to the License Agreement, and supersedes any prior agreements between the parties concerning the License Agreement of the Premises. The License Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

7. APA Authority. APA and the person signing on behalf of it jointly and severally warrant and represent to the City that (i) APA has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize APA to enter into this Amendment and to carry out APA's obligations hereunder has been taken, and (iii) the person signing on behalf of APA has been duly authorized by APA to sign this Amendment on its behalf.

8. City Authority. The City and the person signing on behalf of the City jointly and severally warrant and represent to APA that (i) the City has the full right, power and authority to enter into this Amendment, (ii) all requisite action to authorize the City to enter into this Amendment and to carry out the City's obligations hereunder has been taken, and (iii) the person signing on behalf of the City has been duly authorized by the City to sign this Amendment on its behalf.

9. Binding. This Amendment shall be binding on and inure to the benefit of the City, APA, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

10. Governing Law. This Amendment shall be construed and governed by the laws of the State of Texas in effect from time to time.

11. Section Headings. The section headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof.

12. Construction. Each party acknowledges that it and its counsel have had the opportunity to review this Amendment; that the normal rule of construction shall not be applicable; and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Amendment.

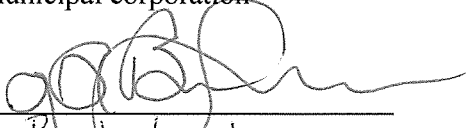
13. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties to this Amendment may execute the Amendment by signing any of the counterparts. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Amendment had been delivered. The City and APA (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Amendment based on the foregoing forms of signature.

[Signature Page follows]

IN WITNESS WHEREOF, the City and APA have executed this Amendment through their duly authorized representatives to be effective as of the Effective Date.

**CITY:**

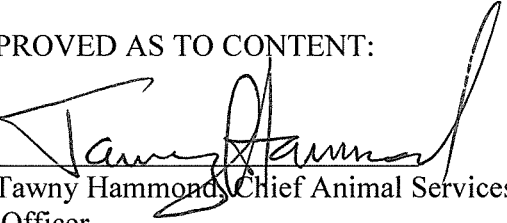
**CITY OF AUSTIN,**  
a Texas home-rule city  
and municipal corporation

By:   
Name: Bert Lumbrey  
Title: Assistant City Manager

**APPROVED AS TO FORM:**

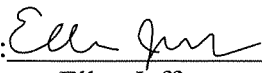
By:   
Assistant City Attorney

**APPROVED AS TO CONTENT:**

By:   
Tawny Hammond, Chief Animal Services  
Officer

**APA:**

**AUSTIN PETS ALIVE,**  
a Texas non-profit corporation

By:   
Name: Ellen Jefferson, DVM  
Title: Executive Director