



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the City Manager to Enter Revised Memorandum of Understanding with People Assisting Lodi Shelter (PALS)

MEETING DATE: March 19, 2008

PREPARED BY: City Attorney

RECOMMENDED ACTION: That the City Council authorize the City Manager to enter into a revised Memorandum of Understanding (MOU) with People Assisting Lodi Shelter (PALS) and to retain the temporary building moved to the Lodi Animal Shelter.

BACKGROUND INFORMATION: People Assisting Lodi Shelter (PALS), a non profit organization whose goal is to increase animal adoptions, improve animal housing conditions, and assist shelter staff by helping keep the animals in a clean environment, has maintained a modular pet adoption center on the Animal Shelter grounds under an MOU with the City of Lodi since November 2004.

Staff has made some minor revisions to the attached MOU that continues the agreement for an additional five (5) years.

FISCAL IMPACT: Not Applicable

Steve Schwabauer, City Attorney

APPROVED: _____
Blair King, City Manager

MEMORANDUM OF UNDERSTANDING
PEOPLE ASSISTING LODI SHELTER

This Memorandum of Understanding ("Agreement" or "MOU") is entered into as of this ____ day of _____, 2008 by People Assisting Lodi Shelter dba PALS ("PALS") and the City of Lodi, acting by and through the City's Animal Care and Control Department ("City").

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Background

- A. City operates animal care and control services which accept thousands of surrendered, stray and abandoned domestic pets each year. City holds these pets at the City shelter for at least the period of time required by law, and then makes adoptable pets available to the public for adoption. City desires to increase the adoption rate and significantly reduce the euthanasia rate of excess adoptable pets by expanding the adoption program and establishing a new pet adoption center.
- B. For over ~~ten~~ years, PALS co-founders have volunteered to raise funds, promote adoptions of shelter pets, provide spay/neuter to control overpopulation, and assisted shelter staff with caring for and grooming pets and cleaning shelter facilities. In or about 2001 PALS cofounders established, furnished, staffed and maintained the shelter's ~~current~~ cat adoption area, "Cassie's Garden." In July 2004, PALS was granted 501(c) (3) nonprofit status from the IRS. PALS established a new attractive adoption facility (completed June 2006), ~~subsidized adoptions and subsidized~~ off-site adoption programs that have significantly increased the adoption rate of shelter pets by the community.
- C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

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Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. City understands that PALS is a 501 (c) (3) stand-alone organization by their own Board of Directors and policies and are partnered with the City in the humane care of shelter animals. PALS and City agree that PALS will manage and operate the pet adoption facility where members of the public can interact with adoptable City Shelter pets in a conducive setting, and receive information/educational literature about responsible pet ownership. The pet adoption center is located in a detached modular building located on the Shelter grounds.
2. Rent. PALS agrees to pay the rent for the modular building that will serve as the pet adoption center.

3. Modifications and Utilities. City agrees to provide or pay utility expenses for the shelter adoption center including power, sewer, water and garbage services.
4. Maintenance. PALS and City agree to cooperate fully to ensure that maintenance of the pet adoption center interior meets national standards established by humane associations for animal shelters. City agrees to maintain pet adoption center grounds, including utilities. PALS agrees to establish cleaning and maintenance protocols and to train and supervise volunteers to achieve those protocols. PALS agrees to use best efforts to provide volunteers to clean and maintain the pet adoption center on a daily basis. PALS will continue to recruit volunteers to cover daily shifts.
5. Administration. City and PALS agree that PALS shall be responsible for administering the pet adoptions facility, including but not limited to: establishing adoption hours; recruiting, training, supervising and staffing volunteers' ordering/purchasing equipment, furnishings, materials and supplies; screening potential adopters and processing adoption applications, educating adopters about responsible pet ownership', developing and implementing community education programs to promote responsible pet ownership, adoptions, and spay/neuter. City shall continue to furnish pet food and cat litter supplies for shelter animals residing in the pet adoption center.
6. Finances. City recognizes that PALS volunteers have raised tens of thousands of dollars over the years for the benefit of the Shelter. At this time, City is maintaining the PALS trust account (#_____). PALS and City agree that this fund shall be used for the sole purpose of maintaining the adoption facility and promoting pet adoptions and funds shall only be released as requested by PALS' authorized representative(s), i.e., officers or board members presenting a board resolution.
7. Transparency. PALS agrees to make its financial records available to City for review upon request. As an exclusively volunteer charitable 501 (c) (3) organization, PALS is fiscally accountable to its participating volunteers, as well as the Attorney General. To afford the community the opportunity to become familiar and/or involved with PALS' programs, PALS will conduct one or more community meetings annually to present information about the progress of shelter adoptions, PALS' activities, and opportunities for public participation. City agrees, upon request, to provide PALS with financial information related to all funds contributed by PALS to the City.
8. Term. The term of this Agreement shall commence in August 2007 and shall continue for five years. This Agreement shall be renewable upon agreement by the parties.

9. Mediation. In the event a dispute arises between parties, City and PALS agree to mediate their dispute in good faith, using a mediator(s) or mediation service upon which they agree, each bearing its own costs.
10. Attorney Fees. In the event a dispute arises between the parties and they are unable to resolve it through mediation, the prevailing party to any litigation shall be entitled to all expenses incurred therefore, including reasonable attorney fees.
11. Optional Termination. Either party may terminate this Agreement in writing upon at least 90 days notice. In the event of an early termination, the following shall occur:
- a. City agrees to assume all responsibility for the shelter adoption center, including rent, so long as the building remains on shelter property.
 - b. PALS shall have the option of removing the pet adoption center building, kennels and fixtures that were purchased by or donated to PALS. If PALS exercises the option set forth herein, PALS shall be responsible for all moving costs, maintenance costs and rental cost incurred therefor.
 - c. All promises to perform that are contained in this Agreement shall be void.
12. Indemnity and Insurance.
- a. Indemnification by City. Except to the extent caused by the negligence or intentional misconduct of PALS or of any agent, servant or employee of PALS, City ("Indemnitor") shall, at its sole cost and expense indemnify and hold harmless PALS and all associated, affiliated, allied and subsidiary entities of PALS, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys and contractors (hereinafter referred to as "Indemnitees"), from and against:
 - i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witness and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or

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intangible property, or any other right of any person, firm or corporation.

- b. Indemnification by PALS: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, PALS (“indemnitor”) shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as “Indemnitees”) from and against.
 - i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witness and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of PALS, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.
- c. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees for any reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitors sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party’s duty to defend shall begin upon receipt of written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party’s indemnification obligation.
- d. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from

cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suites or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions or proceedings but shall not include attorney fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suites or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall include the reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suites, actions or proceedings.

- e. Insurance. During the term of this Agreement, both parties must maintain, or cause to be maintained, in full force and effect at their sole cost and expenses, the following types and limits of insurance:
- i. Workers Compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of one hundred thousand dollars (\$100,000) for each accident.
 - ii. Comprehensive Commercial General Liability insurance with minimum limits of one million dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.
 - iii. All policies other than those for Workers Compensation shall be written on an occurrence and not on a "claims made" basis.
 - iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

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- f. Named Insureds: All policies, except for Workers Compensation policies, shall name City and all of its associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder shall contain cross liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against who a claim is or may be made in the same manner. As if separate policies had been insured to each insured hereunder."

- g. Evidence of Insurance. PALS shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise PALS of any claim or litigation that may result in liability to PALS. PALS shall immediately advise City of any claim or litigation that may result in liability to City.

- h. Cancellation of Policies of Insurance. PALS' insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

- i. Self-Insurance. The City's insurance requirements set forth herein may be satisfied by a self-insurance program that complies with all laws and regulations governing self-insurance.

14. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) U. S. postage prepaid, Return Receipt Requested, Registered or Certified Mail,

(ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to: Chief of Police
Director, Department of Public Works
P. O. Box 3006
Lodi, CA 95241
Fax: (209) 339-0422

If to PALS, to: People Assisting Lodi Shelter
2414 W. Kettleman Lane
Suite 210-2207
Lodi, CA 95242

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
16. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall be waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.
17. Miscellaneous.
 - a. PALS and City represent that each, respectively, has full right, power and authority to execute this Agreement.
 - b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
 - c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in the introduction above.

CITY OF LODI, a municipal corporation

PEOPLE ASSISTING LODI SHELTER

BLAIR KING
City Manager

KELLY HIGGS,
President of PALS

Deleted: DENNIS BRADSHAW

Attest:

RANDI JOHL
City Clerk

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney