

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 COOPERATIVE AGREEMENT

2 (Dual Purpose Veterinary Clinic)

3 33930

4 THIS AGREEMENT is made and entered, in duplicate, as of  
5 JUN 19 2015, for reference purposes only, by and between FRIENDS OF  
6 LONG BEACH ANIMAL SHELTER, a California non-profit public benefit corporation, doing  
7 business as FRIENDS OF LONG BEACH ANIMALS ("FOLBA"), whose address is PO Box  
8 92736, Long Beach, California 90805, and the CITY OF LONG BEACH, a municipal  
9 corporation ("City").

10 WHEREAS, a major component of FOLBA's mission is to end pet  
11 overpopulation by offering incentives to spay/neuter animals, particularly to low-income  
12 residents of Long Beach; and

13 WHEREAS, the City provides a wide array of animal services through its  
14 Animal Care Services Department ("LBACS"), including operation of an animal shelter at  
15 7700 East Spring Street, Long Beach (Shelter); and

16 WHEREAS, FOLBA proposes to enter into an Agreement with the City and  
17 its LBACS for the purchase, installation, outfitting, and operation of a Dual Purpose  
18 Veterinary Clinic ("DPVC"), to be located on the Shelter premises;

19 NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in  
20 this Agreement, the parties agree as follows:

21 1. PREMISES. A modular building has been purchased by FOLBA and  
22 will be donated to the City; it will be placed on the Shelter property and developed to serve  
23 as the DPVC. The DPVC shall be used by LBACS and FOLBA for the performance of their  
24 respective services, as provided in this Agreement.

25 2. TERM. The initial term of this Agreement shall commence upon full  
26 execution of this Agreement ("Commencement Date"), and shall continue for five (5) years  
27 from the Commencement Date ("Termination Date"). This Agreement may be renewed for  
28 two (2) five-year renewal options at the discretion of the City Manager. FOLBA may

1 terminate this Agreement at any time, by giving the City 120 days' notice.

2 3. USE AND ACCESS.

3 A. LBACS shall have exclusive use of the DPVC for up to five days  
4 each week, specifically, Monday through Friday. LBACS will have the right to alter  
5 its five days use upon 45 days advance written notice to FOLBA. On its days of  
6 use, LBACS will provide clinical treatment of animals under its care.

7 B. FOLBA shall have exclusive use of the DPVC on the remaining  
8 two days each week, specifically, Saturday and Sunday, or whenever it is not used  
9 by LBACS and by advance approval by LBACS, including full use of the DPVC  
10 outfitting equipment referenced in paragraph 4, below. On its days of use, FOLBA  
11 will provide low-cost spay/neuter services, vaccines, and micro chipping services.

12 C. In the event LBACS experiences an emergency involving the  
13 health and safety of an animal in its care on days of FOLBA's usage, LBACS shall  
14 have the use of such DPVC facilities as are required by the circumstances in order  
15 to respond to the emergency. In addition, LBACS shall also have priority use of the  
16 DPVC during health and safety emergencies, such as natural disasters, as defined  
17 by LBACS and/or pursuant to mutual aid obligations for LBACS, even if FOLBA is  
18 scheduled to use the DPVC.

19 D. In the event either party does not schedule use of the DPVC on  
20 any day allotted to it, the other party will have the exclusive right to use the DPVC  
21 on such day without remuneration to the other party.

22 E. Any use of the DPVC by any other organization(s) shall be at  
23 the mutual agreement of both LBACS and FOLBA. Agreement to such usage shall  
24 not be unreasonably withheld, but the utilizing party shall conduct operations in the  
25 DPVC that are consistent with the goals and objectives of FOLBA and LBACS, and  
26 meet any other requirements including insurance and personnel requirements.  
27 Should revenues be created as a result of FOLBA operating the facility, FOLBA shall  
28 retain all such created revenues.

1 F. FOLBA shall provide DPVC access to FOLBA, its staff,  
2 contractors, volunteers, and clients for the days FOLBA uses the DPVC. For  
3 security purposes, FOLBA shall not have keys or the alarm code to the DPVC.  
4 LBACS shall be responsible to unlock and lock the DPVC during FOLBA's use or  
5 use by other approved organizations.

6 G. Parking is available during hours of use for FOLBA staff,  
7 contractors, and volunteers in the LBACS public parking lot, which is located in  
8 front of the LBACS building.

9 4. INSTALLATION AND EQUIPMENT.

10 A. FOLBA will pay all installation costs of the DPVC including any  
11 and all connection fees to all utility services.

12 B. LBACS will provide the initial and required continuing outfitting  
13 of the DPVC, including standard veterinary clinic equipment such as operating  
14 tables, animal preparation stations, scales, autoclaves, cleaners, office furniture,  
15 and similar; FOLBA will be consulted regarding such acquisitions.

16 C. In the event FOLBA requires or desires certain equipment that  
17 LBACS does not require or desire, FOLBA shall have the right to purchase and  
18 install, at the discretion of LBACS, such equipment for its use, at its sole cost.

19 5. MEDICINES AND CONTROLLED SUBSTANCES. FOLBA and  
20 LBACS shall each maintain and control their own supply of medicines and drugs, including  
21 controlled substances. Both parties will enforce the controls required by federal, state and  
22 local laws and regulations, and be responsible for the security of its own controlled  
23 substances.

24 6. REGULATORY COMPLIANCE. FOLBA will obtain and maintain its  
25 own DPVC Use Permit from the California Veterinary Medical Board for operating the  
26 DPVC while under its control, as well as its own DEA Registration Certificate for its use of  
27 the DPVC, and its own business license and all other licenses required for its use of the  
28 DPVC.

1           7.     CONSUMABLES. Each party shall procure and maintain its own  
2 inventory of portable instruments, such as surgical packs, syringes, forceps, retractors,  
3 clamps, and similar. In the event the need arises for use of a specific instrument not  
4 currently in the possession of a party, that party may use an instrument owned by the other  
5 party; however, such instrument must be cleaned and sterilized prior to its return. FOLBA  
6 and LBACS will each be responsible for consumable commodities used during their  
7 respective DPVC use, including medical and office supplies. LBACS and FOLBA will each  
8 be responsible for their own data processing needs, including PCs, laptops, and printers.

9           8.     STAFFING. FOLBA will hire, supervise, and compensate the staff it  
10 requires for the days that it operates the DPVC, and will pay any applicable taxes,  
11 withholdings, workers' compensation insurance, and all other standard requirements for  
12 employers. FOLBA will also exercise appropriate supervision of its volunteers and  
13 contractors. All FOLBA volunteers shall meet the same requirements as LBACS "Rescue  
14 Partners," and undergo the same orientation and training as "Rescue Partners," including  
15 completion of an application and required screening.

16           9.     INSURANCE. As a condition precedent to the effectiveness of this  
17 Agreement, FOLBA shall procure and maintain, at FOLBA's expense for the duration of  
18 this Agreement, from insurance companies that are admitted to write insurance in  
19 California and have ratings of or equivalent to A:V by A.M. Best Company or from  
20 authorized non-admitted insurance companies subject to Section 1763 of the California  
21 Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the  
22 following insurance:

23           A.     Commercial general liability insurance equivalent in scope to  
24 ISO form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than \$1,000,000  
25 per each occurrence and \$2,000,000 general aggregate. This coverage shall  
26 include but not be limited to broad form contractual liability, cross liability,  
27 independent contractors liability, and products and completed operations liability.  
28 City, its boards and commissions, and their officials, employees and agents shall be

1 named as additional insureds by endorsement on City's endorsement form or on an  
2 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85  
3 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37  
4 07 04, and this insurance shall contain no special limitations on the scope of  
5 protection given to City, its boards and commissions, and their officials, employees  
6 and agents. This policy shall be endorsed to state that the insurer waives its right  
7 of subrogation against City, its boards and commissions, and their officials,  
8 employees and agents.

9 B. Workers' Compensation insurance as required by the California  
10 Labor Code and employer's liability insurance in an amount not less than  
11 \$1,000,000 per accident or occupational illness. This policy shall be endorsed to  
12 state that the insurer waives its right of subrogation against City, its boards and  
13 commissions, and their officials, employees and agents.

14 C. Professional liability or errors and omissions insurance in an  
15 amount not less than \$1,000,000 per claim.

16 D. Commercial automobile liability insurance equivalent in scope  
17 to ISO form CA 00 01 06 92, covering Auto Symbol 1 ("Any Auto") in an amount not  
18 less than \$500,000 combined single limit per accident.

19 E. Special perils ("All Risk") property insurance in an amount  
20 sufficient to cover the full replacement value of FOLBA's personal property,  
21 improvements and equipment on the Premises.

22 F. Any self-insurance program, self-insured retention, or  
23 deductible must be separately approved in writing by City's Risk Manager or  
24 designee and shall protect City, its officials, employees and agents in the same  
25 manner and to the same extent as they would have been protected had the policy  
26 or policies not contained retention or deductible provisions.

27 G. Each insurance policy shall be endorsed to state that coverage  
28 shall not be reduced, non-renewed or canceled except after thirty (30) days prior

1 written notice to City, shall be primary and not contributing to any other insurance  
2 or self-insurance maintained by City, and shall be endorsed to state that coverage  
3 maintained by City shall be excess to and shall not contribute to insurance or self-  
4 insurance maintained by FOLBA. FOLBA shall notify City in writing within five (5)  
5 days after any insurance has been voided by the insurer or cancelled by the insured.

6 H. If this coverage is written on a "claims made" basis, it must  
7 provide for an extended reporting period of not less than one hundred eighty (180)  
8 days, commencing on the date this Agreement expires or is terminated, unless  
9 FOLBA guarantees that FOLBA will provide to City evidence of uninterrupted,  
10 continuing coverage for a period of not less than three (3) years, commencing on  
11 the date this Agreement expires or is terminated.

12 I. FOLBA shall require that all subcontractors or contractors that  
13 FOLBA uses in the performance of these services maintain insurance in compliance  
14 with this Section unless otherwise agreed in writing by City's Risk Manager or  
15 designee.

16 J. Prior to the start of performance, FOLBA shall deliver to City  
17 certificates of insurance and the endorsements for approval as to sufficiency and  
18 form. In addition, FOLBA shall, within thirty (30) days prior to expiration of the  
19 insurance, furnish to City certificates of insurance and endorsements evidencing  
20 renewal of the insurance. City reserves the right to require complete certified copies  
21 of all policies of FOLBA and FOLBA's subcontractors and contractors, at any time.  
22 FOLBA shall make available to City's Risk Manager or designee all books, records  
23 and other information relating to this insurance, during normal business hours.

24 K. Any modification or waiver of these insurance requirements  
25 shall only be made with the approval of City's Risk Manager or designee. Not more  
26 frequently than once a year, City's Risk Manager or designee may require that  
27 FOLBA, FOLBA's subcontractors and contractors change the amount, scope or  
28 types of coverages required in this Section if, in his or her sole opinion, the amount,

1 scope or types of coverages are not adequate.

2 L. The procuring or existence of insurance shall not be construed  
3 or deemed as a limitation on liability relating to FOLBA's performance or as full  
4 performance of or compliance with the indemnification provisions of this Agreement.

5 10. INDEMNIFICATION.

6 A. FOLBA and the City agree to defend, indemnify, and hold  
7 harmless each other against any and all liability, expenses, and claims arising from  
8 their respective acts or omissions, including attorney's fees and costs. FOLBA shall  
9 be responsible for damages caused by the negligence of its directors, officers,  
10 employees, and duly authorized volunteers occurring in the performance of this  
11 Agreement. City shall be responsible for damages caused by the negligence of its  
12 directors, officers, employees, and duly authorized volunteers occurring in the  
13 performance of this Agreement. It is the intention of FOLBA and the City that the  
14 provisions of this paragraph be interpreted to impose on each party responsibility  
15 for the negligence of their respective directors, officers, employees, and duly  
16 authorized volunteers.

17 B. The provisions of this Section shall survive the expiration or  
18 termination of this Agreement.

19 11. MAINTENANCE AND UTILITIES. LBACS will provide Internet access  
20 for the use of FOLBA to enable its necessary operational functions. LBACS will be  
21 responsible for the repairs, maintenance and utilities for the DPVC; each party shall provide  
22 custodial services for the days it uses the DPVC, and agrees to remove all trash and leave  
23 the DPVC in a clean and orderly condition upon the conclusion of its period of use.

24 12. SIGNAGE. FOLBA shall be responsible for installing and maintaining  
25 the appropriate signage to locate and direct visitors to the DPVC during the days it operates  
26 the DPVC. FOLBA's logo shall be displayed on the outside of the DPVC. Such signage  
27 shall be approved by LBACS and must meet all requirements of the Long Beach Municipal  
28 Code. FOLBA may use portions of the facility and grounds for placing organization specific

1 items for publicity and awareness functions. Placement of these items is subject to the  
2 agreement and approval of LBACS and the requirements of the Long Beach Municipal  
3 Code.

4 13. INDEPENDENT CONTRACTOR. In performing its services, FOLBA  
5 and its agents, volunteers, contractors, and employees, are and shall act as independent  
6 contractors and not employees, representatives, or agents of City. FOLBA shall have  
7 control of FOLBA's work and the manner in which it is performed. FOLBA shall be free to  
8 contract for similar services to be performed for others during this Agreement provided,  
9 however, FOLBA acknowledges and agrees that:

10 A. City will not withhold taxes of any kind from any payments to  
11 FOLBA;

12 B. City will not secure workers' compensation or pay  
13 unemployment insurance to, for, or on FOLBA's behalf; and

14 C. City will not provide and FOLBA and its agents, volunteers,  
15 contractors, and employees, are not entitled to any of the usual and customary  
16 rights, benefits or privileges of City employees. FOLBA expressly warrants that  
17 neither FOLBA nor any of FOLBA's employees or agents shall represent themselves  
18 to be employees or agents of City.

19 14. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
20 contemplates the personal services of FOLBA and FOLBA's employees, and the parties  
21 acknowledge that a substantial inducement to City for entering this Agreement was and is  
22 the professional reputation and competence of FOLBA and FOLBA's employees. FOLBA  
23 shall not assign its rights or delegate its duties under this Agreement, or any interest in this  
24 Agreement, or any portion of it, without the prior approval of City, except that FOLBA may  
25 with the prior approval of the City Manager of City, assign any moneys due or to become  
26 due FOLBA under this Agreement. Any attempted assignment or delegation shall be void,  
27 and any assignee or delegate shall acquire no right or interest by reason of an attempted  
28 assignment or delegation. Furthermore, FOLBA shall not subcontract any portion of its



1 performance without the prior approval of the City Manager or designee, or substitute an  
2 approved subconsultant or contractor without approval prior to the substitution. Nothing  
3 stated in this Section shall prevent FOLBA from employing as many employees as FOLBA  
4 deems necessary for performance of this Agreement.

5 15. AMENDMENT. This Agreement, including all Exhibits, shall not be  
6 amended, nor any provision or breach waived, except in writing signed by the parties which  
7 expressly refers to this Agreement.

8 16. GOVERNING LAW. This Agreement shall be construed in  
9 accordance with the laws of the State of California, and the venue for any legal actions  
10 brought by any party with respect to this Agreement shall be the County of Los Angeles,  
11 State of California for state actions and the Central District of California for any federal  
12 actions. FOLBA shall cause all work performed in connection with construction of the  
13 Project to be performed in compliance with (1) all applicable laws, ordinances, rules and  
14 regulations of federal, state, county or municipal governments or agencies (including,  
15 without limitation, all applicable federal and state labor standards, including the prevailing  
16 wage provisions of sections 1770 et seq. of the California Labor Code); and (2) all  
17 directions, rules and regulations of any fire marshal, health officer, building inspector, or  
18 other officer of every governmental agency now having or hereafter acquiring jurisdiction.

19 17. PREVAILING WAGE.

20 A. FOLBA agrees that all public work (as defined in California  
21 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
22 Work"), if any, shall comply with the requirements of California Labor Code sections  
23 1770 et seq. City makes no representation or statement that the Project, or any  
24 portion thereof, is or is not a "public work" as defined in California Labor Code  
25 section 1720.

26 B. In all bid specifications, contracts and subcontracts for any  
27 such Public Work, FOLBA shall obtain the general prevailing rate of per diem wages  
28 and the general prevailing rate for holiday and overtime work in this locality for each

1 craft, classification or type of worker needed to perform the Public Work, and shall  
2 include such rates in the bid specifications, contract or subcontract. Such bid  
3 specifications, contract or subcontract must contain the following provision: "It shall  
4 be mandatory for the contractor to pay not less than the said prevailing rate of wages  
5 to all workers employed by the contractor in the execution of this contract. The  
6 contractor expressly agrees to comply with the penalty provisions of California Labor  
7 Code section 1775 and the payroll record keeping requirements of California Labor  
8 Code section 1771."

9 18. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
10 constitutes the entire understanding between the parties and supersedes all other  
11 agreements, oral or written, with respect to the subject matter in this Agreement.

12 19. AMBIGUITY. In the event of any conflict or ambiguity between this  
13 Agreement and any Exhibit, the provisions of this Agreement shall govern.

14 20. NONDISCRIMINATION.  
15 A. In connection with performance of this Agreement and subject  
16 to applicable rules and regulations, FOLBA shall not discriminate against any  
17 employee or applicant for employment because of race, religion, national origin,  
18 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
19 disability. FOLBA shall ensure that applicants are employed, and that employees  
20 are treated during their employment, without regard to these bases. These actions  
21 shall include, but not be limited to, the following: employment, upgrading, demotion  
22 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay  
23 or other forms of compensation; and selection for training, including apprenticeship.

24 B. It is the policy of City to encourage the participation of  
25 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
26 procurement process, and FOLBA agrees to use its best efforts to carry out this  
27 policy in its use of subcontractors and contractors to the fullest extent consistent  
28 with the efficient performance of this Agreement. FOLBA may rely on written

1 representations by subcontractors and contractors regarding their status. FOLBA  
2 shall report to City in May and in December or, in the case of short-term agreements,  
3 prior to invoicing for final payment, the names of all subcontractors and contractors  
4 hired by FOLBA for this Project and information on whether or not they are a  
5 Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in  
6 Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

7 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
8 accordance with the provisions of the Ordinance, this Agreement is subject to the  
9 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
10 Long Beach Municipal Code, as amended from time to time.

11 A. During the performance of this Agreement, FOLBA certifies and  
12 represents that FOLBA will comply with the EBO. FOLBA agrees to post the  
13 following statement in conspicuous places at its place of business available to  
14 employees and applicants for employment:

15 "During the performance of a contract with the City of Long  
16 Beach, FOLBA will provide equal benefits to employees with spouses  
17 and its employees with domestic partners. Additional information about  
18 the City of Long Beach's Equal Benefits Ordinance may be obtained from  
19 the City of Long Beach Business Services Division at 562-570-6200."

20 B. The failure of FOLBA to comply with the EBO will be deemed  
21 to be a material breach of the Agreement by the City.

22 C. If FOLBA fails to comply with the EBO, the City may cancel,  
23 terminate or suspend the Agreement, in whole or in part, and monies due or to  
24 become due under the Agreement may be retained by the City. The City may also  
25 pursue any and all other remedies at law or in equity for any breach.

26 D. Failure to comply with the EBO may be used as evidence  
27 against FOLBA in actions taken pursuant to the provisions of Long Beach Municipal  
28 Code 2.93 et seq., Contractor Responsibility.

1 E. If the City determines that FOLBA has set up or used its  
2 contracting entity for the purpose of evading the intent of the EBO, the City may  
3 terminate the Agreement on behalf of the City. Violation of this provision may be  
4 used as evidence against FOLBA in actions taken pursuant to the provisions of Long  
5 Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

6 22. NOTICE. Any notice or approval required by this Agreement shall be  
7 in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
8 postage prepaid, addressed to FOLBA at the address first stated above, and to City at 333  
9 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to  
10 the City Engineer at the same address. Notice of change of address shall be given in the  
11 same manner as stated for other notices. Notice shall be deemed given on the date  
12 deposited in the mail or on the date personal delivery is made, whichever occurs first.

13 23. NO WAIVER. The acceptance of any services or the payment of any  
14 money by City shall not operate as a waiver of any provision of this Agreement or of any  
15 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
16 Agreement shall not constitute a waiver of any other or subsequent breach of this  
17 Agreement.

18 24. TAX REPORTING. As required by federal and state law, City is  
19 obligated to and will report the payment of compensation to FOLBA on Form 1099-Misc.  
20 FOLBA shall be solely responsible for payment of all federal and state taxes resulting from  
21 payments under this Agreement. FOLBA shall submit FOLBA's Employer Identification  
22 Number (EIN), or FOLBA's Social Security Number if FOLBA does not have an EIN, in  
23 writing to City's Accounts Payable, Department of Financial Management. FOLBA  
24 acknowledges and agrees that City has no obligation to pay FOLBA until FOLBA provides  
25 one of these numbers.

26 25. ADVERTISING. FOLBA shall not use the name of City, its officials or  
27 employees in any advertising or solicitation for business or as a reference, without the prior  
28 approval of the City Manager or designee.

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lona Beach, CA 90802-4664

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26. THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

FRIENDS OF LONG BEACH ANIMAL SHELTER, a California non-profit public benefit corporation, doing business as FRIENDS OF LONG BEACH ANIMALS

JUN 24 2015, 2015

By [Signature]  
Name SHIRLEY VARGAS  
Title PRESIDENT

JUN 24 2015, 2015

By [Signature]  
Name NONA DALY  
Title Vice President

"FOLBA"

CITY OF LONG BEACH, a municipal corporation

8/10/15, 2015

By [Signature]  
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City" Assistant City Manager

This Agreement is approved as to form on 7/27, 2015.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy