MH/vv
09/03/15
Item #19

AN ORDINANCE 2015-09-03-0745

AUTHORIZING A CONTRACT AMENDMENT WITH PET SHOTZ, INC. TO INCREASE THE COMPENSATION TO UP TO $100,000.00 FOR ADDITIONAL IN-HOUSE SPAY AND NEUTER SERVICES WITH THE OPTION TO RENEW FOR TWO ONE-YEAR TERMS, AND AUTHORIZING A ONE-YEAR CONTRACT WITH PET SPOTS FOR UP TO $140,000.00 FOR COMMUNITY SPAY AND NEUTER SERVICES WITH THE OPTION TO RENEW FOR ONE ADDITIONAL YEAR.

* * * * *

WHEREAS, in FY 2011, the Animal Care Services Department (ACS) updated its Strategic Plan to include the following three key objectives: 1) enhanced enforcement; 2) control of the stray animal population; and 3) increasing the live release rate; and

WHEREAS, ACS' live release rate has increased from 62% in FY 2012 to an estimated 85% for FY 15; and

WHEREAS, ACS has seen an 18% increase in the number of live outcomes leaving ACS through adoption, transfer to rescue partners, trap-neuter-return, or return-to-owner; and

WHEREAS, with the increase in live placement comes a greater demand for in-house spay and neuter surgeries; and

WHEREAS, authorizing these contracts will assist ACS as the demand for spay and neuter surgeries increase due to additional rescued and adopted animals; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Animal Care Services Department or her designee is authorized to 1) execute a contract amendment with Pet Shotz, Inc. to increase the compensation to up to $100,000.00 for additional in-house spay and neuter services with the option to renew for two one-year terms and 2) execute a one-year contract with Pet Spots for up to $140,000.00 for community spay and neuter services with the option to renew for one additional year. A copy of the contract amendment and contract, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment I and II.**

SECTION 2. Funding in the amount of $100,000.00 for this ordinance is available from Fund 11001000, Cost Center 3703020001 and General Ledger 5202020, as part of the Fiscal Year 2015 Budget.

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SECTION 3. Funding for this ordinance in the amount of $140,000.00 is contingent upon approval of the Fiscal Year 2016 Budget for Fund 11001000, Cost Center 3703020001 and General Ledger 5201040.

SECTION 4. Future funding through the renewal terms of these contracts are contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 5. Payment not to exceed the budgeted amount is authorized to Pet Shotz, Inc. and Pet Spots and should be encumbered with a purchase order.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 3rd day of September, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**19 (in consent vote: 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20)**
Date:	09/03/2015
Time:	09:20:53 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract amendment with Pet Shotz, Inc. to increase the compensation to up to $100,000.00 for additional in-house spay and neuter services with the option to renew for two one-year terms, and authorizing a one-year contract with Pet Spots for up to $140,000.00 for community spay and neuter services with the option to renew for one additional year. [Xavier Urrutia, Acting Assistant City Manager; Kathy Davis, Director, Animal Care Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Attachment I

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR VETERINARIAN SERVICES

STATE OF TEXAS §

COUNTY OF BEXAR §

This amendment to the Professional Services Agreement for Veterinarian Services, authorized by Ordinance No. 2015-_____, is entered into by and between the City of San Antonio ("City"), a home rule municipal corporation, and Pet Shotz, Inc. by and through Fretorry B. Rogers, DVM its President/Owner ("Contractor"), referred to collectively herein as the "Parties".

WHEREAS, on January 1, 2015, City and Contractor entered into an Agreement for the provision of veterinarian services by Contractor at the Animal Care Services facility; and

WHEREAS, the Agreement provided for a term beginning January 1, 2015 and ending September 30, 2015; and

WHEREAS, Contractor can commit to providing additional veterinarian services; and

WHEREAS, the Parties now wish to amend the Agreement to amend the compensation of the Agreement to provide payment for additional services, amend the Agreement to allow the Department the ability to increase the amount of funding for additional surgeries and adjust the rate per surgery and amend the Agreement to provide for two one year renewal periods; **NOW, IN ACCORDANCE THEREWITH**, the Parties agree as follows:

I. AMENDMENTS

A. Section 2.1 of the Agreement is hereby amended to read as follows:

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on January 1, 2015 and terminate on September 30, 2015. This Agreement may be renewed by mutual consent of the parties for up to two (2) successive, one (1) year terms (each, a "Renewal Term"). Any renewals shall be in writing, and signed by the parties. The City Manager, her designee, or the Director of the Animal Care Services Department shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

B. Article IV. Compensation to Contractor, of the Agreement is hereby amended to read as follows:

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed $100,000.00 as total compensation, to be paid to Contractor as follows:

C. Article XVI. Amendments, of the Agreement is hereby amended to read as follows:

Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval;

provided, however, during the term of the Agreement and subject to funding availability, the Director of the Animal Care Services Department shall have the authority to execute an amendment of this Agreement without further action by the San Antonio City Council, to 1) increase the amount of funding under this Agreement for additional surgeries for services under section 4.2.1, or 2) adjust the rate per surgery for surgeries under section 4.2.1.

II. PROVISIONS REMAIN IN EFFECT

All other terms, conditions, covenants and provisions of the Original Agreement, not specifically mentioned herein and revised by this document, are hereby retained in their entirety, unchanged, and shall remain in full force in effect for the duration of said Original Agreement, and any renewals thereof.

III. ENTIRE AGREEMENT

This Agreement, as amended, embodies the complete agreement of the parties hereto with regard to the subject matter contained herein, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein.

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

City Of San Antonio		**Pet Shotz, Inc.**	
	(Signature)		*(Signature)*
Printed Name:	**Kathy Davis**	Printed Name:	**Fretorry B. Rogers, DVM**
Title:	**Director, Animal Care Services**	Title:	**President**
Date:		Date:	8/13/15

Approved as to Form:

_____
City Attorney

Attachment II

PROFESSIONAL SERVICES AGREEMENT
FOR
SPAY-NEUTER SURGICAL SERVICES

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on the 3rd day of September 2015 and Pet Spots by and through its Executive Director, Fretorry Rogers, DVM ("Contractor"), both of which may be referred to herein collectively as the "Parties".

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

I. DEFINITIONS

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

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's Animal Care Services Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2015 and terminate on September 30, 2016. This Agreement may be renewed by mutual consent of the parties for one (1) successive, one (1) year term ("Renewal Term"). Any renewals shall be in writing, and signed by the parties. The City Manager, her designee, or the Director of the Animal Care Services Department shall have the authority to execute renewals on behalf of the City without further City Council action, subject to appropriation of funds therefore.

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

III. SCOPE OF SERVICES

3.1 Contractor agrees to enter into a nonexclusive agreement to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 Contractor shall perform up to a total of 2,500 spay-neuter surgeries for dogs and cats over the term of this agreement. Surgeries are to be performed for pets of pet owners who reside in targeted areas within the City as determined and approved by the Director of Animal Care Services.

3.3 Contractor shall be responsible for providing veterinary spay-neuter services to include, but not limited to, evaluating animals to determine suitability for sterilization procedure; performance of surgical procedure; post-operative care including medications as well as any additional follow-up care due to surgical complications.

3.4 Unless specified herein, Contractor will provide all trained staff, surgical facilities and related equipment, surgical packs, necessary consumable supplies, and maintain accurate medical records

3.5 Subject to availability as determined by City, City may allow Contractor local use of the ACS Spay/Neuter Van ("Spay/Neuter Van") for Contractor to provide the veterinary spay-neuter services subject to the following terms and conditions:

3.5.1 Contractor agrees and understands Contractor's use of the Spay/Neuter Van shall be subject to its availability as determined by City and City scheduling. The Spay/Neuter Van shall be picked up at a time and location designated by City and will be provided to Contractor with a full tank of fuel. After using the Spay/Neuter Van, Contractor must at all times return the Spay/Neuter Van to City with a full tank of fuel.

3.5.2 Contractor shall furnish additional fuel as necessary for operation of the Spay/Neuter Van while the same is in the possession of Contractor. City shall be allowed at any time to inspect the Spay/Neuter Van while under Contractor's use.

3.5.3 The Spay/Neuter Van shall be used by Contractor in good operating practices, by safe careful and competent personnel.

3.5.4 Upon termination of Contractor's period of use throughout the term of this Agreement, Contractor shall return the Spay/Neuter Van to City at such location as City shall designate. Upon return, the Spay/Neuter Van shall be thoroughly cleaned and in good order.

3.5.5 So long as the Spay/Neuter Van is in the possession of Contractor under the terms of this Agreement, it shall be the responsibility of Contractor to assure that the Spay/Neuter Van, and its component parts, are not diminished in value in any way. Any damage to the Spay/Neuter Van shall be immediately reported to the City.

3.5.6 Signage and graphics appearing on the Spay/Neuter Van shall be determined exclusively by City. Additional graphics or signs shall not be added to the exterior or interior of the Spay/Neuter Van. Contractor will not alter, deface, change or remove any identification that is placed on the Spay/Neuter Van indicating City's ownership thereof.

3.5.7 Contractor shall be solely responsible for all damage, or loss of the Spay/Neuter Van up to its actual replacement value, due to fire, theft, vandalism, collision or any other causes of physical damage. Risk of loss for the Spay/Neuter Van shall remain with Contractor at all times.

3.5.8 Contractor understands and agrees that it does not acquire any right, title or interest in or to the Spay/Neuter Van under this Agreement and shall not assign nor sublet the Spay/Neuter Van or its rights or obligations hereunder in whole or in part. If persons not in Contractor's employ operate the Spay/Neuter Van, Contractor shall remain responsible for such operation according to the terms hereof.

3.5.9 If the Spay/Neuter Van breaks down during Contractor's use, Contractor at its expense shall be responsible for towing the Spay/Neuter Van to a location designated by City for repair by City.

3.5.10 Contractor shall notify City immediately of any accident involving the Spay/Neuter Van and promptly furnish City in writing all information required by City in connection therewith including information regarding the time, place and nature of such accident and the damages involved, as well as the names and addresses of the persons concerned and persons injured, if any, witnesses and owners of property damaged, and any other information known to Contractor together with correspondence and documents pertaining to the accident and to otherwise cooperate in all particulars in aiding the investigation and defense of all claims and demands arising out of any and all accidents. Contractor shall also insure that the San Antonio Police Department is called to the accident scene and files an accident report.

3.5.11 The Spay/Neuter Van shall be used solely for the purpose specified in this Agreement. In no event shall the Spay/Neuter Van be used for personal convenience. The Spay/Neuter Van shall not to be used for general transportation, passenger transportation or to carry materials and goods not specifically related to the Spay/Neuter Van's activities pursuant to this Agreement.

3.5.12 Contractor agrees to comply with and conform to all laws and regulations of any government public body having jurisdiction relating to the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of the Spay/Neuter Van and to assume responsibility for all losses, damages, expenses, fines, forfeitures, seizures, confiscation and penalties arising out of the violation of any such laws and regulations.

3.6 Contractor will provide supporting documentation verifying surgeries performed, as determined by City.

3.7 Contractor surgeries must be performed in a manner consistent with or that exceeds the prevailing standard for veterinary care in Bexar County, Texas.

3.8 Contractor will invoice the City within thirty (30) days following the preceding month's surgical services completed. Contractor shall provide supporting documentation as determined by City to include, but not limited to, surgery logs and evidence that each animal sterilized under this agreement is currently licensed and vaccinated for rabies. Supporting documentation must accompany each spay-neuter surgery performed for which Contractor is seeking payment. On a monthly basis Contractor will provide a report to include the number of surgeries, sex, species, and breed of each sterilized animal. The monthly reports shall also include the name, full address, telephone number, and email (if available) of the owner of each animal sterilized under this agreement. The monthly reports shall be in a format to be determined by the Department and is to be received by the City by no later than the 2nd day of every month.

3.9 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed one hundred forty thousand dollars ($140,000.00) as total compensation, to be paid to Contractor as follows:

Contractor shall be paid at the rate of fifty-six dollars ($56.00) per spay-neuter surgery performed and not charge any additional fees for services under this agreement. This shall represent the total amount received from all sources, the pet owner or otherwise, for each surgery performed. Any additional services provided to pet owner which are not included in this agreement shall be paid for by pet owner.

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

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

4.4 Necessity of Timely Invoice/Waiver of Payment. Notwithstanding the forgoing, City cannot pay for any goods or services without an invoice. Vendor must invoice City no later than 90 calendar days from the date goods are delivered or services rendered. Failure to submit an invoice within said 90 days shall negate any liability on the part of City and constitute a **waiver** by Contractor of any and all right or claims to collect moneys that vendor may rightfully be otherwise entitled to for goods or services performed.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing; document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

5.3 Veterinary records shall be owned and maintained in accordance with Texas Administrative Code section 573.52, Patient Record Keeping. Contractor shall make such records available to City in accordance with Article VI.

VI. RECORDS RETENTION AND RIGHT TO AUDIT

6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

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

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

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

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

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.2 Failing to perform or failing to comply with any covenant herein required
7.4.3 Performing unsatisfactorily as determined by Director

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written

request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

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

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

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

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
Attn: Kathy Davis, Director
Animal Care Services
4710 Highway 151
San Antonio, TX 78227

If intended for Contractor, to:

Pet Spots
Attn: Dr. Fretorry Rogers,
438 Shadbush St.
San Antonio, Texas 78245

IX. CONFIDENTIALITY

In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (Including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other Information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is valuable property of the

City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information, is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Animal Care Services Department, which shall be clearly labeled "*Spay/Neuter Surgeries*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Animal Care Services Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

10.3 A contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Animal Care Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

10.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

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

XI. INDEMNIFICATION

11.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but

not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising, out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any **acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

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

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

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

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

XIV. RESERVED

XV. CONFLICT OF INTEREST

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

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

XVI. AMENDMENTS

Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, during the term of the Agreement and subject to funding availability, the Director of the Animal Care Services Department shall have the authority to execute an amendment of this Agreement without further action by the San Antonio City Council, to 1) increase the amount of funding under this Agreement for additional surgeries or 2) adjust the rate per surgery.

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

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

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below: None

XXVI. ENTIRE AGREEMENT

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

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

CITY OF SAN ANTONIO	**CONTRACTOR** **Pet Spots**
_____	_____
Printed Name: Xavier Urrutia	Printed Name: Fretorry Rogers, DVM
Title: Interim Assistant City Manager	Title: Executive Director
Date: _____	Date: 8/13/15

Approved as to Form:

_____
Martha Sepeda
Acting City Attorney