

AN ORDINANCE 2013-05-30-0355

**AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT IN AN AMOUNT NOT-TO-EXCEED \$2,200,000.00 WITH ANIMAL DEFENSE LEAGUE OF TEXAS, FOR THE DESIGN, CONSTRUCTION AND OPERATION OF A KENNEL FACILITY FOR STRAY ANIMAL KENNELS PROJECT ON ANIMAL DEFENSE LEAGUE OWNED LAND AT 11300 NACOGDOCHES DRIVE, A 2012 – 2017 GENERAL OBLIGATION BOND FUNDED PROJECT; AND, AS PART OF THE PROJECT AUTHORIZING THE EXECUTION OF A LEASE/SUBLEASE OF THE PROJECT LAND FOR A 25-YEAR TERM.**

\* \* \* \* \*

**WHEREAS**, on May 12, 2012, San Antonio voters approved the 2012 – 2017 Bond Program, consisting of five propositions totaling \$596 Million; and

**WHEREAS**, the Bond Program funds will be used on various capital improvement projects to address community infrastructure needs and improve the overall quality of life in San Antonio; and

**WHEREAS**, as part of that program, \$2,200,000.00 in General Obligation Bond funds was approved for the construction of animal kennels to increase the City of San Antonio's capacity to house stray animals; and

**WHEREAS**, a Request for Proposals (RFP) was released in February 2013 seeking proposals from interested parties for the design, construction, and operation of a kennel facility on Respondent owned/leased land; and

**WHEREAS**, the purpose of this RFP was to enable the Animal Care Services Department (ACS) to increase the City's animal shelter capacity while also assuring the animal's live outcome; and

**WHEREAS**, according to the RFP, the selected respondent would provide complete construction services and use funds for the building of an approved high volume rescue partner facility within San Antonio; and

**WHEREAS**, in return, the selected respondent would provide the daily operation of the facility for a minimum period of 25 years and ensure the rescue of an estimated 3,100 additional animals from ACS; and

**WHEREAS**, this RFP was advertised in the San Antonio Hart Beat, on the City's website and the Texas Electronic State Business Daily in February 2013; and

**WHEREAS**, responses were due on March 12, 2013 and one firm responded to the RFP; and

**WHEREAS**, based on the evaluation and ranking made in the selection process, staff recommends Animal Defense League of Texas (ADL); and

**WHEREAS**, this contract will be awarded in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

**WHEREAS**, the Goal Setting Committee set a 30% Small Business Enterprise (SBE) subcontracting goal and a 21% Minority/Women Business Enterprise (M/WBE) subcontracting goal; and

**WHEREAS**, Animal Defense League of Texas has committed to meeting the 30% SBE and 21% M/WBE subcontracting goals; and

**WHEREAS**, this contract was developed utilizing a formal request for proposal process; therefore, as required by the Ethics Ordinance, a Discretionary Contracts Disclosure Form has been included herein as an attachment; **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 Capital Improvements Management Services Department or his designee is authorized to execute a funding agreement in an amount not-to-exceed \$2,200,000.00 with Animal Defense League of Texas, for the design, construction and operation of a kennel facility for Stray Animal Kennels project on Animal Defense League owned land at 11300 Nacogdoches Drive, a 2012 – 2017 General Obligation Bond funded project; and, as part of the project authorizing the execution of a Lease/Sublease of the project land for a 25-year term. A copy of said funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** The City Manager or her designee, or the Director of the Capital Improvements Management Services Department or his designee is further authorized to negotiate and execute a Ground Lease/ Leaseback of the project land for a 25-year term. A copy of the ground lease and leaseback, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment II** and **III**.

**SECTION 3.** Payment not to exceed the amount of \$2,200,000.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00417, Stray Animal Kennels, is authorized to be encumbered and made payable to the Animal Defense League of Texas for the design, construction and operation of a kennel facility.

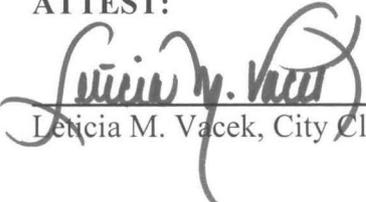
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions,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

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

PASSED AND APPROVED this 30th day of May, 2013.

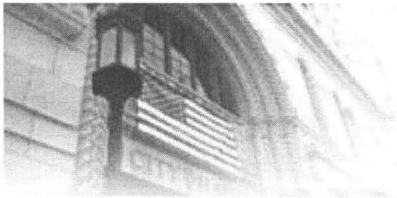
  
M A Y O R  
Julián Castro

**ATTEST:**

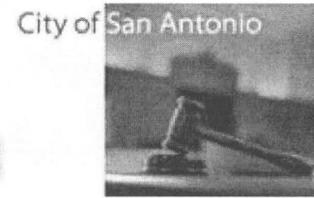
  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 8

<b>Name:</b>	6, 7, 8, 9A, 9B, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 17, 18, 20A, 20B, 20C, 21, 22, 25, 26, 27, 28, 29A, 29B, 30A, 30B						
<b>Date:</b>	05/30/2013						
<b>Time:</b>	10:49:32 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution of a funding agreement in an amount not-to-exceed \$2,200,000.00 with Animal Defense League of Texas, for the design, construction and operation of a kennel facility for Stray Animal Kennels project on Animal Defense League owned land at 11300 Nacogdoches Drive, a 2012 – 2017 General Obligation Bond funded project; and, as part of the project authorizing the execution of a Lease/Sublease of the project land for a 25-year term. [Erik Walsh, Deputy City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10	x					



## I. TERM

The term of this Agreement shall commence upon execution of the Agreement by the San Antonio City Manager or designee and continue for twenty-five (25) years.

## II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Stray Animal Kennels Project by December 31, 2014. The Project shall include, but not be limited to, the facility's design, construction, construction management, budget controls, scheduling, administration, construction engineering and inspection, quality assurance, drawing submittal review and approval coordination, project record keeping and close-out documents (hereafter referred to as "Project Scope").

2.02 Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$2,134,000.00 and provide evidence to City that any additional funds necessary for the Project have been secured prior to the receipt of any funding under this Agreement. In the event the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Executive Director, Janice Darling, shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Capital Improvements Management Services (hereafter referred to as "CIMS") or his/her designee shall be responsible for the administration of this Agreement on behalf of City until the completion of the design and construction phases of this Project; thereafter, the Director of ACS or his/her designee shall be responsible for the administration of this Agreement on behalf of City.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in **Section 2.03** and **Section 2.04** herein.

2.06 Grantee shall provide to City its plans and specifications for the Project (hereafter referred to as "Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as Grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this **Article II** do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions.

2.07 After approval of the Plans by the City, Grantee shall submit any proposed design changes to the CIMS Director or his/her designee for review and approval to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional(s) to provide periodic certifications of construction, certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the CIMS Director or his/her designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

2.09 Beginning on January 31st, 2015, and on each succeeding January 31<sup>st</sup>, throughout the term of the Agreement, Grantee shall provide to City an annual report (hereafter referred to as the "Annual Report"). The Annual Report shall include the following:

- 2.09.1 The number of cats and dogs for which Grantee provided care that year; the outcome of animals under Grantee's care that year; the average length of stay for the animals under Grantee's care that year; the number of dog and cat kennels Grantee currently has available; the criteria in use by Grantee to determine if a pet must be euthanized; and Grantee's then current overall kennel capacity.
- 2.09.2 Evidence of insurance coverages, with City listed as an additional insured, as outlined in **Article XII** herein.
- 2.09.3 Description of all maintenance activities, including routine, capital and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.10 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Contract to complete the design and construction of the Project not later than eighteen months from the date of execution of this Contract.

2.11 Beginning on June 30th, 2014, and on each succeeding June 30th, throughout the term of the Agreement, Grantee shall provide to City an Audited Financial Statement of its business activities. All such audits shall be conducted in accordance with U.S. generally accepted auditing standards by independent auditors.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all Consultants, Sub-Consultants, Contractors and Subcontractors that may work on the Project.

3.02 This section intentionally left blank.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

3.04 **PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.**

- A. The requirements of Chapter 2258 of the Texas Government Code, entitled “Prevailing Wage Rates,” shall apply to this agreement. Grantee agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.
- B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request, upon advertisement of construction bids, and City shall provide Grantee with the appropriate and applicable wage determination, which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. Grantee is required, and shall require its Consultants, Sub-Consultants, Construction Contractor (hereafter referred to as “Contractor”) and all Subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time Grantee calls for bids for construction of a given phase. Grantee further is required to cause the latest prevailing wage determination decision to be included in bids and contracts with Grantee’s Contractor and all Subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.
- C. Upon audit of the records and certified payrolls under this section, should City or its auditors find any violations, Grantee shall cause its Contractor to forfeit as a penalty to City \$60.00 for each laborer, workman or mechanic employed for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Grantee’s Contractor or any Subcontractor. The establishment of prevailing wage rates, in accordance with Chapter 2258, Texas Government Code, shall not be construed to relieve Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

3.05 **ENVIRONMENTAL**

Construction shall be in accordance with the all state and federal environmental requirements including all City applicable construction and development regulations.

**3.06 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM**

Grantee shall comply with the requirements of the City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, as amended), as further described in **Exhibit A** hereto (the “SBEDA Requirements”) for City funds being used for design and construction of the project.

**IV. OWNERSHIP, USE OPERATIONS**

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public and to the highest standard for the operation of animal kennels.

4.02 Grantee shall provide the following services from the completed Project throughout the term of this agreement:

- No less than 3,184 additional rescue animals taken from ACS thus increasing the City’s shelter capacity. Animals rescued under another contract or arrangement with Animal Care Services will not be included in the minimum animal requirement under this Agreement
- 90 percent of all rescued animals taken from ACS shall have live outcomes.

4.03 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.04 The Project improvements shall be used for animal kennel facilities during the entire term of Grantee’s Lease of the facility from City and the term of the Bonds in connection therewith.

4.05 Following the construction of the kennel facility, Grantee shall be given the ability to utilize its own fee schedule to cover operational costs for animals in its care. Facility operations shall be funded through revenues on site and Grantee shall be allowed to identify its own fee schedule, upon review and written approval of the ACS Director. Grantee shall retain all income generated as a result of the operation of the kennel facility.

**V. FUNDING AND ASSISTANCE BY CITY**

5.01 City shall reimburse Grantee for all Allowable expenses incurred hereunder. Grantee understands and accepts that City funds under this Agreement only may be utilized for design and construction or renovation that solely increases City’s kennel capacity at Grantee’s location, thus ensuring ACS’s increased capacity. Notwithstanding any other provisions of this

Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed \$2,134,000.00, reflecting City's total funding of the Project.

5.02 City shall not be obligated or liable under this Agreement to any party, other than Grantee, for payment of any monies or for providing any goods or services.

5.03 Funding shall consist of reimbursements paid to Grantee for the Allowable Expenditures set forth in Article VII below, not to exceed \$2,134,000.00. The City funding provided under this Agreement shall only be used for the portions of the Project which are dedicated to public use/public purpose.

5.04 At the end of Grantee's 25-year lease of the new kennel facility from City, ownership of the kennel facility shall transfer to Grantee at no additional cost to Grantee.

5.05 In the event Grantee is unable to meet its annual animal rescue commitment at any time during its lease term Grantee shall annually be required to reimburse City in an amount calculated as follows:

$$\begin{array}{rcl} \text{Reimbursement} & = & \frac{(3,184) - (\# \text{ of Animal Actually Rescued})}{3,184} * \frac{\$2,134,000.00}{25} \\ \text{Amount} & & \end{array}$$

Provided, however, in the event that there is a natural disaster or a catastrophic occurrence which is, in the sole determination of the Director of ACS, which shall be reasonably exercised, (a) beyond Grantee's control and not due to Grantee's fault or negligence, and (b) which materially and adversely affects Grantee's ability to perform animal intake for more than 2 weeks, the annual animal rescue commitment and thus the reimbursement amount may be adjusted downward on a pro rata basis.

5.06 City shall have the option, in its sole discretion, to forego the Reimbursement Amount and to operate the kennel facility (either directly or indirectly through a third party) for the remainder of Grantee's lease term.

**VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

6.01 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereafter referred to as "Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project. Records shall be retained by Grantee in an electronic format and Grantee shall forward the records to City, upon request, upon the termination of this Agreement.

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and Grantee further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 During construction of the new kennel facility, City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice submitted through City's electronic Project Reporting Information Management Exchange Link (hereafter referred to as "COSA PRIMElink")

6.05 All requests for reimbursement shall be submitted through the COSA PRIMElink. Grantee shall sign a Business Level Agreement and ensure that all of its employees and/or representatives utilizing PRIMElink sign and comply with an Individual User Agreement. Grantee's requests for reimbursement shall be completed on PRIMElink or through through the utilization of forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Grantee shall submit a schedule of values for payment to be approved by CIMS, which CIMS' approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the COSA PRIMElink.

6.06 Prior to reimbursement, City shall have the right to inspect work completed, to ensure conformance with the approved Plans. Invoices shall include all supporting documentation of costs have been incurred by Grantee, as required by City.

6.07 Following any reimbursement by City to Grantee, City agrees to provide Grantee written notice regarding any expenditure City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide Grantee thirty (30) days from receipt of said notice to cure the deficiency cited by City or refund to City any sum of money paid by City to Grantee determined to:

- (A) not having been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) not being supported by adequate documentation to fully justify the expenditure.

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in **Section 6** herein as a

result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request therefore, wherein the amount disallowed or disapproved shall be specified.

## VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a design plan, construction plan and budget by Grantee, Grantee shall submit said design plan, construction plan and budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Construction contract
- Construction contingencies
- Architectural/Engineering Design contract and amendments
- Project oversight costs as approved by City

Expenditures of the funds provided under this Agreement only shall be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable City, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization;
- Travel and travel-related expenses;
- Costs or fees for consultant and/or professional services, except for those directly related to the kennel construction Project;
- Costs or fees associated with attendance at meetings, seminars or conferences;
- Costs or fees associated with regular maintenance and operation;
- Fundraising;
- Equipment and Furnishings, except for items of a capital nature, which are being provided by Grantee's General Contractor and shown on the approved Plans and specifically approved by City;
- Advertising except for those incurred to solicit bids for construction; and
- Insurance.

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made to City thirty (30) days from date necessary to permit a thorough review by City.

Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

### **VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, shall be and shall remain complete and accurate to the best of grantees knowledge and belief, as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that it shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.
- (C) No litigation or proceedings presently are pending or, to Grantee's knowledge, threatened against Grantee.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

### **IX. ACCESSIBILITY OF RECORDS**

9.01 At any time and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives and shall permit City or any of its authorized representatives to audit, examine and make excerpts and/or copies of Grantee's records.

9.02 Grantee agrees and represents that it will cooperate with City, at no charge to City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

### **X. MONITORING AND EVALUATION**

Grantee agrees that City may carry out reasonable monitoring and evaluation activities, so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities and with all other laws, regulations and ordinances related to the performance hereof.

## XI. INDEMNITY

11.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS City and its elected officials, employees, officers, directors, volunteers and representatives of 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 City, directly or indirectly arising out of, resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, Consultant, Sub-Consultant, Contractor or Subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives, while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this **Article XI** 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 GRANTEE 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02 The provisions of this INDEMNITY solely are for the benefit of the parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise City in writing within twenty four (24) hours of any claim or demand against either City or Grantee known to Grantee that is related to or arising out of Grantee's activities under this Agreement and Grantee shall see to the investigation and defense of such claim or demand at Grantee's sole cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this **Article XI**.

## XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to CIMS, which clearly shall be labeled, "Construction and Operation of Kennel Facility" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof(s) of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed, along with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no

duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's CIMS Contract Services Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

12.02 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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 any modification to insurance requirements whereupon City may incur increased risk.

12.03 Grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> 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	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
* if applicable	

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in **Section 12.03 (Insurance table)** from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names Grantee and City as additional insureds.

12.05 City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, as they apply to the limits required by City, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within ten (10) days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: CIMS Department  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

- Name City, its officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, with respect to the operations and activities of, or on behalf of, the named insured performed under contract with 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 City where City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

12.08 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its Sub-Consultants', Contractor(s)' or Subcontractors' performance of the work covered under this Agreement.

12.09 It is agreed that Grantee's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by City, for liability arising

out of operations under this Agreement.

12.10 It is understood and agreed that the insurance required under this Agreement is in addition to, separate and apart from any other obligation contained in this Agreement.

12.11 Grantee shall comply with Texas Government Code Chapter 2253 provisions, regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

### **XIII. NONDISCRIMINATION**

Grantee covenants that it, its agents, employees and/or anyone under its control, shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status in employment practices or in the use of or admission to the premises, which said discrimination Grantee acknowledges is prohibited.

### **XIV. CONFLICT OF INTEREST**

14.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that, in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of Grantee's governing body or of its staff.

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business or other ties.

14.03 No member of Grantee's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership or association in which he or she has a direct or indirect interest;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

### **XV. POLITICAL ACTIVITY**

None of the activities performed hereunder shall involve and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or

for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

## **XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules or other appended documentation to any proposal or contract, along with any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

## **XVII. CONTRACTING**

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by Consultants, Sub-Consultants, Contractors and/or Subcontractors with the terms and conditions of this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall, in no event, be obligated to any third party, including any Consultant, Sub-consultant, Contractor and/or Subcontractor of Grantee, for performance of or payment for work or services.

## **XVIII. CHANGES AND AMENDMENTS**

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof only shall be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 It is understood and agreed by City and Grantee that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall automatically be incorporated into this Agreement without written amendment hereto and shall become a part hereof, as of the effective date of the changed rule, regulation or law.

## **XIX. ASSIGNMENTS**

Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to this Agreement or any claim arising pursuant to this Agreement without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

## **XX. SEVERABILITY OF PROVISIONS**

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, City's Charter, City's Code or a City ordinance, then and in that event it is the intention of both City and Grantee that such invalidity, illegality or unenforceability shall not affect any other clause or provision of this Agreement and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision never was contained herein; it also is the intention of City and Grantee that, in lieu of each clause or provision of this Agreement that is deemed or rendered 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.

## **XXI. NON-WAIVER OF PERFORMANCE**

21.01 No waiver by either City or Grantee of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other term, condition, covenant or guarantee herein contained. Further, any failure by either City or Grantee 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 City or Grantee 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.

21.02 No act or omission by either City or Grantee shall, in any manner, impair or prejudice any right, power, privilege or remedy available to either City or Grantee by law or in equity and such rights, powers, privileges, or remedies shall be specifically preserved hereby.

21.03 No representative or agent of City may waive the effect of the provisions of this **Article XXI** without formal action from the San Antonio City Council.

## **XXII. ENTIRE AGREEMENT**

This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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 hereof and duly executed by the Parties.

## **XXIII. NOTICES**

23.01 For purposes of this Agreement, all official communications and notices between City and Grantee shall be deemed sufficient if in writing and mailed via the USPS, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Director Capital Improvements Management  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
San Antonio, Texas 78283-3966

Grantee: Animal Defense League  
11300 Nacogdoches Rd  
San Antonio, TX 78217

23.02 Notice of change of address by either Party to this Agreement shall be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

#### **XXIV. 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, successors and assigns, except as otherwise expressly provided herein.

#### **XXV. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be deemed or construed by either City, Grantee or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

#### **XXVI. TEXAS LAW TO APPLY**

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.

#### **XXVII. GENDER**

Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**XVIII. 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.

**XXIX. LEGAL AUTHORITY**

29.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

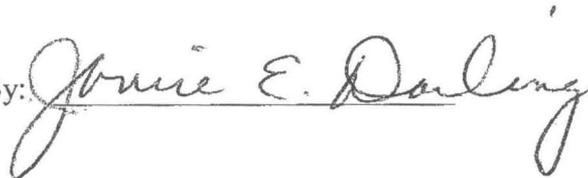
29.02 The signer of this Agreement for Grantee represents; warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF SAN ANTONIO**

**GRANTEE: Animal Defense League of Texas**

By: \_\_\_\_\_  
Sheryl Sculley  
San Antonio City Manager

By:  \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A SBEDA COMPLIANCE**  
**FUNDING AGREEMENT - STRAY ANIMAL KENNELS**

**I. SBEDA Ordinance Compliance Provisions**

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and SubGRANTEES that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification or “Certified”** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by GRANTEE to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if GRANTEE attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the GRANTEE shall not be given credit for the participation of its S/M/WBE subGRANTEE or joint venture partner towards attainment of S/M/WBE utilization goals, and the GRANTEE and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

**Good Faith Efforts** – documentation of the GRANTEE’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime GRANTEE’s posting of a bond covering the work of SBE or M/WBE SubGRANTEES; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE SubGRANTEES.) The appropriate form and content of GRANTEE’s Good Faith Efforts

documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult person that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to GRANTEES and/or SubGRANTEES and vendors for CITY contracted goods and/or services.

**Prime GRANTEE** – the vendor or GRANTEE to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the GRANTEE.

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, GRANTEE is the Respondent.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**SBE Directory** - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

**SBE Subcontracting Program** – an API in which Prime GRANTEES or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE SubGRANTEES.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by GRANTEE may also be required to reflect Good Faith Efforts that a Prime GRANTEE or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or

those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager** – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of GRANTEE and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

**SubGRANTEE** – any vendor or GRANTEE that is providing goods or services to a Prime GRANTEE or GRANTEE in furtherance of the Prime GRANTEE's performance under a contract or purchase order with the City. A copy of each binding agreement between the GRANTEE and its subGRANTEES shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

**Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of GRANTEE's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**SubGRANTEE/Supplier Utilization Plan** – a binding part of this contract Agreement which states the GRANTEE's commitment for the use of Joint Venture Partners and / or SubGRANTEES/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of GRANTEE's Joint Venture partners and SubGRANTEES/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and SubGRANTEE/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or SubGRANTEE/Supplier names, scopes of work, of dollar

values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

#### D. SBEDA Program Compliance – General Provisions

As GRANTEE acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of GRANTEE’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. GRANTEE voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, GRANTEE further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. GRANTEE shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding GRANTEE’s utilization and payment of SubGRANTEEs, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its SubGRANTEEs with this term;
2. GRANTEE shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of GRANTEE or its SubGRANTEEs or suppliers;
3. GRANTEE shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview SubGRANTEEs and workers to determine whether there has been a violation of the terms of this Agreement;
4. GRANTEE shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to GRANTEE’s SubGRANTEE / Supplier Utilization

Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by GRANTEE to replace the SubGRANTEE / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the SubGRANTEE / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by GRANTEE of work previously designated for performance by SubGRANTEE or supplier, substitutions of new SubGRANTEEs, terminations of previously designated SubGRANTEEs, or reductions in the scope of work and value of work awarded to SubGRANTEEs or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. GRANTEE shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. GRANTEE shall retain all records of its SubGRANTEE payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's SubGRANTEE / Supplier Utilization Plan, the GRANTEE shall not be given credit for the participation of its S/M/WBE or HUBZone subGRANTEE(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the GRANTEE and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. GRANTEE acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the GRANTEE and each of its SubGRANTEEs for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and GRANTEE has represented to CITY which primary commodity codes each registered SubGRANTEE will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. GRANTEE hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

**SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is also being awarded pursuant to the SBE Subcontracting Program. GRANTEE agrees to subcontract at least ~~thirty percent (30%)~~ of its prime contract value to certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Sub-GRANTEE/Supplier Utilization Plan which GRANTEE agrees to submit during the price proposal negotiation phase of this contract, and that contains the names of the certified SBE Sub-GRANTEES to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Sub-GRANTEE, and documentation including a description of each SBE Sub-GRANTEE's scope of work and confirmation of each SBE Sub-GRANTEE's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain this Sub-GRANTEE goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law, **and**

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is also being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least ~~twenty one percent (21%)~~ of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Sub-GRANTEE/Supplier Utilization Plan which GRANTEE agrees to submit during the price proposal negotiation phase of this contract, and that contains the names of the certified M/WBE Sub-GRANTEES to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Sub-GRANTEE, and documentation including a description of each M/WBE Sub-GRANTEE's scope of work and confirmation of each M/WBE Sub-GRANTEE's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain this Sub-GRANTEE goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

#### F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the GRANTEE represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of

the SBEDA Ordinance. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of SubGRANTEEs, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for SubGRANTEEs, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. GRANTEE's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. GRANTEE shall incorporate this clause into each of its SubGRANTEE and supplier agreements entered into pursuant to CITY contracts.

#### G. Prompt Payment

Upon execution of this contract by GRANTEE, GRANTEE shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its SubGRANTEEs, including HUBZone SubGRANTEEs, to ensure that the GRANTEE's reported subcontract participation is accurate. GRANTEE shall pay its SubGRANTEEs in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of GRANTEE's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to GRANTEE, and no new CITY contracts shall be issued to the GRANTEE until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

#### E. Violations, Sanctions and Penalties

In addition to the above terms, GRANTEE acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of GRANTEE or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

**Primary Ground Lease**  
(Kennel Facility with Animal Defense League)

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**Authorizing Ordinance:**

**Landlord:** Animal Defense League of Texas

**Landlord's Address:** 11300 Nacogdoches Road, San Antonio, Texas  
78217

**Tenant** City of San Antonio

**Tenant's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Premises:** A parcel containing approximately 2 acres located at 11300 Nacogdoches Road, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A**, which is incorporated herein for all purposes. The parties hereto understand and agree that the initial **Exhibit A**, shall be replaced by an on the ground survey prepared after execution of this Lease agreement.

**Permitted Use:** Any and all lawful uses

**Lease Commencement Date:** The date of commencement of the Funding Agreement

**Initial Term:** Until (a) the expiration of 25 years from the Lease Commencement Date; (b) final repayment by the City of all bonds providing funding for the Funding Agreement, as those bonds may be refinanced from time to time, whichever occurs later.

**Funding Agreement:** Agreement of even date herewith between Landlord and Tenant for funding a Kennel Facility pursuant to the Authorizing Ordinance.

**Sub Ground Lease:** Lease whereby the Animal Defense League subleases the Premises from City of even date herewith pursuant to the Authorizing Ordinance.

*Background:*

Landlord and Tenant are contemporaneously entering into the Funding Agreement, the Sub Ground Lease, and this Ground Lease.

The durations of the Ground Lease and the Sub Ground Lease coincide.

At the expiration of both leases, neither this Primary Ground Lease nor the Sub Ground Lease will be an encumbrance on the fee title to the Premises

*Rights and Obligations:*

**1. Demise of Premises.**

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements; rights, and privileges of Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Landlord as owner of the Premises by reason of the closing of any street, sidewalk, or alley.

**2. Lease Term.**

The Term is as stated above.

**3. Rent.**

Landlord acknowledges receipt in full of all Rent due for the first 25 years of the Term.

**4. Taxes.**

Landlord is responsible for all real estate taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency.

**5. Utilities.**

Landlord is responsible for procuring and paying for all utility service to the Premises.

## **6. Use of Premises.**

6.01. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation. Tenant is not considered to have violated this provision unless:

- a. Landlord has notified Tenant in writing specifying the alleged violation;
- b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, rule or regulation; and
- c. Tenant has had a reasonable time after final adjudication to cure the specified violation.

## **7. Mechanic's Liens.**

Tenant must not cause any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded because of Tenant's act or omission, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action to do so at Tenant's sole expense.

## **8. Environmental.**

8.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

8.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

8.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

8.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental

Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

8.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

8.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

8.07. Landlord represents and warrants that, (i) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

8.08. Before the Occupancy Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

8.09. Landlord must indemnify Tenant and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Landlord's environmental representations, warranties, and covenants.

## **9. Condemnation.**

If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn and the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that the business cannot be effectively and practicably operated on it, then all proceeds of the condemnation shall be Landlord's save and except a prorated portion of the funds provided under the funding agreement shall be paid to Tenant to pay off the remaining debt issued for the Funding Agreement.

## **10. Assignment and Subletting**

10.01. Any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent, is void and terminates the Lease. Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Landlord's notice to Tenant.

10.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

10.03. Landlord need not consent to a sublease to a Landlord-affiliated entity.

## **11. Default and Remedies.**

11.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 30 days after receipt of written notice to Tenant and any lender, notice to whom is required by this lease, Landlord may take any action provided for in law or equity to enforce its rights, provided, however, (1) Landlord shall not have any authority to terminate this lease prior to the final expiration of any bonds issued to support the funding agreement and (2) under no circumstances is Tenant liable for any damages under this Lease.

11.02 If Landlord defaults in performing any obligation arising out of this lease and does not correct the default within 30 days after receipt of written notice to Landlord, Tenant may take any action provided for in law or equity to enforce its rights hereunder.

## **12. Dispute Resolution.**

12.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

12.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

12.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

12.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

12.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

12.06. Mediator fees must be borne equally.

12.07. The parties need not mediate before going to court (i) for either party to seek emergency injunctive relief or (ii) for Landlord to seek forcible entry and detainer relief against Tenant.

### **13. Prohibited Interests in Contracts**

13.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02. Landlord warrants and certifies as follows:

(i) Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

#### **14. Miscellaneous.**

14.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.02. Time is of the essence under this agreement.

14.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

14.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

14.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

14.06. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

**14.07. This Written Agreement, Together With the Funding Agreement and the Sub Ground Lease, Represents The Final Agreement Between The Parties And May Not Be Contradicted**

**By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

14.08. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

14.09. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

14.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

14.11. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

14.12. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

14.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

14.14. Tenant must permit Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

14.15. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

14.16. The Director of Animal Care Services may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

14.17. Whenever this lease states a number more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

### **15. Public Information.**

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**Remainder of Page Intentionally Left Blank**

**16. Appropriations.**

All obligations of the City of San Antonio under this instrument are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

**In Witness Whereof, the parties have hereunto caused their representatives to set their hands.**

*Tenant*

*Landlord*

**City of San Antonio**, a Texas municipal corporation

**Animal Defense League of Texas**, a Texas non-profit corporation

Signature: \_\_\_\_\_

Signature: Janice E. Darling

Printed Name: \_\_\_\_\_

Printed Name: Janice E. Darling

Title: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

Date: May 3, 2013

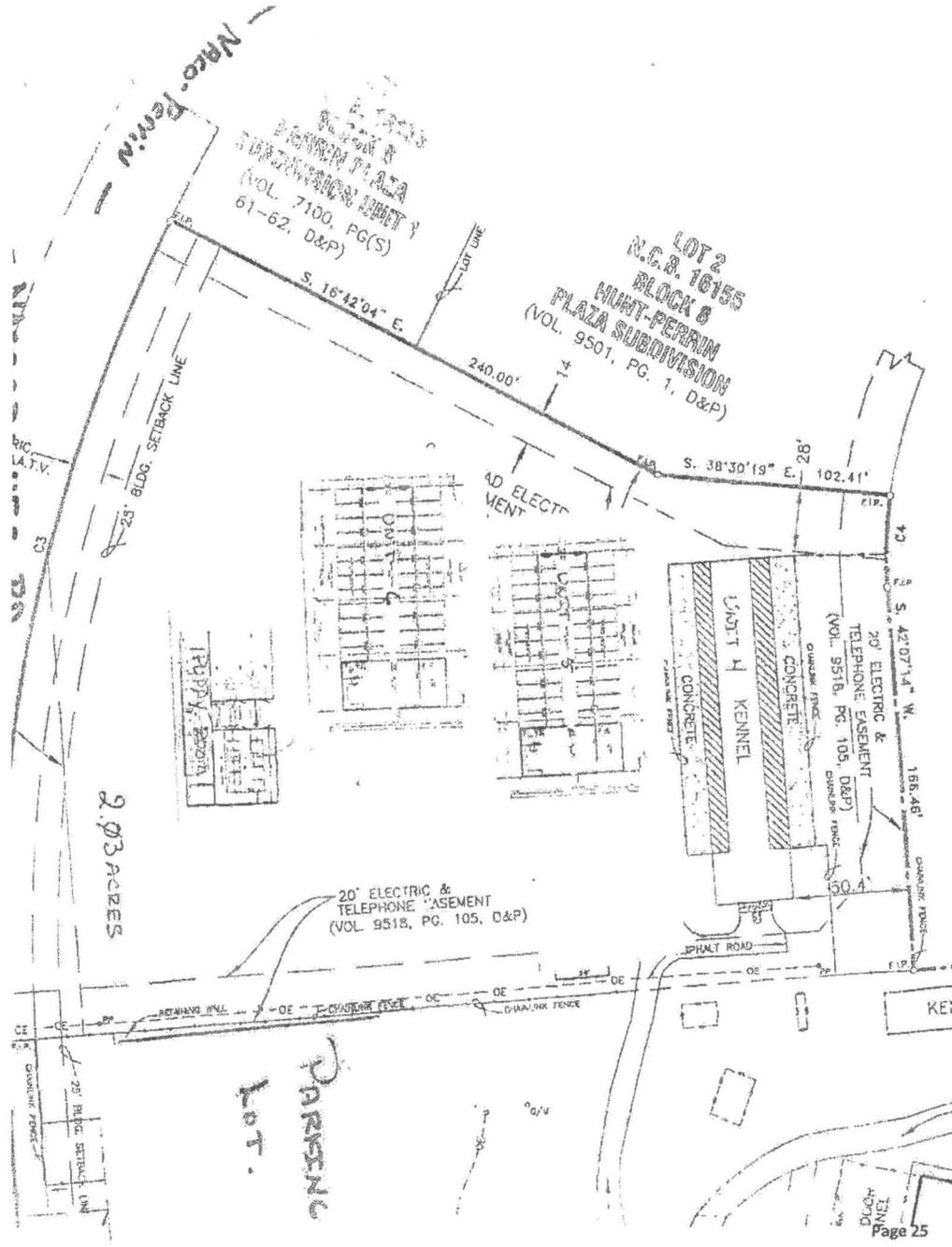
**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

Exhibit A



## Valerie G Vela (City Attorney)

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**From:** Steve Whitworth (City Attorney)  
**Sent:** Tuesday, May 07, 2013 10:28 AM  
**To:** Valerie G Vela (City Attorney)  
**Subject:** FW:

**Attachments:** ADL\_Sub Lease\_Signed by ADL Only.pdf; ADL\_Funding Agreement\_Signed by ADL Only.pdf;  
ADL\_Primary Lease\_Signed by ADL Only.pdf

Attachments for animal care item

Stephen Whitworth  
207-8908

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**From:** Heber Lefgren (ACS)  
**Sent:** Monday, May 06, 2013 9:46 AM  
**To:** Elvia Fernandez (CIMS)  
**Cc:** Angelica Mata (CIMS); Mark Patterson (CIMS); Debbie Sittre (CIMS); Steve Whitworth (City Attorney); Kathy Davis (ACS); Jennifer Ramirez (CMO)  
**Subject:**

Elvia,

Attached are copies of the funding agreement, primary lease, and sub lease that was signed by ADL last week. I will forward you the originals shortly. Let me know if you have any questions.

Heber

**Heber Lefgren**  
Assistant to the Director  
Animal Care Services Department  
[Heber.lefgren@sanantonio.gov](mailto:Heber.lefgren@sanantonio.gov)  
O: (210)207-6606

## Sub Ground Lease

(Kennel Facility with Animal Defense League)

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**Authorizing Ordinance:**

**Sub-Landlord:** City of San Antonio

**Sub-Landlord's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Sub-Tenant:** Animal Defense League of Texas

**Sub-Tenant's Address:** 11300 Nacogdoches Road, San Antonio, Texas 78217

**Premises:** A parcel containing approximately 2 acres located at 11300 Nacogdoches Road, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A**, which is incorporated herein for all purposes. The parties hereto understand and agree that the initial **Exhibit A**, shall be replaced by an on the ground survey prepared after execution of this Lease agreement.

**Permitted Use:** Animal Shelter

**Lease Commencement Date:** The date of commencement of the Funding Agreement

**Initial Term:** Until (a) the expiration of 25 years from the Lease Commencement Date; (b) final repayment by the City of all bonds providing funding for the Funding Agreement, as those bonds may be refinanced from time to time, whichever occurs later.

**Funding Agreement:** Agreement of even date herewith between City of San Antonio and Animal Defense League for funding a Kennel Facility pursuant to the Authorizing Ordinance.

**Ground Lease:** Lease whereby the Animal Defense League leases the Premises to the City of even date herewith pursuant to the Authorizing Ordinance.

*Background:*

Sub-Landlord and Sub-Tenant are contemporaneously entering into the Funding Agreement, the Ground Lease, and this Sub Ground Lease.

The durations of the Ground Lease and the Sub Ground Lease coincide.

At the expiration of both leases, neither this Sub Ground Lease nor the Primary Ground Lease will be an encumbrance on the fee title to the Premises

*Rights and Obligations:*

**1. Demise of Premises.**

Sub-Landlord leases the Premises to Sub-Tenant, and Sub-Tenant leases the Premises from Sub-Landlord under the terms of this Lease. Sub-Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements; rights, and privileges of Sub-Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Sub-Landlord as owner of the Premises by reason of the closing of any street, sidewalk, or alley.

**2. Lease Term.**

The Term is as stated above.

**3. Rent.**

Sub-Landlord acknowledges receipt in full of all Rent due for the first 25 years of the Term.

**4. Taxes.**

Sub-Tenant is responsible for all real estate taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Sub-Landlord or to Sub-Tenant. Sub-Tenant must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency.

**5. Utilities.**

Sub-Tenant is responsible for procuring and paying for all utility service to the Premises.

## **6. Use of Premises and Operational Standards.**

6.01. Facility operations shall be funded through revenues on site and Sub-Tenant shall be allowed to identify its own fee schedule, upon review and written approval of the ACS Director. Sub-Tenant shall retain all income generated as a result of the operation of the kennel facility.

6.02. Sub-Tenant shall provide humane housing and proper care of all animals housed in the new kennel facility to include, but not be limited to, providing food, water, shelter and appropriate veterinary care for so long as such animals remain under the facility's care and control. Humane housing includes, but is not limited to, shelter from sun, wind, extreme temperatures and rain. In addition, animals shall not be overcrowded and shall not be commingled, unless it is appropriate to do so. Animals also must be able freely to move around their enclosures and be able to eat away from fecal matter/debris. Animals shall receive adequate stimulation and appropriate veterinary care, including sterilization and plenty of exercise.

6.03 Puppies shall be housed in a separate building due to their immature immune system. Handling of puppies shall be strictly controlled to minimize disease transmission. Any dog that develops an illness shall be treated, placed on medication and isolated from the general population until the animal is well.

6.04 Sub-Tenant shall follow all of its written protocols, with regard to maintenance of the facility and housing and care for animals. Sub-Tenant shall provide copies of the written protocols in the event that they are ever modified. Sub-Landlord shall have the right to reject any such changes to the written protocols that would result in a lower standard of care the animals being housed.

6.05 Sub-Tenant may use the Premises only for the Permitted Use, unless Sub-Landlord otherwise consents in writing. Sub-Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

6.06 Sub-Tenant hereby commits to fulfill all of its specific commitments contained in the RFP submittal date March 15<sup>th</sup>, 2013 which is hereby incorporated by reference into this contract. It shall be in the Sub-Landlord's sole discretion whether to enforce any such commitments as a covenants of this lease agreement.

6.07. Sub-Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation. Sub-Tenant is not considered to have violated this provision unless:

- a. Sub-Landlord has notified Sub-Tenant in writing specifying the alleged violation;

- b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, rule or regulation; and
- c. Sub-Tenant has had a reasonable time after final adjudication to cure the specified violation.

## **7. Mechanic's Liens.**

Sub-Tenant must not cause any mechanic's or other liens to be filed against the fee of the Premises or against Sub-Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded because of Sub-Tenant's act or omission, Sub-Tenant must either cause it to be removed, or if Sub-Tenant in good faith wishes to contest the lien, take timely action to do so at Sub-Tenant's sole expense.

## **8. Environmental.**

8.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

8.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

8.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

8.04. Sub-Tenant represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Sub-Tenant must cause its employees, agents, contractors, Sub-Tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively, "Occupants") to comply with all applicable Environmental Laws.

8.05. Sub-Tenant represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

8.06. Sub-Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Sub-Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

8.07. Sub-Tenant represents and warrants that, (i) with regard to activities and conditions on the Property Sub-Tenant has not given, nor was it required to give, and Sub-Tenant has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Sub-Tenant may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Sub-Tenant must immediately provide Sub-Landlord a copy.

8.08. Before the Occupancy Commencement Date, Sub-Tenant must permit Sub-Landlord and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Sub-Landlord may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Sub-Landlord, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Sub-Landlord's sole cost. Sub-Landlord must minimize the intrusion upon and inconvenience to Sub-Tenant and the ongoing operations at the Premises. If Sub-Landlord performs any tests that disturb the Property, Sub-Landlord must restore the Property. Sub-Landlord is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

8.09. Sub-Tenant must indemnify Sub-Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Sub-Landlord in enforcing this indemnity) arising from or relating to breach of Sub-Tenant's environmental representations, warranties, and covenants.

## **9. Condemnation.**

If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn and the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Sub-Tenant's business cannot be effectively and practicably operated on it, then all proceeds of the condemnation shall be Sub-Tenant's save and except a prorated

portion of the funds provided under the funding agreement shall be paid to Sub-Landlord to pay off the remaining debt issued for the funding agreement.

## **10. Assignment and Subletting**

10.01. Any attempt at transfer, assignment, or subletting of Sub-Tenant's rights, duties, and obligations hereunder, without the Sub-Landlord's prior written consent, is void and terminates the Lease. Sub-Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Sub-Landlord's notice to Sub-Tenant.

10.02. Sub-Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

10.03. Sub-Landlord need not consent to a sublease to a Sub-Landlord-affiliated entity.

## **11. Default and Remedies.**

11.01. If Sub-Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 30 days after receipt of written notice to Sub-Tenant and any lender, notice to whom is required by this lease, Sub-Landlord may take any action provided for in law or equity to enforce its rights, including the right, as specified under the Funding Agreement, to sublease the Premises to a third party for operation as an animal shelter under terms and conditions similar to those contained in this lease agreement.

11.02. If Sub-Landlord defaults in performing any obligation arising out of this lease and does not correct the default within 30 days after receipt of written notice to Sub-Landlord, Sub-Tenant may take any action provided for in law or equity to enforce its rights hereunder, provided, however, under no circumstances is Sub-Landlord liable for any damages under this Lease.

## **12. Dispute Resolution.**

12.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

12.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as,

within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

12.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

12.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

12.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

12.06. Mediator fees must be borne equally.

12.07. The parties need not mediate before going to court (i) for either party to seek emergency injunctive relief or (ii) for Sub-Landlord to seek forcible entry and detainer relief against Sub-Tenant.

### **13. Prohibited Interests in Contracts**

13.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

13.02. Sub-Landlord warrants and certifies as follows:

(i) Sub-Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Sub-Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.03. Sub-Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

#### **14. Miscellaneous.**

14.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.02. Time is of the essence under this agreement.

14.03. Sub-Tenant will, upon expiration or termination, yield up the Premises peacefully to Sub-Landlord, in good order, condition, and repair, reasonable use and wear excepted.

14.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

14.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

14.06. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

**14.07. This Written Agreement, Together With the Funding Agreement and the Ground Lease, Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

14.08. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

14.09. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

14.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

14.11. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

14.12. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

14.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

14.14. Sub-Tenant must permit Sub-Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Sub-Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective Sub-Tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

14.15. The relationship between Sub-Landlord and Sub-Tenant is at all times solely that of Sub-Landlord and Sub-Tenant, not that of partners or a joint venturers.

14.16. The Director of Animal Care Services may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and

obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

14.17. Whenever this lease states a number more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

### **15. Public Information.**

Sub-Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

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**16. Appropriations.**

All obligations of the City of San Antonio under this instrument are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

**In Witness Whereof, the parties have hereunto caused their representatives to set their hands.**

***Sub-Tenant***

**City of San Antonio**, a Texas municipal corporation

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***Sub-Landlord***

**Animal Defense League of Texas**, a Texas non-profit corporation

Signature: Janice E. Darling

Printed Name: Janice E. Darling

Title: Executive Director

Date: May 3, 2013

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

Exhibit A

