

LEASE AGREEMENT

210 Tuleta Drive: Paul Jolly Center for Pet Adoptions/Petco Pavilion

TABLE OF CONTENTS

1.	Basic Information, Definitions.....	2
2.	Grant.....	3
3.	Rent.....	3
4.	Term, Renewal.....	3
5.	Tenant's Affirmative Promises.....	4
6.	Indemnity.....	9
7.	Tenant's Negative Promises.....	10
8.	Landlord's Affirmative Promises.....	11
9.	Landlord's Negative Promise.....	12
10.	Alterations.....	12
11.	Insurance.....	13
12.	Release of Claims/Subrogation.....	15
13.	Environmental Matters.....	15
14.	Landlord's Municipal Powers.....	16
15.	Prohibited Interests in Contracts.....	16
16.	Casualty/Total or Partial Destruction.....	17
17.	Condemnation/Substantial or Partial Taking.....	17
18.	Holdover.....	17
19.	Default, Remedies for Default, Termination without Cause.....	17
20.	Tenant's Bankruptcy.....	20
21.	Warranty Disclaimer.....	21
22.	Abandoned Property.....	22
23.	Appropriations.....	22
24.	Sublease, Assignment.....	22
25.	Dispute Resolution.....	22
26.	Miscellaneous.....	23
27.	Public Information.....	25
	Signatures	26
	<i>Exhibit A</i>	27
	<i>Exhibit B</i>	28
	<i>Exhibit C</i>	28

DRAFT

1. BASIC INFORMATION, DEFINITIONS.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: Attn: Animal Care Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Tenant: Animal Defense League of Texas

Tenant's Address: 11300 Nacogdoches
San Antonio, Texas 78217

Premises: An approximate 1.926 acre tract, as described on *Exhibit A*. Excluded from the Premises however is the Petco Spay and Neuter Facility located at the southwest corner of the Premises.

Permitted Use: Operation of an animal adoption center (Adoption Center) and in addition, the Petco Pavilion may be used for community educational events to provide service dogs to military veterans and other uses as may be agreed to by Tenant and Landlord, as further described in this Agreement

Occupancy Commencement Date: Premises are move in ready, as defined in Article 2, the actual date to be memorialized at the time in an Occupancy Commencement Memorandum, as described in *Exhibit C*.

Rent Commencement Date: Occupancy Commencement Date

Initial Term: 1 year that is automatically extended 2 additional years if performance requirements are met

Building Operating Hours: Adoption Center shall be open to the public 11:00 am to 7:00 pm, Monday through Sunday.

Common Areas: All parts of the Premises outside of the Paul Jolly Center for Pet Adoptions Building and the Petco Pavilion.

DRAFT

DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as set out below

- 1.1 “*Animals*” shall include both dogs and cats.
- 1.2 “*Rescue*” shall mean the permanent transfer of physical custody and ownership of an animal to Tenant, or its affiliates from the City’s Animal Care Services Department (“ACS”) as approved by the City’s ACS Director.
- 1.3 “*Stray animals*” shall mean animals initially impounded at the ACS’s facility and transferred by Tenant to the Premises and animals impounded by Tenant to be held for the appropriate stay hold period, consistent with the Chapter 5 of the City Code of the City of San Antonio.
- 1.4 “*Director*” shall mean the director of City’s Animal Care Services Department.

2. GRANT.

- 2.1 Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. Included in this lease are the items listed in ***Exhibit B***.
- 2.2 Tenant's right of occupancy begins at the Occupancy Commencement Date. Move• in ready means that the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

3. RENT.

- 3.1 Rent. Tenant shall pay Landlord rent in the amount of One Dollar (\$1.00) per year, which shall be due on the occupancy Commencement Date and each anniversary thereof. Rent shall be mailed to Landlord at the following address:

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

- 3.2 Additional Rent. If real estate ad valorem taxes are assessed against Tenant’s leasehold, Tenant must pay them timely. If real estate ad valorem taxes are assessed against the real estate on which the Premises are located, Tenant must pay, within 30 days of Landlord's request, a share of the taxes equal to the following fraction:

$$\frac{\text{Numerator equals square feet of the Premises}}{\text{Denominator equals the total rentable square feet of the building in which the Premises are located}}$$

4. TERM, RENEWAL.

- 4.1 The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease Agreement (“Lease”).

DRAFT

4.2 The Initial Term shall automatically extend for two (2) years conditional upon Tenant meeting performance requirements described in Section 5.1 hereunder. Additionally, the Parties shall have the option to renew this Lease for one additional three (3) year term. The City Manager or designee, or the Director of the City of San Antonio's Animal Care Services Department shall have the authority to execute a renewal of this Lease on behalf of the City without further City Council action, conditional upon Tenant meeting same performance requirements and subject to appropriation of funds. Any renewal of this Lease shall be in writing, and signed by both Parties.

5. TENANT'S AFFIRMATIVE PROMISES.

Tenant promises that it will:

5.1 Premises Operations. Tenant shall use the Premises for the purposes of operating an animal adoption center and providing community educational event opportunities and other uses as may be agreed to by Tenant and Landlord. Tenant shall: (1) manage the Premises; (2) maximize the annual number of pets rescued from ACS; and (3) manage the use of the Premise's pavilion. Tenant shall have the right to operate an animal adoption center in the Paul Jolly Center for Pet Adoptions Building in the manner it deems best, so long as its operation is compliant with all applicable laws, statutes, codes, and ordinances.

5.1.1 *Operational Standards.* Tenant shall develop and implement policies to ensure quality and consistent operational standards of Premises. Tenant shall provide, at the request of the Landlord, animal shelter standards being applied at the animal adoption center. Landlord can require alterations to shelter standards if needed. Any required shelter standards shall not exceed those applied at ACS. Landlord will not interfere with the day to day operations of the facility, except in the course of its generally applicable regulatory authority.

5.1.2 *Minimum Animal Requirement.* Tenant shall ensure the rescue of a minimum of 2,000 animals per year under this Lease. Animals previously rescued by Tenant and returned to ACS within 365 days of rescue will not count in the number required herein.

5.1.3 *Transfer of Animals.* Tenant shall rescue animals and transfer stray animals from ACS for adoption or owner reclaim. All animals housed on the Premises shall come solely from ACS.

a. Tenant shall cooperate with Landlord in evaluating the feasibility of implementing transfer procedures to allow ACS to drop off animals at the Premises or any other facility managed by Tenant. If found to be beneficial, both Landlord and Tenant may implement said transfer procedures upon mutual agreement without further action by the San Antonio City Council action.

5.1.4 *Stray Animals.* If Tenant transfers or intakes stray animals to the Premises, Tenant shall comply with the following:

a. Tenant shall contact owners when identification such as a tag or microchip is found on a stray animal in Tenant's care and finalize return to owner transactions as

DRAFT

applicable and in accordance with all relevant laws and regulations regarding Chapter 5 of the City Code, including but not limited to Article VII, which includes ensuring all reclaimed animals have a current rabies vaccination and microchip. Boarding, vaccination and any other reclamation fees pursuant to Tenant's established fees will be paid to Tenant at the facility.

- b. Tenant agrees any citation fees and/or fines related to the stray animals will be processed through the relevant court.
- c. Tenant shall consider all stray animals housed on the Premises which are not reclaimed by their owners within City's required stray hold period as rescues to be adopted out by Tenant.
- d. Tenant shall ensure all stray animals transferred from ACS or from a local resident of the City are held at the animal adoption center for the appropriate stray hold period and in accordance with Chapter 5 of the City Code of the City of San Antonio and as authorized by the Director of ACS.
- e. Tenant does not intend to conduct direct intakes of stray animal at Premises; however in the event Tenant opts to do so, Tenant agrees and acknowledges that Tenant shall follow procedures and processes hereto, and as approved by Landlord.

5.1.6 *Animal Standard of Care.* Tenant is solely responsible for the care of all animals housed on the Premises. Tenant shall ensure the provision of all veterinary medical care and treatment for all animals at the Premises and that all animals are sterilized and microchipped prior to their adoption. Tenant shall provide humane housing and proper care of all animals to include, but not limited to, providing food, water, shelter, and appropriate veterinary care for so long as such animals remain under Tenant's care and control. Humane housing includes, but is not limited to shelter from sun, wind, extreme temperatures and rain. Animals must be able to freely move around their enclosure and be able to eat away from fecal matter/debris. Animals shall receive adequate stimulation and exercise. Tenant shall ensure that no less than 90% of all animals housed on the Premises are successfully reclaimed or adopted.

5.1.7 *Events Calendar.* Tenant shall maintain an event calendar for the use of the Pavilion for Educational Events, which shall be made available to Landlord upon request. Tenant shall allow Landlord to utilize the Pavilion for Landlord sponsored events upon request for City and/or community events at zero cost.

- a. *Educational Events.* Tenant shall host and facilitate the scheduling of educational opportunities to the community (Educational Events) within the Premises, more specifically, at the Pavilion; the location, hours, and dates of such events to be determined by Tenant. Landlord reserves the right to veto any event. Tenant shall pay all costs associated with Educational Events held at the Pavilion. All Educational Events must be compliant with City of San Antonio ordinances, including but not limited to those pertaining to alcohol, noise levels, and traffic control.
- b. *Animal Adoption.* Events. Tenant shall coordinate with ACS staff to conduct four Animal Adoption Events per year within the Premises to offer the community

DRAFT

discounted animal adoption prices. Landlord and Tenant may set their own price rates at these events, so long as the animal adoption price rates are lower than the regular adoption prices. Both Parties retain the right to hold additional animal adoption events separate from one another at any time.

- 5.1.8 *Hours of Operation.* The Premises, Animal Adoption Center, shall be open to the public Monday through Sunday from 11:00 a.m. through 7:00 p.m., except for holidays agreed upon between Tenant and Landlord. Changes in hours of operation shall be submitted to Landlord and subject to approval by Landlord.
- 5.1.9 *Signage.* Tenant may place any signage as allowable by the Brackenridge Multi-Use Pet Campus Site Signage Master Plan to the Animal Adoption Center and the Pavilion.
- 5.1.10 *Media.* Tenant shall submit any media plans and press releases relating to the Premises to Landlord for approval prior to release or implementation by Tenant.
- 5.2 Operational Costs. Tenant shall manage and operate the animal adoption center and pay for all costs to insure, operate, and maintain the facility, including but not limited to all expenses associated with the staffing, maintenance as required under this Agreement, operations, materials, supplies, custodial, commodities, all necessary repairs as well as any required utilities such as electricity, water and sewer.
 - 5.2.1 Tenant shall establish fees associated with the operation and management of the Premises, such fees and any future changes thereto shall be subject to the prior written approval of Landlord.
 - 5.2.2 Tenant shall retain all revenue collected for the use and operation of the Premises, including animal adoption fees. Tenant shall have the right to directly operate and retain the revenue from operations and services in support of the animal adoption center and to ensure it remains financially sustainable through adequate operational revenue and fundraising activities.
 - 5.2.3 Tenant acts in the capacity of manager and tenant of the Premises and nothing contained in this Agreement shall be construed by anyone as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship, and all of the services to the public provided by Tenant are provided on behalf of Tenant and not for or on behalf of Landlord. Neither Party to this Agreement has the authority to bind the other Party or to hold out to third parties that it has the authority to bind the other.
- 5.3 Staffing. Tenant shall be responsible for providing qualified staff to conduct the operation and management of all services and activities required under this Agreement. Landlord is not obligated to provide staff to support Tenant's operation and management of the Premises including the animal adoption center, Educational Events at the Pavilion, Adoption Events, or administrative functions of the Premises.
- 5.4 Records and Reports. Tenant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, materials, papers, and records (“documents”), relating to each animal held at the animal adoption center, including each animal’s care, disposition, the fees collected and other evidence pertaining to the services rendered hereunder. Tenant shall make

DRAFT

such documents available to the Landlord at their respective offices, at all reasonable times and as often as Landlord may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by Landlord and any of its authorized representatives.

- 5.4.1 Tenant shall retain any and all documents produced as a result of services provided hereunder for a period of four years (“retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Tenant shall retain the records until the resolution of such litigation or other such questions. Tenant acknowledges and agrees that Landlord shall have access to any and all such documents at any and all times, as deemed necessary by Landlord, during said retention period. Landlord may, at its election, require Tenant to return the documents to Landlord at Tenant's expense prior to or at the conclusion of the retention period. In such event, Tenant may retain a copy of the documents.
- 5.4.2 Upon Landlord's request, Tenant shall provide to Landlord a Statement reviewed by an independent public accountant for a period as may be agreed to by Landlord and Tenant, prepared by an independent Certified Public Accountant. The Statement shall reflect Tenant's revenues and expenditures related to the operation of the animal adoption center.
- 5.5 Monthly Reports. Tenant shall provide Landlord at minimum a monthly report which shall include the total number of animals rescued by Tenant and the current status of those animals. The monthly reports shall include the following specific data regarding rescued animals: animal ID, intake type, intake location, medical or standard transfer, outcome type (as indicated in this section), and zip code location of outcome. Outcome type should be categorized as either: (1) currently in Tenant's care, (2) owner reclaimed, (3) adopted, (4) transferred to other rescue, (5) escaped, (6) stolen, or as (7) died/euthanized in Tenant's care. The monthly reports shall be in a format to be determined by Landlord.
- 5.6 Landlord's Right of Inspections. Tenant shall allow Landlord to inspect the Premises at any time.
- 5.7 Licenses and Certifications. Tenant shall comply with all licenses, legal certifications, or inspections required for the operation and management of the Premises, equipment, or materials. Failure to comply with this requirement shall be treated as a default and will result in termination of this Agreement as outlined in Section 19 of this Agreement.
- 5.8 Property Maintenance. Tenant shall accept the Premises in their present condition “AS IS” the Premises being currently suitable for the Permitted Use. Tenant shall obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Premises adopted by Landlord.
- 5.8.1 Tenant shall be responsible for procuring and paying for utility services to include electricity, gas, water and sewer for the Animal adoption center, exterior area and the Petco Spay and Neuter Facility and may charge Tenant of the Petco Spay and Neuter Facility up to 25% of Tenant's total out of pocket costs or an amount agreeable to both Tenants. Each Tenant shall be responsible for procuring and paying for garbage

DRAFT

collection on its own. Tenants may enter into agreements for other services as between themselves. Tenant shall also furnish and install and maintain in good working order all electric light bulbs, tubes and ballasts. Landlord shall not be liable to Tenant in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord.

- 5.8.2 Tenant shall provide keys to Tenant's lock system and allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.
- 5.8.3 Tenant shall repair, replace, and maintain all parts of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted.
- 5.8.4 Tenant shall submit to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord. Requests shall be submitted through a process as determined by Landlord.
- 5.8.5 Tenant shall vacate the Premises and return all keys to the Premises on the last day of the Term.
- 5.8.6 Tenant shall on request, execute an estoppel certificate that states the Rent Commencement Date, the Occupancy Commencement Date, and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, non-disturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.
- 5.8.7 Tenant shall pay for all costs to operate and maintain the Premises in good, safe and clean operating condition to include all necessary repairs as well as maintaining and repairing and replacing equipment initially provided at the commencement of this Agreement by the Landlord as set out in **Exhibit B** which is attached hereto and incorporated herein for all purposes. There may be additional equipment to be provided which shall be listed in an attached updated list to be attached to the Occupancy Commencement Memorandum. Tenant may provide additional equipment at its expense, if needed. Landlord shall not be responsible for providing additional equipment. If Tenant is in default of its maintenance obligations, then Landlord may, but is not obligated to, make or cause such repairs or maintenance to be made and shall not be responsible to Tenant for any loss or damage that may accrue to the Tenant's "business" revenue or operations by reason thereof. If Landlord makes or causes such repairs or maintenance to be made, Tenant agrees that it will on demand, pay to Landlord the reasonable and necessary cost thereof, and if Tenant shall default in such payment, Landlord shall have the remedies provided elsewhere herein for default of indebtedness, costs, or charges due by the Tenant to Landlord. Tenant shall be responsible for the repainting of exterior or interior walls and unclogging of drain lines including clogged concealed drain lines.
- 5.8.8 Tenant shall be responsible for providing pest control services for the Premises.

DRAFT

- 5.8.9 Tenant shall, at all times, maintain the Premises in a clean and safe condition. Trash shall be disposed of immediately following each day of operation. Custodial services and cleaning supplies, including trash canisters and trash canister liners shall be the responsibility of Tenant.
- 5.9 Security. Tenant shall maintain an operational security camera system that will monitor the facility. The system shall store a minimum of 7 day's-worth of recording and may be made available to Landlord upon request.
- 5.9.1 Tenant expressly understands and agrees that Landlord has not agreed to act and does not act as an insurer of Tenant's property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.
- 5.9.2 Tenant shall be responsible for obtaining and maintaining monitoring services for a fire/burglar security alarm system.
- 5.9.3 Tenant shall be responsible for installing any computer connections for internet services.
- 5.10 Tenant acknowledges that Landlord has entered into a lease Agreement with Pet Shotz, Inc. or its successor for the Petco Spay and Neuter Facility located adjacent to the Animal adoption center on Tenant's Premises at 210 Tuleta Drive., San Antonio, Texas. Under the terms of that lease Agreement, Pet Shotz, Inc. has the nonexclusive right to park vehicles in the parking area of Tenant's Premises. Tenant further acknowledges that the outdoor portion of the Premises will function as it were a common area for Tenant and Pet Shotz, Inc. or its successors. Tenant will work cooperatively with Landlord and Pet Shotz, Inc. and allow and facilitate this nonexclusive use.

6. INDEMNITY.

- 6.1 **TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, LANDLORD and elected officials, employees, officers, directors, volunteers and representatives of LANDLORD, 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 LANDLORD directly or indirectly arising out of, resulting from or related to TENANT'S activities under this Agreement, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of TENANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of LANDLORD, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND LANDLORD 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**

DRAFT

GOVERNMENTAL IMMUNITY AVAILABLE TO LANDLORD UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 6.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise LANDLORD in writing within 24 hours of any claim or demand against LANDLORD or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. LANDLORD shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any obligation under this paragraph.
- 6.3 Defense Counsel. LANDLORD shall have the right to select or to approve defense counsel to be retained by TENANT in fulfilling its obligation hereunder to defend and indemnify LANDLORD, unless such right is expressly waived by LANDLORD in writing. TENANT shall retain LANDLORD approved defense counsel, within seven business days of LANDLORD'S written notice that LANDLORD is invoking its right to indemnification under this Lease Agreement. If TENANT fails to retain Counsel within such time period, LANDLORD shall have the right to retain defense counsel on its own behalf, and TENANT shall be liable for all costs incurred by LANDLORD. LANDLORD shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 6.4 Employee Litigation. In any and all claims against any Party indemnified hereunder by any employee of TENANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for TENANT or any subcontractor under worker's compensation or other employee benefit acts.

7. TENANT'S NEGATIVE PROMISES.

Tenant promises that it will not:

- 7.1 Use the Premises for any purpose other than the Permitted Use.
- 7.2 Create a nuisance.
- 7.3 Interfere with any other Tenant's normal business operations.
- 7.4 Permit waste.
- 7.5 Use the Premises in any way that would increase insurance premiums or void insurance on the Building.
- 7.6 Allow a lien to be placed on the Premises.
- 7.7 Obligate Landlord for any debt related to the Premises without the prior written consent of Landlord.

DRAFT

8. LANDLORD'S AFFIRMATIVE PROMISES.

Landlord promises that it will:

- 8.1 Lease to Tenant the Premises for the entire Term beginning on the Occupancy Commencement Date and ending on the Termination Date.
- 8.2 Repair, replace, and maintain the (a) foundation, (b) roof, (c) structural soundness of the exterior walls, doors, corridors, and windows, (d) concealed electrical wiring (e) collapsed plumbing lines, (f) HVAC systems, (g) landscaping and (h) parking lot.
- 8.3 Provide for maintenance of HVAC systems on the Premises to include regular maintenance in accordance with the manufacturer's prescribed maintenance.
- 8.4 Provide for maintenance of landscaping on the Premises.
- 8.5 Allow Tenant the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.
- 8.6 Obey all applicable laws with respect to Landlord's ownership of the Building and surrounding land.
- 8.7 Work with Tenant and relevant agencies to add directional signage to the Premises.
- 8.8 Provide Tenant one-time funding of \$25,000.00 upon City Council approval of this Lease to be used for the repair or replacement of kennels or cages. The one-time funding under this section shall be available only during the initial term of this Lease and will not be provided for during any extension or renewal term of this Lease Agreement.
- 8.9 Assist Tenant with utility costs for Year 2 and Year 3 of the initial term of the Lease.
 - 8.10.1 *Utility Reimbursement.* For Year 2 and Year 3 of the initial term of this Agreement and subject to Director's approval of Tenant's invoices and budget availability, Landlord will reimburse Tenant an amount not to exceed \$45,000 per year, for up to 75% of utility costs associated with the operation of Premises.
- 8.10 Provide Tenant up to \$450,000.00 annually, to offset Tenant's animal rescue expenses for the first 2,000 animals, to be paid as follows:
 - 8.10.1 *Standard Animal Transfer.* Subject to Director's approval of Tenant's invoices, Landlord shall pay Tenant at a rate of \$225.00 per eligible animal rescued by Tenant through the standard transfer process.
 - 8.10.2 *Medical Animal Transfer.* Subject to Director's approval of Tenant's invoices, Landlord may pay Tenant at an additional medical fee per eligible animal rescued by Tenant through the medical transfer process, as established by Director.
 - a. Each medical animal transfer will count as two animal rescues toward the minimum animal requirement under Section 5.1.2 of this Agreement; however each medical transfer will only count once for compensation and reporting purposes.

DRAFT

- 8.11 Invoices. Tenant shall invoice Landlord, in a form acceptable to Landlord, on a monthly basis, which Landlord shall pay after Director's approval of Tenant's invoice(s). Landlord's obligation to pay Tenant in accordance with Sections 8.9 and 8.10 above is contingent upon Tenant's timely submission of accurate invoices and appropriate documentation. Invoices shall be submitted to Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976 or via email to acsadministration@sanantonio.gov.
- 8.12 Subject to funding availability, Director shall have the authority to execute amendments to this Lease upon mutual agreement, without further action by the San Antonio City Council as necessary throughout the term of this Lease and renewal to adjust: (1) the minimum number requirement set out above in Section 5.1.2 Minimum Animal Requirement upon term renewal; (2) the funding amount set out above in Section 8.11; and, (3) the rates set out above in Section 8.10.1 Standard Animal Transfer, and Section 8.11.2 Medical Animal Transfer.

9. LANDLORD'S NEGATIVE PROMISE.

Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10. ALTERATIONS.

Physical additions or improvements to the Premises made by Tenant must be approved by Landlord in writing and will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alteration, and restore the Premises to the condition existing at the Occupancy Commencement Date, normal wear excepted.

11. INSURANCE.

- 11.1 Prior to the commencement of any work under this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to ACS City's Animal Care Services Department, which shall be clearly labeled "Operations and Facility Management for Paul Jolly Center for Pet Adoptions" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. Landlord will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. Landlord shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by ACS. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 11.2 Landlord reserves the right to review the insurance requirements of this Article during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will Landlord allow modification whereby City may incur increased risk.
- 11.3 Tenant's financial integrity is of interest to City; therefore, subject to Tenant's right to maintain

DRAFT

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

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to property rented by you g. Damage to Rented Premise	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
6. Property Insurance	For physical damage to the property of Landlord including improvements and betterment to the Leased Premises. Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of the Landlord’s property.
7. Umbrella or Excess Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)

11.4 Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Tenant herein, and provide a certificate of insurance and endorsement that names the Tenant and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Tenant. Tenant shall provide Landlord with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City’s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent,

DRAFT

based upon changes in statutory law, court decisions, or circumstances surrounding this Lease. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- 11.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Tenant shall comply and submit requested documents to City within 10 days of said request at the address provided for Landlord in Section 3.1 of this Lease. Tenant shall pay any costs incurred resulting from provision of said documents.
- 11.6 Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- a. Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - c. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - d. Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 11.7 Within 5 calendar days of a suspension, cancellation or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 11.8 In addition to any other remedies the City may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Landlord shall have the right to order Tenant to stop work, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.
- 11.9 Nothing herein contained shall be construed as limiting in any way the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from Tenant's or its subcontractors' performance of the work covered under this Lease.
- 11.10 It is agreed that Tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 11.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Lease and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

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

12. RELEASE OF CLAIMS/SUBROGATION.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the Party actually has the insurance (“Covered Claims”). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

13. ENVIRONMENTAL MATTERS.

13.1 “*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.

13.2 “*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.

13.3 “*Release*” means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

13.4 In its use of the Premises, Tenant shall comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

13.5 Tenant shall not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further shall not 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.

13.6 Tenant shall immediately provide Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant shall promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

13.7 Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

DRAFT

- 13.8 If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, shall take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant shall take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant shall perform the cleanup consistent with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain or remove pollutants.
- 13.9 Tenant shall indemnify Landlord and hold 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 Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants.

14. LANDLORD'S MUNICIPAL POWERS.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

15. PROHIBITED INTERESTS IN CONTRACTS.

- 15.1 Tenant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, Tenant warrants and certifies that this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officials nor employees of the City. Tenant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethic Code.

16. CASUALTY/TOTAL OR PARTIAL DESTRUCTION.

If the Animal adoption center Building is damaged by casualty by more than 30% of fair market value and Landlord chooses to restore, it can do so. If Landlord should choose not to restore, Landlord can terminate the Lease.

17. CONDEMNATION/SUBSTANTIAL OR PARTIAL TAKING.

If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Landlord, the Lease automatically terminates. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

18. HOLDOVER.

If Tenant holdover after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except Tenant is a tenant at sufferance.

19. DEFAULT, REMEDIES FOR DEFAULT, TERMINATION WITHOUT CAUSE.

19.1 Events of Default. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

- 19.1.1 Tenant fails to comply with any term, provision or covenant of this Lease, and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.
- 19.1.2. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy.
- 19.1.3 Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.
- 19.1.4 Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant is instituted against Tenant or a receiver or trustee of all or substantially all of the property of Tenant is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment.
- 19.1.5 Tenant deserts, vacates or abandons all or any portion of Premises, or ceases to physically occupy any substantial portion of Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Occupancy Commencement Date. Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is

DRAFT

established conclusively.

- 19.16 Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.
- 19.17 The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.
- 19.18 This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.
- 19.2 Remedies for Default. Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:
- 19.2.1 In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.
- 19.2.2 Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.
- 19.2.3 Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.
- 19.2.4 Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:
- a. Landlord need not allow Tenant re-entry or provide Tenant with a new key to Premises unless and until Tenant cures any and all defaults under this Lease,
 - b. if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and
 - c. Tenant is obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.
 - d. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code §93.002.

DRAFT

- 19.3. Re-possession and Alteration of Locks. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, re-possession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code §93.002.
- 19.4. Liability for Costs Incurred. If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) the costs of removing and storing Tenant's or any other occupant's property, (B) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, and (C) any and all other costs, fees, and expenses associated with re-letting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.
- 19.5. Default by Landlord. If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant hereby waives its statutory lien under §91.004 of the Texas Property Code.
- 19.6. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant shall indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

DRAFT

- 19.7 Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.
- 19.8 Termination Without Cause. This Agreement may be terminated without cause by Landlord upon 90 calendar days' written notice to Tenant, which notice shall be provided in accordance with Section 26.10 of this Agreement.

20. TENANT'S BANKRUPTCY.

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

- 20.1 "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:
- a. continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;
 - b. hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;
 - c. furnishing an additional/new security deposit by Tenant in the amount of 3 times the then-current monthly Base Rental and Additional Rent payable hereunder.
- 20.2 "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.
- 20.3 Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.
- 20.4 Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.
- 20.5 If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent) remain the exclusive property of Landlord and are not property of Tenant

DRAFT

or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

- 20.6 If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. Notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant's receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice of the proposed assignment.
- 20.7 To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

21. WARRANTY DISCLAIMER.

- 21.1 Tenant takes the Premises "AS-IS," with any and all latent and patent defects as of the Occupancy Commencement Date. Landlord does not warranty that the Premises are fit for a particular purpose.
- 21.2 Tenant acknowledges that it is not relying on the accuracy or completeness of any representation, brochure, rendering, promise, statement, or other assertion or information about the Premises made or furnished by or on behalf of, or otherwise attributed to, Landlord or any of its agents, employees, or representatives. Tenant expressly and unequivocally disclaims all such reliance. Instead, Tenant relies solely and exclusively on its own experience and its independent judgment, evaluation, and examination of the Premises.
- 21.3 Tenant further unequivocally disclaims (i) the existence of any duty to disclose by Landlord or any of its agents, employees, or representatives and (ii) any reliance by Tenant on the silence or any alleged nondisclosure of Landlord or any of its agents, employees or representatives. Tenant takes Premises with the express understanding that there are no express or implied warranties (except for limited warranties of title set forth in the closing documents). Tenant expressly warrants and represents that no promise or agreement not herein expressed has been made to it and hereby disclaims any reliance upon any such alleged promise or agreement. This contract constitutes the entire agreement between the Parties.
- 21.4 This provision was freely negotiated and played an important part in the bargaining process for this contract. Tenant disclaims reliance on Landlord and accepts the Premises "as-is" with full awareness that the Premises' prior uses or other matters could affect its condition, value, suitability, or fitness. Tenant confirms that it hereby assumes all risk associated therewith. Tenant understands that the disclaimers of reliance and other provisions contained herein could limit any legal recourse or remedy Tenant otherwise might have. Tenant acknowledges

DRAFT

that it has sought and has relied upon the advice of its own legal counsel concerning this provision. Provisions of this paragraph survive closing and do not merge into the deed.

22. ABANDONED PROPERTY.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

23. APPROPRIATIONS.

All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council. If the City Council does not appropriate funding for any obligation under this Lease, Landlord need not perform the obligations herein. In such event, Tenant's sole remedy is to terminate this Lease not later than 90 days after the due date for Landlord's omitted performance.

24. SUBLEASE, ASSIGNMENT.

Subject to Landlord's prior written consent, Tenant may assign or sublease this Lease. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

25. DISPUTE RESOLUTION.

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

25.2 Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's rights. 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.

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

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

25.5 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.

25.6 Mediator fees must be borne equally.

25.7 Parties need not mediate before going to court (1) for either Party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

26. MISCELLANEOUS.

DRAFT

- 26.1 Applicable Law. This Lease is entered into in San Antonio, Bexar County, State of Texas. Its construction and the rights, remedies, and obligations arising under it shall be governed by the laws of the State Of Texas and City of San Antonio, Bexar County, Texas. The Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.
- 26.2 Non-Discrimination. As a Party to this Agreement, Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this Agreement
- 26.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2270.002, provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
- a. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
 - b. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
 - c. By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.
- 26.4 Contracts with Iran, Sudan, or Foreign Terrorist Organizations Prohibited. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §806.051, §807.051, or §2252.153.
- 26.5 Severability. If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.
- 26.6 Successors. 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.
- 26.7 Integration. This Written Agreement 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.

DRAFT

- 26.8 Modification. This Agreement may be changed only by a written agreement, signed by the Party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the Party entitled to their benefit, but no modification, express or implied, affects the right of the modifying Party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Unless otherwise set out in this Agreement any modification to this Lease shall be authorized by the San Antonio City Council through an ordinance.
- 26.9 Administrative Actions and Agreements. Director may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, 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 that are not otherwise authorized in accordance to Section 26.8 Modification of this Agreement.
- 26.10 Further Assurances. The Parties shall execute and deliver such additional documents and instruments as necessary to fully effect this Lease. No such additional documents can alter the rights or obligations of the Parties stated in this Lease.
- 26.11 Third Party Beneficiaries. This Agreement benefits the Parties and their successors and permitted assigns only. This Agreement has no third Party beneficiaries.
- 26.12 Notices. Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. 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.
- 26.13 Conflicts Between Numbers Stated Two Ways. Whenever this lease states numbers 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.
- 26.14 Captions. Paragraph captions are for ease of reference only and do not affect the interpretation.
- 26.15 Pronouns. Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.
- 26.16 Incorporation of Exhibits. All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.
- 26.17 Counterparts. This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of this Lease, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

27. PUBLIC INFORMATION.

DRAFT

Tenant 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. Nothing in this agreement waives an otherwise applicable exception to disclosure.

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands.

LANDLORD:

TENANT:

City of San Antonio,
a Texas municipal corporation

Animal Defense League of Texas

Signature: _____

Signature: _____

Printed Name:

Joel McLellan

Title: _____

Title: Executive Director

Date: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

Exhibit B

Equipment initially provided at the commencement of the Lease by the Landlord

City of San Antonio Inventory	
Break room	
Fridge	1
Table	3
Chair	6
Cattery	
Cat Condos	6
Chair	4
Adoption Area	
Office Chairs	7
Glass Display (3 damaged in storage)	4
Storage	
Stainless Steel Rolling Banks	4
Stainless Steel Blows	4
Prep Area	
Industrial Dryer	1
Industrial Washer	1
Rolling Bins	2
Dishwasher	1
Fridge	1
Folding Table	1
Rolling Chairs	3
IT	
Rack	1
Surveillance	
DVR	1
Outdoor	
Stainless Buckets	35
Wooden Benches	5
Picnic Tables	2
Crate Benches	9
Misc.	
Mixing Dilution Stations	6
Water Tank	1

DRAFT

Exhibit C: Occupancy Commencement Memorandum

Occupancy Commencement Memorandum

Landlord: City of San Antonio

Tenant: Animal Defense League of Texas

Lease: 210 Tuleta Drive: Paul Jolly Center for Pet Adoptions/Petco Pavilion

Authorizing Ordinance:

Predicate Facts:

Landlord and Tenant are Parties to the Lease, which was authorized by the Authorizing Ordinance.

For their mutual benefit, the Parties now wish to memorialize the actual Occupancy Commencement date of the Lease's Term.

Rights and Obligations:

Now therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms.

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

1. Occupancy Commencement.

Tenant's right of occupancy commences on _____

2. No Default.

Landlord and Tenant agree that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither Party is in default under the Lease.
- c. Neither Party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

DRAFT

4. List of Equipment Provided.

The attached **Exhibit B** to this Occupancy Commencement Memorandum shall supersede the attached **Exhibit B** to the Lease.

5. Conflict of Terms.

This instrument controls over anything to the contrary in the Lease.

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands.

LANDLORD:

TENANT:

City of San Antonio,
a Texas municipal corporation

Animal Defense League of Texas

Signature: _____

Signature: _____

Printed Name:

Joel McLellan

Title: _____

Title: Executive Director

Date: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney