

AN ORDINANCE 2019-01-17-0027

AUTHORIZING A 10 YEAR LEASE AGREEMENT WITH K9S FOR WARRIORS, A NONPROFIT ORGANIZATION, TO BUILD AND OPERATE A FACILITY ADJACENT TO THE CITY'S ANIMAL CARE SERVICES FACILITY FOR THE USE OF RESCUING AND TRAINING DOGS FROM ANIMAL CARE SERVICES AS SERVICE ANIMALS FOR ADOPTION AND PLACEMENT WITH DISABLED AMERICAN MILITARY VETERANS, WITH OPTIONS TO RENEW FOR TWO ADDITIONAL 5 YEAR TERMS AND TO PURCHASE THE LAND, LOCATED ON 4710 HIGHWAY 151, SAN ANTONIO, TEXAS.

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WHEREAS, in 2018 the City of San Antonio ("City"), known as Military City USA, received an unsolicited proposal from K9s for Warriors, a non-profit organization established to rescue dogs from city shelters and train the dogs to be service animals for military veterans suffering from post-traumatic stress disorder, traumatic brain injuries, and/or military sexual trauma; and

WHEREAS, the proposed Lease Agreement between the City and K9s for Warriors provides for the lease of a 3.22 acre tract of land, as generally depicted in **Attachment I**, ("Premises") located adjacent to the City's Animal Care Services facility on 4710 Highway 151, San Antonio, Texas, for a 10 year term with options to renew for two additional 5 year terms and purchase the Premises for fair market value at the expense of purchaser, so long as the purchaser is a non-profit organization and the use of the property is in a manner that primarily promotes animal welfare, a public purpose of the City; and

WHEREAS, this Lease Agreement stipulates that the permitted use of the Premises shall be for the specific animal welfare public purpose of operating a facility to rescue and train local qualifying dogs as service animals for adoption and placement with Disabled American Military Veterans; and

WHEREAS, this Lease Agreement requires K9s for Warriors make good-faith efforts to transfer a minimum of 200 qualifying dogs annually from the City's Animal Care Services Department, pay the City a nominal annual rent amount of \$1, maintain the Premises, and secure approvals from the City on final construction plans prior to commencement of construction on the Premises, which shall be at K9s for Warriors sole expense from design-build, to operations of a dog rescue and training facility, including all costs all costs incurred in purchasing, or preparing to purchase the Premises; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Animal Care Services Department is authorized to execute a 10 year lease agreement with K9s for Warriors, a nonprofit organization, to build and operate a facility adjacent to the City's Animal Care

5019-01-17-0052

AL
01/17/19
Item No. 15

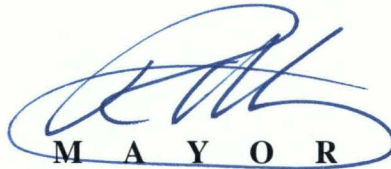
Services facility for the use of rescuing and training dogs from Animal Care Services as service animals for adoption and placement with Disabled American Military Veterans, with options to renew for two additional 5 year terms and to purchase the land, located on 4710 Highway 151, San Antonio, Texas. A copy of the lease, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

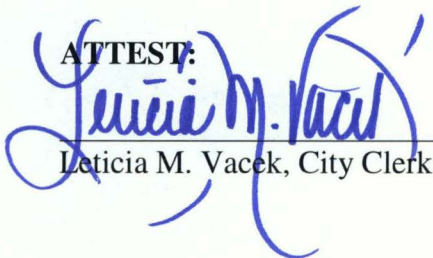
SECTION 2. Funds generated by this Ordinance will be deposited into Fund 11001000, Internal Order 2370000000001 and General Ledger 4401150.

SECTION 3. 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.

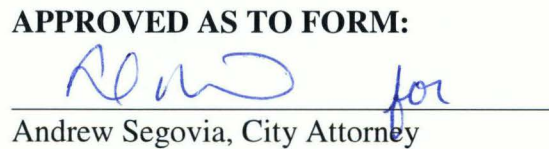
SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 17th day of January, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

25

Wm. M. L.

Agenda Item:	15						
Date:	01/17/2019						
Time:	11:05:08 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a 10 year Lease Agreement with K9s For Warriors, a 501(c) nonprofit organization, for \$1 per year with a renewal option for two additional 5 year terms and an option to purchase the land located adjacent to the City's Animal Care Services campus on 4710 Highway 151 for the use of operating a facility to rescue and train 200 local qualifying dogs per year as services animals for adoption and placement with Disabled American Military Veterans. [María Villagómez, Assistant City Manager; Heber Lefgren, Director, Animal Care Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x			x	
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

Attachment I

**LEASE AGREEMENT
BETWEEN CITY OF SAN ANTONIO AND K9s FOR WARRIORS**

This Lease Agreement ("Lease") is entered into by and between the City of San Antonio ("Landlord", or "City"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 2019-_____, and K9s For Warriors ("Tenant"), a 501(c)(3) non-profit organization registered in the State of Florida for the lease of a 3.22 acre tract of undeveloped land located adjacent to the City's Animal Care Services facilities on 4710 Highway 151, San Antonio, Texas 78227.

In consideration of the rents reserved and covenants made, the sufficiency of which is acknowledged by signature, Landlord and Tenant, agree as follows:

I. LEASED PREMISES/USE

- 1.1 Premises under this Lease means a 3.22 acre (140,337.54 square foot) tract of land, illustrated in **Exhibit A**, out of Lot 16, Block 3, New City Block 16504, COSA-ACF, Unit 1 Subdivision, City of San Antonio, Bexar County, Texas according to map or plat recorded in Volume 9569, Page 191-192, Official Public Records, Bexar County, Texas; Said 3.22 acre tract, ("Premises") being more particularly described in **Exhibit A**, attached and incorporated into this Lease.
- 1.2 Landlord leases Premises to Tenant, and Tenant leases the Premises from Landlord subject to the terms and conditions of this Lease, and subject to (i) all local, state, and federal laws, codes, rules, regulations and ordinances of any governmental or quasi-governmental entity (hereinafter "Laws") and to (ii) all matters of record which affect or relate to the Premises ("Permitted Exceptions"). Premises and this Lease shall extend to the construction of any structures or buildings constructed upon the real property.
- 1.3 Condition of Premises. Tenant has inspected the Premises and accepts possession of the Premises in its "AS IS" condition on the Commencement Date. Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant is not relying upon, any warranties or representations regarding the Premises. Landlord does not warranty that the Premises are fit for a particular purpose.
- 1.4 Permitted Use. Tenant shall use the Premises for the public purpose of operating a facility to rescue local qualifying dogs and train said dogs as services animals for adoption and placement with Disabled American Military Veterans. Tenant shall intake rescue dogs, determine their health and suitability to serve as a service dog for disabled veterans and commence their training prior to transport to Tenant's facilities in Florida for placement with a Disabled American Military Veteran. Tenant will make reasonable efforts to ensure that available kennel space at the Premises will in the first instance be filled by rescue dogs transferred from the City of San Antonio Animal Care Services Department (ACS). In the event space is available at the Premises and Tenant determines in consultation with ACS that dogs then available at ACS do not conform to Tenant's requirements for potential service dogs, Tenant may intake dogs from rescue dogs from

other local organizations for boarding and training at the Premises. In addition to receiving and training rescue dogs, Tenant may use the Premises to train and place service dogs with Military Veterans suffering from Post-traumatic Stress Disorder, traumatic brain injury and/or Military Sexual Trauma. In addition, Tenant may utilize the Premises for operational, administrative, and financial support purposes to support Tenant's endeavors to receive and train rescue dogs as described above. Tenant is solely responsible for the care and safety of all animals housed on the Premises and shall comply with all Laws relating to the care of animals. Tenant shall make good-faith efforts to transfer a minimum of 200 qualifying dogs annually from ACS, subject to availability of animals as determined by ACS Director during the term of this Lease for placement or adoption by Military Veterans.

- 1.5 Tenant shall not use or occupy, nor permit the Premises or any part thereof to be used or occupied for any unlawful, illegal, or extra hazardous business, use, or purpose, or to be used in such a manner as to constitute a nuisance of any kind, or for any purpose or in any way in violation of the Certificate of Occupancy or of any Laws, or if applicable, which may make void or voidable any insurance required to be in force on the Premises. Tenant shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal, or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance and remedy of such use. Notwithstanding the above, Tenant may operate a dog kennel facility on the Premises with the accompanying noise, odor, effluent, and generalized activity associated with housing dogs in a kennel. Tenant shall be solely responsible for any damage caused to Premises or otherwise due to operations of a dog kennel facility.
- 1.6 Parking. During the Term, Tenant shall have the right to use the parking spaces or parking areas near or adjacent to the Buildings that are designated by Landlord. All such parking shall be on a non-exclusive, non-assigned basis. Tenant shall not use or permit its employees or invitees to use any spaces which have been specifically reserved by Landlord to other tenants or for other uses as have been designated by appropriate governmental entities as being restricted to certain uses. Landlord does not guarantee parking to Tenant or to Tenant's invitees. Tenant shall at all times comply and cause its employees and invitees to comply with any parking rules and regulations as Landlord may from time to time reasonably adopt. At no time will Tenant use any parking spaces or the parking area for storage for any purpose other than for the parking vehicles to carry out the normal course of business. Landlord assumes no risk or liability for any damage that may occur to the vehicles or other property of Tenant, its employees, customers or others in any parking area or Common Area of the Premises. Landlord assumes no responsibility for making repairs, changes, or updates to the parking area. This Parking provision is subject to revocation or limitation by Landlord at landlord's sole discretion.
- 1.7 If Tenant wishes to use the Premises for a purpose other than the purpose articulated in 1.3 above, Tenant shall make a written request to Landlord. Landlord shall have reasonable sole discretion to approve or deny requested uses. Other uses shall be permitted under this Lease only as approved to in writing by Landlord. Tenant

acknowledges that a usage that does not serve a public purpose or unauthorized usage may subject this Lease to Termination or to an increase in yearly rent due to City.

- 1.8 Quiet Enjoyment. Tenant has the right to operate the K9s Center on Premises in the manner it deems best, so long as its operation is compliant with all applicable Laws. Tenant shall develop and implement policies that ensure quality, consistent, and safe operational standards. Tenant shall be responsible for all operating costs, including those arising from its Lease.
- 1.9 This Lease does not preclude City and Tenant from entering into a separate agreement for services, which shall be negotiated and memorialized in a separate written agreement.

II. RENT PAYABLE TO LANDLORD

- 2.1 Tenant covenants and agrees to pay rent to Landlord throughout the Term of this Lease as follows ("Rent"): ONE DOLLAR AND ZERO CENTS (\$1.00) per year. Rent shall be due on the occupancy commencement date and each yearly anniversary thereof for the duration of the Lease Term. Rent shall be mailed to: Animal Care Services Department, 4710 State Highway 151, San Antonio, Texas 78227.
- 2.2 To the extent applicable, Tenant will be solely responsible for any real estate ad valorem taxes or other taxes imposed on the leasehold interest during the Term of this Lease.
- 2.3 To the extent applicable, Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises.

III. TERM

- 3.1 The Term ("Term") for lease of Premises shall be ten (10) years commencing upon the execution of this Lease. Tenant shall have the option to renew and extend the Lease Term for two additional five-year periods. Any renewal of this Term shall be in writing, signed by both Landlord and Tenant within 180 days of the expiration of each extension, and subject to approval by City Council, as evidenced by passage of an ordinance.
- 3.2 Unless, renewed, this Lease terminates without further notice when the initial term expires. If renewed, it terminates without further notice when each renewal period expires unless renewed. Tenant's holding over expiration is not a renewal of the Lease.
- 3.3 If Tenant holds over and continues in possession of the Premises after the initial term or any renewal period, Tenant's occupancy will be at will subject to all the terms of this Lease.
- 3.4 In the event that the this Lease terminates at any time before the expiration of the Term, Tenant shall transfer title in fee simple and ownership to all improvements and fixtures made upon or to the Premises to City at the time that termination goes into effect.

- 3.5 Notice. Any notice sent under this Lease shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, or delivered personally to an officer of the receiving Party at the following addresses:

LANDLORD

City of San Antonio
Animal Care Services
4710 State Highway 151
San Antonio, Texas 78227

TENANT

K9s for Warriors
Attn: Chief Executive Officer
114 Camp K9 Road
Ponte Vedra, Florida 32081

IV. PURCHASE OPTION

- 4.1 In exchange for valuable and valid consideration, the sufficiency of which is acknowledged by both City and Tenant, Tenant ("Purchaser") has the exclusive right to purchase the Premises as defined in Section 1.1 of this Lease during the Term of this Lease, for not less than the fair market value of the land, as determined by a City approved appraiser, which Tenant selects or as further controlled by applicable laws ("Purchase Option"). This Purchase Option is not effective during any holdover period.
- 4.2 Tenant may exercise this Purchase Option by delivering notice to Landlord via certified mail delivery to the address for Landlord as set forth in Section 3.5 Notice. above, receipt which shall be no later than 180 calendar days prior to the expiration of the Lease Term, including renewals periods. Upon exercise of the Purchase Option, Tenant shall complete closing on the purchase of Premises within one (1) year of City's receipt of Tenant's written notice to purchase.
- 4.3 Signatures by the City and Tenant below do not obligate Tenant to purchase the Premises and do not obligate Landlord to sell the Premises.
- 4.4 Should Tenant default on payment of the Rent, or on any provision of this Lease, this purchase option shall be automatically revoked unless otherwise agreed to by Landlord.
- 4.5 This Purchase Option does not grant Tenant-Purchaser any superior rights or further rights in excess of those granted by this Lease or by law.
- 4.6 Tenant shall be fully and solely responsible for all costs incurred in purchasing, or preparing to purchase the Premises, including any assessments, surveys, appraisals, inspections, legal fees, etc. If Tenant exercises its Purchase Option, then Tenant shall be solely responsible for the re-platting of the premises subject to written approval by the City prior to recording of the re-plat. Closing on the sale of Premises shall be contingent upon a fully recorded plat of Premises, as evidenced by receipt of recorded plat as approved by City and subject to all applicable laws.
- 4.7 Pursuant to applicable law, if Tenant exercises the Purchase Option under this Lease, Tenant hereby understands and acknowledges that City will include Reverter language in the instrument of transfer, which states that purchaser is a non-profit organization and shall use the property in a manner that primarily promotes animal welfare and a public purpose of the City in accordance with Texas Local Government Code §253.011.

V. UTILITIES AND MAINTENANCE

- 5.1 Tenant shall provide all ordinary maintenance, repair and/or replacement on the Premises and shall do so as necessary for the proper upkeep of the Premises including but not limited to any improvement or development made by Tenant on the Premises such as street, sidewalk, street curbing, lighting, fence, railing, barricade, landscaping, and other necessary site improvements. Should such maintenance, repair and/or replacement be necessary due to Tenants inactions or actions, including but not limited to the installation of utilities to Premises, then Tenant shall be held financially responsible for such maintenance, repair, replacement and/or installation and may be asked to reimburse Landlord for the costs of such maintenance, repair, replacement and/or installation of utilities.
- 5.2 The Rent under this Lease does not pay the cost of any utilities, utility connections, repair, or maintenance. Tenant shall be solely responsible for obtaining all its necessary utilities services, including waste disposal.
- 5.3 Tenant shall take all reasonable steps to maintain the Premises including any improvement or development made by Tenant on the Premises in a manner that complies with all laws and is to maintain the property amenable to public use.
- 5.4 Tenant shall notify immediately Landlord of any material damages to the Premises, when such damage occurs.
- 5.5 Mechanics' Liens. Tenant shall keep the Premises and this Lease free from any lien or other encumbrance filed or recorded against Tenant or the Premises.

VI. CONSTRUCTION ON LEASED PREMISES

- 6.1 Preconditions to Commencing Construction. Tenant shall not commence construction of the Facility until Tenant has satisfied all of the following conditions:
 - (a) An Affidavit from Tenant to serve as written evidence that Tenant has sufficient funds available to it to complete the construction of the Facility.
 - (b) Tenant has presented the final construction plans to Landlord and obtained Landlord's approval. Landlord agrees not to unreasonably withhold, condition, or delay its approval of said construction plan. Should the Tenant and Landlord disagree on construction plans, both parties shall negotiate in good faith. For purposes of approval, a delay will be construed as anything longer than 180 days.
 - (c) Tenant shall deliver or cause to be delivered to Landlord copies of any reports prepared, including soil reports, surveys, hazardous wastes or toxic materials reports, feasibility studies, and other similar written materials prepared for Tenant pursuant to its intent to purchase.

- (d) Tenant shall obtain all necessary approvals, permits, and licenses required by all applicable governmental authorities.
- (e) Tenant has obtained, and has caused its general contractors and subcontractors to obtain, the insurance required under Article IX., and has delivered to Landlord certificates evidencing such insurance.
- 6.2 Once the plans are submitted to and approved by Landlord, Tenant may, with the prior written consent or approval of Landlord, order, authorize, or perform any change, substitute work, or materials as necessary for the construction ("Change Orders"). Should Tenant seek to order, authorize, or perform any Change Orders that materially differ from the Plans approved by Landlord, Tenant shall present the Change Orders to Landlord for approval. Landlord agrees not to unreasonably withhold, condition, or delay its approval.
- 6.3 Tenant shall, at its sole cost and expense, comply and cause its contractors and subcontractors to comply with all applicable laws.
- 6.4 Tenant shall be responsible for any and all damage caused due to construction and improvements made on Premises.
- 6.5 Any building(s) constructed on the Premises shall become the property of Landlord. Any fixtures located on the Premises or placed upon the Premises shall become the property of Landlord.
- 6.6 Any personal property of Tenant located on the Premises shall remain the property of Tenant. Landlord and Tenant agree that Tenant shall have the right, provided Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its property which it may have installed in the Premises.
- 6.7 Tenant, at its sole cost and expense, shall immediately pay for any repair or damage occasioned to the Premises by reason of the removal of any such property and upon expiration or earlier termination of this Lease. Tenant shall leave the Premises in a neat and clean condition, normal wear and tear excepted. The parties agree that any property or other items, if not removed by Tenant from the Premises on or before 30 days after the termination or expiration of this Lease, shall be deemed to become the property of Landlord and may be removed by Landlord at Tenant's expense.

VII. ACCESS TO PREMISES

- 7.1 Landlord shall have the right to enter upon the Premises during business hours for the purpose of abating nuisances or protecting the Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon. When reasonably possible, Landlord shall take reasonable steps to provide Tenant with prior notice of its intention to enter the Premises. Landlord shall have the right, without Tenant's consent and without providing prior notice, to enter upon the Premises for emergency purposes.

VIII. ASSIGNMENT OR SUBLEASE

- 8.1 Tenant may not assign or sublease any part of the Premises or any right or privilege connected therewith without prior written authorization from Landlord. Should Tenant seek to assign, transfer, or sublease this Lease or its rights, it shall provide 30 days written notice to Landlord. Landlord reserves the right to reject or accept the request in its sole discretion.
- 8.2 Any Assignment or Sublease requests shall be limited to entities and for purposes that serve a public purpose. Landlord reserves the right to reject or accept the request in its sole discretion. Further, Landlord reserves the right to set forth requirements for the transfer, assignment, and sublease of the Premises, including stipulating a particular public purpose.
- 8.3 If there is a change in identity or non-profit status of Tenant, Tenant shall provide written notice to Landlord of the change within 30 days of said change.

IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Lease, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to ACS, which shall be clearly labeled "**K9s For Warriors Lease**" 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. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. City shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by the ACS. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 9.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Lease and any extension or renewal of this Lease 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 Lease. In no instance will City allow modification whereby City may incur increased risk.
- 9.3 Tenant's financial integrity is of interest to the City; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by the 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	<i>Statutory</i> \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Environmental Impairment/Impact – sufficiently broad to cover disposal liability. e. Explosion, Collapse, Underground f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage Coverage must include per project aggregate f. \$100,000
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 \$1,000,000.00 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.
6. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

- 9.4 Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Tenant in this Lease, and provide a certificate of insurance and endorsement that names the Tenant and the City as additional insureds. Tenant shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this 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.

- 9.5 As they apply to the limits required by City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto 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 City or Tenant or the underwriter of any such policies). Tenant 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 for City in Section 3.2 above and within 10 days of the requested change. Tenant shall pay any costs incurred resulting from said changes.
- 9.6 Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 9.7 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 Lease. Failure to provide and to maintain the required insurance shall constitute a material breach of this Lease.
- 9.8 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, the City shall have the right to order Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant until Tenant demonstrates compliance with the requirements of this Lease.
- 9.9 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.
- 9.10 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 Lease.

- 9.11 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.
- 9.12 Tenant and any subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

- 10.1 **TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT's activities under this LEASE, 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 LEASE, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.**
- 10.2 It is the EXPRESS INTENT of the parties to this LEASE, that the INDEMNITY provided for in this section, is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.
- 10.3 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 the CITY in writing within 24 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this LEASE and shall see to the investigation and defense of such claim or demand at TENANT'S cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

- 10.4 Defense Counsel. City shall have the right to select or to approve defense counsel to be retained by TENANT in fulfilling its obligation under this Lease to defend and indemnify City, unless such right is expressly waived by City in writing. TENANT shall retain City approved defense counsel within 7 business days of City's written notice that City is invoking its right to indemnification under this Lease. If TENANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and TENANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 10.5 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.

XI. TERMINATION

- 11.1 For purposes of this Lease, "termination" shall mean termination by expiration of the Lease term as stated in Article III. Term, or earlier termination pursuant to any of the provisions of this Lease.
- 11.2 Termination Without Cause. This Lease may be terminated without cause upon mutual written agreement by both Landlord and Tenant at any time during the initial 10 year term. Thereafter, Landlord or Tenant may terminate this Lease without cause upon advance written notice, which must specify an effective date for termination no less than 180 calendar days from receipt of said notice. If Tenant previously provided the City written notice to purchase the Premises as set forth in Article IV. Purchase Option. of this Lease, the City may not terminate this Lease without cause within one year of the City's receipt of Tenant's written notice to purchase the Premises.
- 11.3 Termination For Cause. Upon written notice, which shall be provided in accordance with Article III. Notice, Landlord or Tenant may terminate this Lease as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Lease:
- 11.3.1 The sale, transfer, pledge, conveyance or assignment of this Lease without prior approval, as provided in Article XIII. Assignment or Sublease; or
- 11.3.2 Any material breach of the terms of this Lease, as determined solely by Landlord.

- 11.4 Defaults With Opportunity for Cure. In the event of default in the performance of this Lease in a manner stated in Section 11.4 and Sections 11.4.1–11.6 below, same shall be considered an event of default. Written notice of default specifying such matter(s) in default shall be delivered to the defaulting party. The defaulting party shall have 30 calendar days after receipt of the written notice to cure such default. Failure to cure the default within such 30 day (“Cure Period”) shall provide the non-defaulting party have the right, without further notice, to terminate this Lease in whole or in part as the non-defaulting party deems appropriate.
- 11.4.1 Failure to comply with the terms and conditions stated in this Lease;
- 11.4.2 Bankruptcy or selling substantially all of company’s assets;
- 11.4.3 Failing to perform or failing to comply with any covenant herein required;
- 11.4.4 Failing to use the premises for the public purpose set forth in this Lease or otherwise agreed to by Parties; or
- 11.4.5 Operating as a for-profit business or entity;
- 11.4.6 Operating the Premises in a manner that violates law or any of the provisions of this Lease.
- 11.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Lease shall automatically terminate as of the effective date of such prohibition.
- 11.6 Upon the effective date of expiration or termination of this Lease, Tenant shall cease any operations of work being performed by Tenant or any of its contractors or subcontractors pursuant to this Lease.
- 11.7 Termination not sole remedy. In no event shall Landlord’s action of terminating this Lease, whether for cause or otherwise, be deemed an election of Landlord’s remedies, nor shall such termination limit, in any way, at law or at equity, Landlord’s right to seek damages from or otherwise pursue Tenant for any default hereunder or other action.

XII. DAMAGE AND DESTRUCTION

- 12.1 Damage and Destruction. If all or any part of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord notice thereof within 3 calendar days after such casualty occurs, except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements, and rebuilding the Premises or portion thereof so damaged or destroyed are minimal. Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of restoration, with reasonable diligence repair, alter, restore, replace, and rebuild the Premises or portion thereof so damaged or destroyed

(collectively, "Restore") the same, at least to the extent of the value and as nearly as possible to the condition, quality and class of the Premises existing immediately prior to such occurrence.

- 12.2 Landlord in no event shall be obligated to restore the Premises or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to Restore with reasonable diligence (subject to Unavoidable Delays) the Premises or the portion thereof so damaged or destroyed, Landlord may exercise its right to Terminate subject to the terms of this Lease.

XIII. EFFECT OF WAIVER

Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. Landlord's acceptance of rent after a breach is not a waiver of the breach.

XIV. CONFLICT OF INTEREST

- 14.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his 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.

- 14.2 Pursuant to the subsection above, Tenant warrants and certifies, and this Lease is made in reliance thereon, that by contracting with the City, Tenant does not cause a City employee or officer to have a prohibited financial interest in the Lease. Tenant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. LANDLORD'S MUNICIPAL POWERS

Landlord is a municipality as well as landlord under this Lease. As a municipality, City 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.

XVI. AMENDMENTS

Except where the terms of this Lease expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Tenant. Except where the terms of this Lease expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both Landlord and Tenant. The Department shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

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

XVIII. LAW APPLICABLE & LEGAL FEES

- 20.1 THIS LEASE 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.
- 20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Lease shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 20.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XIX. LEGAL AUTHORITY

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

XX. PARTIES BOUND

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

XXI. GENERAL PROVISIONS

- 21.1 Administrative Actions and Agreements. 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, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for defaults. This paragraph however, does not authorize lease amendments or renewals without Council consent.
- 21.2 Modifications. This Lease may be changed only by written agreement sign by both City and Tenant. Any modification to this Lease must be authorized an ordinance adopted by Council.
- 21.3 Incorporation of Exhibits. All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.
- 21.4 Captions. The captions contained in this Lease are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Lease.
- 21.5 Tenant acknowledges that this instrument is public information and within the meaning of Chapter 552 of Texas Government Code and accordingly may be disclosed to the public. Noting in this lease waives an otherwise applicable exception to disclosure.
- 21.6 This Lease does not create a joint venture or partnership between the City and Tenant.
- 21.7 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 the number of counterparts, they constitute only one agreement. In making proof of this Lease, it is not necessary to produce or account for more counterparts than necessary to show execution by or on behalf of all parties to this Lease.
- 21.8 This parties must execute and deliver such additional documents and instruments as be necessary to effect fully the provisions of this Lease. But no additional documents can alter the rights and obligations of the parties of this Lease.
- 21.9 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.

XXII. ENTIRE AGREEMENT

This Lease constitutes the final and entire agreement between the parties and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind Landlord and Tenant unless same be in writing, dated subsequent to the date hereof, and duly executed by Landlord and Tenant.

In Witness Whereof, the parties have caused their representative to set their hands.

LANDLORD:

City of San Antonio,
a Texas municipal corporation

Signature: _____

Printed Name:

Title: _____

Date: _____

TENANT:

K9s for Warriors

Signature: _____

Rory Diamond

Title: Chief Executive Officer

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

*COSA Animal Care Facilities Property
Proposed Lease Tract*

WINTERGARDEN

**Animal Care
Services Facilities**
625,168.30 sq. ft.

20 ft. Buffer Zone From South Fence Line

**Subject Lease
Property**
140,337.54 sq. ft.

STATE HWY 151 ACCESS

STATE HWY 151



