

AN ORDINANCE 2020-01-16-0007

AMENDING A FUNDING AGREEMENT WITH THE ANIMAL DEFENSE LEAGUE OF TEXAS FOR THE OPERATIONS OF THE STRAY ANIMALS KENNELS PROJECT LOCATED AT 11300 NACOGDOCHES DRIVE; AND AMENDING THE COMPANION PRIMARY GROUND LEASE AND SUB GROUND LEASE AGREEMENTS TO PROVIDE THE OPTION FOR AN EXTENSION TERM FOR A PERIOD NOT TO EXCEED 5 YEARS.

* * * * *

WHEREAS, the City of San Antonio ("City") pursuant to Ordinance 2013-05-30-0355 entered into a Funding Agreement, Ground Lease and Sub Ground Lease with the Animal Defense League of Texas ("ADL") to facilitate the construction and operation of the Stray Animals Kennel Project, located at 11300 Nacogdoches Drive for a term of 25 years; and

WHEREAS the Funding Agreement, and companion Primary Ground Lease and Sub Ground Lease terms were set to coincide for the public purpose enabling the City's Animal Care Services Department ("ACS") to increase the City's shelter capacity and animal live outcome; and

WHEREAS, amendments to the Funding Agreement comprise provisions to: (1) specify animals eligible for reimbursement to include rescues from local residents and exclude returned animals; (2) set an annual number requirement of animals to be rescued from the City's ACS facility; (3) require City approval and coordination of the animal intake process at the Project Site; (4) provide ADL with an option to defer its animal rescue commitment by one year but not more than five years in order to maximize the number of animals rescued; (5) stipulate that transfer of ownership of the City's kennel facility shall be deferred until ADL meets its minimum animal rescue obligations; and (6) provide the City Manager or designee discretion to amend the Funding Agreement to adjust the number of animals required to be rescued directly from the ACS Facility; and

WHEREAS, amendments to the Primary Ground and Sub Ground Lease Agreements provide the option of a lease extension for a term of one year, but not more than five years after the initial terms of 25 years in the event ADL does not meet the minimum animal rescue obligations in accordance with the companion Funding Agreement; **NOW THEREFORE:**

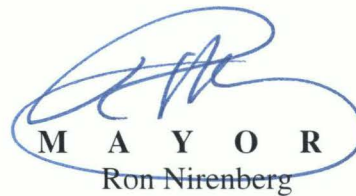
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, is hereby authorized to execute an amendment to the Funding Agreement between the City and the Animal Defense League of Texas, which was approved by Ordinance 2013-05-30-0355 for the design, construction and operation of a kennel facility for Stray Animals Kennels Project on Animal Defense League owned land at 11300 Nacogdoches for a 25-year term terminating on May 30, 2038. A copy of the Amendment to the Funding Agreement in substantial final form is attached and incorporated for all purposes, as **Attachment I.**

SECTION 2. The City Manager or designee is further authorized to execute the First Amendment to Primary Ground Lease and First Amendment to Sub Ground Lease of project land and premises, located at 11300 Nacogdoches to provide the option of a lease extension for a term of one year, but not more than five years after the initial term. A copy of the First Amendment to Primary Ground Lease and First Amendment to Sub Ground Lease in substantial final form is attached and incorporated for all purposes, as **Attachment II** and **III**.

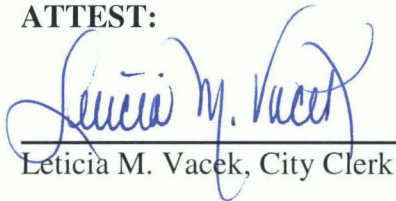
SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 16th day January, 2020.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

ATTACHMENT I

**AMENDMENT TO FUNDING AGREEMENT
FOR
THE STRAY ANIMAL KENNELS PROJECT**

This Amendment to the Funding Agreement for the Stray Animal Kennels Project is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City" or "Grantor") and the Animal Defense League of Texas ("ADL" or "Grantee"), collectively referred to as the "Parties" and individually as a "Party".

WHEREAS, pursuant to City Ordinance No. 2013-05-30-0355, the Parties entered into a Funding Agreement ("Agreement") for a 25 year term whereby the City granted ADL an amount not exceed \$2,200,000.00 for a Stray Animal Kennels Project ("Project") at 11300 Nacogdoches Drive ("Project Site"), as described in *Exhibit I*, attached and incorporated herein for all purposes; and

WHEREAS, in accordance with Article XVIII. Changes and Amendments of the Agreement, the Parties would like to amend this Agreement to: (1) specify animals eligible for reimbursement to include rescues from local residents and exclude returned animals; (2) set an annual number requirement of animals to be rescued from the City's ACS facility; (3) require City approval and coordination of the animal intake process at the Project Site; (4) provide ADL with an option to defer its animal rescue commitment by one year but not more than five years in order to maximize the number of animals rescued; (5) stipulate that the transfer of ownership of the kennel facility shall be deferred until ADL meets its minimum animal rescue obligations; and (6) provide the City Manager or designee discretion to amend the Funding Agreement to adjust the number of animals required to be rescued directly from the ACS Facility; **NOW THEREFORE**,

The Parties agree to amend the Agreement as follows:

1. Section 4.02 of the Agreement is amended to read as follows:

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

(A) Minimum Animal Rescue Obligation. Grantee shall rescue of a minimum of 3,184 dogs and cats per year. Any shortage shall be reflected as unmet animal rescue obligation under this Agreement. For the purposes of this Agreement, "Rescue" shall mean the permanent transfer of physical custody and ownership of a dog or cat from the City to Grantee.

- i. *Eligible Animals*. Solely dogs or cats rescued from the City's ACS facility; dogs or cats surrendered to City at Project Site, by such animals' lawful owner(s) so long as the owner provides proof of residency in the City of San Antonio; and stray dogs or cats dropped off at Project Site and impounded by City count in the minimum animal rescue obligation.
- ii. *Excluded Animals*. Dogs or cats previously rescued by Grantee and adopted that are returned to ACS within 365 days of the adoption though Grantee will not count as an additional rescue animal in the minimum animal rescue obligation.

(B) Rescues from ACS. Grantee shall rescue at least 3,100 eligible animals per year directly from the City's ACS facility under this Agreement and any other contract arrangement with the City.

- i. Grantee shall cooperate with City in evaluating the feasibility of implementing transfer procedures to allow ACS to drop off rescue animals at the Project's facility/Project Site or any other facility managed by Grantee. If found to be beneficial, both Parties may implement said transfer procedures upon mutual agreement without further action by the San Antonio City Council action.
- ii. As necessary throughout the term hereof the City Manager or designee shall have the authority to execute amendments to this Agreement on behalf of the City to adjust the number of animals specifically required to be rescued directly from the City's ACS facility and upon mutual agreement by both Parties without further action by the San Antonio City Council.

(C) Rescues from Local Residents. Grantee may accept and intake dogs or cats surrendered to City at the Project Site by residents of the City of San Antonio.

- i. *Project Site Intakes.* Grantee understands and agrees that Grantee shall obtain the ACS Director's prior written approval of the intake process to accept dogs or cats at the Project Site from residents of the City of San Antonio, in order for such animal to count in the minimum animal rescue obligation. ACS will submit any media plans and press releases relating to Grantee's public intake process to Grantee for approval prior to release or implementation by ACS.
- ii. *Owner Surrendered Animals.* Upon transfer of physical custody of an eligible animal at the Project Site by a local resident, Grantee shall obtain the following:
 - (1) proof of animal ownership;
 - (2) proof of residency in the City of San Antonio from the animal's owner; and,
 - (3) documentation establishing transfer of ownership of said animal to the City.
- iii. *Stray Animals.* In the event a stray animal from a local resident is dropped off at the Project Site, Grantee shall obtain proof of residency from the person who dropped off the animal and obtain the ACS Director's prior written approval to coordinate with the City's ACS animal control officers to impound such animals. The ACS Director shall have the discretion to approve whether said animals to count in the minimum animal rescue obligation.

(D) Grantee shall maintain a minimum of 90% Live Release rate for all rescued animals subject to this Agreement.

2. Section 5.04 of the Agreement is amended to read as follows:

5.04 At the end of Grantee's 25-year lease of the new kennel facility from City, ownership of the kennel facility shall transfer to Grantee at no additional cost to Grantee, unless Grantee exercises the option to defer, as described in Section 5.05 (B) of this Agreement and in such event ownership of the kennel facility may not transfer to Grantee until

Grantee has met its obligations due under this Agreement or this Agreement is otherwise terminated.

3. Section 5.05 the Agreement is amended to read as follows:

5.05 In the event Grantee is unable to meet the annual minimum animal rescue commitment as prescribed in Section 4.02 of this Agreement, at any time during its lease term, Grantee shall annually reimburse City in an amount calculated as follows:

$$\text{Reimbursement Amount} = \frac{(3,184) - (\text{\#of actual eligible animals rescued per year})}{3,184} \times \frac{\$2,134,000.00}{25}$$

- (A) In the event of a natural disaster or a catastrophic occurrence which is, in the sole determination of the ACS Director, which shall be reasonably exercised, (a) beyond Grantee's control and not due to Grantee's fault or negligence, and (b) which materially adversely affects Grantee's ability to perform animal intake for more than two weeks, the annual animal rescue commitment and thus the reimbursement amount may be adjusted.
- (B) Option to Defer. Grantee shall have the option to defer its unmet animal rescue commitment to the following year provided that Grantee is in compliance with Section 4.02 (B) of this Agreement and that Grantee informs City thirty (30) days prior to Annual Report due date, prescribed in Section 2.09 of this Agreement.
- i. If Grantee is unable to meet the Minimum Animal Rescue Obligation prescribed in Section 4.02 of this Agreement or Reimbursement Amount due as provided in Section 5.05 above, this Agreement may extend under mutual agreement by both Parties and, subject to City Council approval under the same terms and conditions for one (1) year, but not more than five (5) years after the initial term.
 - ii. In the event, deferred obligations remain outstanding ninety (90) days prior to expiration of the Agreement, Grantee shall pay City for the outstanding unmet animal rescue obligations, at a rate of \$27.00 per animal no later than thirty (30) days prior to the termination of the mutually agreed upon extension period.
 - iii. Grantee agrees and understands that the transfer of ownership for the kennel facility shall be deferred until Grantee meets its obligations under this Agreement.
 - iv. This section shall not be interpreted to mean that Grantee shall rescue an additional 3,184 animals for each year the Agreement is extended, only that Grantee shall be provided an extension period to rescue animals as part of their deferred obligations from the initial term of this Agreement.

Signatures on the following page

3. This Amendment shall be effective upon the execution of the Parties.

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

CITY OF SAN ANTONIO

GRANTEE: Animal Defense League of Texas

Erik Walsh
City Manager

Date: _____

Joel McLellan
Executive Director

Date: _____

ATTEST

City Clerk

APPROVED AS TO FORM

City Attorney

ATTACHMENT II

First Amendment to Primary Ground Lease

(Kennel Facility with Animal Defense League)

This First Amendment to Primary Ground Lease Agreement is entered into by and between Landlord and Tenant as of the Effective Date.

1. Identifying Information.

Authorizing Ordinance:

Landlord: Animal Defense League of Texas ("ADL")

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

Tenant City of San Antonio

Tenant's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
Attention: Center City Development Office - Real Estate
Leasing

Lease: Primary Ground Lease Agreement between the City of San Antonio and Animal Defense League of Texas, pertaining to a parcel containing approximately 2 acres, located at 11300 Nacogdoches Road, San Antonio, Bexar County, Texas, as authorized by the Ordinance Authorizing Original Lease.

Permitted Use: Any and all lawful uses

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

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

Funding Agreement: Agreement of even date here, with between Landlord and Tenant for funding a Kennel Facility pursuant to the Ordinance Authorizing Original Lease.

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

Ordinance Authorizing Original Lease: 2013-05-30-0355

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" or "Primary Ground" in this amendment include the original Lease.

3. Lease Term.

Section 2 *Lease Term*, of the Lease is amended in its entirety and the following is inserted in substitution.

2.01 The Term is as stated above for Initial Term.

2.02 The Parties shall have the option to extend the Lease Term of this Ground Lease for one (1) year, but not more than five (5) years after the Initial Term in the event Landlord/ADL does not meet the minimum animal rescue obligations in accordance with the Funding Agreement. Any extensions of this Lease shall be in writing and subject to the approval of the San Antonio City Council.

4. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

5. Same Terms and Conditions.

This amendment is a fully integrated expression of the changes the Parties intend to make to the Lease. The Parties acknowledge that, except as expressly set forth in this amendment, the Lease remains in full force and effect according to its terms, and the Parties reaffirm the obligations, under this Lease. Neither Party is in default under the Lease as amended. There have been no amendments or other modifications to the Lease except as expressly described in this amendment.

6. Public Information.

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

In Witness Whereof, the Parties have caused their representatives to set their hands.

Tenant

City of San Antonio,
a Texas municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Landlord

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

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

ATTACHMENT III

First Amendment to Sub Ground Lease

(Kennel Facility with Animal Defense League)

This First Amendment to Primary Ground Lease Agreement is entered into between Landlord and Tenant as of the Effective Date.

1. Identifying Information.

Authorizing Ordinance:

Sub-Landlord: City of San Antonio

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

Address: Attention: Center City Development Office - Real Estate Leasing

Sub-Tenant Animal Defense League of Texas

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

Lease: Sub Ground Lease Agreement between the City of San Antonio and Animal Defense League of Texas, pertaining to a parcel containing approximately 2 acres, located at 11300 Nacogdoches Road, San Antonio, Bexar County, Texas, as authorized by the Ordinance Authorizing Original Lease.

Permitted Use: Animal Shelter

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

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

Funding Agreement: Agreement of even date here, with between Landlord and Tenant for funding a Kennel Facility pursuant to the Ordinance Authorizing Original Lease.

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

Ordinance Authorizing
Original Lease: 2013-05-30-0355

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" or "Sub Ground Lease" in this amendment include the original Sub Ground Lease.

3. Lease Term.

Section 2 *Lease Term*, of the Lease is amended in its entirety and the following is inserted in substitution.

2.01 The Term is as stated above for Initial Term.

2.02 The Parties shall have the option to extend the Lease Term of this Sub Ground Lease for one (1) year, but not more than five (5) years after the Initial Term in the event Landlord/ADL does not meet the minimum animal rescue obligations in accordance with the Funding Agreement. Any extensions of this Lease shall be in writing and subject to the approval of the San Antonio City Council.

4. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

5. Same Terms and Conditions.

This amendment is a fully integrated expression of the changes the Parties intend to make to the Lease. The Parties acknowledge that, except as expressly set forth in this amendment, the Lease remains in full force and effect according to its terms, and the Parties reaffirm the obligations, under this Lease. Neither Party is in default under the Lease as amended. There have been no amendments or other modifications to the Lease except as expressly described in this amendment.

6. Public Information.

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

In Witness Whereof, the Parties have caused their representatives to set their hands.

Sub-Tenant

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Sub-Landlord

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

Signature: _____

Printed
Name: _____

Title: _____

Date: _____