

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
VETERINARY SERVICES**

**STATE OF TEXAS**

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**COUNTY OF BEXAR**

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This Agreement is made by City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through Jon Gary, Director of the Animal Care Services (“Department”), and Dr. Yvonne Smith, DVM (“Contractor”), collectively referred to as the “Parties” and individually as a “Party.”

The Parties severally and collectively agree, and by the execution are bound to the mutual obligations, and to the performance and accomplishment of the tasks described below.

**I. DEFINITIONS**

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

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Director” shall mean the director of City’s Animal Care Services (“Department”).

**II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall commence on upon execution, and terminate on September 30, 2025.
- 2.2 If funding for the entire contract is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of City’s budget period, and contingent upon such appropriation.

**III. SCOPE OF SERVICES**

- 3.1 VETERINARY SERVICES. Contractor agrees enter into a nonexclusive agreement to provide veterinary services on an “as needed basis” as described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.
- 3.2 SPAY NEUTER SURGERIES. When scheduled, Contractor shall perform specific duties and responsibilities for spay and neuter surgeries, which shall include:
  - 3.2.1. Establishing a Veterinarian-Client-Patient Relationship (VCPR) with each patient.
  - 3.2.2. Performing on each pet a physical “hands-on” exam, to include thoracic auscultation, and examination of all visible systems to determine suitability for sterilization procedure.
  - 3.2.3. Evaluating each animal for signs of illness or anesthetic risk, to include upper respiratory infections, severe parasite burden, or other. The veterinarian will be responsible for communicating if the pet is not a suitable surgical candidate and create a plan for the resident to seek out the needed resources for their pet.
  - 3.2.4. Performing a minimum of 10 spay/neuter surgeries per shift, with the expectation of building up to at least 20 or more. A typical shift is an eight-hour shift or

according to operational need and/or consideration to the needs of same-day surgical complications. More than one contractor may be scheduled for the same shift to meet a minimum total of 20 surgeries or more per day per clinic.

- 3.2.5. Demonstrating the ability and experience to handle own intra-operative complications, including but not limited to pedicle hemorrhage, splenic trauma, urinary bladder trauma, discovery of diaphragmatic hernias, etc.
  - 3.2.6. Providing intra-operative communication with owners by phone for life-saving measures or decision-making.
  - 3.2.7. Providing post-operative care, including recheck of surgical sites and handling own surgical complications that may have developed same day of surgery, to include same day return to surgery if needed. Additional post-operative care includes prescribing medications, entering medical notes/prescriptions, talking to owners as needed about anesthetic/surgical updates or other, and monitoring of patients until all animals are fully awake/recovered from anesthesia.
  - 3.2.8. Providing follow-up care due to surgical complications, including complications from surgeries performed during previous shifts and by other clinic surgeons. This includes physical examination, talking with owners, prescribing medications, and providing a recheck/monitoring plan.
  - 3.2.9. Maintaining a complication rate of less than 1%.
  - 3.2.10. Providing direct vet communication with pet owners about medical findings/needs or medical/anesthetic/surgical complications. This includes discussing nonroutine surgical findings, medical findings or medical care needed, anesthetic complications, CPR, and death.
  - 3.2.11. Maintaining updated and accurate animal medical records.
  - 3.2.12. Maintaining high standards of care and quality control provided in a productive and courteous manner.
  - 3.2.13. Abiding by Department requirements for licensing and credentialing.
  - 3.2.14. Adhering to and abiding by Department policies regarding access, maintenance, dispensation, and tracking of controlled substances.
  - 3.2.15. Transferring, at the City's request, controlled substances procured by the City under the custody and control of the Contractor to the City without unreasonable delay.
  - 3.2.16. Invoicing the City for work performed on a monthly basis.
- 3.3 Veterinary Medicine Duties. When scheduled, Contractor shall perform specific duties and responsibilities for veterinary medicine services, which may include:
- 3.3.1. Establishing a Veterinarian-Client-Patient Relationship (VCPR) with each patient.
  - 3.3.2. Performing medical examinations and prescribing treatments to animals during wellness hours.
  - 3.3.3. Partaking in large-scale vaccination and/or microchipping events scheduled at either clinic.
  - 3.3.4. Performing emergency surgeries and administering emergency medication.
  - 3.3.5. Prescribing and administering euthanasia for sick or injured animals.
  - 3.3.6. Overseeing parasite treatment including appropriate deworming, checking animals for heartworms, preventions, and basic in-house diagnostics.
  - 3.3.7. Providing vaccinations to animals at the facility.
  - 3.3.8. Providing diagnosis and treatment of animals in accordance with Department protocols and standards.
  - 3.3.9. Maintaining updated and accurate animal medical records.
  - 3.3.10. Maintaining high standards of care and quality control provided in a productive and courteous manner.
  - 3.3.11. Answering questions from the public pertaining to their pet's medical case including but not limited to, diagnosis, treatment plan, etc.

- 3.3.12. Abiding by Department requirements for licensing and credentialing, including obtaining the appropriate Diversion Control Division (DEA) license. Contractor may be reimbursed up to \$1000.00 per DEA license per location.
  - 3.3.13. Adhering to and abiding by Department policies regarding access, maintenance, dispensation, and tracking of controlled substances.
  - 3.3.14. Performing daily balance checks of controlled substances and weekly audit of their controlled substances inventory.
  - 3.3.15. Performing other veterinary duties as designated by City.
- 3.4 All work performed by Contractor shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, even should City elect not to terminate.

#### **IV. COMPENSATION TO CONTRACTOR**

- 4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed \$37,800.00 as total compensation, to be paid to Contractor as follows:
- 4.1.1 RATE. Contractor shall be paid at a rate of \$1,300.00 per shift as outlined in Article III, Section 3.2.4. Contractor shall also be paid a fee of \$50.00 per shift travel stipend if (1) they reside outside the City of San Antonio city limits AND (2) are more than 25 miles away from the clinic.
- 4.2 The Parties agree that no additional fee or expense shall be charged by Contractor nor be payable by City. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and written agreement by the Parties.
- 4.3 No additional fee or expense of Contractor shall be charged by Contractor nor be payable by City. The Parties agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in section 4.1 above. Total payments to Contractor cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of the Parties.
- 4.4 INVOICES. Contractor shall invoice City on a monthly basis, in a form acceptable to the City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283, with a copy to: [ACSAdministration@sanantonio.gov](mailto:ACSAdministration@sanantonio.gov).

The preferred method for delivery of invoices is electronically to the following e-mail address: [accounts.payable@sanantonio.gov](mailto:accounts.payable@sanantonio.gov). Invoices must be in separate .pdf format file. Multiple invoices cannot be submitted in a single .pdf file; however, Contractor may submit multiple, separate invoice files in a single e-mail. Any required documentation in support of the invoice should be compiled directly behind the invoice in the same .pdf file. If necessary, invoices may be delivered to the following address: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976 or, hand delivered to: City of San Antonio, Finance Department/Accounts

Payable, 111 Soledad, 4<sup>th</sup> Floor, San Antonio, Texas 78205. All invoices must be in a form and content approved by City. City may require modification of invoices.

- 4.5 NECESSITY OF TIMELY INVOICE/WAIVER OF PAYMENT. NOTWITHSTANDING THE FORGOING, CITY CANNOT PAY FOR ANY SERVICE WITHOUT AN INVOICE. CONTRACTOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE SERVICES ARE RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 DAYS SHALL NEGATE ANY LIABILITY ON THE PART OF CITY AND CONSTITUTE A **WAIVER** BY CONTRACTOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONEYS THAT CONTRACTOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR SERVICES PERFORMED.
- 4.6 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payments will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.
- 5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents, and information as City desires, without restriction.
- 5.3 Contractor acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8), Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201, Texas Local Government Code and Subchapter J, Chapter 441, Texas Government Code. Thus, Contractor agrees that no such local government record produced by or on behalf of Contractor pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Contractor.
- 5.4 Contractor acknowledges and agrees that all local government records, as described in this Agreement, produced in the course of the work required by this Contract, shall belong to and is the property of City and shall be made available to the City at any time. Contractor further agrees to turn over to City all such records upon termination of this Contract. Contractor agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. The Department shall be notified of such request as set forth in Article VIII of this Contract.

## **VI. RECORDS RETENTION**

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered under this Agreement (“documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period,

including any extension or renewal of this Agreement and the record retention period provided in Section 6.2 below, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

- 6.2 Contractor shall retain any and all documents produced as a result of services provided under this Agreement 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 under this Agreement, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return the documents to City at Contractor’s expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents.
- 6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

- 7.1 For purposes of this Agreement, “termination” of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions of this Agreement.
- 7.2 TERMINATION WITHOUT CAUSE. This Agreement may be terminated by City without cause upon thirty (30) calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 TERMINATION FOR CAUSE. Upon written notice provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 DEFAULTS WITH OPPORTUNITY FOR CURE. Should Consultant default in the performance of this Agreement in a manner stated in below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant’s future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 7.4.1 Failing to perform or failing to comply with any covenant required in this Agreement.

- 7.5 TERMINATION BY LAW. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any duty or provision under this Agreement, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, under this Agreement, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all rights or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.
- 7.9 TERMINATION NOT SOLE REMEDY. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default under this Agreement or other action.

## VIII. NOTICE

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

If intended for City, to:

City of San Antonio  
Animal Care Services Department  
Attn: Director  
4710 State Hwy 151  
San Antonio, Texas 78227

If intended for Contractor, to:

Dr. Yvonne Smith  
10218 Buescher Lane  
San Antonio, TX 78223

## IX. NON-DISCRIMINATION

- 9.1 Contractor 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, disability, or any other unlawful form of discrimination.
- 9.2 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **X. INSURANCE**

- 10.1 No later than 30 days before the scheduled service under this contract, CONTRACTOR must provide a completed Certificate(s) of Insurance to CITY's Animal Care Services Department. The certificate must be:
- clearly labeled with the legal name of the contract in the Description of Operations block;
  - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf ( CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
  - properly endorsed and have the agent's signature, and phone number.
- 10.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Animal Care Services Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.
- 10.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONTRACTOR certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.
- 10.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on

changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

- 10.5 CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONTRACTOR claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<b>INSURANCE TYPE</b>	<b>LIMITS</b>
1. Professional Liability	\$500,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.

- 10.6 CONTRACTOR must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONTRACTOR and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.
- 10.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio  
Animal Care Services Department  
4710 State Hwy 151  
San Antonio, TX 78227

- 10.8 CONTRACTOR's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and 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 CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.



- 10.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.10 In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONTRACTOR to stop work and/or withhold any payment(s) which become due to CONTRACTOR under this Agreement until CONTRACTOR demonstrates compliance with requirements.
- 10.11 Nothing contained in this Agreement shall be construed as limiting the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR'S or its subcontractors' performance of the work covered under this Agreement.
- 10.12 CONTRACTOR'S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 10.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 10.14 CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## **XI. INDEMNIFICATION**

- 11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to 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 AGREEMENT.**

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees, or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding, and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting under this Agreement shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.
- 12.4 Except as otherwise stated in this Agreement, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties under this Agreement, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee, or subcontractor.

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

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. 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, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with City’s Ethics Code.

### **XV. AMENDMENTS**

Any alteration, addition or deletion to the terms hereof shall be by amendment in writing executed by both City and Contractor and evidenced by passage of a subsequent City ordinance, as to City’s approval; provided, however, during the term of the Agreement and subject to funding availability, the Director of the Animal Care Services Department shall have the authority to execute an amendment of this Agreement without further

action by the San Antonio City Council, to 1) adjust the amount of funding under this Agreement, 2) adjust the rate per shift and/or (3) modifications to the Scope of Work due to the adjustment described in subsection (A) of this Section or for any other reason, so long as the terms of the amendment are reasonably within the parameters set forth in the original Scope of Work.

#### **XVI. SEVERABILITY**

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

#### **XVII. LICENSES/CERTIFICATIONS**

Contractor represents that s/he and any other person designated to provide services under this Agreement has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided.

#### **VIII. COMPLIANCE**

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

#### **XIX. NONWAIVER OF PERFORMANCE**

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

#### **XX. LAW APPLICABLE & LEGAL FEES**

- 20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED UNDER THIS AGREEMENT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 20.3 The Parties expressly agree that, in the event of litigation, each party hereby waives its right to

payment of attorneys' fees.

- 20.4 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.

- "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.
- "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.
- 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 hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

- 20.5 PROHIBITION OF CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION. 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 §2270.0201 or §2252.153. Consultant certifies and that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach of this Agreement.

- 20.6 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES. This section only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
  - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit 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. This term does not include a sole proprietorship.

"Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

Texas Government Code §2274 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 energy companies; and (2) will not boycott energy companies during the term of the contract.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

- 20.7 PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES. This section only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
  - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

"Company" means a for-profit 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. This term does not include a sole proprietorship.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

Texas Government Code §2274 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 have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

## **XXI. LEGAL AUTHORITY**

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

## **XXII. PARTIES BOUND**

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

## **XXIII. CAPTIONS**

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

**XXII. XXIV. ENTIRE AGREEMENT**

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

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

**CITY OF SAN ANTONIO**  
a Texas Municipal Corporation

**CONTRACTOR**

\_\_\_\_\_  
Jon Gary, Director  
Animal Care Services Department

\_\_\_\_\_  
Dr. Yvonne Smith, DVM

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

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

APPROVED AS TO FORM

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