

2024 Retail Lease

(ACS Spay and Neuter Clinic – 1604/1608 S. New Braunfels Ave., San Antonio, Texas 78210)

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1. Basic Information, Definitions.

Effective Date: The date of execution of the Lease by both Parties.
Landlord agrees to execute the Lease prior to Tenant's presentation of the Lease for approval by the City Council of the City of San Antonio.

**Authorizing
Authority/Ordinance:**

Landlord: 1604 S. New Braunfels AGV, LLC

Landlord's Address: c/o Reliance Commercial Property Services (RCPS)
11467 Huebner Rd Ste 255
San Antonio, Texas 78230

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: Leasing, Building and Equipment Services Department)

Premises: +/- 6,000 rentable square feet ("SF") total area as depicted in **Exhibit A** commonly known as SUITE XXX at 1604/1608 S. New Braunfels Ave., San Antonio, Texas 78210.

The total rentable square footage of the Premises is subject to confirmation using the BOMA standard for multi-tenant use retail type structures. In the event the SF is confirmed to be different than indicated herein as a result of finalizing a space plan, then the rent shall be adjusted upward or downward based on the actual SF at the rate specified in Section 3.

Common Areas All portions of the Shopping Center including parking areas, open to public or considered accessible by the public and not exclusive to any other tenant in the Shopping Center.

Permitted Use: Office/animal hospital use for the City of San Antonio or vendors contracted by COSA for veterinary services primarily engaged in spaying and neutering pets and other uses as conducted by Animal Care Services or its partners

**Occupancy
Commencement Date:** The date of the Premises is suitable for Tenant's use which could include Tenant's vendors installation of

cabling systems or other network equipment prior to the Rent Commencement Date and as provided in Section 16 of the Exhibit B Work Letter.

Rent Commencement Date: First day of the first full month after following the date of issuance of the Landlord-obtained Certificate of Occupancy. The commencement date will be memorialized on a Lease Commencement Memorandum attached and incorporated hereto as **Exhibit C**.

Initial Term: Five (5) years commencing on the Rent Commencement Date.

Renewal: One 5-year option to renew upon 180 days written notice, at a rate that will increase 15% from the Base Rent paid in the last month of the Initial Term. The portion of rent attributable to Operating Expenses shall be adjusted to reflect Landlord's actual cost for providing the services that comprise the Operating Rent for the nearest 12-month period during the Initial Term for which Landlord has final costs. At time of Renewal, Landlord shall provide an improvement allowance equal to \$10/SF.

Rent: Specified in Section 3.

Parking: Landlord to provide Tenant 12 unreserved car parking spaces at no additional charge in the parking lot for staff and volunteers. Landlord further acknowledges Tenant will require additional parking for its clients/customers which is anticipated to be on average 80 per day, 40 in the morning and 40 in the afternoon, many of which will be simply drop-off or pick-up. Access to these Tenant parking spaces will be on a non-reserved basis but accessible, to the extent they are available, at all times Tenant is open for business. Landlord retains the right to reserve parking spaces for a future tenant that are not directly in front of the Tenant's lease space.

Essential Services Includes HVAC services and water and sewer connections and service.

Address for Payment of Rent: XXXXX

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this lease (“Lease”).

2.02. Tenant’s right of occupancy begins at the Occupancy Commencement Date. Move-in ready means that the Premises are finished-out according to the requirements of this Lease, except for minor items such as are routinely corrected with a punch list.

2.03. This agreement is binding on the parties on the later of the signatures of the two parties (the “Effective Date”).

3. Rent.

3.01. Rent will be paid as follows:

Base Rent for the Premises for Years 1 – 5: \$17.50 per rentable square foot annually

Operating Expense Rent: Estimated to start at \$6.00 per rentable square foot annually.

Only the Operating Expense Rent shall be subject to adjustment during the term based on the actual increases documented by Landlord during the first year of occupancy. After the first year of occupancy, the actual total operating expenses will be compared to the total that the Tenant has paid during the first year for Operating Expense Rent (\$32,430.00). If the actuals are higher, Tenant will owe the difference in a lump-sum. If the actual first year operating expenses are lower than what Tenant has paid, then Tenant will receive an Operating Expense Rent credit for the second year. The Operating Expense Rent will then be increased by 3% annually thereafter using the actual operating expenses of the first year as the base.

“Base Rent” is on a triple net basis including any costs for Tenant Improvements but excluding any costs for operation of the Premises.

“Operating Expense Rent” is all expenses incurred by Landlord for the operation of the building, but not limited to:

- All utilities not paid directly by Tenant;
- Property Taxes, excluding any taxes attributable to Tenant’s personal property;
- Landscaping of common areas;
- Parking lot sweeping and lighting;
- Maintenance of all life safety systems including sprinkler systems if installed on the Premises;

- Maintenance of the basic structure, including the foundation; all interior and exterior walls, doors and hardware; all interior and exterior glass; roof; all interior and exterior electrical systems; all interior and exterior plumbing systems; and all HVAC systems
- Periodic garbage collection;
- Property insurance in an amount of not less than \$2.0 million per occurrence for general liability and damage to structure in an amount equal to 100% of the Premises replacement value. All policies of insurance shall name the City of San Antonio as an additional insured; and
- Other items as further specified in this lease agreement.

3.02. Tenant must pay the Rent in the amount described in this section in advance on the first day of each month or within 10 days thereafter without penalty. Tenant further may be more than 10 days late twice in a calendar year without penalty. On the third and each later occasion in a calendar year on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 15 days from delivery of Landlord's notice, then Tenant shall pay a late charge of 5% of the delinquent amount as additional rent. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.03. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant shall not abate Rent.

3.04. Prior to receiving payment under the terms of this Lease, Landlord and any successor in interest to Landlord will register the entity that will receive payment with the City of San Antonio as a vendor including providing all reasonable tax information requested by Tenant.

4. Term, Renewal, and Termination.

4.01. The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

4.02. Termination. Tenant shall have the one time right to terminate this Lease effective at the end of the 36th month of the Initial Term with not less than 180 days prior written notice to Landlord.

4.03. Renewal. Tenant shall have one, five (5) year renewal option with 180 days written notice to Landlord prior to Lease expiration. The rent during the renewal term will be paid as provided in Section 1 (subject to first year adjustment as provided in Section 3.01) of this Lease.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and shopping center; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Shopping Center; and (c) any rules and regulations for the Shopping Center and common areas adopted by Landlord.

5.02. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.03. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord. Such request for repairs shall be made within ten (10) days from the date Tenant notices the need for the repair, except for Essential Services, the repairs for which shall be initiated within one (1) business day after Landlord has received notice from Tenant of the requirement to make said repair or if the utilities for Landlord is responsible are interrupted, Tenant may restore the utility and deduct its incurred cost from the Rent next due.

5.04. Vacate the Premises and return all keys, codes and combinations (if applicable) to the Premises promptly upon expiration of the Term, subject to any holdover rights. At the time Premises is vacated, Tenant may leave in place, at its option, any network cabling or other wiring installed by Tenant above the ceiling.

5.05. If applicable, timely pay all property taxes accrued against Tenant's personal property located in the Premises.

5.06. Tenant, at its expense, shall install a ventilation system and take any other reasonable steps sufficient to prevent objectionable odors from permeating into other areas of the shopping center. Said ventilation system shall vent through the roof and be included in Tenant's plans and specifications as required herein. Approval of said plans shall not relieve the Tenant of its obligation as provided within this paragraph.

Landlord acknowledges that certain unpleasant odors will be present in the Premises and are inherent in the operation of the business of an animal clinic even when run in a competent and professional fashion in compliance with applicable legal requirements. This does not, however, relieve Tenant of the obligation to cooperate with Landlord as herein provided to prevent odors from emanating from the Premises in a manner that causes a nuisance to other tenants on the property. In this regard, it is expressly agreed that if Tenant installs a ventilation system in the Leased Premises in accordance with the plans therefore that are approved by Landlord as per the terms of this Lease, and the odor constituting the nuisance in question at any given time does not result from Tenant's negligence or poor operational practices in the Leased Premises, Tenant's sole obligation in the event of an odor from the Leased Premises that results in a nuisance to another tenant on the property shall be to promptly and diligently make (or, at Landlord's option, pay Landlord [within 10 days of Landlord's request] the cost of making) such modifications to its ventilation system or otherwise cooperate with Landlord in instituting means for the discontinuance of such odor nuisance as Landlord may prescribe.

5.07. Tenant shall have the obligation and duty to keep all of the Common Areas of the Shopping Center in immediate proximity to the Premises as indicated in Section 5.16 free and clear of any obstructions, debris, waste, refuse or dangerous condition created or permitted by Tenant or its personnel, contractors, invitees, licensees and customers, or otherwise resulting from Tenant's operations at the Shopping Center, and Tenant agrees to police the Common Areas in immediate proximity to the Premises as indicated in Section 5.16 for trash and debris before 8:00 AM each morning following Tenant's business being open the preceding day, and clean up all trash, refuse, debris and garbage. If Tenant fails to remove such debris, waste or trash prior to such time, then Landlord may, in addition to its other remedies for such default, remove the debris, waste or trash and the cost incurred by Landlord in so doing, including a ten percent (10%) overhead fee to Landlord, and bill Tenant for this additional service, which will be paid or disputed by Tenant within 30 days of receipt of Landlord's bill.

5.08. All garbage, refuse, trash and other waste shall be kept in the kind of container, placed in all areas, and prepared for collection in the manner and at the times and places specified by Landlord, subject to section 19.06 of this Lease. If Landlord designates a Hazardous Material removal program as that term is defined in Section 19.02 of this Lease, Tenant shall comply with Landlord's reasonable request to accommodate the removal of the Hazardous Material. Landlord reserves the right to require that Tenant participate in any recycling program designated by Landlord.

5.09. Tenant shall use, at Tenant's cost, such pest and rodent extermination contractor as Landlord may direct and at such intervals as Landlord may require. In the event Landlord determines that Tenant's Permitted Use is the source of the pest problem and Tenant refuses to take action to cure the issue within 30 days of Landlord's notice to comply, then Landlord may arrange for pest control (in which case, Tenant shall pay Tenant's Proportionate Share of the cost thereof or such other share as Landlord may fairly and reasonably determine) to Landlord within 30 days of receipt of Landlord's written accounting of why the Permitted Use was the source of the pest problem and what charges were incurred by Landlord. Tenant shall have the right to dispute Landlord's assertions and until such time that the matter is mutually agreed to, Tenant shall not be liable for paying Landlord's charges.. Tenant shall provide Landlord with evidence of Tenant's intended compliance with this provision within five (5) days after Landlord's written request.

5.10. All animals shall be leashed or contained and controlled by owner/attendant.

5.11. No loitering of unattended animals outside of the Premises.

5.12. The area in front of the Premises shall be power washed as needed to prevent odor.

5.13. Tenant shall patrol the area 300 feet from the Premises to pick up any animal waste.

5.14. No overnight boarding of animals except in emergency situations.

6. Tenant's Negative Promises.

Tenant promises that it will not:

- 6.01. Use the Premises for any purpose other than the Permitted Use.
- 6.02. Create a nuisance.
- 6.03. Permit waste.
- 6.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Shopping Center.
- 6.05. Change Landlord's lock system.
- 6.06. Alter the Premises.
- 6.07. Allow a lien to be placed on the Premises.
- 6.08. Except as provided in Section 25 of this Lease, assign this Lease or sublease any portion of the Premises without Landlord's written consent, which must not be unreasonably withheld.
- 6.09. Tenant shall not use the Common Areas, including areas adjacent to the Premises, for any purpose other than ingress and egress and any such use thereof shall be subject to the other provisions of this Lease, including these rules. Without limiting the generality of the foregoing, Tenant shall not use the common areas to canvass, solicit business or information from, or distribute any article or material to other tenants, occupants or invitees of the shopping center. Tenant shall not allow anything to remain in any passageway, sidewalk, court, corridor, stairway, entrance, exit, elevator, shipping areas or closets, electrical closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by Tenant, or its contractors, agents, employees, or other parties without Landlord's prior written consent.
- 6.10. No noise emanating from the Premises shall be at a volume such that the decibel level of the sound measured from a distance of five (5) feet from any exterior wall (or the opposite side of any interior common demising wall separating the Premises from adjacent tenant space in the shopping center) is disturbing to other tenants or the public during the hours of 7:00 a.m. and 9:00 p.m., or such that the volume (as so measured) exceeds applicable legal limitations at any other time or, if no legal limitations apply in the area, then the level determined by Landlord in its sole discretion as constituting an annoyance to nearby property owners or the public at large.

7. Landlord's Affirmative Promises.

Landlord promises that it will:

7.01. Lease to Tenant the Premises for the entire Term, beginning on the Occupancy Commencement Date.

7.02. Obey all applicable laws with respect to Landlord's operation of the Shopping Center and common areas.

7.03. Provide the Essential Services.

7.04. **Landlord's Work.** Landlord shall facilitate and substantially complete all aspects of the renovation and expansion of the Premises in accordance with **Exhibit B** ("Landlord's Work"), attached hereto and incorporated, with Landlord using its reasonable efforts to do so no later than 120 days after the date of issuance of the building permit for the Premises; provided, however, should there arise unavoidable causes or unforeseen circumstances beyond the Landlord's control (including but not limited to change orders initiated by Tenant, delays in receiving materials and supplies, or issues in obtaining other required permits, licenses or approval from any governmental related entity), then the aforesaid time period for completing Landlord's Work shall be extended for a reasonable period of time to compensate therefor. Landlord shall provide an allowance of \$30.00 per rentable square foot within the Base Rent for Tenant's anticipated retrofit of the Premises ("Improvement Allowance") in accordance with **Exhibit B**. Upon commencement of the Lease, Landlord shall reconcile its actual expenses for all improvements limited to costs incurred to design and engineer the construction plans and the actual cost of construction, no other costs shall be charged against the Improvement Allowance.

In addition to the Improvement Allowance, Landlord shall provide an Additional Tenant Improvement Allowance ("Additional TI Allowance") equal to \$125.00 per rentable square foot to be spent by Landlord's general contractor, or as requested by Tenant to pay vendors retained by Tenant and/or Landlord in connection construct a complete surgical facility to accomplish the Use. Tenant shall repay Landlord for any Additional TI Allowance expended by Landlord according to a draw schedule in increments of \$200,000.00. Landlord shall show proof of actual costs incurred as part of each request. The remaining balance required to complete the improvements shall be paid in a lump sum within the later of: (i) 30 days after the Commencement Date; or (ii) 30 days after the date Landlord confirms the total cost to construct the Tenant Improvements including documentation executed by the General Contractor, architect and any other persons hired by Landlord to complete the tenant improvements confirming they have been paid in full.

Landlord is to provide Tenant with an as-built plan of the Premises (preferably in AutoCAD). If Landlord does not currently have as-built plans, contemporaneously with agreement to an LOI, Landlord will hire Insite Architects architect to produce as-built plans at Landlord's cost

Wherever the terms of this Section conflict with the **Exhibit B** Work Letter, the terms of this Section shall prevail.

7.05. Mold.

7.05.01. Process of Assessment. If Tenant suspects or identifies the presence of mold within the Premises after taking possession, Landlord shall engage a licensed mold assessor (“assessor”) to make an inspection not later than the third business day from the date Tenant notifies Landlord in writing of the issue (Tenant’s Mold Notice). As used herein, “business day” shall mean any non-holiday Monday through Friday. Landlord’s assessor shall, within 10 business days from the date of the Tenant’s Mold Notice, provide Landlord and Tenant a report of the findings of the inspection (Assessor’s Report). If the Assessor’s Report concludes that mold is present, Landlord shall notify Tenant, in writing (Landlord’s Mold Notice), not later than the third business day from the date Landlord and Tenant receive the report, of its intention to remediate the mold. The Landlord’s Mold Notice must also include a schedule outlining the period of time it will take for a licensed remediation contractor to complete the work. Failure to make this date is an event of default. If Landlord elects to remediate the mold, Landlord must retain a licensed abatement contractor to ensure the abatement is conducted in compliance with current state mold assessment and remediation legal requirements including the promulgated Mold Assessment and Remediation Rules, last amended on May 20, 2007. Upon completion of the mold remediation, the licensed abatement contractor must provide both Landlord and Tenant a report from a licensed environmental testing firm confirming that mold is not present at the Premises.

7.05.02. No Landlord Remediation or Landlord Remediation Taking Longer than 30 days. If Landlord 1.) fails to timely provide Tenant the Landlord’s Mold Notice 2.) elects not to remediate, or 3.) conveys that the remediation is scheduled to take longer than 30 calendar days to be completed, as evidenced by a remediation schedule provided by a licensed remediation contractor, then Tenant may terminate this Lease effective with thirty (30) days’ written notice to Landlord (Tenant’s Election to Terminate Notice). If Tenant exercises this option, Tenant’s obligation to pay rent will cease effective 30 days after Landlord’s receipt of Tenant’s Mold Notice or the date Tenant has fully vacated the Premises, whichever is later. In such circumstance, Landlord shall have no right to re-capture any expenditures related to Landlord’s Work Cost and Tenant shall have 30 days from the date of this Notice to fully vacate the Premises or remediate the mold itself and deduct the remediation cost from the rent next due until such time that the costs incurred by Tenant including the 10% fee are fully recovered.

7.05.03. Rental Abatement. During any mold assessment and remediation period, whether the work is done by Landlord or by Tenant, the rent will be abated for any portion of the Premises deemed by Tenant unusable due to the presence of mold or the remediation activity related to it.

7.06. Landlord, at Landlord’s sole cost and expense will provide Tenant an asbestos survey, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas, for the Premises no later than 10 days after the Effective Date. In the event that the asbestos

survey reveals the presence of friable asbestos, Landlord will, at Landlord's sole cost and expense hire a professional environmental remediation company to encapsulate and/or remediate the friable asbestos, and upon completion, provide Tenant with a new or updated asbestos survey indicating that there is no friable asbestos present in the Premises. In the event the asbestos survey identifies friable asbestos, then within 30 days of completion of Landlord's required removal of the friable asbestos, Landlord will deliver to Tenant an Asbestos Survey of the Premises confirming that the asbestos has been abated.

7.07. Timely pay when due all charges for utility services to the Premises, except for services the payment of which are expressly allocated to Tenant.

7.08. Pay all property taxes assessed against the property of which the Premises are part on or before the assessment of interest or penalties for late payment.

7.09. Landlord at its sole cost and expense shall provide two new 4-ton HVAC heat pump type units to serve the heating and cooling needs of the front portion of the Premises. Landlords work will include all costs with the installation including, but not limited to: electrical services, demo of existing units, roof work to accommodate the equipment and supply and return duct work suitable for the required distribution system which will be paid for through the Tenant through the Tenant Improvement Allowance.

8. Landlord's Negative Promises.

Landlord promises that it will not:

8.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

8.02. Unreasonably withhold consent to a proposed assignment or sublease.

9. Repair, Maintenance and Replacement Responsibilities.

Landlord and Tenant, each at their sole cost and expense, must repair, maintain, and replace, if necessary, any building component allocated to it in the table below:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
HVAC repair, maintenance, and replacement	No	Yes
Janitorial Services to Premises.	Yes	No
Periodic Garbage Collection Services	No	Yes

Janitorial Services to Common Areas per Section 3.01	No	Yes
Utility Services	Electricity and Gas	Water and Sewer Services
Parking Lot Maintenance including Parking Lot Lighting	No	Yes
Landscaping	No	Yes
Exposed Electrical Systems including lights and tubes	Yes	No
Concealed Electrical Systems including Common Area Lighting	No	Yes
Exposed Plumbing Systems and in wall Plumbing Systems above the slab line	Yes	No
Concealed plumbing systems below the slab	No	Yes
Pest Control	Yes	No
Pest Control in the Common Areas	No	Yes

10. Alterations.

At the termination of the Lease, subject to Tenant's election and without creating any obligation to do so, Tenant may (without any damage to the Premises) remove all or any specific technology or HVAC systems installed by Tenant in the Premises including but not limited to telephone cabling, network systems, alarm systems, HVAC exclusively serving the Tenant's communication room or other low voltage access systems (Technology Systems). In the event Tenant elects to leave in place all or any portion of the Technology Systems, the Technology Systems will become the property of Landlord. However, Tenant will not remove any other betterments or other improvements installed in, on or to the Premises as part of the initial Tenant Improvements without Landlord's prior written consent, and any physical additions or improvements to the Premises made by Landlord on behalf of Tenant will become the property of Landlord.

11. Insurance.

11.01. Tenant will self-insure as it deems advisable against property loss. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

11.02. Landlord must maintain Commercial General Liability insurance of not less than \$2,000,000 and property and casualty insurance for physical damage to the Premises in the amount of 100% of replacement cost.

11.02.01. Each insurance policy of Landlord required by this Lease must contain the following clauses:

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio	Center City Development and Operations
City Hall/2nd Floor	P. O. Box 839966
P. O. Box 839966	San Antonio, Texas 78283-3966
San Antonio, Texas 78283-3966	and
Attention: Risk Manager	

“The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Lease must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Tenant because of Landlord’s breach of representation, warranty, declaration, or condition of this policy.”

11.02.02. Within 30 days after the Effective Date and promptly after Tenant’s later request, Landlord must, at its own expense, deliver certificates to Tenant’s Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance agent and must include the signatory’s company affiliation and title.

11.02.03. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

12. Release of Claims/Subrogation.

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

13. Indemnity.

13.01. These definitions apply to the indemnity provisions of this Contract:

13.01.01. “Indemnified Claims” mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys’ fees and court costs and include claims arising from property damage and from personal or bodily injury, including death. Indemnified Claims also include claims in which an Indemnitee shares liability with the Indemnitor, excluding only claims as to which Indemnitees are solely negligent.

13.01.02. “Indemnitees” means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

13.01.03. “Indemnitor” means Landlord.

13.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

13.03. If one or more Indemnitees are finally adjudged to bear fault outside the scope of this indemnity, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees’ adjudicated share of liability. But despite allegations that one or more Indemnitees bear such fault, Indemnitor must nevertheless defend all Indemnitees until final adjudication and all appeals have been exhausted. An Indemnitee may but need not waive appeals. Indemnitor may not recover sums previously spent defending or otherwise indemnifying Indemnitees finally adjudged to bear fault outside the

scope of this indemnity and must continue to indemnify other Indemnitees if claims are still asserted against them.

13.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

13.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnatee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

13.06. In addition to the indemnity required under this Contract, each Indemnatee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

13.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnatee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnatee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnatee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnatee must first be approved by City Council.

13.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

13.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

14. Casualty/Total or Partial Destruction.

14.01. If the Premises or any portion thereof are damaged by casualty and can be restored within 90 days of the date that Landlord is first aware of the damage, Landlord will, at its expense, restore the roof, foundation, common areas, and structural soundness of the exterior walls of the Premises and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing. Restoration must be at no cost to Tenant and in substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within 90 days from the loss, Tenant may terminate this lease by written notice delivered to Landlord. Evidence of completion shall include a Certificate of Occupancy or other documentation issued from the City of San Antonio department charged with managing the building permit process that all work has been completed as required by law.

14.02. If the Premises cannot be restored within 90 days, Landlord has the option of whether or not to restore the Premises. If Landlord chooses not to restore or fails to notify Tenant of its intent to restore the Premises within thirty (30) days of the date that Landlord is first aware this Lease shall terminate. If Landlord chooses to restore the Premises, Landlord will notify Tenant of the estimated time to restore in writing. Tenant shall then have 10 days from the date of notice to terminate the Lease. If Tenant does not terminate this Lease, the Lease will continue, and Landlord will restore the Premises as provided above.

14.03. During the period before Landlord completes restoration, the Rent will be adjusted as may be fair and reasonable based on the portion of the Premises deemed unusable by Tenant due to the damage.

14.04. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

15. Condemnation/Substantial or Partial Taking.

15.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Tenant, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

15.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

15.03. The Award shall be divided between Landlord and Tenant as their respective interests appear, with compensation due Landlord for damage to its reversionary interest, if any, and to Tenant for damage to its leasehold, if any. "Award" shall mean all compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation of the Premises or the land on which the Premises is situated.

16. Holdover.

If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this instrument, Tenant may hold-over for up to six additional months on a month-to-month basis. Tenant need not give advance notice of intent to exercise this hold-over right. The rent during a hold over shall be the same rent for the last month of the Lease term plus \$1,100 per month to cover the 15% increase in base rent anticipated if Tenant renewed plus a 3% increase in CAM, taxes and insurance portions of the rent as the rent for the term being held over, and all other terms of this Lease apply. Council's authorization of this instrument is authority for the City as Tenant to enter into the hold-over period without further council action if the Director of the department presently managing this Lease deems the monthly holdover beneficial.

16.02. If prior notice is required to initiate a renewal under this Lease, the required notice period may include time in the hold-over period. If the required notice of renewal is less than the hold-over period, Tenant may deliver notice in the hold-over period.

16.03. Whenever this Lease refers to its term, events to occur during the term, or rights and obligations of Landlord and Tenant during the term, a hold-over period is considered a part of the term.

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this lease within 30 days after written notice; (ii) failing to provide Essential Services to Tenant within 10 days after written notice and; (iii) failure to timely pay for utility services the payment of which is allocated to Landlord under this Lease; and (iv) failure to pay property taxes before assessment of interest or penalty.

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's remedies for Landlord's default are to sue for damages and, if Landlord does not provide an Essential Service within 30 days after default, terminate this lease. Further, if an Essential Service the payment or responsibility to repair of which is allocated to Landlord is in imminent threat of being terminated or has not been repaired within 10 days of Tenant's written notice to Landlord, Tenant may, without prior notice to Landlord, pay some or all the charges and deduct the entire amount paid against the next occurring Rent payment.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

17.04. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, Tenant to reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages.

18. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Lease, and there are no warranties that extend beyond those expressly stated in this Lease.

19. Environmental.

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

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

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

19.04. Landlord represents that, to the best of its knowledge, the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws.

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

19.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Premises. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises. Tenant shall immediately notify Landlord of any suspected release of any Hazardous Material on, onto or from the Premises in violation of any Environmental Laws or in any but a reasonable and prudent manner.

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

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

19.09. Each party must indemnify the other party and its respective officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by notifying party in enforcing this indemnity) arising from or relating to breach of the environmental representations, warranties, and covenants set forth herein.

20. Appropriations.

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

21. Dispute Resolution.

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

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

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

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

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

21.06. Mediator fees must be borne equally.

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

22. Prohibited Interests in Contracts.

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

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Landlord warrants and certifies as follows:

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

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

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

23. Miscellaneous.

23.01. *Applicable Law.* This Lease is entered into in San Antonio, Bexar County, State of Texas. Its construction and the rights, remedies, and obligations arising under it are governed by the laws of the State of Texas. But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Lease is only in Bexar County, Texas.

23.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

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

23.04. *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.**

23.05. *Modification.* This Lease may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Lease's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

23.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

23.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified

mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

23.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

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

23.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

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

23.12. *Conflicts Between Numbers Stated Two Ways.* Whenever there is a conflict between numbers stated more than one way, either by using both words and numerals or by stating a fixed amount and a calculation, the highest number controls.

23.13. *Quiet Enjoyment.* As long as Tenant pays the rent and other charges under this lease and observes the covenants and terms of this lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the lease term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

23.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

23.15. *No Representations by Landlord.* Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, privileges, easements or licenses are acquired by Tenant except as expressly set forth in this Lease.

23.16. Except as expressly provided in the Lease in Section 17.02, in no circumstances shall the Tenant be entitled to offset or abatement of rent.

23.17. Notwithstanding anything in the Lease to the contrary, in no circumstances shall the Landlord be required to provide security for the Tenant, its employees or invitees, or for the Premises.

24. 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. Nothing in this Lease waives an otherwise applicable exception to disclosure. The parties agree that this Lease shall not be recorded in the public records.

25. Brokerage. Landlord acknowledges that PCR Brokerage San Antonio, LLC dba Partners represents Tenant in this transaction. Landlord's broker shall pay Partners a leasing commission equal to 4% of the total Initial Term rent including Base Rent pursuant to the terms of a separate brokerage agreement.

26. Assignment and Subleasing.

Tenant may assign this Lease or sublet all or a portion of the Premises with Landlord's written permission, which may not be unreasonably withheld, provided either (i) the assignee or sublessee is another governmental agency and the use classification is consistent with that provided for in Section 1 of this Lease; or (ii) any entity that has either by contract or other means assumed the responsibility for providing all or some of the services previously provided by the City at the Premises.

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

Tenant

Landlord

City of San Antonio, a Texas
municipal corporation

1604 S. New Braunfels AGV, LLC

Signature:_____

By:_____

Printed
Name:_____

Printed
Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Approved as to Form:

City Attorney

Exhibit A: Premises Diagram

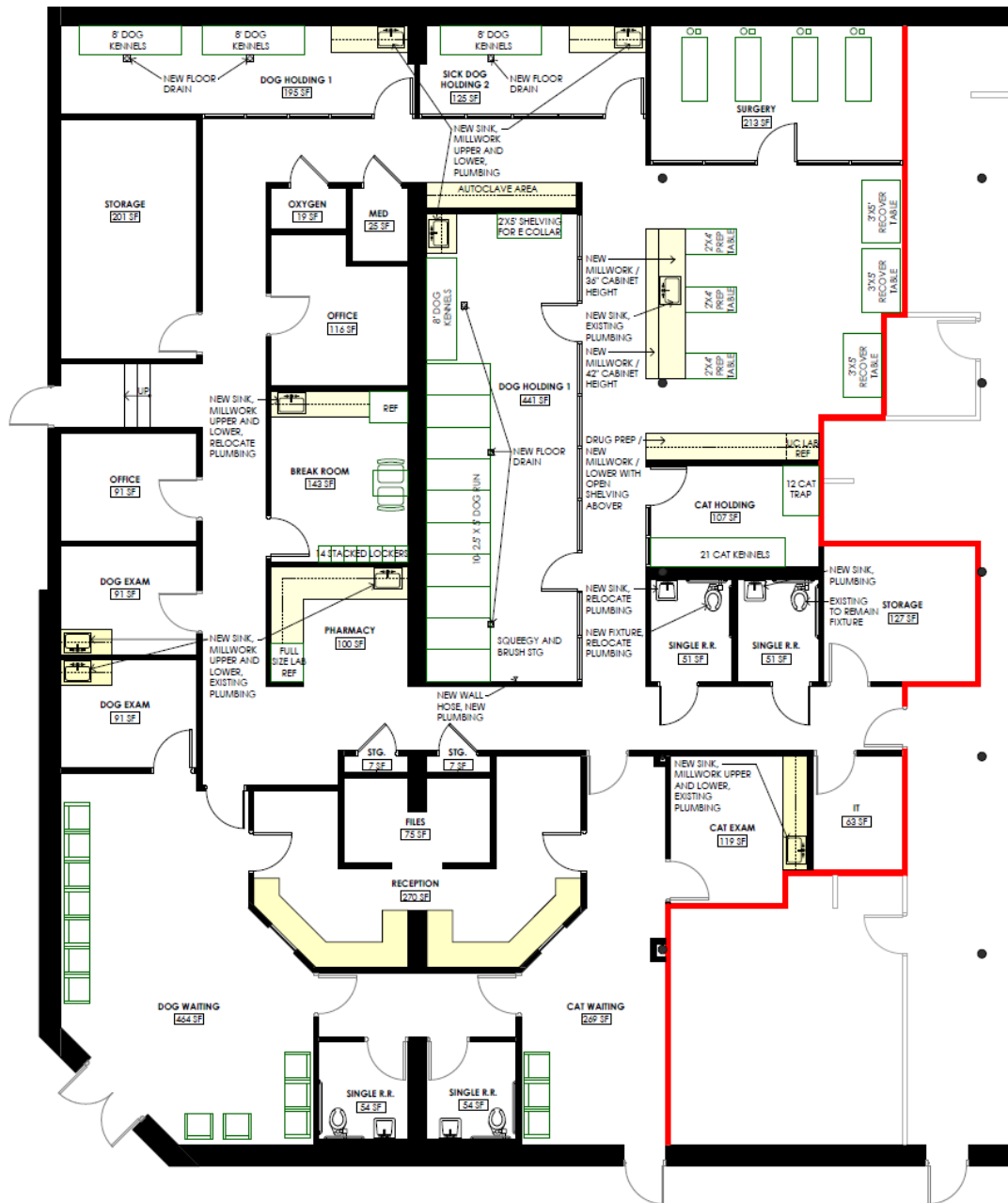


Exhibit B: Work Letter

Exhibit C: Lease Commencement Memorandum

Landlord: 1604 S. New Braunfels AGV, LLC

Tenant: City of San Antonio

Lease:

Authorizing Ordinance: _____

Predicate Facts:

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

The Lease Term is to begin on the date of issuance of the Certificate of Occupancy for the Premises. The Rent Commencement Date is the first day of month following the date of issuance of the Landlord-obtained Certificate of Occupancy.

For their mutual benefit, the parties now wish to memorialize the actual commencement date of the Lease's Term.

Rights and Obligations:

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

1. Defined Terms.

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

2. Lease Commencement.

The Lease Term commenced on _____.

3. Conflict of Terms.

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

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

Tenant:

Landlord:

City of San Antonio, a Texas
municipal corporation

1604 S. New Braunfels AGV, LLC

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

City Attorney

Exhibit D: Tenant's Signage Rights

Need to add what area of the pylon is City's to use and any other requirements including Tenant's right to install signage on awnings in front of Premises.