

Sublease Agreement for Brooks Clinic

Table of Contents

<u>1. Basic Information, Definitions</u>	1
<u>2. Grant</u>	2
<u>3. Master Lease</u>	2
<u>4. Rent</u>	3
<u>5. Term</u>	3
<u>6. Subtenant’s Affirmative Promises</u>	3
<u>7. Indemnity</u>	9
<u>8. Subtenant’s Negative Promises</u>	10
<u>9. Sublandlord’s Affirmative Promises</u>	11
<u>10. Sublandlord’s Negative Promise</u>	12
<u>11. Alterations</u>	12
<u>12. Insurance</u>	12
<u>13. Release of Claims/Subrogation</u>	15
<u>14. Master Lease Landlord’s Municipal Powers</u>	15
<u>15. Casualty/Total or Partial Destruction</u>	15
<u>16. Default, Remedies for Default</u>	15
<u>17. Security Deposit</u>	19
<u>18. Warranty Disclaimer</u>	19
<u>19. Abandoned Property</u>	19
<u>20. Sublease, Assignment</u>	19
<u>21. Miscellaneous</u>	20

Exhibits to this Sublease Agreement:

Exhibit A - Site Plan

Exhibit B - Master Lease

1. Basic Information, Definitions.

Sublandlord: City of San Antonio

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

Subtenant: Spay-Neuter Assistance Program, Inc.

Subtenant’s Address: 6758 Ingram Rd, San Antonio, TX 78238

Sublease Premises: 8034 City Base Landing, San Antonio, Texas 78235
Attached hereto as Exhibit A and identified in the Site Plan

Term: Three (3) years starting on June 01, 2023 (the “Rent Commencement Date”), through September 30, 2026 (the time period being the “Term”). Provided Subtenant is not then in default under the terms of the

Sublease and upon agreement of the Parties, this Agreement may be renewed for two additional terms of 1-year, not to exceed two renewal terms. The renewal shall be in writing and signed by the Director of Animal Care Services (“ACS”) without further action by the San Antonio City Council.

Occupancy Commencement Date Shall be the Rent Commencement Date

Master Lease: Lease between the City of San Antonio and the Brooks Development Authority as authorized by Ordinance 2016-03-10-0214.

Master Lease Landlord: Brooks Development Authority (“BDA”), a Texas Defense Base Development Authority

Master Lease Tenant: City of San Antonio

2. Grant.

2.01. Sublandlord subleases the Sublease Premises to Subtenant, and Subtenant takes the Sublease Premises from Sublandlord on the terms and conditions of this Sublease.

2.02. Subtenant’s right of occupancy begins on the Rent Commencement Date. Likewise, Subtenant’s rent payment is due within 30 days of the Rent Commencement Date.

3. Master Lease.

3.01. Except as otherwise provided in this Sublease, this subtenancy is subject to all the terms and conditions of the Master Lease as amended. Any subsequent reference to the Master Lease shall include this first Amendment. The Master Lease is attached hereto as Exhibit B and incorporated herein by and through this reference.

3.02. Except as specified in this Sublease, Subtenant will perform and observe all of the terms and conditions of the Master Lease as to the Sublease Premises as if Subtenant were named as Tenant in the Master Lease. Subtenant need not comply with obligations of the Lease not pertaining to the Sublease Premises. Subtenant will do nothing that will create a breach by Sublandlord of any of the terms or conditions of the Master Lease. Subtenant’s obligation to pay rent under this Sublease is in lieu of any obligation Subtenant might otherwise have to pay rent under the Master Lease.

3.03. Subject to applicable confidentiality and privacy laws, Subtenant must allow Sublandlord, Sublandlord’s employees and/or agents, or Master-Lease Landlord reasonable access to and entrance on Sublease Premises to inspect the Sublease Premises, upon prior written notice by Sublandlord or Master-Lease Landlord to Subtenant. Except in cases of emergency, access must be during Subtenant’s hours of business. Sublandlord also has access to the Sublease Premises at all reasonable times to conduct scheduled maintenance and/or repairs as may be required of Sublandlord under this Sublease. Master-Lease Landlord or Sublandlord may enter the Sublease Premises at any time during an emergency or for public safety in order to protect and secure the Sublease Premises.

3.04. Subtenant must not alter the Sublease Premises, except as permitted by the terms of the Sublease, without the express, written permission of Sublandlord and Master Lease Landlord.

3.05. No construction and/or renovations of/on the Sublease Premises is permitted without express, written permission of Sublandlord. All permitted construction and/or renovation must be based on detailed written drawings and specifications that have received prior written approval of Sublandlord.

3.06. Sublandlord retains all compliance obligations as to portions of Sublease Premises under the Master Lease not included within the Sublease Premises.

4. Rent.

4.01. Rent includes all sums due to Sublandlord under this Sublease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Subtenant, or otherwise, no matter how denominated.

4.02. Base Rent: Subtenant agrees to pay Sublandlord rent at \$1.00 annually for a total of \$3.00 over the Term for the Leased Premises due in full within 30 days of the Rent Commencement Date and mailed to:

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

4.03. Subtenant shall be responsible for paying monthly Common Area Maintenance (CAM) charges of \$292.61 payable on the first day of every month to Brooks Development Authority. CAM charges will be increased 2% each year on each anniversary of the Occupancy Commencement Date. Subtenant shall pay CAM charges directly to BDA after receiving an invoice from BDA including the CAM charges for that year. Subtenant shall mail the CAM charges payment to:

Brooks Development Authority
3201 Sidney Brooks
San Antonio, Texas 78235

The Common Area includes the park, medians, sidewalks, frontage, playgrounds and ponds that make up the BDA area. The CAM charges will be used for expenses incurred for the park, security, medians, sidewalks, frontage, playgrounds, ponds and other costs are part of the BDA's fees.

5. Term.

5.01. The term of this Sublease is the Term, unless sooner terminated as provided in this Sublease.

5.02. This Sublease terminates automatically without action by either party if the Master Lease terminates for any reason.

5.03. Either party may terminate this Sublease, with or without cause, upon sixty (60) days prior written notice to the other party.

6. Subtenant's Affirmative Promises.

Subtenant promises that it will:

6.01. Accept the Sublease Premises in their present condition "AS IS," the Sublease Premises being currently suitable for the Permitted Use.

6.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Sublease Premises and the Building (as that term is defined in the Master Lease) that the Sublease Premises is located in; (b) any requirements imposed by utility companies serving or insurance companies covering the Sublease Premises or Building; and (c) any rules and regulations for the Building and Common Areas within the Building adopted in writing by Sublandlord and noticed, in writing, to Subtenant.

6.03. Obtain and pay for all utility services used by Subtenant.

6.04. Allow Sublandlord to enter the Sublease Premises to perform Sublandlord's obligations, inspect the Sublease Premises, and show the Sublease Premises to prospective purchasers or Subtenants.

6.05. Repair, replace, and maintain any part of the Sublease Premises that Sublandlord is not obligated to repair, replace, or maintain, normal wear excepted.

6.06. After casualty loss not terminating the Sublease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

6.07. Submit in writing to Sublandlord any request for repairs, replacement, and maintenance that are the obligations of Sublandlord.

6.08. Vacate the Sublease Premises and return all keys to the Sublease Premises on the last day of the Term, subject to any holdover rights.

6.09. On request, execute an estoppel certificate that states the Rent Commencement Date, the Occupancy Commencement Date, and Termination Date of the Sublease, identifies any amendments to the Sublease, describes any rights to extend the Term or purchase rights, lists defaults by Sublandlord, and provides any other information reasonably requested. If Sublandlord sells the Sublease Premises, Subtenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Subtenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Sublease according to its terms, but buyer will not be estopped to act on Subtenant's default under this Sublease.

SUBLEASE PREMISES OPERATION

6.10. Subtenant shall use the Sublease Premises for the purposes of operating an animal spay/neuter clinic (Clinic) for the provision of free or low cost sterilization and animal vaccinations to the community and other uses as may be agreed to by Subtenant and Sublandlord (the "Permitted Use").

6.11. Subtenant shall have the right to operate the Clinic in the Building known as the Brooks Spay and Neuter Facility. Subtenant shall have the right to operate the Clinic in the manner it deems best, so long as its operation is compliant with all applicable laws, codes, and ordinances. Subtenant shall develop and implement policies that ensure quality and consistent operational standards. Subtenant shall pay all costs, including but not limited to, all expenses associated with the staffing, maintenance as required under this Agreement, operations, materials, supplies, custodial, commodities, and other operational costs.

6.12. Subtenant shall manage and operate the Clinic for the provision of free or low-cost veterinarian services to San Antonio residents. Services are to include, but not limited to, animal vaccinations such as rabies and DHPP/FVRCP, microchipping services, flea/parasite treatments, and sterilization surgeries. Tenant shall provide a minimum of 8,665 sterilization surgeries to animals during the first year of the contract, ending September 20, 2024. Thereafter, Tenant shall provide a minimum of 6,500 sterilization surgeries to animals during year two and three of this Agreement. "Animals" includes both dogs and cats. Subtenant shall verify that residents receiving services under this Lease have a San Antonio address.

6.12.01. Subtenant shall ensure the provision of all veterinary medical care at the Sublease Premises as needed for the sterilization surgeries to include post-operative care, medications and follow up care due to surgical complications. Subtenant shall provide humane housing and proper care of all animals to include, but not limited to, providing food, water, shelter, for so long as such animals remain under Subtenant's care and control. Subtenant shall take sole responsibility for the care of all animals authorized by Subtenant to be housed on the Sublease Premises. Subtenant shall maintain a 1 percent or less mortality rate for all animals sterilized by Subtenant. If Subtenant's mortality rate for all animals sterilized by Subtenant exceeds 1 percent, before Sublandlord is allowed any remedies under this Sublease, Sublandlord shall request a meeting with Subtenant to discuss and reach agreements on the standard. Subtenant shall provide, at the request of the Sublandlord, animal shelter standards being applied at the Clinic. Sublandlord can require reasonable alterations to shelter standards required by law and consistent with the ACS 151 location if deemed reasonably necessary. Sublandlord will not interfere with the day-to-day operations of the facility, except in the course of its generally applicable regulatory authority.

6.13. Hours of operation of the Clinic shall be agreed upon by both Parties. Changes in normal hours of operation shall be submitted to Sublandlord and subject to approval by Sublandlord. Subtenant may place its logo on the front door of the Clinic and at other locations in a manner and location agreeable to the Sublandlord and Master Landlord.

6.15. Subtenant shall submit any media plans and news releases that reference the Sublease Premises, the Sublandlord, or any of Sublandlord's existing programs to the Sublandlord which are subject to Sublandlords' reasonable approval prior to release or implementation by Subtenant.

6.16. Subtenant acts in the capacity of manager and tenant of the Sublease Premises and nothing contained in this Agreement shall be construed by anyone as creating the relationship of principal and agent, partners, joint venture or any other similar such relationship, and all of the services to the public provided by Subtenant are provided on behalf of Subtenant and not for or on behalf of Sublandlord. Neither party to this Agreement has the authority to bind the other party or to hold out to third parties that it has the authority to bind the other.

STAFFING

6.17. Subtenant shall be responsible for providing qualified staff for the operation and management of all services and activities. Sublandlord is not obligated to provide staff to support Subtenant's operation and management of the Clinic or administrative functions of the Sublease Premises.

6.18. Subtenant shall establish fees and services associated with the operation and management of the Sublease Premises, such fees and services and any future changes thereto shall be subject to the prior written agreement of Sublandlord.

6.19. Subtenant shall retain all revenue collected for the use and operation of the Sublease Premises, including animal sterilization and vaccination fees. Except as otherwise provided in this Agreement, Subtenant shall have the right to directly operate and retain the revenue from operations and services in support of the Clinic.

RECORDS AND REPORTS

6.20. Subtenant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the Sublandlord at their respective offices, at all reasonable times and as often as Sublandlord may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by Sublandlord and any of its authorized representatives.

6.21. Sublandlord shall retain any and all documents produced as a result of services provided hereunder for a period of four years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Subtenant shall retain the records until the resolution of such litigation or other such questions. Subtenant acknowledges and agrees that Sublandlord shall have access to any and all such documents at any and all times, as deemed necessary by Sublandlord, during said retention period. Sublandlord may, at its election, require Subtenant to return the documents to Sublandlord at Subtenant's expense prior to or at the conclusion of the retention period. In such event, Subtenant may retain a copy of the documents.

6.22. Upon Sublandlord's request, Subtenant shall provide to Sublandlord a Statement reviewed by an independent public accountant for a period as may be agreed to by Sublandlord and Subtenant, prepared by an independent Certified Public Accountant. The Statement shall reflect Subtenant's revenues and expenditures related to the operation of the Clinic.

6.23. Tenant shall provide Landlord a monthly report which shall include: 1) the total number of animals sterilized; 2) number and type of vaccinations issued; 3) the number of microchips issued; 4) zip code of the owner of each animal sterilized; and (5) any other information as reasonably requested by Landlord which is allowed by law to be disclosed.

6.24. Tenant shall not store more than 1 year of paper copies of any item on the Premises and shall maintain all of their records electronically.

6.25. Tenant shall make sterilization records available to each animal's legal owner. Such sterilization records will be made available to each animal's legal owner in either written or electronic format during the Initial Term.

SUBLANDLORD'S RIGHT OF INSPECTIONS

6.26. Tenant shall allow Landlord and its authorized representatives, including members of the Animal Care Services Advisory Board, reasonable access to inspect the Premises, without undue interference with Tenant's business operations at any time during normal business hours, except in cases of emergency (i.e., fire, flood, etc.) at which point Landlord and its authorized representatives may enter at any time and immediately notify Tenant. For non-emergency entry outside normal business hours, Landlord and its authorized representatives may have access as set forth herein with 48 hours' prior notice to Tenant and so long as an authorized Tenant representative is present. Tenant shall also allow Landlord to enter the Premises to perform Landlord's obligations and inspect the Premises. Landlord shall be permitted to show the Premises to prospective purchasers or tenants during normal business hours and with at least 24 hours' advance written notice.

6.27. Tenant shall allow members of the Animal Care Services Advisory Board to inspect the Premises as part of their regular inspection duties during normal business hours.

LICENSES AND CERTIFICATIONS

6.28. Subtenant shall comply with all licenses, legal certifications, or inspections required for the operation and management of the Sublease Premises, equipment, or materials and all applicable state and federal laws and local ordinances, Failure to comply with this requirement shall be treated as a default and will result in termination of this Agreement.

PROPERTY MAINTENANCE

6.29. Subtenant shall accept the Sublease Premises in their present condition "AS IS," the Sublease Premises being currently suitable for the Permitted Use.

6.30. Subtenant shall pay all of out of pocket costs of all electric, gas, water, sewer, garbage collection, and internet. The Subtenant shall be responsible for procuring other services on its own. Subtenant shall also furnish and install and maintain in good working order all electric light bulbs, tubes and ballasts. Sublandlord shall not be liable to Subtenant in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Sublandlord.

6.31. Subtenant shall provide keys to Subtenant's lock system and allow Sublandlord to enter the Sublease Premises to perform Sublandlord's obligations, inspect the Sublease Premises, and show the Sublease Premises to prospective purchasers or tenants.

6.32. Subtenant is responsible to work with Brooks Development Authority (BDA) for the repair, maintenance, or replacement of any structures or equipment serving the Sublease Premises (except for specialty fixtures or equipment mentioned in Exhibit B of this Agreement, if any) as outlined in Section 9.03 of the Lease Agreement between Brooks Development Authority and the City of San Antonio. Sublandlord will assist in facilitating requests for assistance between Subtenant and Brooks Development Authority for items under the purview of Brooks Development Authority as outlined in this section of the Agreement. The following chart ("Chart") can be relied upon to determine each parties' responsibilities, in the event of a conflict in responsibility for the indicated items between the Chart, the Sublease or the Master Lease, the Chart will prevail.

<i>Item</i>	<i>Spay-Neuter Assistance Program Responsibility</i>	<i>City Responsibility</i>	<i>Brooks Development Authority Responsibility</i>
Janitorial Services to Premises.	Yes	No	No
Utility Services	Yes	No	No
Parking Lot Sweeping and Maintenance	No	No	Yes
Landscaping	Yes	No	No
Exposed Electrical Systems	No	No	Yes
Interior and Exterior Light bulbs and tubes	Yes	No	No
Concealed Electrical Systems	No	No	Yes
Exposed Plumbing Systems including clogged drain lines and water heaters	Yes	No	No
Concealed Plumbing Systems including under slab drain lines	No	No	Yes
HVAC Systems	Yes	No	No
Pest Control	Yes	No	No
Roof	No	No	Yes
Broken Interior and Exterior Windows or Doors	Yes	No	No

For all services deemed the responsibility of Subtenant, within 30 days of the Occupancy Commencement Date and annually or upon expiration of a particular service contract, Subtenant shall provide to Sublandlord evidence of preventative maintenance contracts for the HVAC systems, along with service contracts for landscaping and pest control and copies of other contracts for services for any other items the responsibility for which is assigned to Subtenant.

6.33. Subtenant shall repair, replace, and maintain all other parts of the Sublease Premises that Sublandlord or Brooks Development Authority is not obligated to repair, replace, or maintain, normal wear excepted as outlined in this Agreement or in the Lease Agreement between Brooks Development Authority and the City of San Antonio.

6.34. Subtenant shall submit in writing to Sublandlord any request for repairs, replacement, and maintenance that are the obligations of Sublandlord.

6.35. Subtenant shall vacate the Sublease Premises and return all keys to the Sublease Premises on the last day of the Term.

6.36. Subtenant shall install a security camera system that will monitor the facility. The system shall store a minimum of 7 days worth of recording.

6.37 Subtenant shall be responsible for providing pest control services for the Sublease Premises.

6.38. Subtenant shall be responsible for providing landscaping services for the Sublease Premises including the repair of any water sprinkler systems if installed as of the Occupancy Commencement Date.

6.39. Subtenant shall be responsible for installing any connections for internet services.

6.40. Subtenant shall pay for all costs to operate and maintain the Sublease Premises in good, safe and clean operating condition to include all necessary repairs as well as maintaining and repairing and replacing equipment initially provided at the commencement of this Agreement by the Sublandlord as set out in Exhibit B which is attached hereto and incorporated herein for all purposes.. Subtenant may provide additional equipment at its expense, if needed. Sublandlord shall not be responsible for providing additional equipment. If Subtenant is in default of its maintenance obligations, then Sublandlord may, but is not obligated to, make or cause such repairs or maintenance to be made and shall not be responsible to Subtenant for any loss or damage that may accrue to the Subtenant's "business" revenue or operations by reason thereof. If Sublandlord makes or causes such repairs or maintenance to be made, Subtenant agrees that it will on demand, pay to Sublandlord the reasonable and necessary cost thereof, and if Subtenant shall default in such payment, Sublandlord shall have the remedies provided elsewhere herein for default of indebtedness, costs, or charges due by the Subtenant to Sublandlord.

6.41. Subtenant shall maintain the Sublease Premises in good working condition to include but not limited to keeping the Sublease Premises clean of an accumulation of dust and dirt, removing trash from outside the immediate perimeter of the Sublease Premises, and providing animal waste containers for Subtenant's customers. Trash shall be disposed of immediately following each day of operation. Custodial services and cleaning supplies, including trash canisters and trash canister liners shall be the responsibility of Subtenant.

6.42. Subtenant expressly understands and agrees that Sublandlord has not agreed to act and does not act as an insurer of Subtenant's property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property. Subtenant shall be responsible for obtaining and maintaining monitoring services for a fire/burglar security alarm system.

6.43. Subtenant shall have the nonexclusive right to park vehicles in Sublandlord's parking lot designated for the property known as 8234 City Base Landing, San Antonio, Texas 78235.

7. Indemnity.

7.01. These definitions apply to the indemnity provisions of this Sublease Agreement:

7.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising, in whole or in part, out of the negligent acts or omissions of Subtenant, its directors, officers, contractors, employees, agents, assigns or invitees that give rise to assertions of Indemnatee liability under this Sublease Agreement, 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.

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

7.01.03. "Indemnitor" means Subtenant.

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

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

7.04. 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. Subtenant shall use approved panel counsel as listed and approved through its insurance carrier to defend all indemnified claims. 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.

7.05. In addition to the indemnity required under this Sublease Agreement, each Indemnitee 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.

7.06. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee 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 Indemnitee. 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 Indemnitee 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 Indemnitee must first be approved by City Council.

7.07. Nothing in this Sublease Agreement waives governmental immunity or other defenses of Indemnitees under applicable law.

8. Subtenant's Negative Promises.

Subtenant promises that it will not:

8.01. Use the Sublease Premises for any purpose other than the Permitted Use.

8.02. Create a nuisance.

8.03. Interfere with any other Subtenant's normal business operations or Sublandlord's management of the Building.

8.04. Permit waste.

8.05. Use the Sublease Premises in any way that would increase insurance premiums or void insurance on the Building.

8.06. Change Sublandlord's lock system.

8.07. Alter the Sublease Premises without Sublandlord and Master Landlord under the Master Lease's prior written consent.

8.08. Allow a lien to be placed on the Sublease Premises.

9. Sublandlord's Affirmative Promises.

Sublandlord promises that it will:

9.01. Sublease to Subtenant the Sublease Premises for the entire Term beginning on the Occupancy Commencement Date and ending on the Termination Date.

9.02. Obey all applicable laws with respect to Sublandlord's operation of the Building and Common Areas.

9.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, corridors, and windows, (e) HVAC, wiring, and plumbing, and (d) other structures or equipment serving the Sublease Premises.

9.04. Allow Subtenant the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Sublandlord may prescribe.

9.05. Provide \$50,000 in Year 1 (June 1, 2023 – September 30, 2024) to be used for capital equipment such as computers, software, cameras, and other such items required for operations. Funds may be used only for the purchase and installation of equipment that should be capitalized for federal income-tax purposes. All expenditures must be approved by the Sublandlord in advance. At the termination of this Sublease, whether by expiration or otherwise, Subtenant must deliver to Sublandlord all capital items purchased with Sublandlord funds.

9.06. Provide \$50,000.00 annually, provided renewals are signed and executed, to be used for operational support such as staffing, medical supplies, utilities, and other such items required to ensure clinic rates remain low-cost. Tenant shall invoice City within 60 days of new Term Year and will receive entire sum from Landlord within 30 days. In the event that the Lease is terminated before the Initial Term or Renewal Term terminates, Tenant shall be required to return any unused portion of the annual sum for the current Term Year.

9.07. Provide up to \$37,000 annually to reimburse Subtenant for up to 300 surgeries, vaccines, and microchips provided to San Antonio pet owners free of charge. Reimbursements will be made in the following amounts:

Service Type	Rate
Male Cat	\$86 per surgery
Female Cat	\$97 per surgery
Male Dog (<40 lbs)	\$112 per surgery
Male Dog (>40 lbs)	\$131 per surgery
Female Dog (<40 lbs)	\$128 per surgery
Female Dog (>40 lbs)	\$147 per surgery
Microchip	\$10 per microchip
Rabies Vaccine	\$8 per vaccine
DHPP Vaccine	\$8 per vaccine
FVRCP Vaccine	\$8 per vaccine

9.08. Inspect the Sublease Premises quarterly during normal business hours with at least 24 hours’ advance written notice for contract compliance to include maintenance of equipment, sanitation, and the City facilities responsibilities.

10. Sublandlord’s Negative Promise.

Sublandlord promises that it will not interfere with Subtenant’s possession of the Sublease Premises as long as Subtenant is not in default.

11. Alterations.

Physical additions or improvements to the Sublease Premises made by Subtenant will become the property of Sublandlord. Sublandlord may require that Subtenant, at the end of the Term and at Subtenant’s expense, remove any physical additions and improvements, repair any alterations, and restore the Sublease Premises to the condition existing at the Occupancy Commencement Date, normal wear excepted. Subtenant’s making of physical additions or improvements must comply with all requirements of the Master Lease, including obtaining consent of the Master Lease Landlord, if applicable.

12. Insurance.

12.01. No later than 30 days before the scheduled event, 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 event 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.

12.02. 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.

12.03 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.

12.04. 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.

12.05. 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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Contractors *f. Damage to property rented to you g. Damage to Rented Premise	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate. *f. \$300,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
*If Applicable	

12.05. 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. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

12.06. 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:

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

12.07. 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.

12.08. 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.

12.09. 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.

12.10. 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.

12.11. 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.

12.12. 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.

12.13. CONTRACTOR and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

13. Release of Claims/Subrogation.

The insurance requirements of this Sublease are a bargained-for allocation of risk of loss. Sublandlord and Subtenant release each other and the City of San Antonio 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 Sublease 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 Sublease. Sublandlord and Subtenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other and against the City of San Antonio for Covered Claims.

14. Master Lease Tenant’s Municipal Powers.

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

15. Casualty/Total or Partial Destruction.

Casualty loss is handled in the Master Lease. Subtenant is bound to stay in and pay rent for the Premises under this sublease to the same extent Sublandlord is so bound by the Master Lease.

16. Default, Remedies for Default.

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

16.01.01. Subtenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Sublandlord.

16.01.02. Subtenant fails to comply with any term, provision or covenant of this Sublease, other than the payment of rental or expenses demanded by Sublandlord and does not cure such failure within 30 days after written notice thereof to Subtenant, or any representation or warranty by Subtenant or any guarantor of this Sublease is false or misleading in any material respect when given to Sublandlord.

16.01.03. This Sublease or the Sublease Premises or any part thereof is taken upon execution or by other process of law directed against Subtenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Subtenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

16.01.04. Subtenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

16.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Subtenant or any guarantor of the Sublease is instituted against Subtenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Subtenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

16.01.06. Subtenant deserts, vacates or abandons all or any portion of the Sublease Premises, or ceases to physically occupy any substantial portion of the Sublease Premises and continuously operate its business on the Sublease Premises, or fails to commence business operations in the Sublease Premises on or before the Occupancy Commencement Date. If Subtenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Sublease Premises, Subtenant's breach is established conclusively.

16.01.07. Subtenant does or permits to be done anything which creates a lien upon the Sublease Premises which is not removed or released within 30 days of its filing.

16.01.08. The business operated by Subtenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Subtenant, or normal business holidays.

16.01.09. This Sublease or the estate of Subtenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

16.02. *Remedies for Default.* Upon the occurrence of any Subtenant event of default, Sublandlord has the option to pursue anyone or more of the following:

16.02.01. In addition to, and without limiting any other remedies available to Sublandlord at law or in equity, immediately terminate this Sublease and all rights of Subtenant hereunder. Upon termination, Subtenant must immediately surrender the Sublease Premises to Sublandlord. If Subtenant fails to do so, Sublandlord may, without prejudice to any other remedy, enter and take possession of the Sublease Premises or any part thereof and expel or remove Subtenant and any other person who may be occupying the Sublease Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

16.02.02. Enter upon and take possession of the Sublease Premises or any part thereof and expel or remove Subtenant and any other person who may be occupying said Sublease Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Sublease.

16.02.03. Enter upon the Sublease Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Subtenant is obligated to do under the

terms of this Sublease. In such case, Subtenant must reimburse Sublandlord on demand for expenses Sublandlord may incur in thus effecting compliance with Subtenant's obligations. Sublandlord is not liable for any damages resulting to the Subtenant from such action.

16.02.04. Alter all locks and other security devices at the Sublease Premises without terminating this Sublease. If Sublandlord does so:

- (i) Sublandlord need not allow Subtenant re-entry to the Sublease Premises or provide Subtenant with a new key unless and until Subtenant cures any and all defaults under this Sublease,
- (ii) Sublandlord may refuse to give Subtenant a new key unless Subtenant increases its security deposit by an amount determined by Sublandlord,
- (iii) if Sublandlord does provide Subtenant with a key, it will do so only during the Sublandlord's regular business hours, and
- (iv) Subtenant is obligated to pay Sublandlord all costs and expenses incurred by Sublandlord in connection with altering the locks and other security devices.

Sublandlord's remedies and rights under this Sublease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

16.03. *Repossession and Alteration of Locks.* Sublandlord's exercise of one or more remedies is not acceptance of Subtenant's purported surrender of the Sublease Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Sublandlord and Subtenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Sublandlord over the property of Subtenant or others at the Sublease Premises is unauthorized or constitutes conversion. Subtenant consents to Sublandlord's exercise of dominion over Subtenant's property within the Sublease Premises in case of Subtenant's default. Subtenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Sublandlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Sublandlord may elect. Sublandlord is not liable in trespass or otherwise for such re-entry. Sublandlord's remedies and rights under this Sublease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

16.04. *Effect of Termination.* If Sublandlord terminates the Sublease for an event of default, then despite the termination, Subtenant is liable for and must pay Sublandlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Sublandlord's acceptance of past-due rent after termination does not reinstate the Sublease.

16.05. *Default by Sublandlord.* If Sublandlord defaults, Subtenant's exclusive remedy is an action for damages (Subtenant hereby waiving the benefit of any laws granting it a lien upon the property of Sublandlord or on rent due Sublandlord). Subtenant is not permitted to withhold Rent. Before filing any such action Subtenant must give Sublandlord 30-days prior written notice specifying the alleged default and giving Sublandlord opportunity to cure. Unless and until Sublandlord fails to timely cure a default

after written notice, Subtenant has no remedy or cause of action by reason thereof. All obligations of Sublandlord are covenants, not conditions. Sublandlord's liability to Subtenant for default is limited to actual, direct, but not consequential, damages. **Subtenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

16.06. *Payments After Termination.* Subtenant's payment of money to Sublandlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Subtenant prior to the payment. After the service a suit or after any final judgment granting Sublandlord possession of the Sublease Premises, Sublandlord may receive and collect any sums due under the terms of this Sublease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Subtenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

16.07. *Rights Respecting Personal Property.* If Sublandlord takes possession of the Sublease Premises under the authority of this Sublease, Sublandlord may keep in place and use all furniture, fixtures, and equipment at the Sublease Premises, including that owned by or subleased to Subtenant at all times before foreclosure thereon by Sublandlord or repossession thereof by any lessor thereof or lienholder thereon. Sublandlord may also remove from the Sublease Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Sublease Premises are located. In such case, Subtenant is liable to Sublandlord for costs incurred by Sublandlord in the removal and storage and must indemnify Sublandlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Sublandlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Sublandlord a copy of any instrument represented to have been executed by Subtenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Sublandlord need not inquire into the authenticity of the instrument or Subtenant's or Subtenant's predecessor's signature thereon. Sublandlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Subtenant agrees to indemnify Sublandlord from all loss, cost, liability, or expense arising from or relating to Sublandlord's relinquishment of property to a Claimant. These rights of Sublandlord are additional to any other rights that Sublandlord has or may hereafter have at law or in equity. Subtenant stipulates that the rights herein granted Sublandlord are commercially reasonable.

16.08. *Cumulative Remedies.* Each right and remedy provided to Sublandlord in this Sublease is cumulative to every other right or remedy provided to Sublandlord by this Sublease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Sublandlord of one or more of the rights or remedies does not preclude the simultaneous or later exercise by Sublandlord of another remedy. All costs incurred by Sublandlord in collecting any amounts and damages owed by Subtenant under this Sublease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Sublandlord from Subtenant.

17. RESERVED.

18. Warranty Disclaimer.

18.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Sublease, and there are no warranties that extend beyond those expressly stated in this Sublease. Without limitation, this Sublease contains no express or implied warranty that the Sublease Premises have no latent defects or that the Sublease Premises are or will remain suitable for Subtenant's purposes.

18.02. Subtenant acknowledges it has had ample opportunity to perform due diligence regarding the Sublease Premises and accepts the Sublease Premises in their present condition, as-is.

19. Abandoned Property.

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

20. Sublease, Assignment.

Subtenant cannot assign or further sublease this Sublease without Sublandlord's and Master Lease Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Subtenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Subtenant.

21. Prohibited Interests in Contracts.

21.01. 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.

21.02. 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.

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

22. Miscellaneous.

22.01. *Applicable Law.* This Agreement 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 agreement is only in Bexar County, Texas.

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

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

22.04. *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.**

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

22.05.01 *Administrative Actions and Agreements.* The Director of the City's Animal Care Services Department may, without further council action, agree to, sign, and deliver on behalf of the City all consents certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for defaults. This paragraph, however, does not authorize lease amendments with material modifications.

22.05.02 *Modifications.* This Lease may be changed only by written agreement sign by both Sublandlord and Subtenant. Any modification of material rights and obligations to this Lease must be authorized an ordinance adopted by Council.

22.06. *Third Party Beneficiaries.* This Agreement benefits the parties, Master Lease Landlord, and their successors and permitted assigns only. It has no third party beneficiaries other than Master Lease Landlord.

22.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure

to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

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

22.09. *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.

22.10. *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.

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

22.12 *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.

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

CITY OF SAN ANTONIO

SUBTENANT

Shannon Sims, Director
Animal Care Services Department

Dr. Karel Olguin, DVM; Executive Director
Spay-Neuter Assistance Program, Inc.

Date: _____

Date: _____

APPROVED AS TO FORM

City Attorney