

STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

THIS AGREEMENT, entered into this ____ day of August, 2022 by and between the CITY OF EL PASO (the "City") and EL PASO VETERINARY MEDICAL ASSOCIATION ("EPVMA").

WHEREAS, the City of El Paso and the El Paso Veterinary Medical Association ("EPVMA") desire to work together to fulfill the community's veterinary needs, including but not limited to spaying and neutering pets; and

WHEREAS, many of the veterinarians practicing in the City of El Paso are members of EPVMA; and

WHEREAS, the City of El Paso wishes to transfer up to \$1.5 million to the EPVMA to support El Paso Animal Services and pet owners with the cost of veterinary needs including but not limited to minor surgeries, injuries, x-rays, abrasions, and spaying and neutering to support, nurture, and promote overall public health by reducing disease in the community including but not limited to rabies control and the overpopulation of animals; and

WHEREAS, City Council finds the Agreement serves a public purpose, generates adequate consideration in exchange for the expenditure, and there is sufficient controls and consideration to enter into the Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. **PURPOSE**. The purpose of this Agreement is to transfer up to \$1.5 million to the EPVMA to support pet owners with the cost of veterinary needs including but not limited to minor surgeries, injuries, x-rays, abrasions, and spaying and neutering.
2. **EPVMA OBLIGATIONS**.
 - 2.1 EPVMA shall inform its veterinary members of the availability of funds to assist El Paso Animal Services and indigent pet owners with the cost of veterinary needs. Pet owners will be identified by the City and in turn, sent to EPVMA for services to be funded by this Agreement.

- 2.2 EPVMA will be informed by the City and the Animal Services Department of particular pet owners who require assistance with veterinary needs. These pet owners will be directed to a veterinary member of the EPVMA.
- 2.3 EPVMA shall inform its veterinary members of the deadline of 30 days to provide to EPVMA: 1) pet owners' information; 2) services rendered, 3) cost of services rendered, and 4) reference number provided by EPAS to be used for accounting purposes.
- 2.4 EPVMA shall forward information provided by its veterinarian members to the City within 10 days of receiving said information.

3. CITY'S OBLIGATIONS.

- 3.1 The City will, on a case by case basis, send pet owners to EPVMA for assistance with veterinary needs as determined by the City. And the City will transfer funds as needed.
- 3.2 The City will, on a case by case basis, send City owned pets to EPVMA for assistance with veterinary needs as determined by the City. And the City will transfer funds as needed.
- 3.3 The City shall receive from EPVMA information describing the usage of the funds by EPVMA's member veterinarians.

4. TERM. This Agreement shall be in effect for a one-year period, commencing _____, 2022 and ending _____, 2023. The parties concur that this Agreement shall automatically renew annually unless one of the parties terminates it in accordance with the termination provisions.

5. INDEPENDENT CONTRACTORS. EPVMA and the City are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither EPVMA nor the City nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.

6. TERMINATION.

- 6.1 Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party.

- 6.2 In the case a party commits an event of default, the non-defaulting party may terminate the Agreement. The non-defaulting party must provide the defaulting party with written notice of the default, and must allow the defaulting party a 10-day cure period which shall begin on the date of the defaulting party's receipt of said notice. If the defaulting party is not able to cure the default in that 10-day period, this Agreement shall immediately terminate, unless the defaulting party informs the non-defaulting party in writing prior to the end of the 10-day cure period that the defaulting party cannot cure the default within the 10-day period and that the defaulting party shall make its best effort to cure the default within the next 20 days beginning on the date of the written notice from the defaulting party. If the default is not cured by the end of that 20-day period, this Agreement shall terminate.
- 6.3 Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.

7. **INSURANCE.**

- A. EPVMA will not direct any work or funds to any members that do not have the following insurance policies.
1. **LIABILITY INSURANCE.** Liability Insurance from a solvent company authorized to do business in the State of Texas. The liability insurance must provide coverage for the Contractor and its employees in the minimum amounts of \$1,000,000.00 per occurrence for bodily injury or wrongful death and One Million Dollars \$1,000,000 per occurrence for property damage. The Contractor will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the Contractor is performing Work near any railroad or streetcar track, then the Contractor will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
 2. **WORKERS COMPENSATION.** If required by law, the Contractor will obtain a third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and will cover all of the persons engaged in the work.

3. AUTO LIABILITY. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Contractor, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than \$1,000,000.00 for each occurrence Combined Single Limit for Bodily Injury and Property Damage.
 4. PROFESSIONAL LIABILITY INSURANCE. Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Contractor, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000.00 on a claims made basis.
- B. Contractor will maintain the insurance policies described above throughout the Term of this Agreement. The Contractor will ensure that all policies comply with the following:
1. The Contractor may provide the insurances required in this section in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.
 2. Prior to performing any Work, the Contractor will provide the City copies of all insurance policies along with all endorsements and certificates of insurance.
 3. The Contractor will provide the City all certificates evidencing renewal or replacement of said policies of insurance at least 15 calendar days prior to the expiration or cancellation of any such policies.
 4. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City's sole discretion.
 5. Each policy, except those for Workers' Compensation, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
 6. Contractor will obtain the prior written approval of the City's Risk Manager for any deductibles, aggregate caps, and endorsements on any insurance policy required under this Agreement.

7. The Contractor will require the insurance policy issuer to provide the City 30 calendar days advance notice of any reduction in coverage under an insurance policy.
8. Each policy must expressly state that it may not be canceled or non-renewed unless there are 30 calendar days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company.
9. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
10. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

8. **INDEMNIFICATION.** EPVMA SHALL INDEMNIFY, DEFEND AND HOLD THE CITY AND ITS OFFICERS, AGENTS, VOLUNTEERS AND EMPLOYEES COMPLETELY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, SUITS, CLAIMS, JUDGMENTS, FINES OR DEMANDS ARISING BY REASON OF INJURY OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY, INCLUDING ALL REASONABLE COSTS FOR INVESTIGATION AND DEFENSE THEREOF (INCLUDING, BUT NOT LIMITED TO ATTORNEY FEES, COURT COSTS AND EXPERT FEES), OF ANY NATURE WHATSOEVER ARISING OUT OF OR INCIDENT TO THIS CONTRACT, WHICH ARE THE RESULT OF ACTS OF NEGLIGENCE OF EPVMA OR EPVMA'S AGENTS OR EMPLOYEES. EPVMA SHALL GIVE TO THE CITY REASONABLE NOTICE OF ANY SUCH CLAIMS OR ACTIONS. EPVMA SHALL USE LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE CITY IN CARRYING OUT ITS OBLIGATIONS HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS CONTRACT.

9. **GENERAL.**

9.1 NOTICE. Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party. Written notice to the City shall be directed to:

Tommy Gonzalez, City Manager

City Hall
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to: Terry K. Kebschull, Director
Animal Services Department
5001 Fred Wilson
El Paso, Texas 79906

Written notice to the El Paso Veterinary Medical Association shall be directed to:

Eric Boehm
Executive Director
El Paso Veterinary Medical Association
P.O. Box 971412
El Paso, Texas 79997

- 9.2 SEVERABILITY. In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
- 9.3 SUCCESSION. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the City and the EPVMA and their successors, assigns, legal representatives, heirs, executors and administrators.
- 9.4 LAW GOVERNING AGREEMENT. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.
- 9.5 NO WAIVER BY CITY. No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Agreement, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, provision, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
- 9.6 ASSIGNMENT. Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld.
- 9.7 HEADINGS. The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

- 9.8 COMPLIANCE WITH LAWS. EPVMA agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, EPVMA reserves the right to notify City in writing of any suggested modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
- 9.9 FORCE MAJEURE. The time within which EPVMA shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to Acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of EPVMA. Notwithstanding anything contained anywhere else in this Agreement, EPVMA shall not be excused from performance of any of its obligations under this Agreement by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.
- 9.10 LOCATION OF PERFORMANCE. The services described in this Agreement shall be performed in the City and County of El Paso, State of Texas.
- 9.11 ENTIRE AGREEMENT; COUNTERPARTS; AMENDMENT. This Agreement constitutes the entire contract between the City and EPVMA regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of August, 2022.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

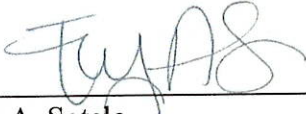
AGREEMENT

Signature Page

CITY OF EL PASO

Tommy Gonzalez
City Manager

APPROVED AS TO FORM:




Evy A. Sotelo
Assistant City Attorney

APPROVED AS TO CONTENT:




Terry K. Keschull, Director
Animal Services Department

EL PASO VETERINARY MEDICAL ASSOCIATION



Name Printed: Eric T Boehm
Title: Executive Director

General Counsel, EPVMA



Name Printed: _____
Title: _____