

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**AGENDA DATE:** June 7, 2022

**PUBLIC HEARING DATE:**

**CONTACT PERSON(S) NAME AND PHONE NUMBER:** Terry Kebschull, 212-8742

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** No. 8: Nurture and Promote a Healthy, Sustainable Community

**SUBGOAL:** 8.3: Enhance animal services to ensure El Paso's pets are provided a safe and healthy environment

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

THAT the City Manager be authorized to sign an Agreement between the CITY OF EL PASO and the EL PASO COMMUNITY FOUNDATION ("EPCF") to coordinate with the Shelter to promote programming initiatives, projects, and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the Shelter for a term of five (5) years and shall automatically renew for successive additional one (1) year periods.

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

With Animal Services providing services for the animal population of the City, this will allow the Department to accept donations for the purposes of reducing the local pet overpopulation and education and outreach, which will benefit the Shelter.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

N/A

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

**HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED?** ☒ YES ☐ NO

**PRIMARY DEPARTMENT:** El Paso Animal Services

**SECONDARY DEPARTMENT:**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

DEPARTMENT HEAD:

A handwritten signature in blue ink, appearing to be "J. J. Miller", is written over a horizontal line.

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

## RESOLUTION

### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign an Agreement between the CITY OF EL PASO and the EL PASO COMMUNITY FOUNDATION ("EPCF") to coordinate with the Shelter to promote programming initiatives, projects, and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the Shelter for a term of five (5) years and shall automatically renew for successive additional one (1) year periods.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leoser  
Mayor

### ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric Gutierrez  
Assistant City Attorney

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Terry K. Kebschull, Director  
Animal Services Department

## **AGREEMENT REGARDING MUTUAL COOPERATION**

**THIS AGREEMENT REGARDING MUTUAL COOPERATION** (this "Agreement") is entered into on June\_\_\_\_\_, 2022 (the "Effective Date") by and between the CITY OF EL PASO, a home rule municipality (the "City"), and EL PASO COMMUNITY FOUNDATION ("EPCF"), a non-profit 501(c)(3) corporation in El Paso, Texas (collectively, the "Parties").

**WHEREAS**, the City, through its Animal Services Department, owns and operates a municipal animal shelter (the "Shelter"), and provides services for the animal population of the City, including the humane sheltering of animals, emergency medical care for impounded animals, spay-neuter clinics for the purposes of reducing the local pet overpopulation and education and outreach;

**WHEREAS**, EPCF desires to cooperate with the City to assist the Shelter, promote and support the services of the Shelter and otherwise benefit and help the animal population in the City; and

**WHEREAS**, in order to better accomplish the goals listed above, it will be beneficial for all parties to outline their goals and objectives as described herein.

**NOW, THEREFORE**, the City and EPCF agree as follows:

1. **Initial Term and Automatic Renewals.** Unless terminated sooner as provided in this Agreement, the term of this Agreement shall be for a period of five (5) years from the Effective Date (the "Term") and shall automatically renew for successive additional one (1) year periods unless either party provides notice to the other of their decision not to renew at least sixty (60) days prior to the expiration of any Term.

2. **Agreements by the EPCF.** Until the expiration of the Term of this Agreement or the earlier termination of thereof, EPCF hereby agrees to use commercially reasonable efforts to:

- a. Coordinate with the Shelter to promote programing initiatives and projects;
- b. Provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the Shelter;
- c. Work with the City to raise funds for the benefit of the Shelter; and
- d. Work with Animal Center staff on annual priorities for community outreach.

Notwithstanding any of the foregoing to the contrary, in no event shall EPCF be required to take any action or refrain from taking any action that may, in EPCF's sole discretion, cause EPCF to be in violation of applicable Internal Revenue Code rules or regulations or other applicable law.

3. **Agreements of the City and the Shelter.** Until the expiration of the Term of this Agreement or the earlier termination thereof, the City agrees to use commercially reasonable efforts to:

- a. Allow EPCF to use any creative design, logos, photography or other intellectual property and business or branding, which may be owned by the City, Animal Services, the Shelter or its agents or assignees for purposes of continuity and association between the City, the Shelter and EPCF;
- b. Coordinate with EPCF to raise funds for the benefit of the Shelter; and
- c. To the extent allowed by law, reimburse EPCF for project expenses preapproved in writing by the Director of Animal Services.

4. **Recognition of Joint Efforts.** During the term of this Agreement, the City and EPCF agree to acknowledge the joint efforts of each other during presentations to third parties. Additionally, for all projects wherein the City and EPCF are working together under this Agreement, printed and online materials shall contain a reference to such relationship with language such as "presented jointly by the City and EPCF" or such other language as the parties may reasonably agree to in writing.

5. **Termination and Amendments.**

- a. Either Party may terminate this Agreement at any time upon thirty (30) calendar days' advance written notice to the other Party.
- b. Unless the Agreement is terminated sooner as provided above, or the Parties amend the Agreement in advance of termination, this Agreement will terminate upon the expiration of the Term if not automatically renewed in accordance with Section 1 above.
- c. This Agreement may be amended or extended by the written authority of the City Manager.

6. **Disputes and Cure Rights.** EPCF and the City agree to use good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes before exercising the termination rights set forth in Section 6 so long as the City is not required to incur any financial obligation for participation in mediation or other non-binding alternate dispute resolution processes. If the Parties' good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes shall be unsuccessful after a period of thirty (30) days, the Parties agree that the sole remedy therefor shall be to exercise the termination rights set forth in Section 6.

7. **Notices.** With respect to any notice required or permitted to be given in connection with Agreement (a "Notice"), such Notice shall be deemed received three (3) days after deposit of such Notice in the United States Certified Mail, return receipt requested, postage pre-paid, or on

the day of delivery, when delivered personally, to the addresses and parties provided below:

To the City:	The City of El Paso Attn: City Manager 300 N. Campbell El Paso, Texas 79901
With Copy to:	El Paso Animal Shelter Attn: Animal Services Director 5001 Fred Wilson Ave. El Paso, Texas 79906
EPCF:	El Paso Community Foundation Attn: President 333 N. Oregon, 2 <sup>nd</sup> Fl. El Paso, Texas 79901

8. **Modification of this Agreement.** This Agreement may be modified only by written agreement by the Parties.

9. **Assignment.** The Parties may not assign any obligations or rights under this Agreement without the express written consent of the other Party.

10. **No Joint Enterprise.** This Agreement does not create any joint enterprise between the Parties.

11. **Independent Contractors.** The City and EPCF are independent legal entities. Nothing in this Agreement creates the relationship of employer and employee, 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 the City nor EPCF nor any of their respective agents or employees has control or the right to control the activities of the other Party in carrying out the terms of this Agreement. Both Parties agree that neither Party has, nor will attempt to assert, authority to make commitments for or to bind the other Party to any obligation other than the obligations described in this Agreement.

12. **Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and do not control the meaning or interpretation of this Agreement.

13. **Expenditures.** Each Party to this Agreement is responsible for the costs associated with such Party's exercise of any rights or performance of any duties under this Agreement.

14. **Complete Agreement.** This Agreement constitutes and expresses the entire agreement between the Parties hereto in reference to the services and agreements herein described.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall constitute one and the same agreement. Delivery of an executed counterpart to this Agreement by .pdf attachment through electronic mail or other electronic means shall be effective as an original.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

17. **Severability.** If a court of competent jurisdiction finds any term of this Agreement to be illegal, invalid, or unenforceable, such term shall be excluded to the extent of such illegality, invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid or unenforceable term shall be deemed replaced by a term that is legal, valid and enforceable and that comes closest to expressing the intention of such illegal, invalid or unenforceable term.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF EL PASO:

By: \_\_\_\_\_  
Tommy Gonzalez  
City Manager

APPROVED AS TO CONTENT:

  
Terry Kebschull  
Animal Services Director

APPROVED AS TO FORM:

  
Eric Gutierrez  
Assistant City Attorney

EL PASO COMMUNITY FOUNDATION

  
Eric Pearson  
President