

STATE OF TEXAS)
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)
COUNTY OF EL PASO)

**PROFESSIONAL SERVICES AGREEMENT
BEST FRIENDS ANIMAL SOCIETY**

This professional service agreement (“Agreement”) is made and entered into between Best Friends Animal Society, a Utah nonprofit corporation (“BFAS” or “Best Friends”) and the City of El Paso, Department of Animal Services, a governmental entity (“Agency”). Each party shall be referred to herein individually as a “Party,” and collectively as the “Parties.” This Agreement shall be effective as of the date on which it is fully executed by both Parties.

BACKGROUND

Best Friends is a leading national animal welfare organization dedicated to ending the killing of dogs and cats in America's shelters. Best Friends believes the no-kill philosophy is underpinned by one simple fact: every healthy or treatable animal should be saved. Generally, “no-kill” means that the shelter(s), private organizations, SPCAs and/or humane societies handling a community’s animal control intake and surrenders are collectively saving all healthy or treatable animals. The industry standard for a quantitative no-kill benchmark is saving 90 percent or more of the animals who come through the community system. Just five years ago, nearly 1.5 million cats and dogs were being killed in America’s shelters because shelters didn’t have the community support, or the resources, they needed to save them. In 2016, Best Friends committed to change that by 2025, and we know that no single organization can do it alone, so we are working with agencies to share our resources and expertise to help their community achieve no-kill. One way in which we facilitate this is through the national shelter embed program.

The national shelter embed program has roots dating back to 2011, when Best Friends piloted Community Cat Projects in partnership with PetSmart Charities®, which placed staff members in shelters to lead a game-changing program to dramatically increase cat save rates. Today, Best Friends is partnered with Maddie’s Fund®, and thanks to that partnership the national embed program continues to place Best Friends staff members in agencies across the country. These staff members work side by side with agency staff to help them implement proven strategies to take their community to no-kill. Backed by a diverse array of subject-matter experts, embedded staff help partner organizations accomplish lifesaving goals that would normally take years in just a matter of months.

Due to the No Kill 2025 vision, Best Friends has a vested interest in helping Agency continue to increase its save rate in a sustainable way and would like to work with Agency through the national shelter embed program to achieve this success.

AGREEMENT

The activities covered by this Agreement are referred to as the “Project.”

1. Proposal

Best Friends would like to partner with Agency to support the shelter in achieving a minimum

ninety percent (90%) save rate. The save rate calculation is determined using the following formula [(Live Intakes) – (Non-Live Outcomes)] divided by (Live Intakes). Best Friends proposes that they embed a Best Friends employee to serve as a “Consultant” for the period of 12 months from the mutually agreed upon Start Date (defined below) (the “Term”). The Term can be extended on a monthly with the mutual written agreement of the Parties. The Term is subject to earlier termination by either Party as set forth below. The Consultant will be paid by Best Friends and would be covered by Best Friends insurance and benefits.

To reimburse Best Friends for some of the costs associated with the Best Friends employee services to Agency, Agency will pay Best Friends a total of \$63,000 divided into twelve equal monthly payments. The first payment to Best Friends will be due within 30 days of the Start Date. In the event that the Parties decide to extend the Term, the Parties will mutually agree upon the level of payment due to Best Friends for any additional months of service. Best Friends and said employee would cover all other costs associated with housing and relocation.

The Consultant would report to the Agency’s Director, as well as the Best Friends senior manager of national shelter embed programming while in this role.

Additionally, the Consultant will have direct oversight responsibilities over the management and employees of Agency in cooperation with the Agency’s Director. Agency will need to provide this Consultant with the true power and authority of a Consultant, including the ability to make program, policy and personnel decisions in partnership with the Agency. In the event, in the reasonable judgment of the Consultant, the Consultant experiences, is informed of or observed any harassment or other concerning behavior relating to Agency’s employees or volunteers, the Consultant will utilize the appropriate Agency internal process to report such behavior.

The Consultant will have a proposed starting date of January 1, 2023 or a date mutually agreed upon by Agency and Best Friends (“Start Date”). The proposed Start Date allows for Best Friends to select the ideal candidate for this role and for the Best Friends employee to relocate.

The Consultant will help ensure sustainability of the programs upon conclusion of their assignment at Agency and will be available for ongoing support.

Agency has a strong and effective foundation which Best Friends believes will blend well with Best Friends effective executive leadership, lifesaving, animal services philosophy and programming. Best Friends has a variety of staff with modern sheltering and leadership skills. By filling this position with a Best Friends staff person, Agency can benefit from the outside operational knowledge, as well as the extended resources as this Consultant connects with other specialists within the Best Friends organization.

Benefits for Agency

- Ability to utilize talented and knowledgeable resources from outside the organization to help facilitate transformational changes within the organization.
- Ability to provide training and ongoing support for all Agency staff.
- Access to other Best Friends resources and expertise via the Best Friends staff person on-

site.

- Increase lifesaving within the organization, providing enhanced working environment for staff and volunteers.
- Operational improvements that will improve reputation in the community and increase community engagement and support.

If the Parties do not fully execute this Agreement by November 11, 2022, BFAS offer to work with Agency will expire and is automatically revoked. BFAS will not be obligated to provide any support (financial or otherwise) to Agency if the offer expires and is automatically revoked.

2. Goals

The specific goal of the project is to achieve and sustain a 90% or higher save rate within the Term by implementing, or enhancing existing, nationally proven programs and policies without compromise to public safety. Such programs and policies include, but are not limited to, a robust local adoption program, enhanced medical and sanitation, collaborative relationships with other animal welfare agencies, increasing returns to owners, community cat programming, finder to foster and owner retention programming, community engagement, and robust foster and volunteer programs.

3. Commitment from Agency to BFAS

In order for Best Friends to devote this time and effort to Agency, Agency agrees to do the following in support of the implementation of lifesaving programs:

- A. Participate in a collaborative need's assessment on site by Best Friends prior to or at the start of the Term to determine agreed upon short, medium- and long-term goals.
- B. Allow the BFAS Municipal and Shelter Support team to conduct a full shelter and field assessment for additional support at no cost to the Agency.
- C. Create and execute a communication strategy to all Agency staff to ensure embed staff, their purpose and the mutually agreed upon goals of this Agreement are properly socialized with the team.
- D. Grant authority of a permanent manager to the Consultant in partnership with Agency Director.
- E. Submit data monthly into Shelter Animals Count and provide Best Friends access to data by agreeing to and selecting to be a coalition member of Best Friends in Shelter Animals Count.
- F. Agree to allow Best Friends detailed data, beyond Shelter Animals Count statistics, to help with improvements of animal care and live outcome work as well as organizational sustainability.
- G. Use its best effort to increase the Agency's save rate calculation [to 90%] with the save rate calculation determined using the following formula [(Live Intakes) – (Non-Live Outcomes)] divided by (Live Intakes).
- H. Agree to communicate with Senior Manager of National Shelter Embed Programming regularly, contact information to be provided by Best Friends.
- I. Allow for additional BFAS staff to work the Agency's facilities under the direction of the Consultant for additional support at no cost to the Agency.
- J. Change any current policies under Agency's control, and proactively work with the

relevant governmental officials to change any applicable ordinances that impede the ability of the shelter to achieve lifesavings goals including without limitation, the ability to institute and sustain lifesaving programs.

4. Project Branding Terms and Promotion

Agency shall cooperate with Best Friends regarding the promotion of the Project. Both Parties may issue reports or statements to its members, the media and the public about the Project. This includes, but is not limited to websites, newsletters, press releases, magazine articles, blogs, and podcasts. Agency shall use their best efforts to provide Best Friends with the opportunity to photograph, video, and audio record events related to the Project, consistent with Agency's policies and procedures for such event(s). Best Friends shall be permitted to use these photographs and video/audio recordings for publicity purposes subject to the release set forth below. Agency shall reasonably cooperate with Best Friends Network staff, volunteer team leaders, and news or magazine writers in the production of such news content. Agency agrees to cooperate with Best Friends and facilitate promotion of the Project through the Best Friends website, newsletters, electronic news distributions, press releases, and other media outlets. Neither Party may use the other Party's logos, trademarks, or other intellectual property without express written permission of the other Party. Agency understands and agrees that it may also grant or have granted Best Friends the ability to use Agency's intellectual property and other information through its execution of terms and commitments as part of Agency's participation as a Best Friends Network Partner or in a Best Friends' event.

5. Agency's Representations and Warranties

Agency represent and warrant that during the Term of this Agreement:

- A. Agency is a qualified 501(c)(3) entity or government organization;
- B. Agency is an activated member of the Best Friends Network;
- C. Agency acknowledges that their animal welfare activities may be governed by a variety of federal, state, and local laws. Agency hereby warrants that they shall use their best efforts to comply with all applicable laws and shall not knowingly violate same;
- D. Agency acknowledges and agrees that the Consultant will not be expected to perform any actions or tasks that conflict with the philosophical beliefs set forth by and policies of Best Friends, and
- E. Agency acknowledges and agrees that, given the complex nature of the environment where the services are to be provided, Best Friends makes no guarantees as to whether any lifesaving goals set forth in this Agreement will be met. All decisions relating to policies, procedures, the care and disposition of animals remain the sole responsibility of Agency.

6. Termination

- A. Termination by Agency
 - 1. Agency may terminate this Agreement upon providing thirty (30) days written notice to Best Friends.
 - 2. Agency may terminate this Agreement upon providing ten (10) business days written notice to Best Friends in the event of the following events of default:
 - i. By its actions or statements, Best Friends materially harms Agency in Agency's reasonable judgment; or

- ii. Best Friends files for bankruptcy, or sells, assigns or transfers the majority of its assets to another entity, or ceases to operate as a nonprofit corporation.
- B. Termination by Best Friends
 - 1. Best Friends may terminate this Agreement upon providing thirty (30) days written notice to Agency.
 - 2. Best Friends may terminate this Agreement upon providing ten (10) business days written notice to Agency if by its actions or statements, Agency materially harms the reputation of Best Friends, as determined by Best Friends in Best Friends reasonable judgment.
 - 3. Best Friends may immediately terminate this Agreement without penalty or any further obligation upon written notice to Agency in the event that Best Friends determines that it lacks the financial ability to continue to support the Project. In such event Best Friends shall be solely responsible for implementation of any decision as it relates to Best Friends employees.
- C. In the event of early termination of this Agreement, the Agency will be required to pay only for any payments that accrue through the last day services have been provided by Best Friends.

7. Photo, Video, Digital and Audio Release

Agency grants to Best Friends permission and rights to photograph, video, and audio record any of Agency's programs or events for the duration of the Project. Agency grants to Best Friends the right to indefinitely use such photographs, videos or digital images and voices. This release covers all photos, videos, and audio recordings made by Best Friends or its employees, contractors, or agents. Agency understand and agree that these photographs, videos, or digital images and recordings may be used by Best Friends in its sole discretion including for identification purposes, to promote or report about Best Friends events, activities and mission; to raise donations, or for other purposes. This includes, but is not limited to, any royalties, proceeds, or other benefits derived from such images or recordings. This release remains in effect even after the Project is complete and termination of this Agreement.

Agency further agrees not to make any claim against Best Friends or its employees, contractors or agents for the use of these photographs, videos or digital image or voice recordings. Agency understands this Agreement releases and forever discharges Best Friends from any liability Agency, its successors, and assigns with respect to personal injury, property damage or other loss or damages that may result as a result from the making and use of photographs, videos or digital image or voice recordings.

8. Non-Disparagement

Each Party agrees not to disparage the other Party during the Project and for three years following the conclusion of the Project.

9. LIMITATION ON LIABILITY

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR

CONSEQUENTIAL DAMAGES OR LOSS OF ANTICIPATED REVENUES (OR LIKE AMOUNTS) IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. IN NO EVENT SHALL BFAS'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT EXCEED THE AMOUNT RECEIVED BY BEST FRIENDS PURSUANT TO THIS AGREEMENT.

10. Indemnity Agreement

As a condition of the granting of this Agreement, Best Friends or its insurer will INDEMNIFY, DEFEND AND HOLD the Agency, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO BEST FRIENDS' EMPLOYEES OR AGENTS PHYSICAL PRESENCE ON AGENCY'S PROPERTY FOR ACTIVITIES RELATING TO THIS AGREEMENT OR ON OTHER LOCATIONS FOR EVENTS DIRECTLY CONNECTED TO THE ACTIVITIES RELATING TO THIS AGREEMENT.

Best Friends acknowledges that Agency has been organized pursuant to the Constitution and laws of the State of Texas, possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. No provision of this agreement extends Agency's liability beyond the liability or authority provided in the Constitution and the laws of the State of Texas. To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to Agency as a governmental entity, Agency shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, subcontractors and agents.

11. Insurance

Best Friends agrees to maintain reasonable insurance coverage to cover its activities in connection with this Agreement. This includes but is not limited to workers compensation coverage required by the State of Texas. The Parties acknowledge that Agency is self-insured.

12. Survival of Terms

Intellectual property rights, including the rights to use photos, digital, audio and video materials, agreed to in this Agreement are perpetual. The releases and indemnity agreements are perpetual. The Non-Disparagement clause survives for three years following the conclusion of the Project.

13. Proprietary Information

Agency acknowledges and agree that the following constitute "Proprietary Information": any secret or proprietary information relating directly to Best Friends business, including, but not limited to, the Best Friends Network and donation process, services, members, donor and volunteer lists, business policies, employment records and policies, operational methods, marketing plans

and strategies, business development plans, new personnel acquisition plans, technical processes, designs and design projects, inventions and research programs, trade know-how, trade secrets, specific software, algorithms, computer processing systems, object and source codes, user manuals, systems documentation, and other business and financial affairs of Best Friends. It is not anticipated that Agency will have access to Best Friends proprietary information as a result of this Agreement. Nonetheless, Agency acknowledges and agrees that in the event Agency learns of or come into possession of any Best Friends proprietary information, Agency will notify Best Friends and return said information. Agency agrees that they will not use, supply or disclose any Proprietary Information it happens to learn of to any third party.

Best Friends acknowledges that Agency is a Governmental Entity and is subject to the Texas Public Information Act, and that Agency will comply with the Best Friends' request for confidentiality to the extent permitted by law.

14. Personal Property

During the Agreement, Best Friends may provide personal property for the use of the Consultant and employees or volunteers of Agency to assist in Agency's work. In the event that Agency utilizes any such personal property, Agency hereby accepts the personal property is provided in "AS-IS", WHERE IS" condition subject to and WITH ALL FAULTS. BEST FRIENDS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WITH RESPECT TO THE GOODS, AND EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. For the avoidance of doubt, Agency's use of the personal property is covered by the indemnification obligation set forth in this Agreement and Agency releases Best Friends from any and all liability under any legal theory relating to the use of such personal property. At the termination of this Agreement, Best Friends, in its sole discretion, may leave all or some of this personal property for the continued use of Agency ("Donated Personal Property"). In such event, Best Friends will provide a list of substantial pieces of the Donated Personal Property or otherwise designate what is being left as Donated Personal Property to Agency. The title to any such Donated Personal Property will transfer on the date Best Friends indicates and such Donated Personal Property continues to be subject to the disclaimers and limitations of warranties, release, and indemnification coverage by Agency as set forth in this section.

15. No Third-Party Beneficiaries

Nothing in this Agreement shall be construed to give any person or entity other than the Parties to this Agreement any legal or equitable claim, right or remedy; rather, this Agreement is intended to be for the sole and exclusive benefit of the Parties hereto.

16. Notices

Any notice required or provided for under this Agreement shall be provided in writing, and shall be deemed given when either personally delivered, sent by Certified U.S. Mail return receipt requested, delivered by courier and confirmed in writing, to the other Party at the address set forth

below or to such other address as may be provided in writing for the delivery of notices hereunder. While email notice should be provided as a courtesy, it shall not be deemed sufficient notice for purposes of this Agreement:

If to Agency:

The City of El Paso, Department of Animal Services
Attn: Director – Animal Services Department
5001 Fred Wilson
El Paso, TX 79906
Tel: 915-212-8742
Email: kebschulltk@elpasotexas.gov

If to BFAS:

Best Friends Animal Society
Attn: Director – National Embed Programming
5001 Angel Canyon Rd.
Kanab, UT 84741
Tel: (435) 644-2001
Email: michellel@bestfriends.org
with a copy to legal@bestfriends.org

17. Other

These terms of this Agreement bind the successors and assigns of the Parties. Each term of this Agreement is material. Agency expressly agrees the releases and indemnity agreement are intended to be as broad and inclusive as permitted by law. The Parties agree that in the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Agreement. This is the entire agreement between the Parties and supersedes any other verbal or written statements, representations, or promises. No Party is responsible in any way for the debts of the other Party, or any breach of any law, rule, regulation, complaint, grievance, custom, or guideline of the other. No Party has authority to bind the other to any contractual or other agreements and in no event shall any Party represent or hold itself out as acting on behalf of the Party hereto.

(The remainder of this page is left intentionally blank. The signature page follows).

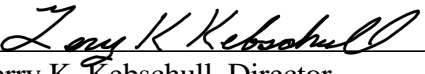
Signature Page

IN WITNESS WHEREOF, the parties have executed this Agreement at El Paso, Texas this _____ day of _____, 2022.

CITY OF EL PASO, TEXAS:

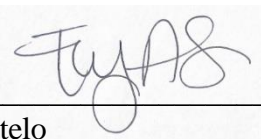
Tomás González
City Manager

APPROVED AS TO CONTENT:




Terry K. Kebschull, Director
Animal Services Department

APPROVED AS TO FORM:



Evy Sotelo
Assistant City Attorney

BEST FRIENDS ANIMAL SOCIETY:



Michelle Logan
Director, National Shelter Embed Programming