

**PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF ABILENE
AND BEST FRIENDS ANIMAL SOCIETY**

This contract dated the 28th day of May, 2020, is between the City of Abilene, a home rule municipal corporation of the State of Texas ("City"), and Best Friends Animal Society, a Utah nonprofit corporation ("Professional") (the "Contract").

The City is engaged in animal shelter and control services and desires to engage the services of Professional, as an independent contractor and not as an employee, to assist in the project and to render services on the terms and conditions provided in this Contract.

The Professional is a[n] qualified professional properly licensed/certified to practice in the State of Texas. Professional desires to render professional services as further described in Attachment A to the City on the terms and conditions provided in this Contract.

THEREFORE, the City engages the services of the Professional. In consideration of the mutual promises contained in this Contract, the parties agree as follows:

I. TERM

In consideration of the compensation stated in Paragraph II and further described in Attachment B., the Professional must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Professional must complete all services by one year from the effective date above. Notwithstanding any other provision in this Contract, this contract may be terminated earlier upon 30 days written notice by either the City or by the Professional. Notwithstanding any other provision in this Contract, such written notice of termination may be made by mail or email at the addresses listed in Section XIII. The term may be extended beyond one year by written agreement of both parties.

II. PAYMENT

For the services to be rendered under this Contract, the Professional will be entitled to a fee as described in Attachment B, which is incorporated by reference for all purposes.

III. ASSIGNMENT

The Professional may not assign in whole or in part any rights, duties, obligations or interest arising from this Contract without the City's prior written consent. In the event of an assignment by the Professional to which the City has consented, the assignee or assignee's legal representative must agree in writing with the City to personally assume, perform, and be bound by all the provisions of this Contract. All of the terms and provisions of this Contract are binding on Professional's successors and assigns and may be enforced by the City against such successors and assigns.

IV. STATUS OF PROFESSIONAL

The Professional is an Independent Contractor. Professional's employees are not the agents, servants or employees of the City.

V. AMENDMENT OR MODIFICATION

This Contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this Contract are of no effect. This Contract may not be amended or modified except by both parties' written consent. This Contract supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Contract.

VI. OWNERSHIP OF DOCUMENTS AND MATERIALS

Ownership of Documents and Materials is according to Attachment C subject to language of Section VII.

VII. NONDISCLOSURE

The Professional may not show to any person or entity any documents, reports, plans, programs, reports, drawings, or any other materials which Professional prepares or acquires in performing this Contract, including any duplicate copies kept by Professional except as set forth below. The Professional may not disclose to any person or entity any information regarding the City's activities, except as set forth below. The City may, however, specifically authorize a limited disclosure at its discretion.

The following will be exceptions to Section VII. Nondisclosure provisions language.

Professional and its employees may utilize any of the programs, reports, drawings or other materials which Professional or its employees prepares in providing the services hereunder in a manner that is not attributable to City without limitation. Professional and its employees will not disclose information regarding the City's activities except as provided below:

The City agrees that it will, through Professional and its designated employee, or employees of the City, provide on-going basic data matrix statistics in Shelter Animals Count (SAC) monthly, by the 15th of the following month (for example, January stats are due by February 15 in SAC).

In addition, Professional through its designated employee will be provided full access to the City's shelter software system and such individual has the authority to report detailed statistics relating to the City's shelter as requested to Professional. Such statistics may be utilized freely by Professional in any de-identified reports. The City shall provide prior written approval (with the City designating the City employees with the authority to grant such approval), prior to the disclosure of any statistics that identify City, that are not otherwise available to Professional through other legal means.

Both parties may issue reports or statements internally, the media and the public about this agreement and the work performed by Professional and its employee. This includes, but is not limited to websites, newsletters, press releases, magazine articles, blogs, and podcasts. City shall use its best efforts to provide Professional with the opportunity to photograph, video, and audio record events related to Professional's work with the City, consistent with City's policies and procedures for such event(s). Professional shall be permitted to use these photographs and video/audio recordings for publicity purposes subject to any legal requirements to obtain releases.

Neither party may use each other's logos, trademarks, or other intellectual property without express permission of the other party.

VIII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Professional" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Professional's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Professional.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Professional shall indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Professional's work and activities conducted in connection with this Contract. To the extent allowed by law, the City shall indemnify, hold harmless, and defend the Professional from and against liability for any claims arising out of the City's work and activities conducted with this Contract.

The Professional is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Professional must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Professional's employees while in the vicinity where the work is

being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Professional or Professional's employees.

The City assumes no responsibility or liability for damages to Professional and Professional's employees which are directly or indirectly attributable to premise defects. Responsibility for Damages to Professional and Professional's employees resulting from all such defects is expressly assumed by the Professional.

The City and Professional must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Professional or City. The City has the right to compromise and defend the same to the extent of its own interests.

IX. INSURANCE

A. GENERAL REQUIREMENTS

The Professional agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Professional is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Professional fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City for their adequacy as to content, form of protection, and providing company.

The required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the City executes the notice to proceed with any work under this agreement, the Professional must provide the City Secretary with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Professional must furnish new certificates or copies of the policy before the expiration date.

Texas Labor Code Section 406.096 requires a city to ensure that contractors carry workers' compensation for each employee when the city is a party to any "building or construction contract." The code enumerates that "building and construction" includes:

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (B) remodeling, extending, repairing, or demolishing a structure; or
- (C) otherwise improving real property or an appurtenance to real property through similar activities.

8. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

1. Name the City as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30 days advance written notice of cancellation or material change.

C. TYPES AND AMOUNTS OF INSURANCE

No Insurance Required

X. VENUE, CHOICE OF LAW AND INTERPRETATION

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

XI. TERMINATION

This contract may be terminated at any time upon 30 days written notice by City to Professional. In the event of termination, Professional will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Professional fails to fulfill his obligations under this contract, or if the Professional violates any of the agreements of this contract, the City has the right to terminate the contract by giving five days written notice to the Professional. The Professional will be compensated for work satisfactorily performed before the termination date.

The Professional, however, is not relieved of liability to the City for damages sustained

by the City because of any breach of contract by Professional. The City may withhold any payments to Professional for the purpose of setoff until the exact amount of damages due the City from the Professional is determined and paid.

This Contract may be terminated upon 30 days written notice by Professional to City in the event that City does not work in good faith with Professional to achieve the mutually agreed upon goals set forth in Attachment A, including without limitation, the amendment of any ordinance or policy that hinders or prevents the City from continuing to increase animal save rate and overall quality of care in a sustainable way.

XII. PROJECT REPRESENTATION

The City agrees to appoint a Project Representative to assist in obtaining information from various City departments as requested by Professional and in coordinating, monitoring, and evaluating the project to its completion. The Project Representative has no control over the means, methods, techniques, or procedures employed by Professional. The City is interested only in the results obtained under this contract; the manner and means of obtaining those results is solely under the Professional's control.

XIII. NOTICE

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

City-ATTN: Mindy Patterson, Deputy City Manager, PO Box 60, Abilene, Texas 79601, mindy.patterson@abilenetx.gov

**Professional - ATTN: Michelle Logan, Director, National Shelter Embed Programming
Best Friends Animal Society
5001 Angel Canyon Rd.
Kanab, UT 84741
michellel@bestfriends.org**

XIV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Professional, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Professional must obtain all necessary permits and licenses required in

completing the work contracted for in this agreement.

XV. NO INDEBTEDNESS

Professional agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Professional is responsible for ensuring that no indebtedness exists.

Section I 30 of the City Charter authorizes the City to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

XVI. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of

bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

XVII. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Professional must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Professional -- not City -- must verify eligibility for employment as required by IRCA.

XVIII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XIX. SALES TAX

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Professional. The Professional must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Professional is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

XX. LEGAL CONSTRUCTION

In the event that any one or more of the provisions contained in this Contract is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and the Contract will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

XXI. BOYCOTT OF ISRAEL

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees, and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Additionally, "company" does not include a sole proprietorship.

If this section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

XXII. SECTIONS AND OTHER HEADINGS

Section, paragraph, and other headings contained in this Contract are for reference purposes only and do not affect in any way the meaning or interpretation of this Contract.

XXIII. COUNTERPARTS

This Contract may be executed in two or more counterparts (including fax, email, or electronic PDF counterparts), each of which shall be deemed an original and all of which together shall constitute one instrument.

{Remainder of Page Intentionally Left Blank- Signature Page Follows}

IN WITNESS HEREOF, the parties hereto have executed this contract effective as of the date written above:

CITY OF ABILENE

PROFESSIONAL

By: Mindy Patterson

By: Michelle Logan

Title: Deputy City
Manager

Title: Director, National
Shelter Embed Programming
Address
5001 Angel Canyon Rd>
Kanab, UT 84741
Phone Number:
435-644-2001

Federal Tax ID#: 23-7147797

ATTEST:



City Secretary

APPROVED:

By: _____

City Attorney

ATTACHMENT A

Scope of Services

See the Proposal (dated March 16, 2020, 5 pages) attached hereto and incorporated herein as if fully copied and set forth at length. If any terms or conditions of the attached Proposal conflict with the terms and conditions of this Contract, the terms and conditions of this Contract shall control for all purposes.

ATTACHMENT B

PAYMENT SCHEDULE PARTIES TO INITIAL OPTION SELECTED

~~OPTION 1~~

~~Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$Click or tap here to enter text. per hour not to exceed \$Click or tap here to enter text..~~

~~Professional must submit monthly invoices to City accompanied by an explanation of charges, professional fees, and services. City will pay invoices according to its normal payment procedures.~~

~~OPTION 2~~

~~Payment is in a lump sum amount of \$Click or tap here to enter text. upon completion of the work and written acceptance by Citfs Project Representative.~~

~~No mechanic, contractor, subprofessionals, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.~~

~~Before final acceptance of this project by the City, the Professional must execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subprofessionals, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional has been notified.~~

~~OPTION 3 X~~

~~Payment is a fixed fee amount of \$95,000 annual salary plus 18% for benefits to a total annual cost of \$112,100 payable per month in 12 equal monthly payments of \$9,341.67 upon completion of the work and written acceptance by City's Project Representative.~~

~~No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.~~

~~Before final acceptance of this project by the City, the Professional shall execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subprofessionals, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional has been notified.~~

ATTACHMENTC

OWNERSHIP OF DOCUMENTS AND MATERIALS

Parties to initial option chosen

(Option 1) X

All documents and materials prepared by Professional under the terms of this contract are the City's property from the time of preparation, and Professional must deliver the documents and materials to the City or make them available for inspection whenever requested. Professional has the right to make duplicate copies of such documents or materials for its own file or for other such purposes as the City authorizes in writing.

(Option 2)

All documents and materials prepared by the Professional remain the property of the Professional; however, Professional must furnish City, at no additional cost, one set of reproducible mylars of the original drawings of the work and/or one copy of all documents prepared by the Professional pursuant to this Agreement.