

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**AGREEMENT
C-21-160-12-28**

This Agreement is made and entered into this **28th day of December 2021**, by and between the **COUNTY OF HIDALGO, TEXAS (“County”)**, a political subdivision of the State of Texas, and **PALM VALLEY ANIMAL SOCIETY (“Contractor”)**, a non-profit corporation organized under the laws of the State of Texas.

WITNESSETH:

WHEREAS, County has the responsibility and duty to provide a location for impoundment and quarantine of animals that are reported to be or which the County has probable cause to believe may have rabies or have exposed an individual to rabies; and

WHEREAS, County does not have facilities to impound or quarantine animals and desires to contract with Contractor having such adequate facilities and services necessary to provide the proper quarantine, tests and other services required by Chapter 826, Texas Health & Safety Code, rules and regulations adopted by County related to local control programs and standards that are in compliance with Chapter 826, Texas Health & Safety Code; and

WHEREAS, Contractor has facilities which qualify as an animal shelter, pursuant to Chapter 826, Texas Health & Safety Code, located within the extraterritorial jurisdiction of the City of Edinburg, Texas and within the extraterritorial jurisdiction of McAllen, Texas, such facilities located in Hidalgo County and suitable for the County to utilize in impounding, quarantining and observing animals, pursuant to Chapter 826, Texas Health & Safety Code; as well as providing a place for placement by County authorities of unwanted stray or abandoned animals; and

WHEREAS, Contractor is the sole provider of impoundment and quarantine of animals in Hidalgo County; and

WHEREAS, Contractor has submitted a proposal to Hidalgo County, Texas to provide facilities to impound, quarantine and observe animals and provide facilities that qualify as animal shelters located in the City of Edinburg to properly quarantine, test, conduct humane euthanasia and dispose of the animals when necessary and has also agreed to provide the facilities for these purposes for County authorities and residents of the non-incorporated areas of the County to bring unwanted stray or abandoned animals to the facility.

NOW, THEREFORE, IT IS AGREED by and between County and Contractor as follows:

1. Definitions:
 - a. “Animals” mean dogs or cats that are impounded at the Facilities by County authorities.

- b. "Animal Shelter" means a facility that keeps, provides a shelter for or legally impounds stray, homeless, abandoned or unwanted animals pursuant to Chapter 826, Texas Health & Safety Code.
- c. "Contractor" shall mean Palm Valley Animal Society
- d. "County" means Hidalgo County, Texas.
- e. "Director" means Medical Officer and/or Director of the Hidalgo County Health and Human Services Department.
- f. "Facilities" means the Animal Shelter owned by Contractor located within the extraterritorial jurisdiction of Edinburg, Texas.

Agreement under the provisions set forth hereinafter:

- 2. Contractor agrees to provide a proper Animal Shelter regulated by and complying with standards prescribed by Chapter 826, Texas Health & Safety Code, in which Animals may be impounded, quarantined, observed, provided humane euthanasia and disposed of either at the request of County authority or resident(s) of the non-incorporated areas of the County who desire to place unwanted stray or abandoned Animals in the Facilities throughout the term of this Agreement under the provisions set forth hereinafter.
- 3. **Term.** This Contract shall be for a period of **two (2) year(s)**, commencing on **January 1, 2022** and expiring on **December 31, 2023**, and may be extended at the mutual discretion of the parties for **two (2) additional one (1) year term(s)** under the same rates, terms and conditions unless this Contract is terminated pursuant to the provisions herein, whichever occurs first.
- 4. **Consideration.** Contractor agrees to take in up to 4,500 (Four thousand five hundred) animals within an annual term at up to 375 (Three hundred seventy-five) animals per month. As consideration for Contractor performing the service indicated above, County agrees to pay Contractor the sum of \$237.00 per animal against monthly invoice. [The total annual contract amount will be \$1,066,500 (One million sixty-six thousand five hundred dollars) at \$88,875.00 (Eighty eight thousand eight hundred seventy five dollars) per month]. If the County exceeds the 375 (Three hundred seventy-five) per month count of animals, then Contractor agrees to accept additional animals at the rate of \$267 (Two hundred sixty seven dollars) per animal for the remainder of that month against monthly invoice. Additionally, animals over the 375 monthly allowance will be billed each month.
- 5. **Invoice & Payment.** Contractor shall be paid on the first day of each month during the term herein, payable against written invoice submitted by Contractor in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251. This fee shall cover all services rendered by Contractor under this Agreement including any standard fees and overages as provided above.
- 6. **Contractor Services.** Contractor shall provide the following services under the terms of the Contract during the term of this Agreement.

- a. Contractor shall provide adequate food, water, shelter, confinement and, when situations warrant, humane euthanasia for all impounded or quarantined Animals.
- b. Contractor shall provide County with Facilities that are licensed by the Texas Department of Health to operate as a place where legal and healthful impounding or quarantining of Animals may occur.
- c. Contractor shall impound or place in quarantine in the Facilities all Animals required or requested to be impound or quarantined per the authority and direction of the Director who is designated and charged with the enforcement of the Chapter 826, Texas Health & Safety Code, or other State or County regulations. If Contractor has the available capacity and subject to any emergencies or acts of God pursuant to Paragraph 19, Contractor shall house and provide for any such Animals. Contractor shall also provide for placement of unwanted stray or abandoned Animals in the Facilities at the County authority's request. At no time shall Contractor refuse to house and provide for any such Animals, so long as Contractor has the available capacity, unless during an emergency situation as described in section "i" below or any emergency or act of God as described in Paragraph 19.
- d. Contractor shall maintain hours for receiving Animals for housing. Contractor shall provide County with an emergency phone number for access to the Facility on a twenty four (24) hours basis. Contractor should notify the County at least forty-eight (48) hours prior to any change of hours of operation or availability. Emergency closing of the Facilities may be necessary and applicable reasons shall be enumerated in the "Force Majeure" action of this Contract.
- e. Contractor will, on a "best efforts" basis, attempt to reunite owners with impounded Animals.
- f. Contractor will attempt to secure adoptive homes for all unclaimed Animals and shall require that any Animal adopted from said Facilities shall, in the case of mature adult Animals, be surgically altered to prevent conception of offspring, within a reasonable time from the date of adoption.
- g. Contractor will provide, at time of animal adoption, programs which provide reduced cost of rabies vaccination for pet animals which may be obtained by the residents. Cost of vaccinations shall be borne by the resident; the County and Contractor shall not be liable for any accident, injury or malevolent occurrence to residents or animals arising from the conducting of said clinics.
- h. Contractor will assist County, when requested, into the investigation of animal cruelty, including but not limited to providing medical information, housing and at time behavior notes.
- i. Contractor will coordinate with the County, as needed and to the extent possible, to provide the sheltering needs of animals during emergency events or declared disasters.
- j. Contractor shall conduct humane euthanasia on Animals when applicable.
- k. Contractor shall dispose of all dead Animals by properly disposing at landfill designated areas.
- l. Contractor shall provide the services for and bear all costs for the preparation and shipment of any Animal to the Texas Department of State Health Services for laboratory testing.
- m. Contractor shall provide laboratory testing of **any Animal** that is suspect of rabies, becomes ill or expires during rabies quarantine, including but not limited to shipping such animal to a facility designated and licensed by the Texas Department of Health, County authorizes its Director to instruct Contractor in the preparation and shipment of any such Animals by written order or verbal order with a written follow-up.
- n. Contractor shall make training available to Hidalgo County Animal Control Officers and/or Hidalgo County Health and Human Services staff with a 30 (thirty) day written notice of the date(s) of said trainings. Contractor will provide a minimum of four trainings per year and provide additional field service training as needed and/or available.

- 11. Indemnification.** Contractor agrees to indemnify and hold County harmless from any loss, costs, liabilities or damages which are incurred by County which are primarily attributable to the acts or omissions of Contractors or the acts or omissions of Contractors employees, agents or other representatives, including the violation of any law or regulation related to Contractors duties under this Agreement. Similarly, to the extent allowed by law, County agrees to indemnify and hold Contractor harmless from any loss, costs, liabilities or damages which are incurred by Contractor which are primarily attributable to the acts or omissions of County or the acts or omissions of County employees, agents or other representatives, including the violation of any law or regulation related to County's duties under this Agreement.
- 12. Assignment.** This Contract shall not be assignable in whole or in part by either party without prior written consent of the other party.
- 13. Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.
- 14. No Waiver.** No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
- 15. Independent Contractor.** It is expressly agreed that this Contract and the performance by the parties hereunder does not create any agency relationship or master-servant relationship that County has no supervision of the performance of the Services provided by Company, and that Company is an independent contractor under this Contract.
- 16. Successors.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
- 17. Provisions.** In case any one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect such shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.
- 18. Amendment.** No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties named herein.

- 19. Force Majeure.** Neither County nor Contractor shall not be required to perform any act, term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure (acts of God), strikes, lockouts, pandemic, material, or labor restrictions by any governmental authority, civil riot, floods, fire, windstorm or any other cause not reasonably in the control of the County or Contractor, which by the exercise of due diligence, County or Contractor is wholly or in part unable to overcome.
- 20. Termination.** This Agreement may be terminated by either party without cause upon (60) sixty days written notice.
- 21. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND SHALL BE PERFORMABLE IN HIDALGO COUNTY.
- 22. Entire Agreement.** This Agreement contains the entire agreement between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and Contractor, and not otherwise.
- 23. Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon sixty (60) days written notice to Contractor. County agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provisions of Tex. Loc. Govt. Code Ann.
- 24. Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
- 25. Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate
- 26. Additional Documents.** The parties hereto covenant and agree that they will execute such other further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

27. It is understood that the employee of County or individuals acting as agents for County are not authorized to receive any type of personal payment, reimbursement, compensation, commission, gift or gratuity for services provided under this Contract. Contractor warrants that no employee or agent of the County has been retained to solicit or secure this Contract and that Contractor has not paid or agreed to pay any employee of County any fee, commission, percentage brokerage fee, gift or any other consideration contingent upon the making of this Contract, or as an inducement for entering into this Contract. The unauthorized offering or receipt of such payments may result in the immediate termination of this Contract.
28. **Immunities.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the stated or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.
29. **Nondiscrimination.** Contractors, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement.
30. **Appendix II to CFR 200-Contract Provisions (if applicable).** Pursuant to 2 CFR 200.237, a non-federal entity's contracts must contain the applicable provisions described in appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. Therefore, if applicable, the provisions are attached and incorporated by reference into this County contract for all purposes should it be subject to Federal award.
31. **Authority to Execute.** The execution and performance of this Agreement by County and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and Contractor in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

COUNTY OF HIDALGO

By: _____
Honorable Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo Jr., County Clerk

PALM VALLEY ANIMAL SOCIETY:

By: Donna Casamento
Print Name: Donna Casamento
Title: Executive Director

Approved by Hidalgo County Commissioners Court: _____

APPROVED AS TO FORM:

Office of the Hidalgo County Criminal District Attorney
Ricardo Rodriguez Jr.

By: _____
Robert Viña, III, Assistant. District Attorney