

**CITY OF KILLEEN**

**STANDARD PROFESSIONAL SERVICES AGREEMENT**

THE STATE OF TEXAS   §  
  §  
BELL COUNTY            §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Killeen, Texas, (the “City”) a Texas municipality, and Aztec Pet Hospital. (“Professional”).

**Section 1. Duration.**

This Agreement shall become effective January 1, 2021 and shall remain in effect until December 31, 2021, unless terminated or renewed as provided for in this Agreement and/or as written in the Exhibit A.

**Section 2. Scope of Work.**

(A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as **Exhibit “A”**. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.

(C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

**Section 3. Compensation.**

(A) The Professional shall be paid in the manner set forth in **Exhibit “A”** and as provided herein.

(B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Professional’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

#### **Section 4. Additional Work.**

The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and not does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Professional shall execute a supplemental agreement for the additional work and the City shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

#### **Section 5. Time of Completion.**

The prompt completion of the services under the Scope of Work, i.e. Exhibit A is critical to the City and/or the operation/function mentioned within the Exhibit. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination.

#### **Section 6. Insurance.**

Before commencing work under this Agreement, Professional shall obtain and furnish to the City evidence of the following insurance during the term of this Agreement and thereafter as required herein:

*General Liability Insurance:* The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

*Automobile Liability Insurance:* Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000

per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

*Qualifying Insurance:* The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

## **Section 7. Miscellaneous Provisions.**

(A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the City and is not an employee, agent, official or representative of the City. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

(D) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the

value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.

(E) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(F) *Conflicts*. In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

## **Section 8. Termination.**

(A) This Agreement may be terminated:

(1) By the mutual agreement and consent of both Professional and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Professional.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees other than the fees then due and payable as of the time of termination and only then for those services that have been

timely and adequately performed by the Professional. In the event of termination not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any then due.

#### **Section 9. Indemnification.**

**Professional shall indemnify, defend and hold harmless the City of Killeen, Texas and its officials, employees and agents (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional’s agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as “Professional”) (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional’s liability to such employee or former employee would otherwise be limited to payments under State Workers’ Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee’s own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.**

**For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional’s agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.**

**Section 10. Notices.**

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**Section 11. No Assignment.**

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

**Section 12. Severability.**

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**Section 13. Waiver.**

Either City or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 14. Governing Law; Venue.**

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bell County, Texas such that exclusive

venue for any action arising out of this Agreement shall be in Bell County, Texas.

**Section 15. Paragraph Headings; Construction.**

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

**Section 16. Binding Effect.**

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**Section 17. Gender.**

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

**Section 18. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 19. Exhibits.**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**Section 20. Entire Agreement.**

It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

**Section 21. Relationship of Parties.**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of

joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 22. Right To Audit.**

City shall have the right to examine and audit the books and records of Professional with regards to the work described in **Exhibit "A"**, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

**Section 23. Dispute Resolution.**

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

**Section 24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.**

Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

**Section 25. Certificate of Interested Parties (TEC Form 1295).**

For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Professional a completed, signed, and notarized TEC Form 1295 complete with a

certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Professional understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Professional with respect to the proper completion of the TEC Form 1295.

**Section 26. Texas Government Code Mandatory Provision.**

The City of Killeen may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by entering into this Agreement, the Professional hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Professional hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY:**

**PROFESSIONAL:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:  
Name: Emily Kuczek  
Title: Manager

**ADDRESS FOR NOTICE:**

**CITY**

City of Killeen, Recreation Services  
1700 E. Stan Schlueter Loop  
Killeen, TX 76542

**PROFESSIONAL**

Aztec Pet Hospital, PLLC  
104 W. FM 2410  
Harker Heights, TX 76548

with a copy to:

City Attorney  
City of Killeen, Texas

## Exhibit A

### SCOPE OF WORK

#### **I. TERM.**

This agreement will begin on January 1, 2021 and will continue until December 31, 2021. The term of the agreement will be for a one (1) year term, with up to four (4) renewals. Any price increases, when renewing the agreement, must be submitted to the City at least ninety (90) days prior to a potential renewal. Upon termination of this agreement per Section 8 of the Standard Professional Services Agreement, all provisions of this agreement shall terminate.

#### **II. SPECIFIC DUTIES.**

Professional agrees to perform the following services for the City during normal operating hours for Professional as long as the City representatives present the animal to Professional's facility at the time and day Professional is to provide for such services:

1. Canine and feline spay and neuter services (provided the surgeon determines pet is healthy enough for surgery and can feel both testicles for neutering upon external palpation),
2. Wellness and sick veterinary care,
3. Emergency services at the Professional facility, located at 104 W FM 2410, Harker Heights, Texas, 76548.

The City is responsible for ensuring all canines and felines requiring surgery are presented to Professional fasted (no food or water after 10:00 PM the night prior to surgery) for all routine surgeries at the time and day coordinated and jointly agreed upon by the City and Professional personnel. Professional agrees to perform wellness, sick, and emergency services when Professional is open for business, and a doctor is on site, provided the City presents the animal to Professional's facility no less than one (1) hour prior to Professional's published closing time. For emergency services, it is solely at the discretion of the Professional if they can provide services outside of this time frame. No services for new patients will be available outside of Professional's published hours of operation. New patients are defined as any pets not seen by a doctor employed by the Professional, within the last 48 hours prior to needing additional services outside of published hours of operation.

#### **III. WORK SCHEDULE.**

All work will be accomplished during Professional's hours of operation listed in Table (A), unless there is a pet that is seen on Friday and hospitalized with Professional over a Saturday, Sunday, and/or Federal Holiday. All routine surgeries will be agreed upon by both Professional and the City, both in the quantity and day/time of service, prior to any animals being presented to Professional for service. All efforts will be made to make arrangements with Professional prior to bringing to Professional's facility any animals for wellness, sick, or injury services to ensure Professional will have the time to provide services. All animals must be presented to

Professional's facility at least one (1) hour prior to the end of Professional's business day.

Table (A)

Professional Hours of Operation	
Sunday	Closed
Monday	8:00 AM to 12:00 PM and 1:30 PM to 5:30 PM
Tuesday	8:00 AM to 12:00 PM and 1:30 PM to 5:30 PM
Wednesday	8:00 AM to 12:00 PM and 1:30 PM to 5:30 PM
Thursday	8:00 AM to 12:00 PM and 1:30 PM to 5:30 PM
Friday	8:00 AM to 12:00 PM and 1:30 PM to 5:30 PM
Saturday	Closed

**IV. FEE SCHEDULE.**

The City will compensate Professional for each pet receiving services as specified below. Additional services are available, and prices will be quoted and agreed upon when a specific case is presented to Professional.

Spay Surgery Fee Schedule Includes pain injection for day of surgery, 7 days of pain medication post-surgery, and e-collar per pet. \*

Canine 0-23 lbs	\$117.00
Canine 0-23 lbs with pregnancy/heat	\$150.00
Canine 24-44 lbs	\$125.00
Canine 24-44 lbs. with pregnancy/heat	\$160.00
Canine 45lbs and up	\$155.00
Canine 45 lbs and up with pregnancy/heat	\$190.00
Feline	\$115.00
Feline with pregnancy/heat	\$150.00

\*Professional will provide spay services for all healthy female canines weighing at least 5 lbs and who are at least 4 months (16 weeks) of age. Professional will provide spay services for all healthy female felines weighing at least 3 lbs and who are at least three months (12 weeks) of age.

Neuter Surgery Fee Schedule\*\*

Canine 0-23 lbs	\$105.00
Canine 0-23 lbs cryptorchid (only available if both testicles can be palpated externally by doctor)	\$140.00
Canine 24-44 lbs	\$115.00
Canine 24-44 lbs. cryptorchid (only available if both testicles can be palpated externally by doctor)	\$150.00
Canine 45lbs and up	\$145.00
Canine 45 lbs and up cryptorchid (only available if both testicles can be palpated externally by doctor)	\$180.00
Feline	\$80.00
Feline cryptorchid (only available if both testicles can be palpated externally by doctor)	\$140.00

\*\*Professional will provide neutering services for all healthy male canines weighing at least 5 lbs and who are at least 4 months (16 weeks) of age. Professional will provide neutering services for all healthy male felines weighing at least 3 lbs and who are at least three months (12 weeks) of age.

Wellness and Sick or Injured Fee Schedule

Exam Fees	\$27.50
Rabies Vaccination (1 year)	\$10.00
Canine Heartworm Test	\$10.00
Feline FELV-FIV combo testing	\$35.00
Fecal	\$15.00
Deworming	\$20.00
Skin Scrape	\$25.00
Ear Pack (per ear)	\$32.00
Nail Trim	\$16.00
Dental Cleaning	\$400.00
Dental extractions	\$20.00
X-rays (Radiographs)	\$90.00
Urinalysis	\$48.94
Urinalysis with cystocentesis (collecting urine directly from animal's bladder)	\$68.94
Mini Chemistry Panel	\$80.00
Comprehensive CBC	\$30.00
Overnight Hospitalization	\$30.00
Euthanasia – if medically necessary and shelter cannot perform	\$30.00

**V. CAPACITY TO DELIVER SERVICES.**

**MICROCHIPS, VACCINES, AND WELLNESS SERVICES:**

Professional will implant microchips provided by the City at no cost, as long as the animal being microchipped is being presented to Professional for another service (i.e. surgery, wellness, sick, or

injury).

Professional will not visit the City on a weekly basis to provide any services.

**AFTER HOURS AND EMERGENCIES:**

Professional will not provide any emergency services after hours to the City.

In the event of a large-scale emergency when the City initiates emergency operations and is receiving evacuees and evacuee animals, Professional is not currently able to visit animal sheltering locations within the City up to twice daily. It is at Professional's sole discretion if Professional will be able to offer this service in the future. A trip fee of \$50 per visit in addition to the application of the fee schedule from Section 4: Fee Schedule will apply per visit, if/when Professional decides it can offer this service.

Professional does not currently have the mobile capacity to render services on-site at the City.

**VI. PAYMENT.**

The City will pay Professional for all services provided by Professional on a net 30 basis. No discount will apply for early payment.

**VII. TERMINATION.**

This contract shall remain in effect until the contract expires or until terminated under the conditions of Section 8 of the Standard Professional Services Agreement.