

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 Texas Humane Heroes, Killeen & Leander, Texas ("Professional").

Section 1. TERM AND DURATION.

This Agreement shall become effective MONTH DATE, YEAR and shall remain in effect for one year, ending in MONTH DATE, YEAR, unless terminated as provided for in this Agreement. If Professional is not in default of the terms hereunder, the Agreement shall automatically extend for one (1) more year unless either Party to the Agreement gives the other Party ninety (90) days written notice prior to the expiration of the initial term or corresponding successive term, as applicable. Additionally, Professional shall provide the City, in writing, any price increases at least one hundred and twenty (120) days prior to a potential renewal of this Agreement.

Section 2. RESPONSIBILITIES OF THE PARTIES.

2.1 Professional Shall:

2.1.1. Perform canine and feline spay and neuter services (collectively referred to herein as "Services") as described in Exhibit "A" which is attached and incorporated into this Agreement.

2.1.2. Maintain a consistent schedule for the days and times listed below, when the City will bring the animals to Professional for Services:

Monday	9:00 AM to 3:00 PM
Tuesday	9:00 AM to 3:00 PM
Wednesday	9:00 AM to 3:00 PM
Thursday	9:00 AM to 3:00 PM
Friday	9:00 AM to 3:00 PM

2.1.3. Implant animal with a microchip provided by the City, at no cost to the City, so long as microchipping is completed in conjunction with another Service.

2.1.4. Use a pre-sterilization roaster to approve the quantity of animals at least seven (7) days in advance of animal receiving Services.

2.1.5. Perform the Services 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.

2.1.6. The Professional shall perform its Services 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.

2.2. The City Shall:

2.2.1. Ensure that all canines and felines that require Services are brought to Professional's place of business, located at 5501 South Clear Creek Road, Killeen, TX 76549 and at the times and days listed below:

Monday	9:00 AM to 3:00 PM
Tuesday	9:00 AM to 3:00 PM
Wednesday	9:00 AM to 3:00 PM
Thursday	9:00 AM to 3:00 PM
Friday	9:00 AM to 3:00 PM

2.2.2. Ensure that all animals scheduled for Services are fasted, meaning no food or water, after 10:00 PM the night prior to the Service being performed.

2.2.3. Use a pre-sterilization roaster to approve the quantity of animals at least seven (7) days in advance of animal receiving Services.

Section 3. COMPENSATION.

3.1.1. The Professional shall be paid for each animal receiving services according to the amounts set forth in Exhibit "A" and as provided herein.

3.1.2. *Billing Period:* The Professional may submit monthly, or less frequently, an invoice to the Executive Director of recreational Services 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.

4.1.1. Additional Work is work that, in the Professional's opinion, is beyond that which is contemplated by the provisions in Exhibit "A". If Additional Work is necessary, the Professional shall promptly notify the City, in writing. If the City agrees that such work does constitute Additional Work, then the City and the Professional shall execute a supplement agreement for the Additional Work and the City shall compensate the Professional for the Additional Work. The City retains the right to make changes to Exhibit "A" at any time by a written amendment. Work that is clearly not within the provisions of Exhibit "A" and does not otherwise constitute as miscellaneous fees in Exhibit "A," must be approved in writing by the City by supplemental agreement before the Additional Work is undertaken by the Professional. Any Additional Work provided by Professional that was not previously approved as Additional Work shall be at the risk

of the Professional.

Section 5. TIME OF COMPLETION.

5.1.1. The prompt completion of Services listed in Exhibit “A” is critical to the efficient operation of this Agreement between the Parties. Unnecessary delays in providing Services under this Agreement shall constitute a breach of contract and shall be grounds for termination of this Agreement without any 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.

6.1.1. Professional shall keep insurance in full force and effect, during the terms of this Agreement, in the following types and minimum amounts and shall furnish to City a copy of the same:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
Workers Compensation	Statutory
General Liability,	\$1,000,000 per occurrence
Fire insurance	\$1,000,000 per occurrence
Premises and Operations	\$1,000,000 aggregate
Personal bodily Injury	\$1,000,000 per person per occurrence
Property Damage	\$100,000 per occurrence
Automobile	\$1,000,000 per person per occurrence

Section 7. MISCELLANEOUS PROVISIONS.

7.1.1. *Subletting.* The Professional shall not sublet or transfer any portion of the Services to which Professional is contracted to perform under this Agreement or which is listed in Exhibit “A”, 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.

7.1.2. *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.

7.1.3. *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.

7.1.4. *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.

7.1.5. *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 [including but not limited to severe rain storms below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities, including pandemics shut downs), 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 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.

7.1.6. *Conflicts.* In the case of any conflicts between the terms of this Agreement and wording contained within Exhibit “A”, this Agreement shall govern. Exhibit “A” is intended to detail the Professional’s operation schedule, the Party’s fee schedule, and details pertaining to the animals that are receiving Services.

Section 8. TERMINATION.

8.1.1. This Agreement may be terminated:

8.1.2(a). By the mutual agreement and consent of both Professional and City;

8.1.2(b). By either party, upon the failure of the other party to fulfill its obligations as set forth in this Agreement;

8.1.2(c). By the City, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the Services under this Agreement in a timely or satisfactory manner;

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

8.1.2. If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall only be entitled to the fees due for Services already performed at the time of termination

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 Indemnatee for the Indemnatee'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.

10.1.1. Any notice required or desired to be given by either Party to this Agreement shall be in writing and shall be deemed to have been served and received only if: (i) delivered in person to the address set forth below; (ii) 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 receipt requested. 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.

11.1.1. 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.

12.1.1. 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.

13.1.1. 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.

14.1.1. 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.

15.1.1. 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.

16.1.1. 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. COUNTERPARTS.

17.1.1. 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 18. EXHIBITS.

18.1.1. All exhibits to this Agreement, and as amended, are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. ENTIRE AGREEMENT.

19.1.1. 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 20. RELATIONSHIP OF PARTIES.

20.1.1. 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 21. RIGHT TO AUDIT.

21.1.1. City shall have the right to examine and audit the books and records of Professional with regards to the Services provided by Professional under this Agreement and which are outlined in Exhibit "A", and any subsequent changes to Exhibit "A", 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 22. DISPUTE RESOLUTION.

22.1.1. 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 in the order listed below:

22.1.2 (a). 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 five (5) days after receipt of the notice of dispute.

22.1.2 (b). 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.

22.1.2 (c). 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 23. DISCLOSURE OF BUSINESS RELATIONSHIPS/AFFILIATIONS; CONFLICT OF INTEREST QUESTIONNAIRE.

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

Section 24. CERTIFICATE OF INTERESTED PARTIES (TEC FORM 1295).

24.1.1. 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 25. MANDATORY PROVISIONS : NON-DISCRIMINATION COVENANTS.

25.1.1. The City of Killeen may not enter into a contract with a company for over one-hundred thousand dollars (\$100,000.00), or a contract which reasonably will be over one-hundred thousand dollars (\$100,000.00), to which public funds are used to wholly or partially pay for goods and services unless the contract contains written verifications from the company that it; (i) does not boycott Israel and will not boycott Israel during the term of the Agreement (Texas Government Code, Chapter 2271); (ii) it does not Boycott energy companies and will not boycott energy companies during the term of the Agreement (Texas Government Code, Chapter 2274) and (iii) it does not have a practice, policy, guidance or directive that discriminates against firearm entities or firearm trade associations and will not

discriminate during the term of the Agreement (Texas Government Code, Chapter 2274). By entering into this Agreement, the Professional hereby verifies that it does not boycott Israel, it does not boycott energy companies, and it does not have a practice, policy, guidance or directive to discriminate against firearm entities or firearm trade associations and Professional agrees that, during the terms of this Agreement, Professional will not boycott Israel, will not boycott energy companies, and will not discriminate against firearm entities or firearm trade associations as those terms are defined in the Texas Government Code, Sections 808, 809 and 2274 respectively and, 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 October 2021.

CITY:

By: _____

Name: _____

Title: _____

PROFESSIONAL:

By: _____

Name: _____

Title: _____

ADDRESS FOR NOTICE:

CITY

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

PROFESSIONAL

Texas Humane Heroes
10930 E. Crystal Falls Pkwy
Leander, TX 76841

with a copy to:

City Attorney's Office
101 N. College Street
Killeen, TX 7654

Exhibit A
Schedule and Fees

I. Professional's Schedule for Services:

Professional Hours of Operations	
Sunday	Closed
Monday	9:00 AM to 3:00 PM
Tuesday	9:00 AM to 3:00 PM
Wednesday	9:00 AM to 3:00 PM
Thursday	9:00 AM to 3:00 PM
Friday	9:00 AM to 3:00 PM
Saturday	Closed

II. Animal Description and Associated Fees:

A. Spay Surgery

Canine 0-24 lbs.	\$75.00
Canine 0-24 lbs. with pregnancy/heat	\$75.00
Canine 25-40 lbs.	\$75.00
Canine 25-40 lbs. with pregnancy/heat	\$75.00
Canine 41 – 60 lbs.	\$75.00
Canine 41 – 60 lbs. with pregnancy/heat	\$75.00
Canine 61 lbs. & up	\$75.00
Canine 61 lbs. & up pregnancy/heat	\$75.00
Feline	\$70.00
Feline with pregnancy/heat	\$70.00

B. Neuter Surgery

Canine 0-24 lbs.	\$75.00
Canine 0-24 lbs. with cryptorchid	\$75.00
Canine 25-40 lbs.	\$75.00
Canine 25-40 lbs. with cryptorchid	\$75.00
Canine 41 – 60 lbs.	\$75.00
Canine 41 – 60 lbs. with cryptorchid	\$75.00
Canine 61 lbs. & up	\$75.00
Canine 61 lbs. & up cryptorchid	\$75.00
Feline	\$70.00

Feline with cryptorchid	\$70.00
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III. Miscellaneous Post-Operation Fees:

E. Collar	\$5.00
24 Hour Pain Meds	Not provided with spay/neuter
3-day pain meds	\$15.00
7-day pain meds	Not provided with spay/neuter




No Israel Boycott Certification

Texas Government Code, Chapter 2270, provides that a governmental entity – including a city – may not enter into certain contracts with a company for goods or services unless the contract contains a written verification that the company does not boycott Israel and will not boycott Israel during the term of the contract. The verification is specifically required when a governmental entity 1) enters into a contract with a company with ten (10) or more full-time employees, and 2) the contract is valued at \$100,000 or more to be paid wholly or partly from public funds.

“Boycott Israel” is defined in Texas Government Code 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By signing below, I verify that the company listed below does not boycott Israel and will not boycott Israel during the term of the contracted entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.



Signature

Jeff Struchtemeyer
Printed Name

10.1.2021
Date

Texas Humane Heroes
Company Name

CEO
Title



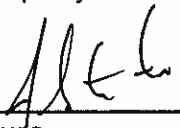
Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

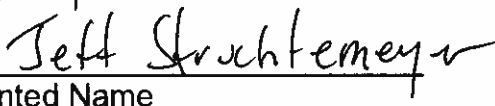
- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

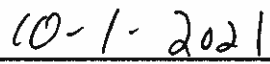
By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.



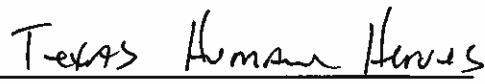
Signature



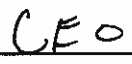
Printed Name



Date



Company Name



Title