

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Department of Public Health – Animal Services

**AGENDA DATE:** CCA 09/29/09

**CONTACT PERSON/PHONE:** Eduardo De Castro – 842-1010

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the City Manager be authorized to sign an Agreement with New Hope Alliance, for the use of City of El Paso Department of Public Health Animal Services Division space in exchange for the operation of a low cost spay/neuter, vaccination and registration service, for the public purpose of reducing the number of unwanted and unvaccinated strays and enhancing public health for the entire community.

**BACKGROUND / DISCUSSION:**

The City of El Paso handles about 24,500 animals per year of which 78% must be euthanize as there are not enough homes for them to go to. One of the ways to reduce these numbers is to sterilize as many animals as we can. We are proposing for the City of El Paso to enter into an agreement with New Hope Alliance (N.H.A.) which provides the use of the city's facility, surgical suite and shelter veterinarian with the goal of sterilizing about twenty to twenty five animals per work day. N.H.A. will in turn provide all surgical supplies, diagnostics and vaccine costs, a veterinary technician and a spay/neuter counselor/clerk to handle appointments and processing.

**PRIOR COUNCIL ACTION:**

On August 2001 the City of El Paso received a spay/neuter van to provide low-cost sterilization surgeries for pets. The program was approved and funded by the City and has been very successful to this day spaying approximately 300 to 350 dogs and cats per month.

**AMOUNT AND SOURCE OF FUNDING:**

The City of El Paso will provide the existing surgical suite, cages, anesthesia machine and the use of the shelter veterinarian. In addition, the city will provide the anesthesia, oxygen and soda lime for a cost of approximately \$1.00 per surgery. All other medications, personnel, supplies, spay/neuter counselors, veterinary technician etc... will be provided by New Hope Alliance

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

**THAT** the City Manager be authorized to sign an Agreement with New Hope Alliance, for the use of City of El Paso Department of Public Health Animal Services Division space in exchange for the operation of a low cost spay/neuter, vaccination and registration service, for the public purpose of reducing the number of unwanted and unvaccinated strays and enhancing public health for the entire community.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO

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John F. Cook  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Josette Flores  
Assistant City Attorney

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Michael Hill, Director  
Department of Public Health

STATE OF TEXAS

§

**AGREEMENT**

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COUNTY OF EL PASO

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This Agreement, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of El Paso, a Texas municipal corporation (“City”) and New Hope Alliance, with its principal place of business located at 221 N. Kansas, Suite 2100, El Paso, Texas 79901 (“Agency”).

**WHEREAS**, the City finds that the uncontrolled breeding of cats and dogs in the City has led to unacceptable numbers of unwanted dogs, puppies and cats and kittens; and

**WHEREAS**, these unwanted animals become strays and constitute a public nuisance and a public health hazard; and

**WHEREAS**, the animals themselves suffer privation and death, are impounded, and most are destroyed at great expense to the City and its residents; and

**WHEREAS**, it is the intention of the City to provide non-monetary assistance to a low cost spay/neuter program to the City’s residents offering spay/neuter services for their dogs and cats and to provide an education program on the benefits of spaying and neutering pets, as well as pet vaccinations and registration (the “Program”), and Agency agrees to provide those services at the City of El Paso Department of Public Health Animal Services Division (“ASD”) located at 5001 Fred Wilson, El Paso, Texas 79906 (“Site”).

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions expressed hereinafter, be it known that the City and Agency hereby enter into this Agreement as follows:

## **1. CONSIDERATION**

- 1.1 In exchange for using the Site, the City's Veterinarian and anesthesia for the Program, with the City assuming the monetary costs of the latter two, Agency agrees to provide a low cost spay/neuter program to the City's residents for their dogs and cats and to provide an education program on the benefits of spaying and neutering pets, as well as coordinate animal registration and vaccinations at the Site, at no monetary cost to the City.

## **2. OBLIGATIONS OF AGENCY**

- 2.1 Agency will provide at the Site, from 10:30 am to 6:00 pm, Monday through Saturday, a minimum of one Program administrator/educator to schedule all spay/neuter appointments, document service on Agency paperwork, collect fees from Program participants and conduct Program administrative tasks, educate and release pets in the Program to the owner.
- 2.2 Agency agrees to not release an animal four months or older from the Site under the Program until such time as that animal has been altered, microchipped, fully vaccinated and registered.
- 2.3 Agency shall obtain written consent of all owners of pets four months or older participating in this Program to have their animals altered, microchipped and vaccinated through the Program, unless documentation can be provided by a licensed veterinarian in the State of Texas verifying that Program services present a health concern or risk for the animal and solely the medically excepted service shall be omitted for that animal.
- 2.4 Agency shall test all dogs and puppies for heartworm, erlichia, and lyme disease and shall test all cats and kittens for feline leukemia, FIV, heartworm.

- 2.5 Agency shall microchip all animals and register them with a national registration service.
- 2.6 Agency shall supply all DAPP2, Distemper, Adenovirus, Parvo, Parainfluenza Vaccine and feline vaccines, and all rabies vaccines.
- 2.7 Agency shall collect the Program fee from participating City residents, and pay the following Agency costs:
- 2.7.1 Medical screening/testing supplies,
  - 2.7.2 Vaccinations,
  - 2.7.3 A veterinary technician to assist veterinarian and to clean and sterilize cages, table and instrumentation,
  - 2.7.4 Microchips and microchip registration,
  - 2.7.5 Spay/Neuter Program Coordinator compensation,
  - 2.7.6 Surgical supplies,
  - 2.7.7 Office supplies, and
  - 2.7.8 Program Operating Expenses
- 2.8 Once the costs listed in Section 2.7 herein are paid, any remaining money shall be designated to a low income spay/neuter voucher program. Pet owners may participate in the low income spay/neuter voucher program if said owners show written proof to Agency that said owners receive or benefit from any of the following:
1. Residence at HUD facilities,
  2. WIC,
  3. Medicare,
  4. Medicaid,
  5. Social security income supplements, disability or fall under the poverty level and can document that status, or
  6. Any other federal or state social assistance.
- 2.9 Agency agrees to not participate in publicity or media events which may cast the Program in a negative light and will seek approval for all publicity and media events from the Deputy Director of the City's ASD or his designee.

### **3. OBLIGATIONS OF THE CITY**

- 3.1 The City agrees to provide an internet connection, desk and work space for Agency's use for the Program and for no other purpose or project of Agency or Agency's employees, contractors, or agents.
- 3.2 The City will provide, at no cost, the use of the surgery suite and existing surgical tables, lights, other fixed surgical equipment and oxygen, Isoflorane, soda lime for anesthesia and the City Veterinarian, 5 days a week. All other required instruments and supplies for use by the City Veterinarian for spay/neuter surgeries will be provided by Agency.
- 3.3 The City will provide a holding area and salvaged cages for animals awaiting spay/neuter services.
- 3.4 The City will assist, participate and cooperate in promotions for the Program using Animal Services' existing website, education program and other presently used public information sources to help advertise the Program.

### **4. RIGHT OF ENTRY**

- 4.1 The City herein grants a right of entry to Agency, to include its designated agents, employees, and contractors, onto the designated Site for purposes of carrying out Agency's responsibilities through the Program. This right of entry is limited to designated operating hours of the assigned Site. Agency shall not utilize the Site when the Site is closed to the general public.

### **5. TERM & TERMINATION**

- 5.1 The term of this Agreement shall be for one (1) year from the date signed. The City shall have the sole discretion to extend this Agreement for an additional one-year term, upon written notice to Agency prior to sixty (60) days of the initial one-year term expiring.

5.2 Termination - Cause. The parties agree that the City may terminate this Agreement in whole or in part for failure of Agency to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the City. No such termination shall be made, unless Agency is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the City prior to such termination.

5.3 Termination – Convenience. The City may terminate this Agreement without cause upon thirty (30) days written notice to Agency.

5.4 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

5.4.1 Except as otherwise provided herein, all duties and obligations of the City and Agency shall cease upon termination or expiration of this Agreement.

## **6. INSURANCE AND INDEMNIFICATION PROVISIONS**

Agency agrees to provide the following as a condition of its use of the Site:

6.1 **LIABILITY INSURANCE.** Agency shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability

insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

6.1.1 Agency is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent groups, alleged or asserted by any individual, in connection with the performance of this Agreement.

6.1.2 Agency shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and groups, its officers, agents, servants or employees.

6.1.3 The Site shall not be made available by the City until Agency files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be grounds for cancellation of this Agreement.

**6.2 INDEMNITY. As a condition of this Agreement, Agency or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF**

**ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to Agency every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Agency will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Agency may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits**

**for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Agency shall pay all judgments in actions defended by Agency pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Agency, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to Agency's property from any cause.**

## **7. EQUIPMENT AND SUPPLIES**

- 7.1 Agency shall provide and maintain in safe and good working order all equipment and supplies necessary for the Program at its sole cost and expense. Except as specifically stated in Section 3 of this Agreement, the City is not required to contribute financial resources towards the purchase or maintenance of any equipment or supplies used for operation of the Program.
- 7.2 Effect of Termination. Upon termination, all equipment and supplies that has been provided for Program use by Agency shall be immediately removed by Agency, unless the termination is a result of Agency's failure to comply with this Agreement or is a result of damage to the City caused by Agency's act or omission, in which case the equipment shall be not be removed by Agency until approved by the Director upon fulfillment of any contractual obligation herein or reparation of such damage by Agency. Should any equipment and supplies be provided for the Program by the City, all such equipment and supplies shall remain with the City upon termination of this Agreement.

## **8. COMPLIANCE WITH LAW**

8.1 Agency agrees to abide by all applicable laws, including, but not limited to the confidentiality provisions as set forth in Chapter 826 of the Texas Health and Safety Code.

## **9. GOVERNMENTAL FUNCTION AND IMMUNITY**

9.1 Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the City enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

9.2 Sovereign Immunity. The City reserves, and does not waive, its rights of sovereign immunity and similar rights and does not waive its rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on the City not permitted by applicable law shall be enforceable.

## **10. MISCELLANEOUS PROVISIONS**

10.1 This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas.

10.2 Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right(s) and the rights granted hereunder are in addition to those available under law and equity.

- 10.3 All covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any court of competent jurisdiction, this shall be interpreted as though such invalid covenant or provision were not contained herein.
- 10.4 The captions of the various sections of this Agreement are for convenience of reference only and shall not alter the terms and conditions of this Agreement.
- 10.5 The parties may not assign the obligations or rights under this Agreement to any person or entity without the prior written consent of the other party.
- 10.6 Contractual Relationship. Agency is an independent contractor and is otherwise a tenant in a landlord-tenant relationship with City. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.
- 10.6.1 As an independent contractor, Agency understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to Agency's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.
- 10.6.2 Agency shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of Agency.
- 10.6.3 Agency shall not receive any compensation or benefits from the City.
- 10.7 Neither party has, nor shall neither party attempt to assert, the authority to make commitments for or to bind the other party to any obligation.

10.8 No provision in this Agreement that purports to impose an obligation or restriction not permitted by applicable law shall be enforceable.

10.9 Notice. Written notice to the other party shall be provided via certified mail, return receipt requested postage prepaid in the United States Postal Service or via hand delivery or fax or mailed, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

AGENCY: New Hope Alliance  
Attn: Rebecca Rojas  
221 North Kansas, Suite 2100  
El Paso, Texas 79901

CITY: City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

COPY TO: City of El Paso  
Attn: Department of Public Health, Director  
5115 El Paso Drive  
El Paso, Texas 79905

## **11. MERGER CLAUSE**

11.1 This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written Agreement of the parties.

*(Signatures appear on the following page)*

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

NEW HOPE ALLIANCE

\_\_\_\_\_  
Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Michael Hill, Director  
Department of Public Health