

SERVICE AGREEMENT

This Service Agreement is entered into between the COUNTY OF EL PASO, TEXAS (“County”) and HORSES UNLIMITED RESCUE and EDUCATION CENTER, INC., a nonprofit corporation licensed to do business in Texas (“Contractor”). Each, the County and the Contractor, are also referred to as a “Party” and collectively as the “Parties.”

WHEREAS, Chapter 142 of the Texas Agricultural Code (“Chapter 142”) charges the Sheriff or his designee with specific duties pertaining to stray animals; and

WHEREAS, Chapter 142 of the Texas Agricultural Code defines “estrays” as stray livestock, stray exotic livestock, stray bison or stray exotic fowl; and

WHEREAS, the County’s Animal Welfare Department (“Animal Welfare”) is committed to the protection of animals in El Paso County and keeping public spaces safe; and

WHEREAS, Contractor has the resources necessary to collect and care for chickens, domestic fowl (which includes fighting roosters) and livestock including but not limited to sheep, swine, goats, horses, cows, and pigs; and

WHEREAS, Contractor desires to collaborate with El Paso County, by and through the El Paso County Sheriff’s Office (“Sheriff” or “Sheriff’s Office”) and Animal Welfare, to assist with the care of chickens, domestic fowl (which includes fighting roosters) and livestock identified by the Sheriff’s Office or Animal Welfare as well as provide certain stray impoundment services included in Chapter 142.

NOW THEREFORE, for these reasons and in consideration of the mutual promises contained in this Agreement, the Parties mutually agree as follows.

SECTION 1. TIMES OF PERFORMANCE.

The Term of this Agreement is for a period of one year beginning the 12th day of September 2022 (“Effective Date”), regardless of the date of execution of this Agreement, and that term shall end on September 11, 2023 (“First Term”). The County shall have the option to renew this agreement for two additional one-year terms (respectively, “Second Term” and “Third Term”) by providing written notice to Contractor.

SECTION 2. COMPENSATION.

- A. The County agrees to pay Contractor \$7,000, seven thousand dollars for the care of up to five (5) horses and an unlimited number of chickens, domestic fowl (which includes fighting roosters) and all other livestock per each year of the Agreement. In exchange for the compensation provided in this Section, Contractor agrees to provide the animals included in this Agreement sufficient wholesome food, water, and shelter with shade. If a horse remains under the Contractor’s care past any given year of performance, the horse shall not count towards the County’s five (5) horse quota for the following contract term and the County shall not be obligated to provide Contractor additional compensation

beyond the one-time fee paid for the horse during the contract term it was initially collected by or delivered to Contractor.

- B. If the County requests that the Contractor care for more than five (5) horses in any given contract term, the County Commissioners may authorize the County's payment of an additional \$1,000, one thousand dollars, per additional horse in that Agreement term. The County shall pay the Contractor the additional fee upon fifteen business days of the Commissioners Court approval of the same.
- C. With the exception of animals donated to the Contractor through this Agreement, acceptance of a donation from a group or individual other than the County, or acceptance of a fee for the transport of livestock purchased at a Sheriff's sale, the Contractor shall not charge additional remuneration from any party other than the County for the care or transfer of any estray livestock subject to this Agreement.
- D. Contractor agrees that compensation provided by the County pursuant to this Section is in lieu of any redemption payment directly from an estray owner for holding or impounding the estray.

SECTION 3. PAYMENTS PURSUANT TO THIS AGREEMENT.

The County shall pay the Contractor \$7,000, seven thousand dollars, within fifteen business days of the Effective Date of this Agreement. If the Contract is renewed pursuant to Section 1 of this Agreement, the County shall provide Contractor payment within thirty (30) calendar days of the County Commissioner's exercising its option to renew.

SECTION 4. VOLUNTEERS.

- A. Provided that Horses Unlimited satisfactorily completes all requisite requirements and complies with all County Criminal Justice Coordination Department's ("CJC") requirements, CJC will include Horses Unlimited as a Community Service offering for eligible adult offenders subject to community supervision.
- B. In order to minimize the risk of injury to any individual completing Community Service at Horses Unlimited, Horses Unlimited will ensure that all volunteers operate in a safe environment.

SECTION 5. PUBLIC AWARENESS.

The County in collaboration with Horses Unlimited will work to develop a short-video or similar product highlighting the County services made available through this Agreement. The County maintains final production approval and will exclusively determine the County medium on which the final product is posted and the duration of circulation. The public awareness video or similar product may be created at any point during the Contract term.

SECTION 6. LOCATION OF PERFORMANCE.

Contractor shall care for the animals made subject to this Agreement on its premises located at 15415 Buckwheat St., El Paso, Texas 79938 ("Contractor's Premises").

SECTION 7. SCOPE OF SERVICES.

A. Care for All Animals Subject to this Agreement

1. Comply with Applicable Laws. Contractor shall comply with all applicable state and local laws in its care of the animals made subject to this Agreement.
2. Definition of Livestock. Livestock includes all animals identified in Texas Agricultural Code Section 1.003(3), as amended, and includes but is not limited to cattle, horses, mules, assess, sheep, goats, llamas, alpacas, exotic livestock, including elk and elk hybrids, and hogs.
3. Care. Contractor shall provide sufficient, wholesome food, water and shelter with shade to all animals subject to this Agreement which may include chickens, domestic fowl (which includes fighting roosters) and livestock.
4. Adequate Safeguards. Contractor shall ensure that its Premises has adequate safeguards to prevent the harm, theft or escape of the animals in its care.
5. Veterinary Attention. In the event the animals subject this agreement require veterinary care or attention, the Contractor shall promptly notify Animal Welfare to dispatch necessary care or provide direction as to where to seek veterinary care.
 - a) The County shall reimburse the Contractor for necessary veterinary care costs rendered to an animal subject to this Agreement. Contractor shall provide Animal Welfare any veterinary care bills with supporting proof of payment within thirty (30) calendar days of incurring the veterinary care costs. The County, by and through Animal Welfare shall confirm that billed veterinary care costs, are necessary and reasonable for the rendered care, before issuing reimbursement to the Contractor withing thirty (30) calendar days of receipt of Contractor's request for reimbursement.
6. Employees, Volunteers and Agents. Contractor shall ensure that all its employees, volunteers and agents are adequately trained to care for the animals in its control.

B. Non-Estray Livestock.

1. Definition of Non-Estray. Non-Estray animals may include but is not limited to chickens, domestic fowl (which includes fighting roosters) and livestock that was surrendered to Animal Welfare by the owner, a cruelly treated animal needing shelter, animal requiring temporary care for the preservation of evidence, or an animal needing temporary shelter.
2. Upon a request from Animal Welfare or the Sheriff's Office to collect chickens, domestic fowl (which includes fighting roosters) and livestock that does not constitute estray, the Contractor shall collect the animal from the location identified by Animal Welfare or the Sheriff's Office within three (3) hours' notice or as otherwise requested by Animal Welfare, the Sheriff's Office or designee.
3. Contractor shall accept and care for any non-estray animal delivered by Animal Welfare, the Sheriff's Office, or a designee to Contractor's premises.
4. Disposition. Non-estray animals shall remain in Contractor's custody until the County, by and through the Sheriff's Office or Animal Welfare, authorizes the disposition in writing.
 - a) If a non-estray animal is surrendered to the County, the County shall initiate steps to transfer ownership of the surrendered animal in the Contractor's

custody to the Contractor.

- b) Contractor shall notify Animal Welfare of any third-party request to claim a non-estrays animal.

C. Estray Livestock

1. Authority. This section is governed by Chapter 142 of the Texas Agricultural Code. In the event of a conflict between this Contract and Chapter 142, Chapter 142 controls.
 - a) The Contractor is responsible for providing any information necessary to the County to fulfill its reporting and publication requirements pursuant to Chapter 142.
2. Impoundment. Contractor shall hold and or impound an estray as follows:
 - a) Upon receiving notice from the Sheriff's Office or Animal Welfare, the Contractor shall collect the estray livestock within one (1) hours' notice.
 - i. Animal Welfare will conduct a search in an effort to identify the estray's owner. Animal Welfare will provide the Contractor the owner's information, if identified so that the Contractor may initiate steps to contact and notify the owner.
 - b) The Contractor shall hold and or impound an estray animal delivered by the Sheriff's Office, Animal Welfare or designee to the Contractor's premises in accordance with Chapter 142.
 - c) In the event Contractor independently learns of an estray animal roaming on public property or on the property of a person without that person's permission:
 - i. The Contractor shall notify the Sheriff's Office and Animal Welfare via phone and e-mail to obtain the Sheriff's Office or Animal Welfare's written approval to care for the estray pursuant to this Agreement. If Animal Welfare approves of making the estray subject to this Agreement, the Contractor shall attempt to contact the estray's owner, if known.
 - a. If an estray is located on public property and the estray's owner does not collect the estray within one (1) hour's oral notice to the owner, the Contractor shall collect the estray as soon as practicable and hold the estray in accordance with Chapter 142 of the Texas Agricultural Code.
 - b. If the owner of the estray is known, the Contractor shall attempt to contact the owner to provide notice of where the estray is held and direct the estray be collected before five (5) days of initial notice of holding.
 - c. Absent the Sheriff, or Animal Welfare's determination that the estray's owner is making a good faith effort to redeem the estray from private property pursuant to Section 142.004(b) of the Texas Agricultural Code, Contractor shall impound the estray animal on the fifth (5) day after the date of notification to the owner.
 - d. Once the estray is impounded, the Contractor shall attempt to contact the known owner to provide notice impoundment, as

well as notice of where the estray is held and direct the estray be collected.

- ii. If after confirming with the Sheriff's Office or Animal Welfare that the owner of the estray is unknown or unable to be contacted, the Contractor may immediately proceed to collect and impound the estray.
 - iii. Contractor shall immediately impound and hold an estray that is dangerous to the public, e.g., rabid or unable to be controlled, and notify the Sheriff's Office and Animal Welfare as soon as practicable; and
 - iv. If a perilous condition exists, the Contractor should contact the Sheriff's Office, and Animal Welfare who will contact the State in order to enable the appropriate disposition and disposal of the estray. The Contractor will assist with any details necessary for the Sheriff's written report regarding the disposition.
 - a. "Perilous condition" means a circumstance or condition in which capture and impoundment of an estray presents an immediate threat to law enforcement personnel or to the health of the estray.
3. Use of Estray. During the period that the Contractor holds an estray animal on behalf of the Sheriff, the estray may not be used for any purpose.
 4. Escape or Death of Impounded Estray. If an estray animal dies or escapes while impounded, the Contractor shall provide the Sheriff all necessary assistance in making a written report of the death or escape.
 - a) The Contractor shall be fully responsible for the proper disposal of any animal, whether estray or nonestray, that dies in its care.
 5. Records. Upon impoundment, the Contractor shall prepare a notice of the estray stating at least the following and provide the same to Animal Welfare who shall file the notice of estray in the estray records in the office of the County Clerk:
 - a) The name and address of the person who reported the estray to the Sheriff;
 - b) The location of the estray when found;
 - c) The location of the estray until disposition; and
 - d) A description of the animal, including its breed, if known, color, sex, age, size, markings of any kind, including ear markings, and brands, and other identifying characteristics.
 6. Unknown Estray Owner. Contractor shall provide the information required by the subsection above ("Records") to Animal Welfare even if the estray's owner is unknown. Animal Welfare shall make a diligent search for the identity of the owner of the estray based on the records provided by Contractor, and by conducting a search in the county register of recorded brands, if the animal has an identifiable brand. If the search does not reveal the owner, the Sheriff shall post a notice of the impoundment of the estray on the public notice board of the courthouse and advertise the impoundment of the estray in a newspaper of general circulation in the County at least twice during the fifteen days after the date of impoundment or on the County's Internet website for at least fifteen days after the date of impoundment.
 7. Recovery by Owner. The owner of an estray may recover possession of an estray at any time before the estray is sold or transferred upon written authorization from the

Sheriff's Office or Animal Welfare upon the owner's satisfactory compliance with Section 142.010 of the Texas Agricultural Code.

8. Disposition or Sale of Impounded Estrays. Following the sale of an estray animal pursuant to Section 142.013 of the Texas Agricultural Code, and written confirmation from the Sheriff's Office, Contractor shall allow the purchaser to collect the animal at a mutually agreed upon time within one (1) week of the purchase.
 - a) Alternatively, if the Sheriff determines that a sale of an estray is unlikely to generate sufficient proceeds to cover the expense of the sale, the Sheriff may instead opt to donate the estray to Contractor, an alternate non-profit, or retain use of the estray for County purposes. The Contractor shall turn over care and control of the animal according to the Sheriff's determination. If the Sheriff donates the animal to Contractor, title transfers to the Contractor upon the Sheriff and Contractor's execution of the Transfer documentation.

SECTION 8. TERMINATION.

This Agreement may be terminated in whole or in part by either Party upon forty-five (45) calendar days written notice to the other Party at the following addresses, or at a new address as provided in writing to the nonmoving party by a party which has moved its physical location within thirty (30) calendar days of said relocation without the necessity of amending this contract:

CONTRACTOR: Horses Unlimited Rescue and Education Center, Inc.
 Attn: Victoria J. Hall
 14014 Tuckey Ln.
 Horizon City, TX 79928-7244
 horsebehaviorist@gmail.com

COUNTY: County of El Paso
 Attn: Chief Administrator
 500 E. San Antonio, Suite #302A
 El Paso, TX 79901
 BKeller@epcounty.com

Copy: El Paso County Sheriff's Office
 Attn: Sheriff
 3850 Justice Rd.
 El Paso, TX 79938
 RWiles@epcounty.com

 Animal Welfare Department
 Attn: Director
 9521 Socorro Rd., Suite B3
 El Paso, TX 79927
 LCombs@epcounty.com

In the event of termination, the County shall relocate the animals it referred to the Contractor during the corresponding contract term on or before the thirtieth (30th) calendar day of receiving

or sending notice of termination. If the El Paso County Commissioners Court terminates this Agreement due to contractor's breach of the Agreement, Contractor shall return to the County within thirty (30) calendar days of receiving the notice of termination the pro rata amount of the \$7,000 dollars paid for the corresponding contract term based on the number of calendar days remaining in the contract year.

SECTION 9. MISCELLANEOUS.

- A. Authority. It is understood and agreed to between the Parties that any portion of this Agreement for the delivery of livestock services for which appropriate legal authority has not been granted to the County, shall be null and void and of no force and effect, and the County shall not be obligated to provide those services, including by and through the Contractor.

- B. Governmental functions. The Parties expressly agree that, in all things relating to this Agreement, the County 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 County, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

- C. Notice. Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by e-mail, personally in hand or sent by certified mail, return receipt requested, postage prepaid and addressed to the appropriate party at the address identified in Section 6 of this Agreement. Notices are effective upon receipt.

- D. Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, THE COUNTY WILL NOT BE LIABLE TO ANY OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE PARTY'S RIGHTS) FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLERARY DAMAGES OF ANY KIND including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT, REGARDLESS OF WHETHER THE COUNTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

- E. INDEMNIFICATION. TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE CONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE COUNTY AND THE COUNTY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE RELATED TO CONTRACTOR, AND/OR CONTRACTOR'S

EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS RELATED TO THIS AGREEMENT. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS AGREEMENT. THIS CLAUSE SHALL SURVIVE TERMINATION.

- F. Intentional Risk Allocation. Each of the Parties acknowledges that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and limitations of liability, are separately intended to limit forms of relief available to the Parties.
- G. Independent Contractors. The County and the Contractor are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the County nor the Contractor nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.
- H. No Exclusivity. This Agreement does not obligate either party to conduct business exclusively with the other party for the services made subject to this Agreement.
- I. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, except as specifically noted. Venue shall lie in El Paso County, Texas.
- J. Non-assignment. Contractor shall not transfer or assign all or any of its rights, obligations, or benefits hereunder in whole or in part to any third party, without the prior written consent of the County.
- K. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and agreements that have been made in connection with the subject matter. No modifications or amendments to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto. All prior negotiations, agreements, and understanding with respect to the subject matter of this Agreement are superseded hereby.
- L. Waiver of Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

- M. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect.

- N. Force Majeure. Neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts of God, acts or omissions of carriers, or other similar causes beyond their control.

IN WITNESS WHEREOF, the Parties have executed this agreement in their official capacities, with legal authority to do so.

COUNTY OF EL PASO

 Ricardo A. Samaniego
 County Judge, County of El Paso

Date: _____

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

Lauralei J. Combs
 Lauralei Combs, Director
 Animal Welfare

 Richard Wiles, Sheriff
 Sheriff's Office

APPROVED AS TO FORM

Ana Schumacher
 Ana Schumacher
 Assistant County Attorney

**[Contractor's signature on the following page]
 Contractor's Signature Page**

HORSES UNLIMITED RESCUE and EDUCATION CENTER, INC.

Victoria J. Hall
Director

Date: _____