

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. R-19-137 ENACTMENT NO. _____

SPONSORED BY: Brad Winter, by request

1 RESOLUTION

2 APPROVING AND ACCEPTING A GRANT FROM PETSMART CHARITIES FOR
3 THE ANIMAL WELFARE DEPARTMENT TO OCCUPY AN ADOPTION BOOTH
4 AT THE PETSMART EVERYDAY ADOPTION CENTER (EAC) LOCATION AND
5 PROVIDE AN APPROPRIATION TO ANIMAL WELFARE DEPARTMENT IN
6 FISCAL YEAR 2019.

7 WHEREAS, the PetSmart Charities wishes to grant the City of Albuquerque
8 \$46,788 to pay for Adoption Counselors at the PetSmart Everyday Adoption
9 Center (EAC) in the Eubank store for the purpose of rehoming shelter animals
10 cared by the City of Albuquerque Animal Welfare Department; and

11 WHEREAS, the City of Albuquerque Animal Welfare Department will utilize
12 grant funds in the amount of \$46,788 to contract Adoption Counselors to
13 provide direct animal care, counseling and facilitating visitation between the
14 animals and potential adopters visiting the PetSmart EAC as well as provide
15 supplies and equipment; and

16 WHEREAS, the City of Albuquerque Animal Welfare Department is desirous
17 of accepting these funds require \$8,048 in indirect costs from the General fund
18 to support this grant.

19 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
20 ALBUQUERQUE:

21 Section 1. That the Mayor is further authorized to execute a contract
22 agreement with the PetSmart Charities for said activities and do all things
23 necessary and proper to continue the program.

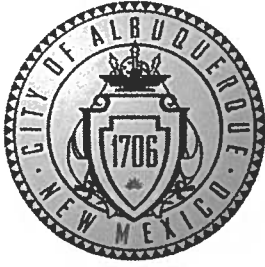
24 Section 2. That funds in the amount of Fifty-Four Thousand Eight Hundred
25 and Thirty-Six dollars (\$54,836), which consist of Forty-Six Thousand Seven
26 Hundred and Eighty-Eight dollars (\$46,788) in Grant Funds from PetSmart

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1 Charities and Eight Thousand Forty-Eight Hundred (\$8,048) for indirect costs
2 from the Transfer to Operating Grants Program in the General Fund, and
3 hereby appropriated to the Animal Welfare Department for Fiscal Year 2019.

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CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

February 4, 2019

Mayor Timothy M. Keller

TO: Klarissa J. Pena, President, City Council

FROM: Timothy M. Keller, Mayor

SUBJECT: Approving and Accepting the FY/19 PetSmart Charities AWD Adoption Site


For your consideration, please find the attached resolution which will allow the Animal Welfare Department to facilitate and fund an AWD Adoption site located at the PetSmart Everyday Adoption Center (EAC).

AWD has applied for grant funds from PetSmart in the amount of \$46,788 for the period of April 1, 2019 through March 31, 2020. Indirect overhead of \$8,048 cost from the General fund is required to support this grant.

The attached resolution is submitted for consideration and action by the Council.

Title/ Subject of Legislation: Resolution approving and accepting the PetSmart Charities Animal Welfare Department adoption site in Fiscal Year 2019.

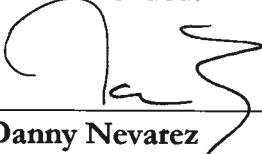
Approved:

 3/15/19
Sarita Nair Date
Chief Administrative Officer

Approved as to Legal Form:

Armandha M. Hult (Acting) for 3/2/19
Esteban A. Aguilar Jr. Date
City Attorney

Recommended:

 2/5/19
Danny Nevarez Date
Director, Animal Welfare Department

Cover Analysis

- 1. What is it?** Resolution approving and accepting the FY/19 grant for AWD Adoption Site at the PetSmart EAC Location.
- 2. What will this piece of legislation do?** This legislation approves an application to utilize this grant to facilitate contractual staff, supplies and direct animal care AWD adoption site at PetSmart EAC location.
- 3. Why is the project needed?** This project will foster community partnerships, increase adoptions and reach citizens who choose not to enter a shelter environment.
- 4. How much will it cost and what is the funding source?** The PetSmart Grant is for \$46,788. Indirect Overhead of \$8,048 will be covered from the Transfer of the Operating Grants Program in the General Fund.
- 5. Is there a revenue source associated with this contract? If so, what level of income is projected?** Grant of \$46,788 from PetSmart Charities will be appropriated to fund 265.

FISCAL IMPACT ANALYSIS

TITLE: Approving and Accepting the FY19 PetSmart Charities AWD Adoption Site

R: O:

FUND: 265

DEPT: 1077000

- ☐ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☒ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

		Fiscal Years				
		2018	2019	2020	2021	Total
Base Salary/Wages						-
Fringe Benefits at		-	-	-	-	-
Subtotal Personnel		-	-	-	-	-
Operating Expenses			-			-
Contractual Services			46,788		-	46,788
Indirect Costs	17.2%	-	8,048	-	-	8,048
Total Expenses		\$ -	\$ 54,836	\$ -	\$ -	\$ 54,836
<hr/>						
[x] Estimated revenues not affected						
[] Estimated revenue impact						
Amount of Grant		-	46,788	-	-	46,788
City Cash Match						
City Inkind Match						
City IDOH		-	8,048	-	-	8,048
Total Revenue		\$ -	\$ 54,836	\$ -	\$ -	\$ 54,836

These estimates do not include any adjustment for inflation.

COMMENTS: Grant Funds will be used to facilitate an AWD adoption site at the PetSmart EAC location to include contract employees, supplies and direct animal care for the FY19 through FY20. IDOH will be paid from the Transfer of the Operating Grants Program in the General Fund.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:


Erica J. Garcia, Fiscal Officer

APPROVED:


Danny Nevarez, Director (date) 2/5/19

REVIEWED BY:


EXECUTIVE BUDGET ANALYST


BUDGET OFFICER (date) 3/1/19


CITY ECONOMIST



GRANT AGREEMENT

This Grant Agreement ("Grant Agreement") is entered into between PetSmart Charities Inc., an Arizona nonprofit corporation and tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code ("Code"), whose address is 19601 N. 27th Avenue, Phoenix, AZ 85027 ("Charities"), and City of Albuquerque, whose address is PO Box 1985, Albuquerque, NM 87103, ("Grantee"). The effective date of this Grant Agreement is upon execution and delivery by both parties, as indicated below.

Section 1 – Grant Purpose and Terms:

Grant Funds	\$148,380
Grant Purpose	\$148,380 to support staffing, maintenance and operations costs including but not limited to direct animal care, equipment, and supplies to support the City of Albuquerque and PetSmart Charities' mutual goal of increasing adoptions through the Everyday Adoption Center (EAC) at PetSmart #174 located at 350 Eubank Blvd NE, Albuquerque, NM 87123. The grant funds are intended to enable City of Albuquerque to develop a fiscally responsible and cost-effective operation of the EAC as well as ensure that the program requirements are met as outlined in the EAC Partner Handbook. The EAC will be operated at full or near capacity at all times. City of Albuquerque will provide (3) part-time or volunteer staff Monday 9:00 a.m. – 9:00 p.m. (open 10-8) Tuesday 9:00 a.m. – 11:00 a.m. and 7:00 p.m. – 9:00 p.m. (closed) Wednesday through Saturday 9:00 a.m. – 9:00 p.m. (open 10-8) Sunday 9:00 a.m. – 7:00 p.m. (open 10-6)
	Should Organization request an extension and/or a reallocation of funds, a request must be submitted in writing to PetSmart Charities for approval a minimum of 30 days prior to grant deadline. The request must outline progress to date including funds expended, funds remaining and a rationale for the requested grant amendment.
Distribution Schedule of Grant Funds	Cash grant to be distributed in three installments. The first payment of \$68,172 upon execution of agreement, the second payment of \$46,788 on 3/12/19 upon receipt of a completed Interim Impact Report and the third payment of \$33,420 on 3/12/20 upon receipt of a completed Interim Impact Report.
Grant Period	Start: Upon date of full execution End: Until terminated
Grant Conditions	None
Impact Report(s)	The organization agrees to provide the following reports to PetSmart Charities in connection with this grant, on or before the deadlines set

	<p>forth below. PetSmart Charities reserves the right to change the method and format of how of how reports are provided.</p> <p>Unless otherwise specified, submit all reports via www.cybergrants.com/petsmartcharities/reports/app. Examples of all reports and partner resources may be found at https://www.petsmartcharities.org/pro/resources. An interim grant report is due by 3/12/19, an interim grant report is due by 3/12/20 and a final impact report will be due by 3/12/21. Impact reports will include:</p> <ol style="list-style-type: none"> 1) Detailed use of grant funds and expenditure 2) Description of impact of grant 3) Number and type of animals adopted at EAC
Grant Acknowledgement	<p>Organization will create and distribute, to appropriate local media and to post on their organizational website, a press release with an approved quote from an appropriate representative of PetSmart Charities, Inc. announcing PetSmart Charities grant to local media within 60 days of execution. The press release must be submitted to PetSmart Charities at PublicRelations@PetSmartCharities.org for review and approval a minimum of 10 days prior to publishing.</p> <p>Organization will add the PetSmart Charities logo badge to their organizational website on the homepage and/or supporters/sponsors page.</p> <p>Organization will Share the grant news and supported program updates on organization's and PetSmart Charities' Social Media.</p>

- A. Use of Grant. Grantee agrees that it will not use, and will not allow any of its employees, agents or representatives to use, any funds provided under this Grant Agreement for any purpose other than the Grant Purpose (including, without limitation, any lobbying or political activities or any other purpose not permitted in Section 501(c)(3) of the Code), during the Grant Period, and subject to any Grant Conditions. If the Grant Funds include any in-kind product, Grantee may be required to execute the Donated Goods Addendum. Grantee will immediately notify Charities if it is unable to comply with the terms of this Grant Agreement. If Grantee has previously received any form of grant from Charities, this Grant Agreement is contingent upon successful performance by Grantee under that agreement. If the Grant Funds include the any services or products, such support may be provided directly by Charities or indirectly through a subsidiary, contractor, representative or agent of Charities and Grantee will participate in any specified program, technical assistance, or training within the guidelines, procedures and timelines defined by Charities or its authorized representative.
- B. Acknowledgment of Grant. Grantee will publicly acknowledge this Grant as required by the Grant Acknowledgment. Before making such acknowledgement, however, Grantee will obtain prior written approval from Charities (including details such as graphics, layout, copy, media, etc.). Grantee will provide Charities a reasonable amount of time for such review and approval.

- C. Unspent Funds: Failure of Grant Purpose or Conditions. If any Grant Funds are not spent at the expiry or sooner termination of the Grant Period, such unspent funds must be returned to Charities within thirty (30) days following such expiry or termination. Additionally, if Grantee is unable or unwilling at any time during the Grant Period to comply with the Grant Purpose or the Grant Conditions, Grantee will immediately notify Charities.
- D. Modifications to Grant. Any modifications to this Grant Agreement must be in writing and signed by both parties, except the following modifications may be made without a formal amendment if a written request is submitted by Grantee in writing (e-mail is acceptable if acknowledged by the recipient) and approved in writing (including e-mail) by Charities in its sole discretion:
1. Minor adjustments to the Grant Purpose or Grant Conditions that do not materially affect the original intent of the Grant; or
 2. Change or extend the Grant Period.
- E. Reporting. Grantee is required to submit the Impact Report(s) to Charities set forth above, along with information that indicates how the Grant Funds were spent and such other information as may be reasonably requested by Charities.
- F. Early Termination by the Parties. At any time prior to the end of the Grant Period, either party may terminate this Grant Agreement at any time, with or without cause, upon at least thirty (30) days written notice of such termination to the other party.
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- G. Early Termination by Charities. Charities may immediately terminate this Grant Agreement upon written notice to Grantee if Charities determines in its sole discretion that:
1. Grantee has not complied with the Grant Purpose or Grant Conditions;
 2. Grantee is the subject of any legal, regulatory or media investigation or is engaged in any action or course that appears to be unprofessional, uncharitable or otherwise inappropriate;
 3. Grantee ceases to operate or materially and adversely changes its method of operation, is insolvent, or files for or is the subject of any type of receivership, bankruptcy or similar proceeding;
 4. Any representation made by Grantee was not accurate when made or it becomes inaccurate at any time during the Grant Period;
 5. Charities finds the results of any audit or inquiry regarding Grantee to be unacceptable;
 6. Grantee (or any person or organization linked to or with Grantee) becomes disreputable or is the subject of negative media attention, including social media; or
 7. Grantee has not complied with the requirements of any other agreement Grantee has with Charities.
- H. Effect of Termination. Upon termination of this Grant Agreement for any reason, Grantee will return to Charities any unspent portion of the Grant Funds as provided above, and all rights and obligations of the parties will cease, except for any rights and obligations that by their terms survive the expiry or termination of this Grant Agreement.
- I. Additional Actions by Charities. If Charities terminates this agreement as set forth in Section G, or if anytime either during the Grant Period or for two (2) years thereafter, Charities determines in its sole and absolute discretion that the Grant Purpose was not fulfilled or that the Grant Conditions were not satisfied, Charities may (without limiting its other rights or remedies hereunder or at law):
1. Withhold any pending or future payments of Grant funds; or
 2. Revoke any payment of funds not used in accordance with this Grant Agreement and require Grantee to provide a full refund to Charities of all previously provided funds.

J. **License to Grantee.** In addition and subject to Section B, Charities may provide a paid-up, limited, non-exclusive, revocable right to publish, print, transmit, display or otherwise use Charities' name and logo ("Marks"), and Grantee will provide any recognition and benefits at the same level provided to other organizations giving Grantee comparable levels of funding. Any materials that include the Marks (or other intellectual property) of Charities, including, but not limited to, any information to be transmitted in electronic or digital format (including e-mail, social media platforms or websites), must be approved by Charities for quality control purposes prior to any printing, distribution, publication or other use (even if such use is the same as or similar to prior approved uses). Charities' Marks may only be used in the exact form, style, font and colors as required by Charities, and Charities may dictate the copyright, trade or service mark indicia that must accompany each use of a Mark. Grantee will endeavor to provide Charities with at least ten (10) business days to review a proposed use of Charities Marks, and each submission of such proposed use will include the full context (e.g., media, platform, accompanying collateral or materials, etc.) associated with such use. Grantee will not use any Marks of Charities' without approval nor will Charities' Marks be used in a negative light or critical manner. The foregoing limited license may not be transferred, assigned or sublicensed. Charities may immediately terminate this license if Charities, in its sole and absolute discretion, determines Grantee's use of the Marks to be unacceptable.

K. **License to Charities.** During the Grant Period, and subject to the terms of this paragraph, Charities has the paid-up, limited, non-exclusive, revocable right to publish, print, transmit, display or otherwise use Grantee's name and logo ("Marks"). Grantee's Marks will not be used in a negative light or critical manner. The foregoing limited license may not be transferred, assigned or sublicensed. Charities use of Grantee's Marks will limited to only be used to support or further Charities' mission.

Section 2 – Grantee's Representations. As of the date of this Grant Agreement, Grantee represents to Charities that:

- A. Grantee is either: an organization exempt from federal income tax under Section 501(c)(3) of the Code, (ii) a governmental entity identified in Section 170(c)(1) of the Code that will use the grant for exclusively public purposes, or (iii) an "Indian tribal government," as defined under Section 7701(b)(40) of the Code, that is treated as a State under Section 7871 of the Code and that it will use Grant Funds for exclusively public purposes.
- B. Grantee holds and maintains all licenses, permits and registrations necessary or appropriate for its lawful operation and fulfillment of the Grant Purpose and satisfaction of the Grant Conditions.
- C. Grantee is and will remain in compliance with all applicable local, state, tribal and federal laws, regulations and other requirements to which Grantee is subject.
- D. Grantee is not on any federal terrorism "watch list" and any Grant Funds will be used in compliance with all applicable anti-terrorist financing and asset control laws, statutes and executive orders.
- E. Grantee agrees that all statements made by Grantee in any application and ancillary materials are true and accurate in all material respects. Grantee agrees to notify Charities promptly in writing of any change regarding the ongoing truthfulness and accuracy of such statements during the Grant Period.

Section 3 – Miscellaneous Provisions.

- A. Maintenance of Records and Audit. Grantee agrees to maintain adequate books and records and other financial documents appropriate for its organization (including all records related to disposition of the Grant) (collectively, "Records"). Grantee will maintain the Records in a manner that Charities (or its auditor) may readily determine that all Grant Funds were used exclusively for the Grant Purpose. During the Grant Period and for two (2) years thereafter, Charities may inspect and audit the Records to determine Grantee's compliance with this Grant Agreement upon at least ten (10) business days prior notice and during normal business hours. Grantee will provide Charities (and its auditor) with unfettered access to the Records and will fully cooperate with such inspection or audit. Grantee expressly grants permission to Charities or its designees to make inquiries and discuss with, or request documentation from, third parties about Grantee related to Grantee's performance under this Grant Agreement.
- B. Regulatory Compliance Cooperation. Grantee will fully cooperate with Charities and provide Charities with any requested information or documentation regarding Charities' compliance with the requirements of any governmental agency, including Charities' nonprofit or tax-exempt status.
- C. Independent Entities. Nothing in this Grant Agreement is intended or will be construed to create any type of partnership, joint venture, employment, franchise or other similar relationship between the parties. The parties agree each party is an independent entity and will be solely responsible for the acts and omissions of its respective officers, agents, employees, and representatives and during and after the term of this Grant Agreement. The parties further agree that the Grant Funds are being provided for the purpose of supporting the Grantee, and there is no explicit or implicit oral or written agreement or understanding that any Charities director, officer or other representative will receive compensation in connection with such payment.
- D. Indemnification. Grantee hereby defends, indemnifies and holds harmless Charities and PetSmart, Inc. (including their respective affiliates, directors, officers, managers, employees, representatives, agents, assigns and successors), from and against all costs, expenses (including reasonable attorneys' fees and expenses through all appeals), claims, judgments, proceedings, losses, liabilities, damages (including property damage or bodily injury or death) or intellectual property infringement incident to or arising out of Grantee's: (a) breach or violation of this Grant Agreement; (b) willful misconduct or negligent act(s) or omission(s); (c) receipt or use of the Grant Funds, or any program or activity of Grantee related to this Grant Agreement; (d) violation of applicable law; or (e) infringement of intellectual property. Notwithstanding the foregoing, this provision shall not be applicable if Grantee is a governmental entity and as such, is prohibited by law from indemnifying Charities.
- E. Non-Disparagement. Grantee will not make, directly or indirectly, any negative statements, whether written or oral (including in any digital electronic format) about Charities, PetSmart or their respective activities, owners, officers, directors, or employees. This includes any statement intended, or that could be reasonably expected given its content or context, to harm or that would lead to unwanted or unfavorable publicity.
- F. Equal Opportunity. Grantee agrees that it will not discriminate by reason of race, color, creed, religion, national origin, age, sexual orientation, disability, veteran status, gender, marital status or any other legally protected status.
- G. Jurisdiction and Governing Law. With respect to any action or proceeding arising out of or related to this Grant Agreement or otherwise between the parties, the parties hereby agree that: (i) venue and jurisdiction will be exclusively in the federal and state courts situated in Maricopa County in the State

of Arizona, U.S., and (ii) they hereby waive jury trial. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona.

- H. Legal Fees. If either party brings any action or proceeding against the other arising under or related to this Grant Agreement, the prevailing party will be entitled to receive its reasonable attorneys', experts', investigation, and other related fees, costs and expenses from the other party.
- I. Assignment: Third-Party Beneficiaries. This Grant Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Grantee will not assign, delegate or sublicense, in whole or in part, any of its rights or obligations under this Grant without the prior written consent of Charities, which may be granted, withheld or conditioned in its sole discretion. Nothing in this Grant Agreement is intended or will be construed to give any third party any legal or equitable right, remedy or claim under or with respect to this Grant Agreement, except for a party's permitted successors or assigns.
- J. Survival. The terms and provisions of paragraph 3.D. (Indemnification), along with any other terms or provisions of this Grant Agreement that are by their terms intended to survive the expiry or termination of the Grant Agreement, will survive expiry or termination of this Grant Agreement.
- K. Construction. This Grant Agreement will not be construed for or against either party on the basis of which party drafted this Grant Agreement, and each party had the opportunity to review this Grant Agreement with their respective legal counsel (or other professional advisor) to the party's satisfaction.
- L. Notices. Any notice given or required under this Grant Agreement will be in writing and delivered to the respective addresses of the parties set forth above or at such other address as either party specifies in writing. Notices will be deemed received: (a) five (5) days after being sent by certified or registered mail, postage prepaid, return receipt requested; (b) on the next business day after when sent by overnight delivery with a major overnight courier; or (c) on receipt of confirmation following transmission via electronic mail or facsimile if received on a business day during business hours (otherwise, deemed received the next business day) and if followed by a hard copy sent by using one of the delivery methods in the preceding clauses (a) or (b) of this paragraph.
- M. Waiver. Severability. The failure of either party to insist upon the performance of any term or provision of this Grant Agreement or to exercise any right or remedy will not be construed as a waiver or relinquishment of such party's right to assert or rely upon any such term or right or remedy on any future occasion. If any provision of this Grant Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. If one or more provisions of this Grant Agreement are held to be unenforceable under applicable laws by a court of competent jurisdiction, those provisions will be limited or eliminated to the minimum extent necessary.
- N. Execution: Counterparts. The parties each represent that the individuals signing below are duly authorized to execute this Grant Agreement on behalf of the party for which they are signing. This Grant Agreement will not be effective until all information requested by Charities is provided by Grantee and is fully executed. This Grant Agreement may be executed by facsimile or electronically (including exchange of scanned signature pages by e-mail), each of which will be deemed an original, and in several counterparts, all of which will constitute one and the same instrument.

O. **Entire Agreement.** This Grant Agreement constitutes the entire agreement and understanding between the parties, and supersedes any and all prior discussions, negotiations or other communications regarding the subject matter hereof. Any waiver or amendment of the terms of this Grant Agreement is binding only if in writing and signed by the authorized representatives of both parties.

TO EVIDENCE THEIR AGREEMENT, the parties have executed and delivered this Grant Agreement, all effective as of the last date written below.

"CHARITIES"

PetSmart Charities, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

"GRANTEE"

City of Albuquerque

Signature: _____

Name: _____

Title: _____

Date: _____