

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

INTERLOCAL AGREEMENT FOR ANIMAL CONTROL AND ANIMAL SHELTER SERVICES

This Interlocal Agreement for Animal Control And Animal Shelter Services ("Agreement") is entered into by and between Collin County, Texas (sometimes referred to herein as the "County" and/or "Party") and the City of Lowry Crossing (sometimes hereinafter referred to herein as "City" and/or "Party") through their duly authorized officers and/or governing boards. This Agreement shall be effective on the commencement of animal control and animal shelter services, which shall be ninety days following written notice of commencement of same by County to City, regardless of when this Agreement is approved and executed by any Party or Parties hereto ("Effective Date").

RECITALS

WHEREAS, the County is authorized to provide animal control and animal shelter services within the County, including but not limited to vaccination of animals, reporting of human exposure to rabies, quarantine and testing of biting animals, reduction of the stray animal population, restraint of dangerous animals, prohibition of dogs running at large and of inhumane treatment of animals, and other related services; and to prescribe penalties for violation of such provisions in accordance with Chapters 822, 825 and 826 of the Texas Health & Safety Code, and Chapter 142 Agriculture Code; and

WHEREAS, prior to the commencement of this Agreement the County will have completed construction of a new Animal Shelter ("Shelter") for purposes of housing stray and impounded animals for the health and safety of the residents of County and of the City; and

WHEREAS, the City to is authorized to provide animal control and animal shelter services pursuant to Chapters 822, 825 and 826 of the Texas Health & Safety Code, in addition to such authority that may be granted under its home-rule charter (as applicable); and

WHEREAS, pursuant to their authority as vested by the Interlocal Cooperation Act, ch. 791 Texas Government Code, the County and City have agreed to cooperate in the provision of animal control and animal shelter services to residents of the City; and

WHEREAS, the County and City seek to set forth in this Interlocal Agreement their respective obligations, responsibilities and duties regarding certain animal control and animal shelter services covered by this Agreement; and

WHEREAS, each Party to this Agreement represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly

authorized governmental function that it is authorized to perform individually under the applicable statutes of the State of Texas and/or (as applicable) its municipal charter. Further, each Party represents and warrants that any compensation to be made to the other Party as set forth in this Agreement is in an amount that fairly compensates the performing Party for the services or functions described herein, and is made from current revenues available to the paying Party;

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals, having been found by the Parties to be true and correct in all respects are incorporated into this Agreement by reference.
2. **County Obligations.** In consideration for the promises of City and payment of the sums hereinafter set forth, County agrees to perform those animal control and animal shelter services as are expressly set forth in the documents entitled "Scope of Services" which is attached hereto as Exhibit "A" and incorporated herein by reference.
3. **City Obligations.** In consideration for the performance of the animal control and animal shelter services detailed in Exhibit "A" by County, City agrees to:
 - 3.1 make payment to the County in the amount of Twelve Thousand and One Hundred and Twenty Five Dollars (\$12,125.00) per year for each year of the term of this Agreement including renewal terms, such payments made from funds appropriated in the then current fiscal year budget of the City;
 - 3.2 The City's payment shall be made in quarterly installments to the County in advance, due and payable on the first day of each quarter during the term of this Agreement, including any renewal terms, with the first payment due and payable within ten (10) days from the Effective Date of this Agreement. City agrees that any payment due to County hereunder which is not paid on or before Thirty (30) days from the due date shall bear interest at the rate of interest prescribed by the Texas Prompt Payment Act (Section 2252.025, Tex. Gov't Code) from the date due until paid;
 - 3.3 amend its animal control Ordinances as necessary to conform such Ordinances with the services outlined in Exhibit "A" hereto (including the duly adopted animal control policies established by the County), so as to avoid any conflict with the terms of this Agreement.
4. **City Rights Preserved.** Nothing in this Agreement shall divest, diminish or affect the City's authority to issue notices of violations and court citations for alleged violations of City Ordinances, however City delegates to County the authority to perform the animal control and animal shelter services described in Exhibit "A" hereto on the City's behalf and as the City's

agent in the provision of such services.

5. **Term / Renewal Terms.** This Agreement shall commence on the Effective Date and shall continue for an initial term of one (1) year, unless terminated earlier as provided in this Agreement or by law. Unless terminated in accordance with this Agreement or by law, upon expiration of the initial term, this Agreement shall renew automatically for renewal terms of one (1) year upon the same terms and conditions, subject to the Parties' right to terminate due to the failure of their governing boards to appropriate funds in amounts sufficient to compensate the County for the continuation of the services described in Exhibit "A". **Prior to any renewal term herein, the County may choose to amend and/or increase the annual fee to be paid by City, but in such event shall provide at least Thirty (30) days advance notice of such amendment and/or fee increase to City, such notice to be delivered prior to the termination of the then current term of the Agreement.** The remaining terms and conditions of this Agreement shall continue in force and effect unless amended by the Parties in the manner set forth herein.

6. **Notice of Nonappropriation.** If, for any fiscal year, City's governing board fails to appropriate funds in amounts sufficient to pay County for the performance of its obligations under this Agreement, City shall promptly give notice to County of such event. City shall make a reasonable effort to ensure that funds are appropriated to fully perform on its obligations as set forth in this Agreement. City shall endeavor to provide County with at least ninety (90) days advance written notice of its intent not to appropriate the necessary funds for the City's performance of its obligations under this Agreement.

7. **Termination.** Notwithstanding any other provision, this Agreement may be terminated as provided in this section.

7.1. **By Mutual Agreement.** This Agreement may be terminated by mutual agreement of all of the Parties, as evidenced by a written termination agreement.

7.2 **For Nonappropriation of funds.** If the City fails to appropriate the funds necessary to for the performance of its obligations under this Agreement and such nonappropriation cannot be mitigated adequately by efforts of the County in adjusting its budget for continued performance of animal control and animal shelter services on City's behalf, County may cease the provision of animal control services to the City thereby terminating this Agreement upon the first day of the fiscal year of such non-appropriation. In such event, County shall provide City with reasonable advance notice of its intent to terminate this Agreement in accordance with this provision.

7.3 **By the County.** County may terminate this Agreement with reasonable advance written notice to City of its intent to do so. In the event County exercises its rights to terminate this Agreement under this section during the term of the Agreement or any renewal term, County shall, within a reasonable time, refund to City the unexpended portion of its quarterly fee calculated on a pro-rata calendar basis.

7.4 By City. City may terminate this Agreement: 1) for cause in the event County fails to perform any of its obligations as set forth herein, including the scope of services listed in Exhibit "A" after providing written notice to County and a reasonable opportunity to cure such defect in performance; and/or 2) due to City's failure to appropriate funds in amounts sufficient to meet its obligations hereunder.

8. Additional Rights Upon Default. Following exhaustion of the dispute resolution process set forth in section 9 below, this Agreement may be enforced in law or in equity, including a suit for specific performance and/or for damages. The Parties agree that specific performance should be an available remedy due to the difficulty in determining the damages that may accrue as a result of a material breach of the Agreement by any other Party. In the alternative, should any Party breach any of the terms of this Agreement, the non-breaching Party to this Agreement may obtain a judgment against any breaching Party for damages incurred as a result of such breach. The successful Party in such litigation shall be entitled to a recovery of its costs and attorneys' fees. The Parties agree to a limited waiver of their respective immunities (both as to suit and to damages), but only as is necessary to allow the non-breaching Party to recover its damages, costs and attorneys' fees from the breaching Party's breach(es) of this Agreement.

9. Dispute Resolution Process.

9.1. Dispute Resolution Process. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following procedures ("Dispute Resolution Process").

9.1.1. Notice. The aggrieved Party shall notify the responding Party of the dispute, by way of a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding Party shall have a reasonable opportunity to respond.

9.1.2. First Resolution Meeting. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to affect an agreed resolution of the issue.

9.1.3. Second Resolution Meeting. If the Parties' designated representatives reach an impasse concerning the dispute, the following representative shall meet to discuss the dispute: (a) if the Party is a City, the City Manager and/or the Mayor; (b) if the Party is the County, a County Commissioner and/or County Judge.

9.1.4. Successful Resolution. If the Parties reach an accord at any stage of the meeting, they shall reduce their agreement to writing. Such writing shall be

presented for approval by the Parties' respective governing boards. If approval of the writing is obtained, such writing shall constitute an amendment to this Agreement with respect to the subject matter(s) of the notice of the dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matter other than the subject matter(s) submitted to the Dispute Resolution Process.

9.1.5. Unsuccessful Resolution. If the Parties are unable to reach a resolution of the dispute within a reasonable time, either Party may pursue such legal and equitable remedies as are available to it under Texas law.

10. **Miscellaneous.**

10.1. Interpretation of Agreement. Although drawn by one Party, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any other Party.

10.2. Administration of Agreement. The County shall administer this Agreement on behalf of the County. The City Council of the City shall administer this Agreement on behalf of the City. Each Party may designate a new administrator on written notice to the other.

10.3. Governing law. This Agreement shall be governed by the laws of Texas, without regard to the principles of conflict of laws.

10.4. Venue. Any litigation in any way relating to this Agreement shall be brought in State court in Collin County, Texas.

10.5. Non-Assignability. A Party shall not assign, sublet or transfer its interest in this Agreement without the written consent of the other Party.

10.6. Notices. Any notice or request required by this Agreement must be in writing, and may be given or be served by depositing the same in the United States Postal Service, postal prepaid, and certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same in person to such Party, or to an officer of such Party, or by telecopy, when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner herein above described shall be effective from and after such deposit if it received by its intended recipient within 10 business days of the mailing. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For purposes of notice, the addresses of the Parties shall, until changed as herein provided, be as follows:

For the County:

Keith Self, Collin County Judge
2300 Bloomdale, Suite 4192
McKinney, Texas 75071

For City of Lowry Crossing:

Derek Stephens, Mayor Lowry Crossing
Lowry Crossing City Hall
1405 S. Bridgefarmer Road
McKinney, Texas 75069

However, the Parties hereto shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice to the other Party.

10.7. Severability. Should any provision of this Agreement or the application thereof be held invalid or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent, consistent with the intent of the Parties as evidenced by this Agreement.

10.8. Non-waiver. Failure of a Party to exercise any right or remedy in the event of default by any other Party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

10.9. Authority of Signatories. The Parties represent that the individuals signing this Agreement on their behalf possess full power and authority to enter into this Agreement from their respective governing boards in compliance with the laws of the State of Texas.

10.10. Further Assurances. Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

10.11. Retention of Defenses. The Parties agree that, neither this Agreement nor the performance thereunder shall affect, impair nor limit their respective immunities and limitations of liability to the claims of third parties, including third-party claims related to the animal control and animal shelter services provided by County hereunder. Notwithstanding each Party's acknowledgment that this Agreement is duly authorized, validly existing and binding on all Parties hereto, the Parties agree that no Party has waived its sovereign immunity to the claims of third parties by entering into and performing its obligations under this Agreement.

10.12 Modification. If the Parties desire to modify this Agreement during or after the

initial term, any modifications may be either incorporated herein by written amendment or set forth in a new written agreement.

10.13. Entire Agreement. This Agreement is the entire agreement of the Parties. This Agreement may not be altered or amended except by mutual written agreement as provided herein.

10.14. Counterparts. This Agreement may be executed in one or more identical counterparts, each of which will be deemed an original for all purposes.

10.15. No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies upon any person or entity other than the Parties.

DATED to be effective this the 1st day of October, 2009.

COLLIN COUNTY, TEXAS
2300 Bloomdale, Suite 4192
McKinney, Texas 75071

BY: _____

TITLE: _____

DATE: _____

[Signature]
County Judge
9/16/09

CITY OF LOWRY CROSSING, TEXAS

1405 S. Bridgefarmer Road
McKinney, Texas 75069

BY: _____

TITLE: _____

DATE: _____

[Signature]
Mayor
8/11/09

ATTEST: _____

NAME: _____

TITLE: _____

Georgia S. Shepherd
NAME: *Georgia S. Shepherd*
TITLE: *Administrative Secretary*

ATTEST: _____

NAME: _____

TITLE: _____

Janis Cable
NAME: *Janis Cable*
TITLE: *City Secretary*

EXHIBIT "A"

ANIMAL CONTROL AND ANIMAL SHELTER – SCOPE OF SERVICES

Animal Control:

- Normal Operating days/hours – 8a-5p M-F.
 - 3 Animal Control Officers - 6,240 hours per year less vacation, holiday, sick and administrative leave
 - 1 Animal Control Supervisor – 2,080 hours per year less vacation, holiday, sick or administrative leave
- 24 hour/7 day on-call services for emergencies. The following situations will be considered emergencies:
 - Any/all Fire and Police/Sheriff calls for assistance
 - Provide support to police/Sheriff personnel when called for assistance in cases that may include estrays. This includes all aspects from capture and impoundment to final disposition.
 - Personnel responding to stray calls shall be trained and equipped to handle euthanasia.
 - Gravely injured animal.
 - Vicious/dangerous animal.
 - Animal attack/bite against a human.
 - Livestock loose/Estray.
 - Suspicion of rabid animal.
- Response times: 45-minute response time to calls (measured from time of call to arrival on scene) – in general. Circumstances may arise to delay response time (i.e., inclement weather, prior calls, heavy call volume, travel to remote locations, etc.). If 45-minute response time cannot be met, the responding officer shall provide a reasonable estimated time of arrival. Maximum response time of 2 hours.
- Shall comply with the regulations contained in the most recently adopted Collin County Rabies/Animal Control Regulations Court Order (currently 96-117-02-26), most recently adopted Additional Provisions to the Rabies/Animal Control Regulations (currently 97-544-08-11), and the most recently adopted Prohibition of Possessing Wild Animals in Unincorporated Areas Court Order (currently 97-641-09-22 attachment A); and Vernon's Texas Annotated Codes, Volume 2 Agricultural Code, Chapter 142 Estray Statutes. Compliance shall include but not be limited to the regulations/codes listed.
- Enforce the most recently adopted Collin County Animal Control Regulations (currently 96-117-02-26, 97-544-08-11 and 97-641-09-22).
- Enforce Vernon's Texas Annotated Codes, Volume 2 Agricultural Code, Chapter 142 Estray Statutes and definitions included in the Parks and Wildlife Code, Chapter 71.001. This shall include animals in the above statutes plus skunks, raccoons and snakes.
- Investigate and respond to all complaints.

- Enforce all applicable regulations through issuance of citations or filing of civil and/or criminal charges. Appear in Court as State's witness in all cases filed.
- As needed or required by law, perform humane destruction of animals in the field and removal of carcasses. Shall remain at scene with animal until verified destroyed.
- Submit any suspect animal's head to Department of State Health Services for rabies diagnosis, in the event of human contact.
- Capture of stray injured or aggressive animals as described in the most recently adopted Animal Control Ordinance and Vernon's Texas Annotated Codes, Volume 2 Agricultural Code, Chapter 142 Estray Statutes on a complaint basis.
- Provide monthly activity reports, per entity, showing activity of services provided during pervious month. Submit to each entity an annual audit report detailing services for the pervious twelve (12) month period, no later than March 31st of each year. The report shall include, but not be limited to, the following: date/time/destination of call, type of call, and any/all actions taken.

Animal Shelter:

- Public Operating days/hours – *9a-6p M-F, 10a-2p Saturday and closed to the public on Sunday (Personnel on site for 3-4 hours on Sunday for cleaning, feeding and care only).*
 - 4 Animal Control Officers - 160 hours per week total
 - 1 Shelter Supervisor – 40 hours per week
 - 1 Administrative Assistant/Dispatcher – 40 hours per week
- 24/7 access to ACOs for live animal drop-off.
 - 24/7 access to small freezer for deceased, small animals.
 - 24/7 access to large freezer for deceased, large animals.
- House, feed and care for (or locate appropriate care and housing for) any type of animal surrendered to the shelter, ensuring that their basic needs are met.
- Hold received animals for 5 days.
 - Verify current rabies vaccination for all owner-reclaimed animals.
 - Arrange for vaccination of non-vaccinated animals prior to release from the shelter.
 - Microchip and enroll in national database all un-chipped, owner-reclaimed animals prior to leaving the shelter.
 - Counsel and provide information on the importance of spay and neuter to all affected owners reclaiming animals.
 - Pre-evaluate for adoption potential – advise SPCA of findings (contract with SPCA to come the shelter on a daily basis to collect non-reclaimed, adoptable animals after their 5-day holding period has expired).
 - Humanely euthanize, in accordance with law, animals not selected for adoption and not reclaimed by owner.

- Dispose of, in accordance with law, all euthanized animals.
- Reduce disease transmission between animals by placing animals suspected of communicable illness in a separate isolation area.
- Place animals involved in biting incidents in rabies quarantine area and observe for signs of rabies for the specified amount of time.
- Build and maintain a database of information about each animal that enters and leaves the shelter.
 - Using the same records input by McKinney and Frisco ACOs (if on the same computer system) continue to build the record with information about the animal during its stay in the shelter and finalized with detailed information regarding the final disposition of the animal.
 - Produce reports for each entity detailing information about animals sheltered and final dispositions.