

***FIRST AMENDED INTERLOCAL AGREEMENT
FOR THE FACILITY CONSTRUCTION AND USE OF
AN ANIMAL SHELTER IN COLLIN COUNTY***

This Interlocal Agreement for the Use of an Animal Shelter in Collin County ("Agreement") is entered into between Collin County the City of Lucas (sometimes hereinafter collectively referred to as "Parties" or individually referred to as "Party") through their duly authorized officers or employees, and this Agreement shall be effective on the date it is executed by all Parties hereto ("Effective Date"). This Agreement supersedes and replaces all prior agreements between the parties regarding the construction and use of the animal shelter in Collin County.

RECITALS

WHEREAS, Collin County ("County") has identified the need to operate an animal shelter in the County for their mutual benefit; and

WHEREAS, the Parties desire to cooperate in operating and maintaining an animal shelter in accordance with Texas law and in a manner intended to realize greater efficiencies in the expenditure of limited public funds; and

WHEREAS, the Parties have agreed to cooperate in the financing of the maintenance and operation of an animal shelter; and

WHEREAS, the Parties have each adopted a resolution supporting the creation of an animal shelter in Collin County to assist in the sheltering and care of the Parties' homeless domestic animals; and

WHEREAS, the Parties believe at this time it is necessary, appropriate, and in their mutual best interests to express in this Agreement their respective duties, responsibilities, and covenants by and between each Party with respect to the animal shelter; and

WHEREAS, this Agreement is an interlocal agreement authorized and governed by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act; and

WHEREAS, each Party 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 charter; and

WHEREAS, each Party has agreed that any compensation to be paid to any other Party as set forth in this Agreement is an amount that fairly compensates the performing Party for the services or functions described herein, and such compensation shall be paid 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:

TERMS:

1. **Definitions.** For purposes of this Agreement and all other agreements, contracts and documents executed, adopted or approved pursuant to this Agreement, the following terms shall have the meaning prescribed to them within this section unless the context of their use dictates otherwise:

- (a) ***Agreement***—this Agreement together with all attachments and schedules appended hereto.
- (b) ***City***—the City of Lucas
- (c) ***County***—Collin County, Texas.
- (d) ***Quarterly Payment***—Payments made to the County by the City on a quarterly basis.
- (e) ***Shelter***—the animal shelter facility, including all buildings and structures located on the Shelter Site, utilized for purposes of housing and/or treating animals on behalf of the Parties.
- (f) ***Shelter Services***—the scope of services to be provided at the Shelter, as further described and shown on the attached “Exhibit A”.

2. **Parties.** The Parties to this Agreement (“Parties”) are Collin County and the City of Lucas.

3. **Incorporation of Recitals.** The recitals that appear above are found by the Parties to be true and correct in all respects and are incorporated into this Agreement by reference.
4. **Initial Term/Renewal Term.**
 - 4.01 **Initial Term.** This Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years, unless terminated earlier as provided in this Agreement or by law.
 - 4.02 **Automatic Renewal Term(s).** Unless terminated in accordance with this Agreement or by law or modified because of additional construction, this Agreement will automatically renew for a term following the Initial Term, unless a Party expressly declines automatic renewal. The duration of the renewal term shall be for a period of (1) year, upon the same terms and conditions as this Agreement or as modified by subsequent agreements between the Parties, and shall continue from year to year until such time as the Parties explicitly determine not to renew this Agreement. A Party may decline to automatically renew this Agreement at any time during or after the Initial Term, provided that such Party notifies all other Parties in writing of its intent to decline automatic renewal one-hundred eighty days (180) prior to the automatic renewal date.
5. **Housing Limitations.** If the Shelter reaches capacity it will stop accepting animals. If the Shelter reaches capacity, the County will use reasonable efforts to place any of the Party's excess animals in alternate Shelter locations.
6. **Shelter Workers.** Unless otherwise agreed to by the Parties, the persons employed to work at the Shelter shall be County employees, subject to the exclusive direction and control of the County. The County shall be responsible for all wages, benefits and taxes associated with all of the Shelter workers. Actions of the Shelter workers will not create any liability to the Cities.
7. **Shelter Services.** The scope of services to be provided at the Shelter is more fully defined in "Exhibit A". If at any time a Party believes that the County, or any City operating the Shelter, has failed to adequately provide appropriate Shelter Services, that Party shall provide written notice of the alleged deficiency to all other Parties to this Agreement. Once notified, the County, or City operating the Shelter, shall have a reasonable amount of time, which shall

be no more than six (6) months, to address the complaining Party's claim. The failure of the County, or City operating the Shelter, to appropriately address a Party's complaint concerning inadequate Shelter Services, after notice and an opportunity to cure, shall be treated as a material breach of this Agreement pursuant to Section 10.

8. **Total Fees** The total cost of Animal Sheltering for FY08 (includes all fees associated with Sheltering) to be paid by to the County will be FOURTEEN THOUSAND FIVE HUNDRED AND SEVENTY DOLLARS AND NO CENTS (\$14,570.00). Payments are to made quarterly.
9. **Renewal Rates** The Animal Sheltering fee amount for each subsequent fiscal year will be sent to the City no later than 90 days before the end of the fiscal year in the form of a statement accompanied by a renewal contract that must be signed and returned no later than 60 days before the end of the fiscal year.
10. **Nonappropriation.** Notwithstanding any other provision(s) to the contrary in this Agreement, the Parties specifically recognizes that the continuation of this Agreement after the close of any given fiscal year shall be subject to approval by the governing body. The Parties expressly agree that this Agreement shall automatically terminate, without any penalty or liability to participating City, in the event the governing body of such City fails to approve or appropriate funds for any continuation period of this Agreement.
 - 10.01 **Notice of Non-appropriation.** If for any fiscal year Party fails to appropriate or commit funds to satisfy its Quarterly Payments and/or any other financial obligations under this Agreement, Party shall promptly give written notice to all other Parties of the non-appropriation of funds. Party shall make a reasonable effort to ensure that funds are appropriated to fully perform its obligations under this Agreement. Party shall provide all other Parties with at least sixty (60) days' notice of such Party's intent to not appropriate the funds necessary to satisfy its obligations under this Agreement.
 - 10.02 **Loss of Rights.** Any Party who fails to fully appropriate the funds necessary to cover such Party's obligations under this Agreement shall, upon the effective date of such non-appropriation, immediately lose all rights to house any animals in the Shelter or have any use thereof.

11. **Termination.** Notwithstanding any other provision, this Agreement may be terminated as provided in this section.
- 11.01 **Mutual Agreement.** This Agreement may be terminated by mutual agreement of all of the Parties, as evidenced by a written termination agreement.
- 11.02 **By the County.** If a Party fails or refuses to make its Quarterly Payments as required by this Agreement, the County, upon consultation with the Operating Committee, may terminate this Agreement as to that Party by giving notice in accordance with section 13.15 of this Agreement. A Party that receives notice of termination through this subsection will have sixty (60) days to become current with its Quarterly Payment obligation and avoid termination of its rights through this Agreement. If a Party's rights are terminated because it has failed or refused to make its Quarterly Payments as required under this Agreement, such Party shall not be entitled to a refund of any payments made prior to termination.
- 11.03 **By a City.** The City may voluntarily terminate its rights and obligations under the Agreement, if at any time the City determines that adhering to the Agreement is no longer in its best interest. To invoke its right to terminate the Agreement, a City must give at least one hundred eighty (180) days' notice of its intent to terminate its rights and obligations under the Agreement to all other Parties. No prior payments shall be refunded to the City that voluntarily terminates its rights and obligations under this Agreement, and all payments made prior to termination shall be exclusively used in accordance with the terms of this Agreement.
- 11.04 **Non-appropriation of funds.** The County may cease all operation of the Shelter and thereby terminate this Agreement if Party fails to appropriate the funds necessary to perform its obligations under this Agreement and such non-appropriation losses cannot be mitigated adequately by efforts of the County, in consultation with the Operating Committee, and such non-appropriation results in a lack of committed funding for the continued operation of the Shelter. In such event, the County shall provide all Parties with reasonable notice of its intent to terminate this Agreement in accordance with this provision and shall provide the other Parties with a reasonable opportunity to mitigate any damages caused because of a Party's non-appropriation of funds. No prior payments shall be refunded to any Party but shall be exclusively used for decommissioning the use of the Shelter.

12. **Additional Rights Upon Default.** 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 Parties to this Agreement may obtain a judgment against any breaching Party to remedy such breach. Such rights upon breach shall be supplemental to those procedures set forth in Section 12 below. The Parties hereby expressly waive their immunity from suit and for liability and/or damages in connection with any actions brought by another Party to this Agreement solely to enforce a term of this Agreement.
13. **Dispute Resolution Process.**
- 13.01 **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").
- 13.02 **Notice.** The aggrieved Party shall notify the responding Party of the dispute by way of a meeting or a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding Party shall attend said meeting or respond to the writing within a reasonable time as may be determined by the circumstances alleged.
- 13.03 **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 effect an agreed resolution of the issue.
- 13.04 **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.
- 13.05 **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 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 submitted to the Dispute Resolution Process.

- 13.06 **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.

14. **Miscellaneous.**

- 14.01 **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 either Party.
- 14.02 **Administration of Agreement.** The County shall administer this Agreement on behalf of the County. The City Council of City of Lucas shall administer this Agreement on behalf of the City. Each Party may designate a new administrator on written notice to the other.
- 14.03 **Governing law.** This Agreement shall be governed by the laws of Texas without regard to the principles of conflict of laws.
- 14.04 **Venue.** Any litigation in any way relating to this Agreement shall be brought in State court in Collin County, Texas.
- 14.05 **Non-Assignability.** A Party shall not assign, sublet or transfer its interest in this Agreement without the written consent of the other Parties.
- 14.06 **Notices.** Any notice or request required to be given pursuant to the terms of this Agreement shall be in writing and mailed or delivered to the respective Parties at the address set forth for each Party below, or any other address which the respective Parties hereafter may designate in writing to the other party for such purposes, and such notice or request shall be deemed to have been duly given if (1) delivered personally to such Party, or to an officer or duly authorized agent of such Party; or (2) served by enclosing the request or notice in a registered or certified mail, with return receipt requested, postpaid envelope properly addressed to the Party to be notified

and depositing the envelope in a post office or official depository under the care and custody of the United States Postal Service; or (3) delivered 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 is received by its intended recipient within ten (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 Collin County, Texas:

Keith Self, Collin County Judge
210 S. McDonald Street, Suite 626
McKinney, Texas 75069

For the City of Lucas, Texas:

Bill Carmickle, Mayor
151 Country Club Road
Lucas, Texas 75002-7663

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

14.07 **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.

14.08 **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.

14.09 **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.

14.10 **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.

14.11 **Retention of Defenses.** The Parties agree that neither this Agreement nor the operation or use of the Shelter by the Parties shall affect, impair or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated upon Shelter Site defects.

14.12 **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.

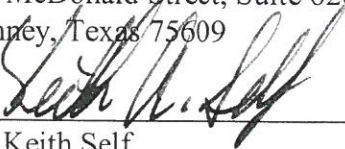
14.13 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties. This Agreement may not be altered or amended except by mutual written agreement as provided herein.

14.14 **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 6th day of December, 2007.

COLLIN COUNTY, TEXAS

210 S. McDonald Street, Suite 626
McKinney, Texas 75069

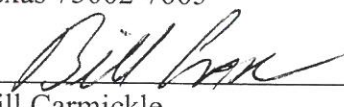
BY: 
Keith Self

TITLE: County Judge

DATE: 1/11/08

CITY OF LUCAS, TEXAS

151 Country Club Road
Lucas, Texas 75002-7663

BY: 
Bill Carmickle

TITLE: Mayor

DATE: December 6, 2007



ATTEST: Georgia D. Shepherd

TITLE: Administrative Secretary

ATTEST: Kathy Wingo

TITLE: City Secretary

Animal Shelter – Scope of Services

- 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 McKinney and Frisco 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 to 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.