

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

INTERLOCAL AGREEMENT FOR ANIMAL CONTROL SERVICES

This Interlocal Agreement for Animal Control Services (“Agreement”) is entered into by and between Collin County, Texas (sometimes referred to herein as the “County”) and the Cities of Celina, Fairview, Lowry Crossing, Lucas, Melissa, Parker, Princeton and Prosper (sometimes hereinafter collectively referred to as “City Parties” or “Parties” or individually as “City” or “Party”) through their duly authorized officers and/or governing boards. This Agreement shall be effective on January 1, 2006, regardless of when approved and executed by any Party or Parties hereto (“Effective Date”).

RECITALS

WHEREAS, the County is authorized to provide animal control 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, the City Parties to this Agreement are separately authorized to provide animal control services pursuant to Chapters 822, 825 and 826 of the Texas Health & Safety Code, in addition to such authority that may be granted under their home-rule charters (as applicable); and

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

WHEREAS, the County and City Parties seek to set forth in this Interlocal Agreement their respective obligations, responsibilities and duties regarding certain animal control 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 any other Party as set forth in this Agreement are in amounts that fairly compensate the performing Party for the services or functions described herein, and are 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 the City Parties and payment of the sums hereinafter set forth, the County agrees to perform those animal control 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 services detailed in Exhibit "A" by County, each City agrees to:
 - 3.1 make payment to the County in the respective amounts as set forth in the spreadsheet attached as Exhibit "B" hereto from funds appropriated in the current fiscal year budget of such Cities. Each City's payment shall be made on a quarterly basis to the County during the term of this Agreement and any renewal terms, with the first quarterly payment to be made within ten (10) days from the receipt of an invoice from the County, such invoice expected to be issued approximately thirty (30) days prior to the completion of the new County Animal Shelter. It is anticipated that the County Animal Shelter will be completed in June 2006. Each City agrees that any payment due to the County hereunder which is not paid on or before 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;
 - 3.2 amend their 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 Parties' authority to issue notices of violations and court citations for alleged violations of City Ordinances, however each City delegates to County the authority to perform the animal control 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 each renewal of this Agreement, the County shall prepare and circulate a new budget and cost-sharing spreadsheet indicating the proposed cost to each City for continued participation in this Agreement for animal control services. Prior to or on the renewal date(s), each City shall make its quarterly payment to the County for the continuation of animal control services for the renewal term. 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. **Animal Control Account.** The County shall designate, create and maintain an account within its financial records and accounts for purposes of reflecting the payments made by the City Parties in connection with this Agreement, as well as the disbursements made by the County in connection with the animal control services provided to the City Parties as more fully described in Exhibit "A"; however, no City shall have any right to a refund of any amount paid to County for the animal control services provided by County except as set forth in section 9.3 herein.

7. **County Records.** The County shall keep such books and records as is necessary to fully and accurately account for the deposit and disbursement of funds from the Animal Control Account as well as the services provided by County as set forth in Exhibit "A" which shall be made available to any Party upon request.

8. **Notice of Nonappropriation.** If, for any fiscal year, any City's governing board fails to appropriate funds in amounts sufficient to pay the County for the performance of its obligations under this Agreement such City shall promptly give notice to the other Parties of the nonappropriation of funds. Each City shall make a reasonable effort to ensure that funds are appropriated to fully perform on its obligations as set forth in this Agreement. A City shall endeavor to provide the other Parties with at least one hundred twenty (120) days notice of its intent not to appropriate the necessary funds for the City's performance of its obligations under this Agreement.

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

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

9.2 For Nonappropriation of funds. If any Party fails to appropriate the funds necessary to for such Party's 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 services, the County may cease the provision of animal control services to the City Parties thereby terminating this Agreement. 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 through any Party's nonappropriation of funds. No prior payments shall be refunded to any Party but shall be exclusively used for decommissioning the provision of animal control services on the City

Parties' behalf.

9.3 By the County. The County may terminate this Agreement with reasonable advance written notice to the City Parties of its intent to do so in the event the costs and expenses of providing such services exceeds and/or is reasonably forecasted to exceed by Twenty-Five percent (25%) or greater the aggregate payments provided by the City Parties and the County for such services as such amounts are referenced in the spreadsheet attached Exhibit "B" hereto. Likewise, the County shall have the right to terminate this Agreement during any renewal terms in the event the costs and expenses to the County for providing such services exceed and/or is reasonably forecasted to exceed by Twenty-Five percent (25%) or greater the then applicable budget for the provision of such services during such renewal term. In the event the County exercises its rights to terminate this Agreement under this section and County is in possession of unexpended payments contributed by the City Parties, then after County has absorbed those expenses necessary in reducing its workforce and other termination-related expenses, the County shall, within a reasonable time, refund to the City Parties the unspent portion of their payments on a pro rata basis in proportion to the amounts paid by each City, respectively, for services during such term.

9.4 By a City. A City may terminate this Agreement: 1) for cause in the event the 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 the County and a reasonable opportunity to cure such defect in performance; and/or 2) due the City's failure to appropriate funds in amounts sufficient to meet its obligations hereunder.

10. **Additional Rights Upon Default.** Following exhaustion of the dispute resolution process set forth in section 11 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 Parties 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.

11. **Dispute Resolution Process.**

11.1. 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").

1.1.1. 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.

1.1.2. 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.

11.1.3. 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.

11.1.4. 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 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.

11.1.5. 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.

12. **Miscellaneous.**

12.1. 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.

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

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

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

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

12.6. 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:

Ron Harris, Collin County Judge
Collin County Government Center
210 S. McDonald, Suite 626
McKinney, Texas 75069

The City of Melissa
Attn: Mayor
P.O. Box 409
Melissa, TX 75454-9501

[complete]

For City of:

[complete]

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.

12.7. 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.

12.8. 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.

12.9. 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.

12.10. 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.

12.11. 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 claims related to the animal control 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.

12.12 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.

12.13. 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.

12.14. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.

12.15. 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 _____ day of _____, 2005.

COLLIN COUNTY, TEXAS
210 S. McDonald Street, Ste. 626
McKinney, Texas 75609

BY: Ron Harris

TITLE: County Judge

DATE: 10-4-06

TOWN OF PROSPER, TEXAS
121 W. Broadway Street / P.O. Box 307
Prosper, Texas 75078

BY: _____

Charles Niswanger

TITLE: Mayor

DATE: _____

ATTEST: Richard M. Sheldon

TITLE: Assistant to County Judge

ATTEST: _____

TITLE: _____

CITY OF CELINA, TEXAS

address

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF FAIRVIEW, TEXAS

address

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

Deleted: _____

CITY OF LOWRY CROSSING, TEXAS

address

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF PRINCETON, TEXAS

address

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF MELISSA, TEXAS

address

BY:  _____

TITLE: Mayor

DATE: 22 February 2006

ATTEST: Douglas W. Box

TITLE: City Administrator

CITY OF PROSPER, TEXAS

address

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____