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

This First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County ("Agreement") is entered into between the parties, Collin County, the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper (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"), the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper (sometimes hereinafter collectively referred to as "Cities" or individually referred to as "City") have identified a need to construct and operate an animal shelter in the County for their mutual benefit; and

WHEREAS, the Parties desire to cooperate in designing, constructing, 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 construction, 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) **Cities**—the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper.
 - (c) **County**—Collin County, Texas.
 - (d) **Contract Documents**—the drawings and specifications prepared by the County's architect and engineer for the construction of the Shelter.

- (e) ***Design and Construction Account***—the account containing funding for the design and construction of the Shelter. The funds in this account shall be used solely for design, construction and certification of the Shelter and not for operations and/or maintenance or related activities.
- (f) ***Operating Committee***—the joint advisory committee comprised of permanent and rotating members as more fully described in Section 9.02 of this Agreement.
- (g) ***Quarterly Payment***—Payments made to the County by each Party on a quarterly basis, comprised of: (1) the Party’s payment for the rent and use of the Shelter (“Rental Payments”); and (2) the Party’s payment for the operation and maintenance of the Shelter (“Maintenance and Operation Payments”).
- (h) ***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.
- (i) ***Shelter Construction Account***—the depository account established and maintained by the County for the purpose of holding funds for the design, construction, furnishing and certification of the Shelter.
- (j) ***Shelter Construction Budget***—the document attached hereto as “Exhibit A”, setting forth the proposed budget for all design and construction services, materials, fees and expenses to be incurred in connection with the design, construction, and certification of the Shelter.
- (k) ***Shelter Operations Budget***—the document attached hereto as “Exhibit B”, setting forth the annual proposed budget for the operation of the Shelter once it is placed into operation.
- (l) ***Shelter Operating Account***—the depository account established and maintained by the County for the purpose of holding funds for the operation and maintenance of the Shelter following completion of construction.
- (m) ***Shelter Operating Expenses***—the actual expenses for services necessary for conducting programs or services at the Shelter, such as building system services, utilities, animal services, custodial services, upkeep of the grounds, maintenance, security and those items enumerated in Paragraph 9.10.3 of this Agreement.

- (n) **Shelter Services**—the scope of services to be provided at the Shelter, as further described and shown on the attached “Exhibit C”.
- (o) **Shelter Site**—that tract of land provided by the County upon which the Shelter is to be constructed, as further described and shown on the attached “Exhibit D”.
- (p) **Utilities**—services provided by a public utility, including water, sanitary sewer, electric and gas. Other services such as telephone, cable television and other communications services are specifically excluded.

2. **Parties.** The Parties to this Agreement (“Parties”) are Collin County, the City of Anna, the City of Celina, the Town of Fairview, the City of Farmersville, the City of Frisco, the City of Lowry Crossing, the City of McKinney, the City of Melissa, the City of Princeton, and the City of Prosper.

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. **Shelter Site Plan/Utilization of Real Property.**

5.01 **Shelter Site.** The parties have identified County-owned property (“Shelter Site”) on which to locate the Shelter. The County will allow the Shelter Site to be used for construction and operation of the Shelter without reimbursement from the Cities for such use. The County will retain its title and ownership in the Shelter Site during the term of this Agreement and following termination. No other party, person and/or entity shall have any legal rights, title or interest in the Shelter Site.

5.02 **Site Plan.** A master plan of the Shelter Site is attached as “Exhibit D” and incorporated herein. It is contemplated by the Parties that the Shelter will be located on the Shelter Site.

6. **Shelter Budget/Shelter Account.**

6.01 **Shelter Construction Budget.** The costs of design and construction of the Shelter will be derived from the Shelter Construction Budget. The Parties adopt the “Shelter Construction Budget” attached hereto as “Exhibit A” as inclusive of all services, materials, fees and expenses to be incurred in connection with the design, construction, and certification of the Shelter. The Parties agree that the Shelter Construction Budget is reasonable and necessary to effect the design, construction, and certification of the Shelter. Costs and/or expenses not related to the design and/or construction of the Shelter (e.g. operations and maintenance expenses, furnishings, special equipment) and not included in the Shelter Construction Budget shall be borne by the party incurring the cost or expense, and shall not be chargeable to the Shelter Construction Budget. The Operating Committee shall make recommendations to the Parties’ respective governing boards regarding any modifications and/or amendments to the Shelter Construction Budget which are determined to be necessary and in the Parties’ mutual interest. All modifications and/or amendments to the Shelter Construction Budget shall be effective upon approval in writing by the Parties. Any modification and/or amendment to the Shelter Construction Budget shall be null and void, absent evidence of the Parties’ written approval of such modification and/or an amendment.

6.02 **Design and Construction Funding by the County.** The County, at its sole expense, agrees to provide start-up funding, including funds for legal and ancillary expenses, in an amount not to exceed TWO MILLION SEVEN-HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000) to be used for the design, construction and

certification of the Shelter, and the start-up funds shall be included in the Shelter Construction Budget. The Shelter Construction Budget is attached hereto as "Exhibit A". The Parties agree that the County will receive partial repayment for the start-up funds contributed for the design and construction of the Shelter through Rental Payments as described in section 9.10.1 of this Agreement. The County warrants that it has appropriated and committed funds in the amount of TWO MILLION SEVEN-HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$2,750,000.00) as start-up funds for the Shelter Construction Budget to be used for design, construction and certification of the Shelter. The start-up funds will be deposited in the Design and Construction Account and shall be used solely for the design, construction and certification of the Shelter. Such funds shall be kept and maintained separately from the operating and maintenance funds set aside for the operation and maintenance of the Shelter. It is anticipated that the start-up funds provided by the County shall be sufficient to cover the costs of the design, construction and certification of the Shelter. Following completion of construction and certification of the Shelter by applicable authorities, any remaining funds contained in the Shelter Construction Budget shall be returned to the County, or if other parties have contributed to the Shelter Construction Budget, then to such parties on a pro-rated basis, based upon their original contributions to the Shelter Construction Budget.

7. **Shelter Design.**

7.01 **The Shelter Architect/Engineer.** The County agrees to engage a professional architect/engineer to design Shelter construction documents. Although the County shall retain the architect/engineer, the Parties agree that the Operating Committee shall serve as a consultant in an advisory capacity to the architect/engineer in all matters involving the design, development or construction of the Shelter. The County shall be responsible for the payment of the professional fees and expenses of the architect/engineer, and such fees and expenses shall be paid from the Design and Construction Account. Shelter design and contract documents shall be prepared by the County's architect/engineer and shared with the members of the Operating Committee for recommendations and comment prior to commencement of construction.

7.02 **Shelter Design and Contract Document Modifications.** The County may unilaterally make modifications to the Shelter design and contract documents, including approval of written change orders, if the changes: (1) do not cumulatively



result in an increase in the Shelter Construction Budget by more than 3% of the guaranteed maximum construction price; or (2) do not have a substantial and adverse impact on cost efficiencies for the Shelter. If the cumulative total of the proposed changes are greater than 3% of the guaranteed maximum construction price, or if any proposed change has a substantial and adverse impact on cost efficiencies for the Shelter, consent by a majority of the members of the Operating Committee will be required, which approval shall not be unreasonably withheld. Copies of documents memorializing changes in the design and contract documents shall be circulated by the County to the members of the Operating Committee. A copy of the Shelter's proposed building design is attached hereto as Exhibit F.

8. **Construction.**

8.01 **Fixed Construction Budget.** The Parties agree to adopt a construction budget and schedule. The County agrees to engage a construction manager "at risk" to construct the Shelter in accordance with the contract documents approved by the Parties. The County shall use reasonable efforts to diligently prosecute completion of the Shelter and shall endeavor to complete the Shelter within the fixed construction budget and on schedule. To ensure that costs of the Shelter will not exceed the construction budget, the County will utilize the construction manager "at risk" method of construction. The County will work to make construction of the Shelter as cost effective as possible. In soliciting proposals for construction of the Shelter, the County shall comply with all applicable procurement laws and/or regulations.

8.02 **Construction.** The County shall enter into such construction agreements as are necessary to construct the Shelter in accordance with the construction documents. The County shall observe all state laws and County policies regarding the construction of the Shelter, including bond requirements, prevailing wages and other legal requirements.

8.02.1 **Indemnification Agreement Concerning Liability Arising out of the Shelter's Construction.** To the extent allowed by law, the County agrees to indemnify, hold harmless, save and defend the Cities, their agents and employees against any and all suits, causes of action, claims of any character, type or description, occurrences, damages, losses, expenses, costs, liabilities, judgments for bodily injury or death, or damage to property arising out of the construction of the Shelter.

- 8.02.2 **Additional Construction.** Prior to the expiration of the Initial Term, the Operating Committee shall consider the need for the construction of additional space for the Shelter. The Operating Committee shall make a recommendation to the Parties as to whether additional space for the Shelter should be constructed at the end of the Initial Term.
- 8.03 **Inspections and Reports.** Each Party shall have the right to inspect the progress of the work and shall have reasonable access to the Shelter Site during normal business hours, subject to complying with safety requirements imposed by the construction contractor. Each Party shall receive copies of reports provided to the County by the construction contractor concerning the Shelter construction.
- 8.04 **Construction Cost Information.** Within thirty (30) days following the receipt from the construction contractor of the construction completion documents (“as built”) the County shall provide the Parties with an accounting of the expenditures from the Shelter Construction Account, reflecting the total cost of design and construction of the Shelter, including those arising from any change orders and/or design modifications.
- 8.05 **Ownership Vested In The County.** Notwithstanding any other provision in this Agreement, upon final acceptance of the Shelter by the County, the ownership of all building improvements on the Shelter Site, including the Shelter and fixtures affixed thereon, shall vest in the County, including all construction warranties. Per this Agreement, upon completion of construction, each other Party shall be granted a non-exclusive use of the Shelter and Shelter Site during the term of this Agreement and during any renewal terms.

9. **Operation of Facilities.**

9.01 **County Authority.** Until the County has recouped 85% of its funds initially expended in the design, construction and certification of the Shelter, the County, through the Commissioners Court, shall be empowered to make all decisions regarding ongoing operational issues including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures and related issues. In addition, the County will be responsible for annually examining the apportionment of Shelter Operating Expenses among the Parties and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party of the Shelter.

Once the County has recouped 85% of its funds initially expended in the design, construction and certification of the Shelter (through recoupment of such costs from Rental Payments), the decision-making authority regarding the items set forth in the previous paragraph above will be transferred to the Operating Committee. At such time, the Commissioners Court of Collin County shall remain empowered to make recommendations to the Operating Committee regarding ongoing operational issues including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures and related issues. Notwithstanding the transfer of authority on those matters, the County will continue to retain the authority for annually examining the apportionment of Shelter Operating Expenses and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party.

9.02 **Operating Committee.** A joint committee ("Operating Committee") will be formed for purposes of advising the Parties in connection with the operation of the Shelter. The Operating Committee shall be comprised of permanent and rotating members. For the first two (2) years of this Agreement, each Party shall have one permanent member on the Operating Committee. Thereafter, the permanent members will be representatives from each Party that has paid at least 15% of the Shelter Operating Expenses for the prior two years. In addition, the Operating Committee shall have at least one (1) rotating member chosen biannually through a chance drawing of representatives nominated by the Parties from those Cities who do not pay at least 15% of the Shelter Operating Expenses. The rotating member on the Operating Committee is intended to be for purposes of allowing other local government users of the Shelter who do not pay at least 15% of the Shelter Operating Expenses to have representation on the Operating Committee.

9.02.1 **Meetings.** The Operating Committee, shall at the first meeting of the calendar year, elect one of its members as chairperson who shall serve for two (2) years or until he/she is reelected or a successor is elected, provided however, that no individual shall be a chairperson for more than two (2) consecutive terms. The Operating Committee shall also elect from its membership a vice-chairperson and a secretary, all of whom shall serve for two (2) years or until they are reelected or their successors are elected. The Operating Committee shall meet at least two (2) times a year at the call of the chairperson at such times and places as determined by the Operating Committee.

9.02.2 **Duties and Responsibilities.** The Operating Committee will be responsible for examining and providing recommendations to the Parties regarding virtually all aspects of the operations of the Shelter, including the financing of such operations. In addition, the Operating Committee shall review the apportionment of Shelter Operating Expenses to each Party. The Operating Committee shall also make recommendations to the Parties regarding the efficient utilization of public funds for the maintenance, operation and continued use of the Shelter to the Parties' collective benefit. The Operating Committee shall further have the power and duty to prepare appropriate studies necessary to determine various public services and facilities required to meet current and long-term community and Shelter needs and to prepare strategic plans designed to meet those needs. Upon recommendation by the Operating Committee, the strategic plan or plans, in whole or in part, or amendments thereto, may be adopted by the governing bodies of the participating governmental units served by the Operating Committee.

9.03 **Shelter Operation By City.** If during the term of this Agreement any Party, other than the County, desires to operate the Shelter, including providing employees for the operation thereof, it shall express such request in writing to all other Parties along with a proposed plan for the operation of the Shelter. Upon receipt of the Party's written request, the County shall enter into negotiations with that Party for purposes of transferring operational control of the Shelter to that Party on mutually agreeable terms and conditions; however, nothing herein shall require the County to transfer operational control of the Shelter on terms and conditions the County finds to be detrimental to its and/or the Shelter's long term interest and/or viability.

- 9.04 **Identification of Personal Property.** Personal property located at the Shelter Site shall be inventoried, identified and marked in accordance with policies and procedures of each Party.
- 9.05 **Use Of Shelter Facilities.** While the Parties to this Agreement have priority rights to use the Shelter facilities, it is agreed that non-parties to this Agreement may deliver animals to the Shelter on a space-available basis. In such event the non-parties shall be charged a flat fee, as determined by the County with the advice and recommendation of the Operating Committee, for use of the Shelter. All fees collected from any non-party user of the Shelter shall be deposited in the Shelter Operating Account.
- 9.06 **Housing Limitations.** There will not be a limit to the number of animals delivered by any Party. 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.
- 9.07 **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. The County will designate a lead employee at the Shelter as the Shelter Manager, who from time to time shall report to the Operating Committee in order to assist the Operating Committee in carrying out its duties in accordance with this Agreement. Actions of the Shelter workers will not create any liability to the Cities.
- 9.08 **Shelter Services.** The scope of services to be provided at the Shelter is more fully defined in "Exhibit C". 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.

9.09 **Shelter Operations Budget.** As provided in more detail in the “Shelter Operations Budget,” attached as “Exhibit B”, the Parties understand and agree that it is expected that the anticipated expense for operating the Shelter for the first year of operations will be approximately FOUR HUNDRED SIXTY THOUSAND DOLLARS AND NO CENTS (\$460,000.00). The Parties agree that the anticipated expense for the first year of Shelter operation is reasonable and necessary in order to operate and maintain the Shelter. The Parties agree to share in this expense on a proportionate basis in accordance with the terms and conditions as further described herein. All subsequent Shelter Operations Budgets shall be determined each year by the Operating Committee with the assistance of the Parties; however, any Shelter Operations Budget recommended by the Operating Committee shall be subject to approval by the governing boards of the Parties.

9.10 **Payments of Parties For Rental and Use of The Shelter.** Following the completion of construction and the opening of the Shelter, each Party agrees to pay up front and in advance on a quarterly basis, a Quarterly Payment, (“Quarterly Payment”) consisting of: (1) the Party’s payment for the rent and use of the Shelter (“Rental Payment”); and (2) the Party’s payment for the Party’s proportion of the Shelter Operating expenses of the Shelter (“Maintenance and Operation Payment”) as set forth in the Shelter Operations Budget.

Each Party warrants that, as of the Effective Date of this Agreement, it has appropriated and has committed funds in the amount of its Quarterly Payment requirements for both the Rental Payment and the Maintenance and Operation Payments to the extent such payments will become due during the Party’s current fiscal year. Each Party further warrants that it will make every reasonable effort in the future to appropriate and commit funds in the amount of its aggregate anticipated Quarterly Payments that will become due during any subsequent fiscal year. The total contributions of each Party to be paid into the Shelter Operating Account through Quarterly Payments made by the Parties during the first year of the Shelter’s operation are more fully set forth in “Exhibit B”.

Each Party hereby covenants and agrees to pay promptly when due all Quarterly Payments, all adjustments to such payments, and any other charges payable to the County under the provisions of this Agreement. Each Party further covenants and agrees that all such Quarterly Payments due and owing or other charges due and unpaid as of the date of termination of this Agreement shall be deemed due and payable on such termination date.

Each Party agrees that any Quarterly Payment due to the County 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 (Tex. Gov't Code Ann. § 2251.025) from the date due until paid.

All Party payments received shall be expended by County solely for reimbursement of the County's permanent improvement fund, maintenance and operational costs of the Shelter. County shall track receipts and expenditures through its existing project code system (or any similar tracking system) to enable the Parties to verify that all Party payments received are expended by the County solely for reimbursement of the County's permanent improvement fund, maintenance and operational costs of the Shelter. County shall not be required to maintain a separate fund or separate accounting method for the Shelter.

9.10.1 Rental Payments. A portion of each Quarterly Payment shall be designated as Rental Payment for the Shelter. The Rental Payment due by each Party will be based on the cost of the design, construction and certification of the Shelter (excluding the value of the Shelter Site) amortized over the anticipated lifespan of the Shelter – being ten (10) years in length. Each Party's Rental Payment for any given year during the term of this Agreement shall not be fixed, but shall be calculated on a pro-rata basis based upon population, utilizing the North Central Texas Council of Government population estimates as more fully set forth in the Shelter Construction Budget, attached as "Exhibit A". For any Party who is not included in the North Central Texas Council of Government population estimates, the Rental Payments due from that Party will be based on a flat fee amount at rates set by the County.

9.10.1.1 Adjusted Rental Payments. The amount of each Party's Rental Payments subsequent to the first year of the Initial Term of this Agreement will be adjusted in accordance with changes in the North Central Texas Council of Government population estimates ("Adjusted Rental Payments"). Each year, upon recommendation of the Operating Committee and in accordance with the mechanism for determining Adjusted Rental Payments, as set forth in the Shelter Operations Budget attached hereto as "Exhibit B", the County will provide notice to each Party of the Parties' Adjusted Rental Payments for the following year. Following the initial year of Shelter operations, the County will provide the Parties with notice of the amounts of

the Adjusted Rental Payments by April 30th of each subsequent year for the duration of this Agreement.

9.10.1.2 **Scheduled Payments.** Each Party's Rental Payment or Adjusted Rental Payment is due as a portion of the Quarterly Payment and shall be paid to the County in advance on a quarterly basis without demand or offset at such address as the County shall, from time to time, designate in writing. The County shall collect and use the Rental Payments only as reimbursement for the amortized design, construction and certification costs of the Shelter.

9.10.1.3 **Cessation of Rental Payments and Adjusted Rental Payments.** Once the County has recouped its construction costs for the Shelter, the Adjusted Rental Payments due by the Parties shall cease.

9.10.2 **Maintenance and Operation Payments.** A portion of each Party's Quarterly Payment shall be designated as Maintenance and Operation Payments for the Shelter, such payments being derived from the Shelter Operating Expenses incurred as a result of the operation of the Shelter. The Maintenance and Operation Payments due by each Party will be shared on a pro-rata basis on the basis of the Parties' respective populations as set forth in the North Central Texas Council of Government population estimates. The Maintenance and Operation Payments due from any Party not included in the North Central Texas Council of Government population estimates will be based on a flat fee at rates set by the County.

9.10.2.1 **Adjusted Maintenance and Operation Payments.** The estimated Maintenance and Operation Payments that are anticipated to be due by each Party for the first year of Shelter operations are fully set forth in the Shelter Operations Budget, attached as "Exhibit B". Following the expiration of the first year of Shelter operations, the amount of each Party's subsequent Maintenance and Operation Payments will be adjusted on an annual basis in accordance with changes in the North Central Texas Council of Government population estimates and calculated on the actual Shelter Operating Expenses incurred in connection with the operation of the Shelter.

9.10.2.2 **Notice of Subsequent Maintenance and Operation Payments.** Each year, the County, upon recommendation of the Operating Committee, will provide notice to each Party of its estimated Maintenance and Operation Payments for the following year. The County will provide the Parties with

notice of the estimated Maintenance and Operation Payments by July 1st of each year following the first year from the date of commencement of Shelter operations.

9.10.2.3 **Scheduled Payments.** Each Party's Maintenance and Operation Payment, or Adjusted Maintenance and Operation Payment, is due as a portion of the Quarterly Payment and shall be paid to the County in advance without demand or offset at such address as the County shall, from time to time, designate in writing. The County shall collect and deposit the Operations and Maintenance Payments into the Operations and Maintenance Account.

9.10.2.4 **Adjustments for Increased Shelter Operating Expenses.** Each year the Maintenance and Operation Payments are subject to adjustment for increases in Shelter Operating Expenses attributable to the Shelter and its appurtenances, including parking facilities and the site upon which said improvements are situated. Any such adjustments for the actual increase or decrease of the Shelter Operating Expenses, in comparison to the Shelter's Base Year Operating Expenses, are to be made as follows:

9.10.2.4.1 **Review.** Following the first year of Shelter operations, and each year thereafter, the County shall review and compare the total budgeted amount of the Shelter's Operating Expenses to the actual operation and maintenance expenses that were incurred by the County from Shelter operations during the preceding fiscal year. Such review shall be conducted and all calculations computed by January 31st. The County will rely on the County Auditor's closing financial statements to determine the actual Shelter Operating Expenses that were incurred by the County during the preceding fiscal year.

9.10.2.4.2 **Surplus.** If the aggregate Maintenance and Operation Payments as budgeted and collected for the preceding fiscal year are greater than the Shelter Operating Expenses for that fiscal year, the County shall promptly notify each Party of the overage and of such Party's proportionate share of the overage. The overage amounts shall be credited to the Parties in accordance with such Party's proportionate share of the preceding year's overage, with such credits beginning on February 1st of the subsequent fiscal year.

9.10.2.4.3 **Deficit.** If the Shelter's aggregate Maintenance and Operation Payments as budgeted and collected for the preceding fiscal year is less than the Shelter Operating Expenses for that fiscal year, the County shall promptly notify each Party of the deficit and of such Party's proportionate share of the total amount of such deficit. Each Party shall thereafter pay into the Shelter Operating Account such Party's proportionate share of the preceding year's deficit as an additional payment due hereunder within thirty (30) days of the date of an invoice from the County reflecting the amount due by such Party.

9.10.3 **Shelter Operating Expenses.** In addition to the expenses specifically identified in paragraph 1, subsection (m), of this Agreement, Shelter Operating Expenses shall mean all taxes, expenses, costs and disbursements of every kind and nature which the County shall pay or become obligated to pay and which are attributable to the ownership, operation and maintenance of the Shelter and its appurtenances, the related parking facilities, and the site upon which the Shelter is situated, including, without limitation, the following:

- (a) Wages and salaries of all employees and/or agents of the Shelter engaged in the operation and maintenance of the Shelter, together with social security taxes, unemployment taxes or insurance, and any other taxes that may be levied on such wages and salaries, and the costs of any benefits approved for County employees.
- (b) All supplies and materials used in the operation, maintenance and security of the Shelter.
- (c) Cost of all water, natural gas, electricity and other utilities used to serve the Shelter and any equipment incident thereto.
- (d) Costs of all maintenance or service contracts at the Shelter and any related equipment, including alarm service and window cleaning.
- (e) Costs of landscaping and upkeep of ground area on which the Shelter and related parking facilities are situated and the private streets surrounding the Shelter and related parking facilities, including any service contracts for the maintenance thereof.

- (f) Costs of all accounting and other services attributable to the operation, management and maintenance of the Shelter and related parking facilities, including indirect costs to the extent they can be accurately identified and quantified.
- (g) Costs of repairs, replacements and general maintenance of the Shelter and related parking facilities.
- (h) All taxes, assessments and governmental charges other than taxes on income, whether federal, state, county or municipal, and other taxes and assessments on the Shelter or operation thereof.
- (i) Costs of capital improvement items, including the installation thereof, to the Shelter which are primarily for the benefit of reducing operating expenses or which are required by governmental order.

The Shelter's Maintenance and Operation Costs shall not include depreciation, interest and principal payments on mortgages or other debt costs, if any.

9.11 **Payments of Non-Parties.** From time to time, to the extent space is available in the Shelter and after the necessary allocation of space for all Parties hereto, the County may authorize the Shelter to accept animals from an entity not a Party to this Agreement. The payment amount due from any entity utilizing the Shelter that is not a Party to this Agreement shall be based on a per-animal-housed fee at a rate set by the County and determined with the advice and recommendation of the Operating Committee. Following the initial year of operations of the Shelter, the County shall notify the Parties of any agreement and/or arrangement wherein a non-Party is being charged a per-animal-housed-fee that is less than the lowest amount paid by a Party for the same or similar services for the most recent year for which such calculations can be made. The funds collected by the County from non-parties shall be deposited in the Shelter Operating Account and utilized solely to offset Operation and Maintenance Expenses. This provision shall not be applicable to any entity utilizing the Shelter as a result of any Party's non-appropriation of funds in accordance with Section 10.13 of this Agreement. A Party to this Agreement shall have no rights to use the Shelter after a non-appropriation by such Party's governing board that results in its failure to make the required Quarterly Payments under this Agreement.

- 9.12 **Shelter Account 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 Shelter Construction Account as well as the Shelter Operating Account. Information regarding the Shelter Construction Account and Shelter Operating Account shall be made available to any Party upon request.
- 9.13 **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 of the Cities, which fiscal year ends on September 30th of each year, shall be subject to approval by the governing bodies of each participating City. The Parties expressly agree that this Agreement shall automatically terminate, without any penalty or liability to any participating City, in the event the governing body of such City fails to approve or appropriate funds for any continuation period of this Agreement.

9.13.1 **Notice of Non-appropriation.** If for any fiscal year a Party fails to appropriate or commit funds to satisfy its Quarterly Payments and/or any other financial obligations under this Agreement, such Party shall promptly give written notice to all other Parties of the non-appropriation of funds. A Party shall make a reasonable effort to ensure that funds are appropriated to fully perform its obligations under this Agreement. A Party shall provide all other Parties with at least one hundred eighty (180) days' notice of such Party's intent to not appropriate the funds necessary to satisfy its obligations under this Agreement.

9.13.2 **Partial Appropriation.** If for any fiscal year a Party only partially appropriates funds to satisfy its Quarterly Payments and/or any other financial obligations under this Agreement, such partial appropriation of funds shall be first credited to such Party's Rental Payments as more fully described in Section 9.10.1 of this Agreement. Any appropriated funds above such Party's Rental Payments shall then be credited to such Party's Maintenance and Operation Payments, as more fully described in Section 9.10.2 of this Agreement.

9.13.3 **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.

- 10 **Termination.** Notwithstanding any other provision, this Agreement may be terminated as provided in this section.
- 10.10 **Mutual Agreement.** This Agreement may be terminated by mutual agreement of all of the Parties, as evidenced by a written termination agreement.
- 10.11 **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.
- 10.12 **By a City.** Any City that is a Party to this Agreement may voluntarily terminate its rights and obligations under the Agreement, if at any time such 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 any 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.
- 10.13 **Non-appropriation of funds.** The County may cease all operation of the Shelter and thereby terminate this Agreement if any 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.

11 **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.

12 **Dispute Resolution Process.**

12.10 **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”).

12:10.2 **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.

12.10.3 **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.

12.10.4 **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.

12.10.5 **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.

12.10.6 **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.

13 **Miscellaneous.**

13.10 **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.

13.11 **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.

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

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

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

13.15 **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:

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

For the City of Anna, Texas:

Kenneth L. Pelham, Mayor
101 N. Powell Parkway
Anna, Texas 75409

For the City of Celina, Texas:

Corbett Howard, Mayor
302 W. Walnut Street
Celina, Texas 75009

For the City of Farmersville, Texas:

Robbin Lamkin, Mayor
205 S. Main Street
Farmersville, Texas 75442

For the City of Frisco, Texas:

Mike Simpson, Mayor
6891 Main Street
Frisco, Texas 75034

For the City of Lowry Crossing, Texas:

Brett Mayes, Mayor
1405 S. Bridgefarmer Road
McKinney, Texas 75069

For the Town of Fairview, Texas:

Sim Israeloff, Mayor
500 S. Highway 5
Fairview, TX 75069

For the City of McKinney, Texas:

Lawrence W. Robinson, City Manager
222 N. Tennessee Street
McKinney, Texas 75069

For the City of Melissa, Texas:

David Dorman, Mayor
901 US Hwy 121
Melissa, Texas 75454

For the City of Princeton, Texas:

Bill Caldwell, Mayor
306 N. Front
Princeton, Texas 75407

For the City of Prosper, Texas:

Charles Niswanger, Mayor
113 W. Broadway

Prosper, Texas 75078

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.

13.16 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.

13.17 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.

13.18 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.

13.19 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.

13.20 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.

13.21 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.

13.22 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.

13.23 **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 26th day of September, 2006.

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

CITY OF ANNA, TEXAS
101 N. Powell Parkway
Anna, Texas 75409

BY: Ronald L. Harris
Ronald L. Harris

BY: _____
Kenneth L. Pelham

TITLE: County Judge

TITLE: Mayor

DATE: 10-4-06

DATE: _____

ATTEST: Kimberly M. Sheldon

ATTEST: _____

TITLE: Assistant to County Judge

TITLE: _____

CITY OF CELINA, TEXAS
302 W. Walnut Street
Celina, Texas 75009

CITY OF FARMERSVILLE, TEXAS
205 S. Main Street
Farmersville, Texas 75442

BY: _____
Corbett Howard

BY: _____
Robbin Lamkin

TITLE: Mayor

TITLE: Mayor

DATE: _____

DATE: _____

ATTEST: _____

ATTEST: _____

TITLE: _____

TITLE: _____

CITY OF FRISCO, TEXAS

6891 Main Street
Frisco, Texas 75034

BY: _____
George Purefoy

TITLE: City Manager

DATE: _____

ATTEST: _____

TITLE: _____

TOWN OF FAIRVIEW, TEXAS

500 S. Highway 5
Fairview, TX 75069

BY: _____
~~Sim Israeloff~~ John Godwin

TITLE: Mayor - Town Manager

DATE: 9/21/06

ATTEST: Carolyn Jones
CAROLYN JONES

TITLE: Town Secretary

CITY OF FLOWRY CROSSING, TEXAS

1405 S. Bridgefarmer Road
McKinney, Texas 75069

BY: _____
Brett Mayes

TITLE: Mayor

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF MCKINNEY, TEXAS

222 N. Tennessee Street
McKinney, Texas 75069

BY: _____
Lawrence W. Robinson

TITLE: City Manager

DATE: _____

ATTEST: _____
Sandra Hart, CMC

TITLE: City Secretary

CITY OF MELISSA, TEXAS

901 US Hwy 121
Melissa, Texas 75454

BY: _____
David Dorman

TITLE: Mayor _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF PRINCETON, TEXAS

306 N. Front
Princeton, Texas 75407

BY: _____
Steven Deffibaugh

TITLE: Mayor _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF PROSPER, TEXAS

113 W. Broadway
Prosper, Texas 75078

BY: _____
Charles Niswanger

TITLE: Mayor _____

DATE: _____

ATTEST: _____

TITLE: _____