

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

This Amendment to the First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County ("Amendment") is entered into by and among 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 Town of Prosper (sometimes hereinafter collectively referred to as "Parties" or individually referred to as "Party") through their duly authorized officers or employees.

R E C I T A L S

WHEREAS, the Parties entered into an Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County in 2006; and

WHEREAS, the Parties entered into that certain First Amended Interlocal Agreement for the Facility Construction and Use of an Animal Shelter in Collin County dated to be effective as of September 26, 2006 ("Agreement"), which Agreement specifically superseded and replaced all prior agreements between the parties regarding the construction and use of the Shelter in Collin County; and

WHEREAS, the Parties now desire to amend the Agreement as set forth in this Amendment and to agree as set forth herein.

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 recitals that appear above are found by the Parties to be true and correct in all respects and are incorporated into this Amendment by reference.
2. **Defined Terms**. Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Agreement.
3. **Amendment to Section 4, "Initial Term/Renewal Term"**. Section 4, entitled "Initial Term/Renewal Term," of the Agreement is hereby amended by deleting Sections 4.01 and 4.02 replacing said sections in their entirety with new Sections 4.01 and 4.02 to read as follows:

"4.01 **Initial Term**. This Agreement shall commence on November 14, 2006 and shall continue for an initial term of seventeen (17) 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 “Renewal Term” following the Initial Term, unless a Party expressly declines automatic renewal. The duration of the Renewal Term shall be for a period of five (5) years, upon the same terms and conditions contained in this Agreement or as modified by subsequent agreements between the Parties, and shall automatically renew and continue for additional Renewal Terms 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 three hundred sixty-five (365) days prior to the automatic renewal date.”

4. **Amendments to Section 9, “Operation of Facilities”**. Section 9, entitled “Operation of Facilities,” of the Agreement is hereby amended by and through the amendment of the following Sections:

- (a) **Section 9.01, “Operating Committee Authority,” is hereby deleted in its entirety and replaced with a new Section 9.01 that is also entitled “Operating Committee Authority” to read as follows:**

“9.01 **Operating Committee Authority.** The Operating Committee shall be entitled to make nonbinding recommendations regarding: (a) ongoing operational issues, including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures, and related issues; and (b) the annual 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.”

- (b) **Sections 9.10.2, entitled “Maintenance and Operation Payments,” and 9.10.2.1, entitled “Adjusted Maintenance and Operation Payments,” are hereby deleted in their entirety and replaced with a new Section 9.10.2 that is also entitled “Maintenance and Operation Payments” and a new Section 9.10.2.1 entitled “Adjusted Maintenance and Operation Payments,” which Sections shall read as follows:**

“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. For the period beginning on the Effective Date of this Agreement and ending upon the termination of this Agreement, 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 the greater of (.1) changes in the North Central Texas Council of Government population estimates or (.2) the Animal Intake Rates by each Party, as applicable, and calculated on the actual Shelter Operating Expenses incurred in connection with the operation of the Shelter."

- (c) **A new Section 9.10.4 entitled "Shelter Capital Improvements Fund Payments," including Sections 9.10.4.1, 9.10.4.2, and Sections 9.10.4.2.1 through 9.10.4.2.3 are hereby adopted to read as follows:**

"9.10.4 Shelter Capital Improvements Fund Payments. On at least an annual basis the Operating Committee, with the assistance of the Parties, shall evaluate the physical condition of the Shelter to identify any permanent structural changes that need to be made to the Shelter or physical aspects of the Shelter that need restoration which will either enhance the Shelter's use as an animal shelter or increase its useful life as an animal shelter (collectively, "Capital Improvements"). If the Operating Committee determines that Capital Improvements are necessary, the Operating Committee shall prepare a written plan and estimated budget for the proposed Capital Improvements and forward such plan and estimated budget to the Commissioners Court for its consideration. The Commissioners Court will have the final authority on whether or not to move forward with the Capital Improvements recommended by the Operating Committee, but in making such decisions may solicit input from the other Parties' governing boards as to their willingness to budget and appropriate funding so as to share proportionately in the costs of the proposed Capital Improvements.

If approved by the Commissioners Court and the governing boards of the other Parties, each Party hereto agrees to pay on an annual basis a new Shelter Capital Improvements Fund Payment for the purpose of funding (either up front or over time) the costs of necessary Capital Improvements that are identified and approved by both the Operating Committee and the Commissioners Court.

For those Capital Improvements that are initially approved by the Operating Committee and the Commissioners Court, the total annual amount of Capital Improvements Fund Payments due and payable by the respective Parties shall be subject to approval by the governing boards of the Parties. Capital Improvements Fund Payments shall be allocated on a proportionate basis to the Parties in accordance with the terms and conditions described herein. No portion of a Party's Shelter Capital Improvements Fund Payment shall be used to pay depreciation, interest or principal payments on mortgages or other debt costs, if any. In addition, no portion of a Party's Shelter Capital Improvements Fund Payment shall be used to pay for any expenditure save and except the specific Capital Improvements recommended by the Operating Committee and approved by the governing boards of the Parties.

Each Party warrants that, as of the Effective Date of the Amendment establishing this Section, it has appropriated and has committed funds in the amount of its approved Shelter Capital Improvements Fund Payment requirements 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 anticipated Shelter Capital Improvements Fund Payment that will become due during any subsequent fiscal year subject to the Party's right to terminate this Agreement pursuant to Section 10.12.

Each Party hereby covenants and agrees to pay promptly when due all approved Shelter Capital Improvements Fund Payments, all adjustments to such payments, and any other charges payable to the County under the provisions of this Agreement. Each Party agrees that any approved Shelter Capital Improvements Fund 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 § 2251.025) from the date due until paid.

All Party payments received shall be expended by County solely for reimbursement of costs for Capital Improvements that have been initially approved by both the Operating Committee and the Commissioners Court, and thereafter approved by the Parties respective governing boards. 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 Capital Improvements. County shall maintain a separate Shelter Capital Improvements Fund Payments account for the Shelter.

9.10.4.1 Calculation of Shelter Capital Improvements Fund Payments for approved Capital Improvements. Beginning on the Effective Date of the Amendment establishing this Section, the Shelter Capital Improvements Fund Payments due from each Party will be shared on a pro-rata basis, calculated on the basis of the Parties' respective populations as set forth in the North Central Texas Council of Government population estimates. The Shelter Capital Improvements Fund 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.

9.10.4.2 Adjusted Shelter Capital Improvements Fund Payments. The estimated Shelter Capital Improvements Fund Payments that are anticipated to be due by each Party for the year following the Effective Date of the Amendment establishing this Section are set forth in "Exhibit G," attached hereto. On the first anniversary of the Effective Date of the Amendment establishing this Section and for each subsequent year thereafter, the amount of each Party's Shelter Capital Improvements Fund Payments will be adjusted on an annual basis in accordance with changes in the North Central Texas Council of Government population estimates, and calculated based on the actual Capital Improvements costs incurred.

9.10.4.2.1 Review. Each year the County shall review and compare the total budgeted amount of the Shelter Capital Improvements expenses to the actual Shelter Capital Improvements expenses that were incurred by the County 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 Capital Improvements expenses that were incurred by the County during the preceding fiscal year.

9.10.4.2.2 Surplus. If the aggregate Shelter Capital Improvements Fund Payments as budgeted and collected for the preceding fiscal year are greater than the Shelter Capital Improvements 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 payments it made to the County as compared to the preceding year's overage, with such credits beginning on May 1st of the subsequent fiscal year. In no event shall a Party be entitled to a

proportionate share of the Overage if the Party did not pay money to the County that contributed to the Overage.

9.10.4.2.3 **Deficit.** If the Shelter's aggregate Shelter Capital Improvements Fund Payments as budgeted and collected for the preceding fiscal year are less than the Shelter Capital Improvements 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 to the Shelter Capital Improvements fund 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 subject to the availability of funds for such purpose."

5. **Amendment to Section 10, "Termination"**. Section 10, "Termination," of the Agreement is hereby amended by deleting Section 10.12, "By a City," and replacing said section with a new Section 10.12 also entitled "By a City" to read as follows:

"10.12 **By a City.** Any City that is a Party to this Agreement may voluntarily terminate its rights and obligations under this 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 this 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."

"10.12.1 **No Refund of Shelter Operating Expense.** No prior payments shall be refunded to any City that voluntarily terminates its rights and obligations under this Agreement to the extent that such prior payments have been committed to and used exclusively in accordance with the terms of this Agreement for Shelter Operating Expenses incurred as a result of the operation of the Shelter. If, however, a surplus of money exists in the Shelter Operations Budget at the end of the then applicable fiscal year, a proportionate share of such overage based on the contributions of the then participating Parties shall be refunded to any City that voluntarily terminates its rights and obligations under this Agreement for the then-current fiscal year under Section 9.10.2."

"10.12.2 **Refund of Shelter Capital Improvements Fund Payment.** Any City that is a Party to this Agreement and voluntarily terminates its rights and obligations under this Agreement shall have refunded to it on or before the date of termination any and all

payments made by such City to the Shelter Capital Improvements Fund Payment account to the extent that such money has (a) NOT been previously refunded to said City as an overage under Section 9.10.4.2.2 herein-above, (b) NOT actually been expended for one or more specific Capital Improvements recommended for approval by the Operating Committee and approved by the governing boards of the Parties, or (3) NOT been committed for expenditure by a fully executed written contract entered into before the City's notice of termination and which fully executed written contract is for one or more specific Capital Improvements recommended for approval by the Operating Committee and approved by the governing boards of the Parties.

Notwithstanding the foregoing and anything contained herein to the contrary, any City that is a Party to this Agreement and voluntarily terminates its rights and obligations under this Agreement shall have no further responsibility or liability for any additional payments to the Shelter Capital Improvements Fund Payment following the effective date of such City's termination of this Agreement."

6. **Ratification.** The Parties hereby ratify and confirm that all of the terms, provisions, covenants and conditions of the Agreement remain in full force and effect, except as amended in this Amendment.
7. **Controlling Agreement.** To the extent that any provision contained in this Amendment conflicts with the Agreement, the provision contained in this Amendment shall supersede and control over the conflicting provision contained in the Agreement.
8. **Entire Agreement/ Amendment.** This Amendment and the Agreement contain the entire agreement of the Parties with respect to the matters contained herein. This Amendment may not be modified or terminated except by the written agreement of the Parties.
9. **Authority to Execute.** The individuals executing this Amendment on behalf of the respective Parties below represent that all appropriate and necessary action has been taken to authorize the individual who is executing this Amendment to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Amendment in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
10. **Counterparts.** This Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment. An electronic mail or facsimile signature will

also be deemed to constitute an original if properly executed and delivered to the other Parties.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Amendment and caused this Amendment to be effective when all the Parties have signed it. The date this Amendment is signed by the last Party to sign it (as indicated by the date associated with that Party's signature below) will be deemed the effective date of this Amendment ("Effective Date").

COLLIN COUNTY, TEXAS

CITY OF ANNA, TEXAS

By: Michael G. Ken

By: _____

BY: _____
NAME: _____

BY: _____
NAME: _____

Name: _____
Title: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

Attest: _____
Title: _____

CITY OF CELINA, TEXAS

CITY OF FARMERSVILLE, TEXAS

By: _____

By: _____

BY: _____
NAME: _____

BY: _____
NAME: _____

Name: _____

Name: _____

Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

CITY OF FRISCO, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

CITY OF LOWRY CROSSING, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____

Attest: _____
Title: _____

Attest: _____
Title: _____

CITY OF PROSPER, TEXAS

By: _____

BY: _____
NAME: _____

Name: _____
Title: _____

TITLE: City Manager
Date: _____

Attest: _____
Title: _____