

THE STATE OF TEXAS

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COUNTIES OF COMAL
AND GUADALUPE

**THIRD AMENDED
AGREEMENT**

This Third Amended Agreement, by and between the City of New Braunfels, a Home Rule Municipal Corporation located in Comal and Guadalupe Counties, Texas, hereinafter referred to as the “City”, and the Humane Society of the New Braunfels Area, Inc., a Texas Non-Profit Corporation located in New Braunfels, Comal County, Texas, hereinafter referred to as the “Humane Society”, shall upon approval and execution be the effective Agreement between these parties commencing October 1, 2021.

WHEREAS, the City and the Humane Society entered into an Agreement for the management to operate and maintain animal control, care and welfare services as well as to operate and maintain an animal care facility for the purpose of sheltering lost or abandoned animals until humanely disposed of in accordance with its principles and all applicable state and local rules and regulations; and

WHEREAS, the City agrees with the Humane Society, and local veterinary medical providers that providing preventive vaccination services to animals at intake improves the health and welfare of animals in shelter care; and

WHEREAS, the City has a continuing need for animal impoundment facilities to house, board and keep animals collected by City Animal Control Officers, City-appointed agents, and/or residents of the City of New Braunfels; and

WHEREAS, the City Council of the City of New Braunfels authorizes the City Manager to amend the previous Agreement with the Humane Society.

NOW THEREFORE, it is hereby agreed that all animals collected by the aforementioned parties shall be impounded for the time prescribed by the City’s animal control ordinances and the policies adopted by the Humane Society at the Humane Society’s shelter in accordance with the terms, conditions and agreements as follows:

1. Definitions: For the purposes of this Agreement the following terms are defined as follows:

A. “Animal” means every non-human species of animal, both domestic and wild.

- B. "Animal Fees" refers to intake fees, disposal fees, and impoundment fees collected by the City or the Humane Society over a twelve (12) month period.
 - C. "Animal Ordinances" means and refers to City of New Braunfels Code of Ordinances, Chapter 6 - Animals, any related ordinances, and all amendments thereto.
 - D. "City" means and refers to the City of New Braunfels, in Comal and Guadalupe Counties, Texas.
 - E. "Humane Society" means and refers to the Humane Society of the New Braunfels Area, Inc.
 - F. "Major Holidays" means and refers only to those holidays observed by the Humane Society limited to fourteen (14) per year.
 - G. "Quarantine" or "Quarantine Services" means and refers to the strict confinement, for the purpose of preventing the spread of disease, under restraint by closed cage, isolation, kennel, rabies chamber, paddock, or any other manner approved by the local health authority on the premises of the Humane Society. This also includes the daily rabies review of all city animals under quarantine at the Humane Society by Humane Society staff.
 - H. "Quarantine Period" means that portion of the observation period during which an animal is physically confined for observation as provided for under section 6-109 of the City's Code of Ordinances as amended.
 - I. "Shelter" and "Premises" are used interchangeably, and both refer to and mean the Humane Society's animal shelter, currently addressed at 3353 Morningside Drive, New Braunfels, Texas, and any subsequent location.
2. Term: This Agreement shall begin on October 1, 2021, the effective date, and shall continue for a period of three (3) years, with two 1-year options for renewal, unless sooner terminated by either party by giving written notice of its desire to terminate this Agreement ninety (90) days prior to the desired effective termination date. Option to Extend: this Agreement may be extended provided all terms and conditions, except for the Agreement period being extended or any price redetermination as authorized elsewhere in this Agreement, remain unchanged and in full force effect. Option to Extend, if exercised is to be executed in the form of a Modification/Supplemental Agreement, to be issued not sooner than ninety (90) days prior to expiration of this

Agreement, not later than the final day of the Agreement period. This Option to Extend requires the mutual agreement of both parties. Refusal by either party to exercise this Option to Extend shall require this Agreement to expire on the original or mutually agreed date. The normal extension period shall be in one (1) year increments.

3. **Animal Control Responsibilities:** The Humane Society's responsibility for a seized animal shall not begin until the animal has been placed in the custody of the Shelter. The City agrees that all animals apprehended within the city limits by Animal Control Officers or the City's duly appointed agents shall be delivered either to the Shelter or the animal's owner. Once impounded, animals shall remain under the control and custody of the Humane Society for such period of time as required under state law and the City's Animal Ordinances except as hereinafter stipulated.
4. **Quarantine Services:** The Humane Society agrees to provide Quarantine Services to the City for animals placed into quarantine with the Shelter by City personnel or its authorized agents in accordance with state statutes and local ordinances.
5. **Payments:**
 - A. **Intake Fees** – Beginning October 1, 2021, the City's fiscal year (FY) payment for intake services shall be based on a rolling three (3) calendar year (CY) average of the annual number of animals that were in-taken by the City's Animal Control Officers or apprehended within the New Braunfels city limits. For the term of this Agreement, the base rate for intake services is \$110.00 per animal. By March 31st of every CY, city and Humane Society staff will verify the actual number of animals that received intake services so that the payment for the upcoming FY can be calculated. The amount will be paid in twelve (12) equal monthly payments.

Payment Methodology - \$110 per Animal		
FY 2022 payment	FY 2023 payment	FY 2024 payment
Average Animal Intake – CY 2018, 2019 & 2020	Average Animal Intake – CY 2019, 2020 & 2021	Average Animal Intake – CY 2020, 2021 & 2022

- B. **Disposal Fees** – The Humane Society agrees to turnover to the City on a monthly basis, all animal disposal fees and costs collected by the Shelter. The City agrees to pay the disposal costs for animal remains accumulated at the Shelter.

- C. Dispatch Services – In addition to the intake fee stated above, the City shall pay the Humane Society on a monthly basis, on or before the 15th of each month, a fee of \$4,500 to cover the cost of dispatch services.
 - D. Facilities Use Fee Payment – The City shall pay to the Humane Society on a monthly basis, on or before the 15th of each month, a Facilities Use Fee Payment in the amount of \$4,167 as an originally agreed-upon contribution to the facility mortgage in consideration for impoundment space and access herein provided to the City. The total amount of the Facilities Use Fee paid shall not exceed \$500,000; inclusive of the previous amounts paid under the terms of the original contract dated October 1, 2012. As of the commencement date of this Agreement, October 1, 2021, the City has paid \$450,036 in Facilities Use Fees. Once the total amount has been paid, the Facilities Use Fee shall terminate and the City shall have no further obligation to the Humane Society regarding this Facilities Use Fee, but shall still be granted the same impoundment space and access to facilities as provided in this Agreement.
 - E. Impoundment Fee Payments – The Humane Society shall pay to the City on a monthly basis, on or before the 15th day of each month, all impoundment fees collected or received by the Humane Society from animal owners.
 - F. License Registration – The Humane Society shall refer to the City any residents or providers who wish to pay their animal license registration fees. The Humane Society shall notify the Neighborhood Services Manager of any animals in-taken that are not licensed/registered.
6. Records and Reports:
- A. The Humane Society shall be the central records depository for the City for records pertaining to the City's Animal Ordinances. The Humane Society shall maintain, at its expense, a computer system to facilitate said record keeping. Such records shall include those listed below.
 - B. The Humane Society shall provide the City's Neighborhood Services Manager a monthly report, in addition to the statement described in Section 5(A) above, that provides the following information on a per month basis for animals brought in by City Animal Control Officers, Appointed Agents or City residents:
 - (1) The number of animals received sorted by:

- a. Animal delivered by the City's Animal Control Officers and Appointed Agents
 - b. Animals not delivered by the City's Animal Control Officers and Appointed Agents
- (2) The number of animals euthanized
- (3) The number of animals adopted
- (4) The number of animals reclaimed
- (5) The total amount of impoundment fees collected
- C. The Humane Society agrees to submit to the City's Chief Financial Officer prior to October 1st of each year, a copy of its projected and proposed fiscal budget for the upcoming fiscal period detailing funding, planned operations, and any capital investments on assets, liabilities and equities. The Humane Society further agrees to submit to the City prior to January 1st of each year a copy of its final operating budget for that year, which shall cover the time period of October 1st through September 30th. All financial statements and reports shall be on forms approved by the City. In addition, the Humane Society agrees to allow the City to audit, at the City's expense, the Humane Society's books, financial and otherwise, maintained by the Humane Society, provided the City provides at least five (5) days written notice of its intent to perform an audit. The Humane Society agrees to provide the City and its auditors with complete access to all records necessary to perform said audit.
- D. On a quarterly basis, the Humane Society will provide the following financial document to the City's Chief Financial Officer in a mutual effort to ensure and maintain fiscal health for the benefit of the taxpayers:
 - (1) Bank reconciliations
 - (2) Income statement
 - (3) Balance sheet
 - (4) IRS-990 Tax Form and supporting documentation (annual)
- 7. Operation: The Humane Society agrees to operate and maintain the Shelter in a safe, humane and business-like manner, in compliance with all State regulations, and in a manner comparable with other animal shelters. Without limiting the foregoing, operation of the Shelter shall include the following:

- A. Hours of operation – Animal Control Officers shall have twenty-four (24) hour access to the Shelter for the delivery of animals. The Shelter's hours of operation shall be conspicuously posted at the Shelter and viewable by the public twenty-four (24) hours a day, seven days a week. Excluding Major Holidays and two (2) days of required training, the Shelter will be open to the public each week a minimum of thirty-six (36) hours, as follows:
- (1) Monday through Friday – Thirty (30) hours minimum
 - (2) Saturday and Sunday – Six (6) hours minimum, with at least four (4) hours on Saturday
- B. Dispatch – The Humane Society shall provide dispatch service for Animal Control Officers during the thirty-six (36) hours of public operation outlined above. In addition, the Humane Society shall provide an additional twelve (12) hours of dispatch service whether or not the shelter is open to the public. The Shelter shall provide dispatch service at least six (6) days per week for a minimum of forty-eight (48) hours total dispatch service per week. The Shelter is not required to provide dispatch service when the Shelter is closed for major holidays or for the aforementioned two training days. The Humane Society shall inform the City's Neighborhood Services Manager if the shelter will be closed for training so that the City can ensure alternative dispatch services no later than seven (7) days before the scheduled closure.
- C. Equipment – The City shall provide, install, maintain and pay for the following equipment for use by the Shelter in providing dispatch services:
- (1) Telephone – A dedicated telephone and telephone line with a separate directory listing for Animal Welfare and Rescue at the Shelter. The telephone shall be equipped with call forwarding or other such switching device as to allow the routing of calls to the City's Police Dispatch when the Shelter is closed. The Humane Society agrees not to use the line for other Shelter business.
 - (2) Radio – Radio dispatch equipment, including but not limited to the placement of a base radio and antenna at the Shelter.
- D. Ownership of animals delivered to Shelter – The City agrees, to the extent permitted by law, that every dog, cat or other animal, licensed or unlicensed, not claimed or

redeemed by the owner before the expiration of the dates specified in the City's Animal Ordinances, shall become the sole and exclusive property of the Humane Society, so that neither the City nor any agency of the City shall have any claim or right to said animals. Once an animal has become the property of the Humane Society, it may sell any animal, save and except for dogs and cats, according to the procedures outlined in the City's Animal Ordinances and all sale proceeds shall be the property of the Humane Society.

- E. Disposal of animals – The City agrees that the Humane Society may, in accordance with its principles humanely dispose of every animal placed in its custody, in a manner consistent with the City's Animal Ordinances. The Humane Society is authorized to euthanize any animal placed in its custody by the City or the City's agents, and not redeemed or adopted within the time periods outlined in the City's Animal Ordinances. An animal may be euthanized if its owner cannot be determined or contacted within a reasonable time and when in the opinion of the Animal Control Officer, the Shelter Director or their designees, and in consultation with a licensed veterinarian, it would be more humane to euthanize the sick or injured animal than to attempt to preserve its life for the designated impoundment/holding periods set forth in the Animal Ordinances.
- F. Shelter Conditions – The Humane Society agrees to provide suitable, safe and sanitary kennels, cages and pens for the impoundment of all animals in its custody and shall be responsible for their safekeeping for the impoundment periods as set forth in the City's Animal Ordinances.
- G. Liability – The Humane Society shall not be held liable to any person for the detention of any animal delivered to the Shelter by the City or its agent, provided the detention is in accordance with the City's Animal Ordinances.
- H. Employment – Nothing in this Agreement shall be construed as altering the employment status of the City's Animal Control Officers. Animal Control Officers are City employees. Disciplinary authority over Animal Control Officers shall be the exclusive domain of the City. The City is responsible for providing all vehicles, equipment, salaries, dispatch forms, records, office supplies and photocopy services

to be utilized by the City's Animal Control Officers. All such equipment and supplies provided by the City shall remain the property of the City.

I. Additional Considerations – The Humane Society agrees to provide all customary utility services for animal control operations. The Humane Society agrees to provide the following animal control services, including but not limited to housing, intake functions, isolation and quarantine facilities, and targeted medical treatment. The Humane Society further agrees to the following:

- (1) The Humane Society will strive to maintain "No Kill" status and continue to reduce euthanasia, promote the humane treatment of animals, promote enhanced animal adoptions and fostering, advocate proactive Spay/Neuter initiatives, community education, and provide safe harbor for animals afflicted by neglect, abandonment and abuse, and in pursuit of such the Humane Society agrees to maintain representation on the City's Animal Services Advisory Board as currently structured.
- (2) The Humane Society agrees to develop, provide, and maintain a web-based program which shall be made available to the City's Animal Welfare and Rescue Division. The web-based program will allow animal control officers the capability to remotely access the information collected and documented by the Humane Society, including but not limited to current animal intake information, impoundment status, calls for service, demographic details, animal vaccination and licensing information, and other similar particulars.
- (3) The Humane Society agrees that the City shall have first right of refusal to purchase its real property addressed at 3353 Morningside Drive, New Braunfels, Texas if the Humane Society decides to sell. The City has paid the Humane Society ten dollars (\$10) and other valuable consideration for the first right of refusal, the sufficiency and receipt of such consideration is hereby acknowledged. Additionally, the City shall be afforded the right to purchase the personal property if the Humane Society decides to sell. An appraisal at the time of the sale shall determine the fair market value of the real and personal property. The final purchase price amount for the City shall be equal to the difference remaining after

deduction of all accrued facilities use fee amounts paid to the Shelter, as described in Section 5.D, at the time of sale.

(4) The Humane Society agrees to contact and notify the City within twenty-four (24) hours of any potential or actual material changes impacting the operation of the facility, changes which may include, but are not limited to the following reportable events:

- a. Signs or symptoms of potential or actual zoonotic disease transmission or similar communicable disease outbreak conditions;
- b. Adding to or reducing indoor or outdoor space(s);
- c. Reducing the number of currently existing quarantine units;
- d. Receiving notice of failure or substandard compliance with statutory minimum standards pursuant to applicable Texas Department of State Health Services inspection reviews;
- e. Changing the type of animals to be cared for;
- f. Changing the hours, days, or months of operation;
- g. Offering new services, which may fiscally affect contractual stipulations found in this Agreement;
- h. Extended utility outages; or
- i. Closing temporarily.

(5) The Humane Society agrees to provide a copy of the Texas Department of State Health Services facility inspection report to the City upon request.

(6) The Humane Society agrees to develop written daily operational policies and practices related to animal care and housing, zoonotic disease control, isolation and separation protocols, and cleaning and disinfection procedures, updating and introducing industry best management practices whenever possible. The Humane Society agrees to provide copies of said documents to the City for review.

(7) The Humane Society agrees to allow City inspection officials access to enter the Shelter, in order to conduct periodic inspections of the premises to ensure compliance with the terms of this agreement, city ordinances and/or building codes.

8. Commercial Animal Establishments: The City agrees to solicit input from the Humane Society on the development and adoption of rules and regulations regarding commercial animal establishments.
9. Conflicts: It is mutually agreed that in all cases of conflict between this Agreement, State law and the City's Animal Ordinances, State law and the City's Ordinances shall prevail.
10. Notice: The City agrees to provide the Humane Society notice of any proposed amendments to the City's Animal Ordinances at least two (2) weeks prior to the amendments' first reading before the City Council, in order for the Humane Society to have an opportunity to review and comment on the proposed amendments.

Notwithstanding the foregoing, failure to provide notice in accordance with this Agreement shall in no way affect the validity of any amendment to the City's Animal Ordinances. All notices required to be furnished in writing under the terms of this Agreement shall be furnished to the City at the following address:

City of New Braunfels, Texas
550 Landa Street
New Braunfels, TX 78130
Attention: Neighborhood Services Manager

and shall be provided to the Humane Society at the following address:

Humane Society of the New Braunfels Area, Inc.
3353 Morningside Drive
New Braunfels, TX 78130
Attention: Director

Any notice sent to any other address shall be insufficient to comply with the provisions of this Agreement. Notices will be deemed furnished when deposited in the United States mail postage prepaid.

11. Amendments: This Agreement may be amended from time to time in writing, approved by both the City and the Humane Society.
12. Indemnification: The Humane Society shall indemnify and hold the City harmless from any liability from claims, demands and expenses, including attorney fees that may arise due to actions by the Humane Society in the performance of its duties pursuant to this Agreement.
13. Miscellaneous: The City shall have no further responsibility to the Humane Society other than as set forth in this Agreement. The Humane Society shall not have any authority

over the City or its agents, except as set forth in this Agreement. The Humane Society shall not have any further responsibility to the City other than as set forth in this Agreement and the City shall not have any authority over the Humane Society employees, or other individuals affiliated with the Humane Society, except as set forth in this Agreement. Venue for all disputes related to this Agreement shall lie in New Braunfels, Comal County, Texas.

IN WITNESS WHEREOF, the Humane Society by and through its President, and the City, acting through its City Manager, duly authorized by the City Council of the City of New Braunfels, Texas, enters into this Agreement with an effective date of the 1st day of October, 2021.

THE HUMANE SOCIETY OF THE NEW
BRAUNFELS AREA, INC., A TEXAS NON-
PROFIT CORPORATION.

By: _____
_____, President

ATTEST:

_____, Vice President

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Robert Camareno, City Manager

ATTEST:

Caitlin Krobot, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney