

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS

COUNTY OF COMAL

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SECOND
AMENDMENT TO
AGREEMENT

This 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 by the parties described herein, automatically terminate all other previous contractual agreements between the City and the Humane Society.

WITNESSETH

WHEREAS, the City and the Humane Society entered into an Agreement for the management to operate and maintain animal control services and well as operating and maintaining 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(s), 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 Animal Control Services Contract with the Humane Society of the New Braunfels Area, Inc.

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. "City" means and refers to the City of New Braunfels, in Comal and Guadalupe Counties, Texas.
- B. "Humane Society" means and refers to the Humane Society of the New Braunfels Area, Inc. "Shelter"
- C. "Animal Control Ordinances" means and refers to City of New Braunfels Code of Ordinances. Chapter 6 – Animals, and all amendments thereto.
- D. "Shelter" and "Premises" are used interchangeably and both refer to and mean the Humane Society's animal shelter, currently located at 3353 Momingside Drive, New Braunfels, Texas, and any subsequent location.
- E. "Animal" or "animal" means every nonhuman species of animal, both domestic and wild.
- F. "Animal Fees" means the total revenue collected by the City over a twelve (12) month period, defined herein, for dog and cat licensing fees, impoundment fees, commercial animal establishment fees and fines and fees collected through the New Braunfels' Municipal Court, excluding court costs, for violations of the City's Animal Control Ordinance.
- G. "Major holidays" means and refers only to those holidays observed by the Humane Society limited to fourteen (14) per year.
- H. "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.
- I. "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.
- J.

2. Term: This Agreement shall begin on January 1, 2019, the effective date, and shall continue for a period of three (3) years, 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 contract may be extended provided all terms and conditions, except for the contract period being extended or any price redetermination as authorized elsewhere in this contract, 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 contract, not later than the final day of the contract 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 contract 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 confines of the City by Animal Control Officers or the City's duly appointed agents shall be delivered either to the Humane Society Animal 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 Control Ordinances except as hereinafter stipulated.

4. Quarantine Services: The Humane Society agrees to provide Quarantine Services to the City, in accordance with State and local laws, for animals placed into quarantine with the Shelter by City personnel or its authorized agents, in return for the agreement to reimburse the Humane Society for quarantine expenses not recovered from the owner of the quarantined animal (limited to \$450.00 maximum per year), specifically: (1) holding fees at \$18.00 per day, maximum of 3 days per animal; (2) rabies vaccinations at \$10.00 per vaccination; and (3) veterinary certifications at \$35.00 per certification. The Humane Society acknowledges and agrees that it shall use its best efforts to obtain payment from the owner of the animal first and seek reimbursement from the City only after its attempts at collection of the expenses have failed. The City acknowledges that the Shelter may be required to raise quarantine service fees in response to market events, however, the City's potential total reimbursement responsibility shall be limited to a maximum of \$450.00 per year.

5. Payments:

A. Impound Fees - Beginning October 1, 2018, the City shall pay to the Humane Society an impoundment fee of Eighty Five Dollars (\$85.00) for each animal delivered to the Shelter by the City's Animal Control Officers, appointed agents or residents of the city. The impoundment fee includes the costs of impoundment and vaccination of the animals. The City and the Humane Society will annually negotiate, in good faith, revisions to the impoundment fee. In order to calculate the amount owed by the City, the Humane Society agrees to provide the City a monthly statement, signed by the Humane Society's designated official, listing all animals delivered to the Shelter during the previous month. The City agrees to tender payment to the Humane Society within 30 days of receipt of the Humane Society's signed, detailed statement.

- 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 and to provide appropriate personnel when available, to assist Shelter personnel in the preparation and delivery of animal remains to a proper disposal site. The City agrees that should City personnel not be available on a timely basis to assist in the preparation and delivery of animal remains to the disposal site when requested by the Humane Society, then the Humane Society may utilize disposal fees and costs collected by the Shelter, to pay for preparation and transport of animal remains to a proper waste disposal site.
- C. Monthly Payments - In addition to the impoundment fee stated above, the City shall pay the Humane Society on a monthly basis, on or before the (15th) of each month, an Administrative Fee of \$4,000. Effective October 1 of each year, the City agrees to an annual increase in the monthly administrative fee amount paid the Society through October 1, 2022, in the amount of an additional one hundred Dollars (\$100.00). After this period, the City will negotiate in good faith revisions to the monthly administrative fee with the Humane Society.
- D. Facility 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 in the amount of \$4,167 in consideration for office space, utilities, facilities, and the enumerated operational services herein provided to the animal control services division. 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. Once this 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.
- E. Impoundment and License fee payments - The Humane Society shall pay to the City on a monthly basis, on or before the fifteenth (15th) day of each month, all impoundment and license fees collected or received by the Humane Society, including those license fees collected by authorized providers and turned over to the Humane Society.
- F. Quarantine Fee Reimbursement - The City shall reimburse the Humane Society up to \$450.00 per year, for quarantine expenses not collected from owners of animals quarantined at the Humane Society shelter. The Humane Society agrees to provide a detailed invoice and copies of documents indicating its collection efforts for each animal for which the Society seeks reimbursement.

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 Control 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 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. Animals 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 redeemed.
 - 5. The number of animal control calls taken.
 - 6. The total amount of impoundment fees collected.
 - 7. The number of summons issued by the City's Animal Control Officers.
 - 8. The number of City licenses issued, sorted by those issued by:
 - a. The Humane Society.
 - b. Local veterinarians, sorted by each veterinarian, if applicable.
 - 9. The amount of City license fees collected, sorted by the amounts collected by the:
 - a. Humane Society.
 - b. Local veterinarians, sorted by each veterinarian, if applicable.
- C. The Humane Society agrees to submit to the City prior to January 1st of each year, a copy of their 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 February 1st of each year a copy of its final operating budget for that year, which shall cover the time period of January 1st through December 31st. 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. The Humane Society agrees to meet with the City quarterly to review financials and other above information in a mutual effort to ensure and maintain fiscal health for the benefit of the taxpayers.

7. Operation: The Humane Society agrees to operate and maintain the Shelter in a safe, humane and businesslike 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.

- 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 Control 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 Control 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 Control 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 Control 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 Control Ordinance. An animal may be immediately euthanized if its owner cannot be readily determined or contacted 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 Control Ordinance.

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 Control Ordinance.

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 Control 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 under the Animal Services division of the City. 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 office space for City Animal Control Officers for the duration of the contract. The Humane Society agrees to provide all customary utility services for animal control operations. The 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 Society will strive to 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 Society agrees to maintain representation on the City's Animal Shelter Advisory Board as currently structured.
 2. The Society agrees to develop, provide, and maintain a web based computer software program which shall be made available to the City Animal Control Division. The computer software program will allow animal control officers the capability to remotely access the information collected and documented by the Society, including but not limited to current animal intake information, impoundment status, calls for service demographical details, animal vaccination and licensing information and other similar particulars.
 3. The Society agrees that the City shall have first right of refusal to purchase the property if the Humane Society decides to sell or vacate the premises. Additionally, the City shall be afforded the right to purchase the real and personal property at the fair market value determined by appraisal at the time of sale. The final purchase price amount shall be equal to the difference remaining, after the City deducts all accrued facilities use fee amounts paid to the Shelter, as described in Section (5) D, at the time of sale. If the City decides not to purchase the facilities, the Humane Society will reimburse to the City, from sale of proceeds, the total accrued facilities use fee payment amounts paid to the Society at that time.
 4. The 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:
 - (1) Signs or symptoms of potential or actual zoonotic disease transmission or

- similar communicable disease outbreak conditions;
- (2) Adding to or reducing indoor or outdoor space(s);
 - (3) Reducing the number of currently existing quarantine units;
 - (4) Receiving notice of failure or substandard compliance with statutory minimum standards pursuant to applicable Texas Department of State Health Services inspection reviews;
 - (5) Changing the type of animals to be cared for;
 - (6) Changing the hours, days, or months of operation;
 - (7) Offering new services, which may fiscally affect contractual stipulations found in this contract; or
 - (8) Closing temporarily.
5. The Society agrees to provide a copy of the Texas Department of State Health Services facility inspection report to the City upon request.
 6. The 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 & disinfection procedures, updating and introducing industry best management practices whenever possible. The Society agrees to provide copies of said documents to the City for review.
 7. The 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.
8. License: The City's designee shall sell City dog and cat licenses to owners not purchasing said licenses from a veterinarian at the time of vaccination, and may also sell duplicate licenses to owners who have lost a license.
9. Training: Animal Control Officers shall participate in Animal Control Officer training classes as to be certified by the State of Texas and to hold certification in current status.
10. 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.
11. Conflicts: It is mutually agreed that in all cases of conflict between this Agreement, State law and the City's Animal Control Ordinances, State law and the City's Ordinances shall prevail.

12. Notice: The City agrees to provide the Humane Society notice of any proposed amendments to the City's Animal Control 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 Control 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: City 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.

14. Amendments: This Agreement may be amended from time to time in writing, approved by both the City and the Humane Society.

15. 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. To the extent allowed by law, the City shall indemnify and hold the Humane Society harmless from any liability from claims, demands, and expenses, including attorney fees that may arise due to actions by the City in the performance of its functions pursuant to this Agreement. Nothing in this Agreement shall be construed as a waiver of the City's Governmental Immunity.

16. 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 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 on this the 1st day of January, 2019.

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

By: _____

John Velasquez, President

ATTEST:

Dr. James Rierson, Vice President

CITY OF NEW BRAUNFELS, TEXAS

By: _____

Robert Camareno, City Manager

ATTEST:

Patrick D. Aten, City Secretary



APPROVED AS TO FORM:



Valeria M. Acevedo, City Attorney