

INTERLOCAL COOPERATION AGREEMENT FOR ANIMAL CONTROL SERVICES

This Interlocal Agreement (the “Agreement”) is by and among the undersigned Participating Entities, each a “party” and collectively the “Parties,” acting by and through their authorized representatives.

RECITALS

WHEREAS, Chapter 791, the Interlocal Cooperation Act (the “Act”), of the Texas Government Code provides authorization for local governments to contract with one another to provide governmental functions, mutual aid and services under the terms of the Act; and

WHEREAS, the provision of animal control services are governmental functions and services under the terms of the Act; and

WHEREAS, the governing body of each Participating Entity in this Agreement desires to promote the health, safety and welfare of its citizens by engaging other local animal control authorities to assist with Animal Control Services in the event of an Emergency or Disaster; and

WHEREAS, the governing body of each Participating Entity believes that this Agreement is necessary for the benefit of the public and that each Participating Entity has the legal authority to provide governmental functions and services that are the subject of the Agreement; and

WHEREAS, any payment that a party is required to make hereunder shall be made from current, available revenue.

NOW, THEREFORE, upon and for the mutual consideration stated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article I Definitions

Unless the context clearly indicates otherwise, the following words and phrases used in this Agreement shall have the following meaning:

“Animal” shall mean any small domesticated creature, including, but not limited to, dogs, cats, birds, fish, mammals, reptiles, insects, and fowls.

“Animal Control Services” shall mean the services provided by a Party in response to a complaint or report that are necessary to effectively carry out an animal control program. Animal Control Services shall include, but not be limited to: the humane capture and sheltering of stray, unrestrained, homeless, abandoned, or unwanted animals and the humane transportation of captured animals to the Animal Shelter; response to calls regarding wild animals in residences; response to calls regarding animal bites and scratches, including the initial investigation of such incidents; and the capture of biting animals for state-mandated rabies quarantine observation by the Local Rabies

Control Authority. Animal Control Services do not include trapping nuisance animals, horses, or livestock or removal of deceased animals. No Participating Entity shall be responsible for conducting cruelty investigations or enforcement of criminal offenses through issuance of Notices to Appear or filing Probable Cause Affidavits with the appropriate court.

“Animal Shelter” shall mean the Responding Entity’s animal shelter facilities that keep or legally impound stray, homeless, abandoned, or unwanted animals on behalf of their respective cities.

“Coordinating Committee” shall mean a committee created to administer this Agreement which shall be comprised of one (1) designated representative from each Participating Entity. The Host Entity’s representative shall serve as the presiding member of the Committee.

“Emergency or Disaster” shall mean an event or set of circumstances resulting from disasters caused by all hazards, whether natural or man-made, and to provide support for search and rescue operations for persons and property, including Animals and/or Livestock, in distress which: (a) demands immediate action to preserve public health, protect life, protect property, or to provide relief to the community overtaken by such occurrences; or (b) reaches such a dimension or degree of destructiveness as to warrant any Participating Entity’s mayor or the governor of the State of Texas to declare a state of emergency or disaster.

“Host Entity” shall mean the City of Irving, Texas.

“Livestock” shall mean as set forth in the Texas Agriculture Code Section 1.003(3) and shall include cattle, horses, mules, asses, sheep, goats, or domestic game birds.

“Participating Entity” shall mean a municipality and/or local government that executes this Agreement.

“Responding Entity” shall mean the Participating Entity providing emergency Animal Control Services under this Agreement.

“Requesting Entity” shall mean the Participating Entity that is in need of emergency Animal Control Services under this Agreement.

Article II

Term

21 The Initial Term of this Agreement shall commence on June 1, 2018 (the “Effective Date”) and continue for a period of one (1) year, unless sooner terminated as provided herein. This Agreement shall automatically renew on June 1st of each year following the Effective Date (each a “Renewal Term”), unless sooner terminated as provided herein.

22 A Participating Entity may terminate its participation in this Agreement by providing thirty (30) days prior written notice of its request to terminate the Agreement to the Host Entity. The written notice of intent to terminate shall be delivered by the Host Entity, in writing, to the designated representative of each party to this Agreement. Termination by one or more parties to this Agreement does not affect the Agreement as it applies to the remaining parties.

23 A party's participation in this Agreement may be terminated for cause, including failure to comply with the terms or conditions of this Agreement, by an affirmative vote of a simple majority of the members of the Coordinating Committee. Upon termination under this section, the Host Entity shall provide thirty (30) days' written notice to the Participating Entity which has been removed following the Coordinating Committee's decision.

Article III

Responsibilities of the Parties

3.1 Requests for Animal Control Services. A Participating Entity may agree to provide Animal Control Services for a Requesting Entity in the event the Requesting Entity has provided notice that an Emergency or Disaster has or imminently will occur in its jurisdiction. The Receiving Entity's designated representative shall notify the Responding Entity's representative in writing via fax, email, or written correspondence as soon as practicable after it is known that an Emergency or Disaster has occurred or imminently will occur and emergency Animal Control Services are needed in its jurisdiction. In the event that written notification is not possible due to the Emergency or Disaster, notice may be provided by the Receiving Entity via direct telephone notification to the Responding Entity's representative, provided that the Receiving Entity shall provide notice in writing memorializing the date, time and nature of the telephone notice thereafter as soon as practicable.

3.2 Custody and Care of Animals. The Responding Entity shall take possession of the Animal(s) presented by the Receiving Entity and process the Animals following the same procedures as would be used by the Responding Entity in processing the Animal(s) in its jurisdiction, including providing the same quality of housing, food and services. The Responding Entity shall provide all necessary staffing and personnel needs for the Animals held in its Animal Shelter, unless otherwise agreed by both parties in writing.

3.3 Coordinating Committee. Except as otherwise provided herein, this Agreement will be administered by a Coordinating Committee comprised of one (1) designated representative from each Participating Entity. The Coordinating Committee shall have only the duties specifically outlined in this Agreement and may adopt its own rules of procedure not inconsistent with this Agreement. The Parties acknowledge and agree that the Coordinating Committee shall not be construed as a board or committee appointed by a governing body and shall not be required to comply with the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

3.4 Additional Parties. An eligible local government entity that desires to become a party to this Agreement may submit a written request to become a participating entity to the designated representative of the Host City. The Host City will forward the written request to the Coordinating Committee within thirty (30) days of any such request. An eligible entity shall only be entitled to become a participating entity upon approval by a simple majority vote of the Coordinating Committee. Notwithstanding approval of the Coordinating Committee, no entity will be deemed a party hereto until such time as the entity has adopted and fully executed this Agreement in the manner provided by law for such entity and has delivered a conformed copy of the same to the Host Entity's designated representative.

Article IV

Costs, Recordkeeping and Right of Refusal

4.1 If a Receiving Entity requires Animal Control Services by a Responding Entity under this Agreement that exceeds twelve (12) consecutive hours, the Receiving Entity shall, upon written request, reimburse Responding Entity the actual costs of providing Animal Control Services, including costs for personnel, operation and maintenance of equipment, damaged equipment, food, lodging, and transportation, incurred by the Responding Entity in response to a request for reimbursement. Written requests for reimbursement must be submitted as soon as practicable but in no event later than sixty (60) days after Animal Control Services were provided. Such request shall identify with specificity each service, labor, or equipment provided and the unit and total costs associated with each. The Responding Entity shall be responsible for creating and maintaining for a period of three (3) years a record of all costs incurred, both reimbursed and unreimbursed costs, in providing Animal Control Services to a Participating Entity under this Agreement.

4.2 The Receiving Entity shall pay the reimbursement from available funds. If federal money is available to pay costs associated with the provision of Animal Control Services under this Agreement, the Receiving Entity shall make the claim for the eligible costs of the Responding Entity on the Receiving Entity's application and shall disburse the federal share of the money to the Responding Entity, with sufficient local funds to cover the actual costs of the Responding Entity in providing assistance. Failure of Responding Entity to submit a request for reimbursement to Receiving Entity within the specified time frame specified in Section 4.1 of this Agreement will result in the Responding Entity not being reimbursed for the Animal Control Services provided unless the Federal Emergency Management Agency (FEMA) extends the deadline for filing requests for reimbursement. The Parties hereto recognize that each benefits from the existence of this Agreement and expect that each will provide and receive emergency mutual aid for Animal Control Services over the life of this Agreement. The Responding Entity may assume in whole or in part any costs associated with the provision of Animal Control Services or may loan or donate equipment or services to the Receiving Entity without charge or cost.

4.3 Each Participating Entity shall have the right to refuse to provide the Animal Control Services required by this Agreement in the event that the Participating Entity, in its sole discretion, determines that it does not or will not have the resources to provide the Animal Control Services under this Agreement, including but not limited to, insufficient staffing to provide the Animal Control Services or overcrowding at the Animal Shelter during the Emergency or Disaster.

Article V

Liability and Immunity

5.1 Responsibility for Claims. The Parties agree, to the extent authorized under the constitution and laws of the State of Texas and without waiving any immunity, right, protection, or defense to which a Participating Entity may be entitled, that each Participating Entity shall only be responsible for any claims for damages, costs, and expenses to a person or persons and/or property arising from or caused by the act or omission of its respective officials, agents, representatives, and employees in the performance of this Agreement, including but not limited to their acts of negligence or omission in the provision of Animal Control Services or housing of animals, but only to the extent the party would otherwise be liable under Texas or federal law.

52 Joint Liability. In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity, right, protection, or defense available to any party individually under Texas law. Each party shall be responsible for its sole negligence. The provisions of this section are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

53 **It is expressly understood and agreed that in execution of this Agreement, no party waives, nor shall be deemed to have waived, immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights for any third parties not signatories hereto.**

Article VI Miscellaneous

61 Assignment. This Agreement may not be assigned by any party hereto without the prior written unanimous consent of the other parties. No assignment, delegation of duties or subcontract under this Agreement shall be effective without the prior written unanimous consent of all parties hereto.

62 Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action arising as a result of this Agreement shall be in the state court of proper jurisdiction of the Responding Entity.

63 Legal Construction. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in this Agreement.

64 Amendment. This Agreement may not be amended except in writing executed by all current parties hereto at the time of amendment.

65 Entire Agreement. This Agreement represents the entire Agreement among the Parties with respect to the subject matter covered by this Agreement.

6.7 No Relationship Created. The Parties agree and acknowledge that no Party is an agent of any other Party under this Agreement and that each Party is responsible for its own acts, forbearance, negligence, and deeds, and for those of its agents or employees.

6.8 Rights of Third Parties. Nothing contained in this Agreement shall be construed to create, and the Parties do not intend to create, any rights in or for the benefit of third parties.

6.9 Force Majeure. In the event that any party shall be prevented from performing any of its obligations under this Agreement by any act of God, war, right, civil commotion, strikes, fires, flood or by the occurrence of any other event beyond the control of such party, then such party shall be excused from the performance of the obligations in this Agreement but only during such periods of Force Majeure.

6.10 Recitals. The recitals of this Agreement are incorporated herein.

6.11 Notice. Notices. All notices pertaining to this Agreement shall be in writing and shall be deemed delivered (i) when received at a Party's address if hand delivered or sent via overnight delivery service by way of USPS, UPS, FedEx, or similar carrier, or (ii) on the third (3rd) business day after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Parties at the respective notice addresses set forth below or at other addresses as may have been previously specified by written notice delivered in accordance with this Agreement.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

[Signature Pages to Follow]

EXECUTED this ____ day of _____, 2018.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
Shelley George, City Secretary

Approved as to form:

By: _____
Peter G. Smith, City Attorney

Designated Representative for the City of Allen, Texas:

Animal Control Manager
205 W. McDermott
Allen, Texas 75013
214-509-4378

EXECUTED this ____ day of _____, 2018.

_____, **TEXAS**

By: _____
_____, _____

Attest:

By: _____
_____, _____

Approved as to form:

By: _____
_____, [Legal Counsel]

Designated Representative for the _____, Texas:

