

**AGREEMENT FOR ANIMAL SHELTER SERVICES PROVIDED BY
BRAZOS ANIMAL SHELTER, INC.**

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This Agreement is made this ____ day of _____, 2011 by and between The Brazos Animal Shelter, Inc., a Texas non-profit corporation (herein referred to as the “Shelter”) and the City of College Station, Texas, Texas a home rule municipality (herein referred to as the “City”).

Whereas, the SHELTER plans to operate an animal shelter facility to be located at 5359 Leonard Road, Bryan, in Brazos County, Texas, to house stray, unwanted or abandoned animals; and

Whereas, the CITY has need of a facility to house animals it takes possession of throughout the CITY pursuant to City Ordinance after such animals have been abandoned, seized, or are considered strays as defined by the City’s animal control ordinance; and

Whereas, the CITY desires to have the SHELTER perform such other animal services, including the collection, administration and/or accounting of certain monies associated with impoundment, boarding and licensing of CITY animals as set forth herein; and

Whereas, the SHELTER and the CITY have agreed to the execution of this Agreement for the purpose of the SHELTER providing such services; now therefore

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual covenants herein expressed, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE ONE – DEFINITIONS

The Parties agree that the following definitions shall apply to this Agreement:

1.1 “Animals” shall mean domestic animals such as dogs, cats and domesticated rabbits, non-indigenous reptiles and shall exclude birds, fowls and livestock as defined herein.

1.2 “Annual Payment” shall mean the annual amount CITY pays SHELTER for SHELTER’s services calculated pursuant to the terms of this Agreement.

1.3 “Birds” and “Fowls” shall be defined as an animal belonging to the class of Aves including members of the parrot family and all game birds, including but not limited to dove, quail, duck, goose, pigeon, cardinal, blue jay, robin, sparrow, blackbird and crow.

1.4 “City Ordinance” shall refer to Chapter 2 of the City of College Station Code of Ordinances as same may, from time to time be amended.

1.5 “City Licensing Program” shall mean the City program of licensing dogs and cats in accordance with City Ordinance and Chapter 826, Texas Health and Safety Code.

1.6 “Contract Rate” shall mean the per animal charge for services rendered by SHELTER to CITY pursuant to this Agreement, and which rate shall be calculated by dividing the Annual Payment by the reasonably anticipated number of animals to be processed annually by SHELTER for CITY.

1.7 “Facility” shall mean that one facility used by SHELTER in providing shelter and other services for CITY pursuant to this Agreement currently anticipated to be located at 5359 Leonard Road, Bryan, Tx.

1.8 “Livestock” shall be as set forth in the Texas Agriculture Code Section 1.003(3) and shall include cattle, horses, mules, asses, sheep, goats and hogs and shall also include bison, swine and other equine, poultry, wild rabbits, exotic animals, or domestic game birds.

ARTICLE TWO - IMPOUNDMENT

2.1 **Facility.** The SHELTER represents that its Facility may house and process animals for CITY in a manner for SHELTER to meet its obligations herein as well as meets applicable legal requirements for animal shelters, including all rules and regulations pursuant to Chapter 823 Texas Health and Safety Code.

2.2 **Impoundment.** The SHELTER agrees that it will accept all animals brought to its Facility by CITY. Such animals shall be impounded under the exclusive control and custody of the SHELTER for periods of time as required by Title 10, Texas Health and Safety Code and the CITY Ordinance except as hereinafter set forth. Prior to delivery to the SHELTER, the CITY shall scan for micro chips or search for a CITY license and use all reasonable diligence to notify the licensed owner, if any. The CITY shall take all injured animals that are licensed and tagged in accordance with the CITY licensing program to a veterinarian or animal clinic during SHELTER non-business hours for treatment in accordance with City Ordinance. The CITY shall not accept a surrender of ownership of an animal by its owner at the Facility, except through and at the SHELTER.

2.3 **Hold Period.** Every animal delivered to the Facility by the CITY shall become

the sole and exclusive property of the SHELTER to process in accordance with this Agreement, including in accordance with the CITY ordinance regarding impoundment and redemption. The CITY agrees that the passage of three (3) working days beginning from the date of delivery to the SHELTER of every impounded stray animal is the "Redemption Period." Neither the CITY nor any agency nor agent of the CITY shall have any claim or right to any animal not claimed and redeemed during the Redemption Period.

2.4 **Care.** The SHELTER agrees and represents that it will provide reasonable and appropriate care for all animals delivered to the Facility by the CITY. This includes adequate shelter, food, water and all other humane treatment.

ARTICLE THREE– ANIMAL DISPOSITION

3.1 **Disposition Policy.** The SHELTER shall have the undisputed right, consistent with the CITY Ordinance, Title 10, Texas Health and Safety Code and this Agreement, to dispose of every animal given into its custody in accordance with the following policy:

- a. To return the animal to its former owner, if possible;
- b. To place unclaimed animals in the care, custody and control of new owners; or
- c. To humanely destroy animals which are not claimed by owners.

The SHELTER shall have the sole and exclusive right to determine the responsibility of persons offering to become the owners of unclaimed animals and the suitability of the home offered, and shall have the sole and exclusive right to accept or reject such applicants for unclaimed animals. Pursuant to the terms of this Agreement, the SHELTER shall have the sole and exclusive right to determine if and when animals are to be placed in a new home or destroyed but agrees to make a good faith attempt to place animals prior to destroying them. Notwithstanding the foregoing, the SHELTER shall have the right to humanely destroy any animal impounded that is found to be physically suffering, injured or have a communicable disease prior to the end of the Redemption Period.

3.2 **Impoundment, Boarding and Adoption.** The SHELTER agrees, in accordance with Paragraph 3.1 of this Agreement, that if the owner of an impounded animal shall claim the animal prior to the Redemption Period the SHELTER shall collect from the owner the then current impoundment fee together with the cost of board at the then current rate per animal so impounded. Further, the SHELTER shall require the owner of every impounded animal to pay all applicable fees including licensing and vaccination fees of an impounded animal which has not been inoculated and licensed, as appropriate. The SHELTER shall set, in its sole discretion, all fees, if any, it charges to the public for an animal adoption.

ARTICLE FOUR-COLLECTION OF FEES

4.1 **Enforcing Agency.** CITY herein designates SHELTER and SHELTER herein agrees to serve as the enforcing agency on behalf of the CITY for purposes set forth in this Agreement. Specifically SHELTER agrees that it will act on CITY's behalf by charging, collecting and/or accounting for those fees it receives pursuant to City Ordinance, including licensing fees, impoundment fees and boarding fees.

4.2 **Disposition of Funds.** Any CITY licensing fees collected or received by SHELTER shall be accounted for separately and shall be used to offset the Annual Payment and the Contract Rate relating thereto as may be required in this Agreement. Any monies paid in owner-returned cases to the SHELTER for impoundment during the Redemption Period will be accounted for separately but will not be used to offset the calculation of the Annual Payment and Contract Rate relating thereto.

ARTICLE FIVE- COST OF SERVICES AND FEES

5.1 **Cost.** For the first CITY fiscal year this Agreement is in effect, the CITY agrees to pay and the SHELTER agrees to accept as compensation for the services it renders an Annual Payment of \$169,513.00 which is based upon a Contract Rate of \$95.77 per animal. The Annual Payment shall be adjusted annually as set forth below for each year this Agreement is in effect for services to be performed hereunder.

Should the CITY determine that the SHELTER has entered into any subsequent agreement with another public entity during the term of this Agreement which provides for terms and conditions more favorable than those contained in this Agreement, including a rate per animal charge that is less than the Contract Rate, then this Agreement shall be deemed to be modified to provide CITY with those more favorable terms and conditions. SHELTER shall notify CITY promptly of the existence of such contract with a public entity and CITY shall have the right to receive the more favorable terms and conditions immediately. If requested in writing by the CITY, SHELTER shall amend this Agreement to contain the more favorable terms and conditions.

5.2 **Billing.** The SHELTER agrees to bill the CITY the Annual Payment in twelve equal monthly installments. CITY agrees to pay such bill pursuant to the Texas Prompt Payment Act.

5.3 **Annual adjustment.** By May 31st of each year this Agreement is in effect, both parties agree to meet to determine the Annual Payment and the Contract Rate relating thereto for the upcoming CITY fiscal year. Such amount shall be calculated by taking into consideration the reasonably anticipated annual costs for the SHELTER to perform its services hereunder at the Facility credited or offset by the reasonably anticipated annual amount of licensing fees the SHELTER expects to receive on behalf of the CITY. In determining the reasonably anticipated

annual costs for the SHELTER to perform its services hereunder, the actual total costs of such services to the proportionate number of animals the SHELTER processes on behalf of the CITY shall be taken into consideration. The CITY agrees to adopt by resolution the new mutually agreed upon Annual Payment and the Contract Rate relating thereto for each year this Agreement is in effect.

In addition to the Annual Payment and the Contract Rate relating thereto, there may be such additional charges assessed CITY for services performed by SHELTER hereunder and as may from time to time be mutually agreed upon in writing.

5.4 Livestock, Birds and Fowl. The CITY agrees that the responsibility for seizing, securing, housing and disposing of livestock belongs to the sheriff's department of Brazos County, Texas. In the event, for any reason, the CITY delivers livestock to the SHELTER which was seized in its jurisdiction by the duly appointed agents of the CITY, the SHELTER shall be paid for actual expenses it incurs to feed, house, transport and dispose of such livestock in addition to any other amounts under this Agreement.

In the event, for any reason, the CITY delivers birds or fowl to the SHELTER which was seized in its jurisdiction by the duly appointed agents of the CITY, the SHELTER shall be paid for actual expenses it incurs to feed, house, transport and dispose of such birds and fowl in addition to any other amounts under this Agreement.

SHELTER agrees to abide by all applicable law in processing livestock, birds and fowl hereunder.

5.5 Report.

(a) The SHELTER agrees to provide to the CITY, on or before the 20th day following each month during the term of this Agreement, a report setting forth the following information for each animal delivered by the CITY to the Facility:

- (i) date delivered to the SHELTER;
- (ii) source of delivery (name of animal control officer);
- (iii) type of animal (cat, dog or other);
- (iv) duration of stay at the SHELTER for each animal delivered by the CITY;
- (v) reason for impoundment if not a stray; and
- (vi) total number of animals delivered to the SHELTER.

(b) The SHELTER will also provide to the CITY a report of any livestock, birds and fowl delivered by the CITY to the Facility setting forth:

- (i) the date of delivery;
- (ii) the source of delivery (name of animal control officer);
- (iii) the reason for delivery;
- (iv) the type of livestock, bird or fowl; and
- (v) any expenses incurred to date.

5.6 **Financial Records and Audit.** SHELTER agrees to conduct an audit on an annual basis using an outside agency to perform same, and agrees to provide CITY a copy of such audit as soon as it is available. The SHELTER's financial monthly reports will be provided to the City Manager of the CITY on a monthly basis.

CITY reserves the right to conduct its own audit of the records of the SHELTER at any time it deems necessary for the limited purpose of verifying the Annual Payment and the Contract Rate relating thereto, the number of animals licensed, and the number and ratio of animals processed on behalf of the CITY compared to the total number of animals processed by the SHELTER, the length of stay of each such animal and the collection of fees for various services and items.

ARTICLE SIX- RABIES OBSERVATION

The SHELTER agrees to accept from the CITY animals for rabies observation. Such animals delivered for rabies observation shall be isolated for a period of not less than ten (10) days or, in the case of a wild, stray or owner surrendered animal, three (3) days if the SHELTER, in its sole discretion, decides to destroy the animal and send it to the Texas Department of State Health Services for rabies testing. The SHELTER shall be responsible for the processing, storage and delivery for testing of animal carcasses and diagnostic fees for suspected rabies animals. The SHELTER shall make available to the CITY, upon request, information about the disposition of any rabies suspected animal.

ARTICLE SEVEN- LEGAL HOLDS

In the event an animal or livestock is being held by the SHELTER as a result of a cruelty seizure, criminal prosecution or other legal hold by the CITY, the CITY shall reimburse the SHELTER for any veterinarian invoices and medical bills incurred by the SHELTER until the Court awards the animal or livestock to the SHELTER, orders it destroyed or orders it returned to its owner. The CITY shall not be liable for these costs in the event the Court orders the animal or livestock owner to pay such costs and the same are paid within sixty (60) days of such order. If the fees are not paid by the animal or livestock owner, after sixty (60) days the CITY shall be liable for those fees and shall remit the same upon invoice by the SHELTER. In such instance, the SHELTER confers upon the CITY all rights and remedies it may have by law or equity to recover such fees and costs from the owner.

ARTICLE EIGHT- CITY REPRESENTATIONS AND OBLIGATIONS

The CITY represents to the SHELTER that the CITY Ordinance provides for the vaccination and licensing of animals under appropriate circumstances, impounding of animals running at large, and the regulation of the sale of animals, and that while this Agreement is in effect, such CITY Ordinance will be continued in force, provided, however, that such CITY Ordinance may be modified from time to time as the CITY deems appropriate.

ARTICLE NINE– SHELTER REPRESENTATIONS AND OBLIGATIONS

9.1 **Hours of Operation.** The SHELTER will keep its Facility open to the public for not less than three (3) hours per day on weekdays, and not less than three (3) hours on Saturday (except holidays), for the purpose of giving owners ample opportunity to redeem their impounded animals.

9.2 **Nondiscrimination.** The SHELTER covenants and agrees that, in connection with the performance of the Agreement, it will not discriminate against any individual with respect to adoption of animals, compensation, terms or privileges of employment by reason of such individual's race, color, religion, gender, national origin or handicap, except as exempted by bona fide occupational qualification and bona fide criteria for adoption.

9.3 **Use of CITY funds.** SHELTER agrees that any monies it collects on behalf of CITY pursuant to the terms of this Agreement shall be handled in accordance with applicable law, including Sections 826.031 and 836.033 Texas Health and Safety Code.

ARTICLE TEN - INSURANCE

SHELTER shall at all times relevant to the fulfillment of this Agreement have, keep, and maintain insurance covering general liability, worker's compensation if required by State law, and automobile liability in the following amounts:

- 10.1(a) Workers Compensation insurance shall be at statutory limits, including employers liability coverage at minimum limits of \$500,000.00 each accident.
- 10.1(b) The General Liability insurance shall have a minimum combined single limit for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence.
- 10.1(c) Automobile Liability insurance shall be continuously held with limits for bodily injury and for property damage of not less than \$1,000,000.00 on all self-propelled vehicles used in connection with the SHELTER operation, whether owned, non-owned or hired.

All insurance policies shall be subject to the examination and approval of CITY, as to the adequacy of form, content, form of protection, and insurance company. The SHELTER shall furnish to CITY's Risk Manager, for the City of College Station's files, certificates or copies of the policies, plainly and clearly evidencing such insurance prior to commencing any activities set forth in this Agreement, and thereafter, new certificates or policies prior to the expiration date of any prior certificate or policy throughout the term of this Agreement.

ARTICLE ELEVEN- INDEMNIFICATION

11.1 **Indemnification by SHELTER.** The SHELTER agrees to indemnify and hold harmless the CITY against all claims, damages or causes of action which might arise as a result of acts, omissions or negligence of SHELTER, its employees or its agents arising out of SHELTER's obligations under this Agreement.

11.2 **Indemnification by CITY.** The CITY agrees, to the extent allowed by law, to indemnify and hold harmless the SHELTER from any and all claims, damages, or causes of action which arise as a result of acts, omissions or negligence of the CITY, its employees or its agents arising of the CITY's obligations under this Agreement.

ARTICLE TWELVE-CONDITION PRECEDENT

It is a condition precedent that the terms and conditions of this Agreement shall not go into effect until the Facility is open for services to be performed hereunder by SHELTER and in any event no later than July 1, 2011.

ARTICLE THIRTEEN - CONTRACT TERM

This Agreement shall be for a term of Ten (10) years commencing as of the date of approval by the governing bodies of both parties and shall be automatically renewed for one additional Five (5) year term unless one party gives the other at least one hundred eighty (180) days advance written notice. Either party may cancel this Agreement at any time upon one hundred eighty (180) days written notice to the non-cancelling party. In the event of termination, the CITY shall pay those fees that accrue to the termination date and be refunded any credits that may accrue to the termination date.

ARTICLE FOURTEEN - DEFAULT

14.1 **SHELTER Default.** If SHELTER fails in any material term or condition of this Agreement, including failing to obtain or comply with applicable state law requirements for performing services hereunder, SHELTER shall be in default of this Agreement. Whenever CITY determines it's feasible, CITY will give SHELTER a reasonable amount of time to correct the default upon written notice as to the nature of the default and the reasonable time period within which to cure same.

If SHELTER is unable to timely cure a default, then CITY shall be excused from performing any further obligations under this Agreement. If SHELTER is in default, SHELTER may only terminate this Agreement without further liability to CITY.

14.2 **CITY Default.** If CITY fails in any material term or condition of this Agreement and

SHELTER is not in default, SHELTER, as its option, may terminate this Agreement, and SHELTER may thereafter pursue its remedies available at law. In no event shall CITY be liable to SHELTER for any consequential damages as a result of its breach.

In the event the CITY fails to remit to the SHELTER the Contract Rate or any additional fees and expenses due hereunder, the CITY shall be in default. Any past due payment of fees and expenses shall bear interest in accordance with Texas Government Code, Chapter 2251. The SHELTER may, in its sole discretion, terminate this agreement for non-payment of fees if the CITY has not cured its default after sixty (60) days written notice.

ARTICLE FIFTEEN- NOTICE.

Any notice sent under this Agreement except as may be otherwise expressly required in this Agreement shall be written and mailed by certified receipt requested, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following:

To the SHELTER:

Brazos Animal Shelter, Inc.
Attn: President
5359 Leonard Rd.
Bryan, Tx
Telephone: 979/775-5755
Facsimile: 979/822-0411
Email: mball@brazosanimalshelter.org

To CITY:

City of College Station
Attn: Chief of Police
2611 Texas Avenue South
College Station, Tx 77840
Telephone: 979/764-3605
Facsimile: 979/764-3468
Email: jcapps@cstx.gov

Each party may change its address by written notice to the other party in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged or confirmed, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by, the other party, as the case may be.

ARTICLE SIXTEEN-MEDIATION

Any dispute or claim in law or equity arising out of this Agreement or any resulting transaction, including disputes or claims involving the parties to this Agreement, their officers, agents or employees, shall be submitted to neutral, non-binding mediation prior to the commencement of litigation or any other proceeding before a trier of fact. The parties to the dispute or claim agree to act in good faith to participate in mediation, and to identify a mutually acceptable mediator. Both parties to the mediation agree to share equally in its cost. If the dispute or claim is resolved successfully through the mediation, the resolution will be documented by a written agreement executed by both parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the parties reflecting the same, and the parties may then proceed to seek an alternative form of resolution of the dispute or claim, in accordance with the remaining terms of this Agreement and other rights and remedies afforded to them by law.

ARTICLE SEVENTEEN - MISCELLANEOUS

17.1 **Assignment.** This Agreement is not assignable by either party without the written consent of the other.

17.2 **Governing Law and Venue.** The law of the State of Texas shall govern the validity, interpretation and performance of this Agreement, and this Agreement shall be considered performed in Brazos County.

17.3 **Entirety.** This Agreement is the entire agreement concerning the terms and conditions under which the services defined herein will be performed.

17.4 **Prior Matters.** All prior agreements, negotiations, representations, understandings, and partial agreements concerning this Agreement's subject matter are superseded by and merged with this Agreement.

17.5 **Amendment.** Except as may be expressly set forth elsewhere in this Agreement, no attempted amendment, modification, waiver, or release of this Agreement's obligations shall be binding unless a writing exists that (a) identifies the amended, modified, waived, or released obligation, (b) describes the nature of the amendment, modification, waiver, or release, and (c) is duly approved by each party and executed by each party's authorized representative.

17.6 **Severability of Provisions.** If any part of this Agreement contravenes any applicable statutes, regulations, rules, or common law requirements, then to the extent and only to the extent of such contravention, such part shall be severed from this Agreement and deemed non-binding while all other parts of this Agreement shall remain binding.

17.7 **Headings.** The headings, sub-headings, and other subdivisions of this Agreement are inserted for convenience only. The Parties do not intend them to be an aid in legal construction.

17.8 **Counterparts Permitted.** This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed an original of this Agreement for all purposes.

ATTEST:

COLLEGE STATION, TEXAS

City Secretary

By: _____
Mayor

APPROVED AS TO FORM

BRAZOS ANIMAL SHELTER, INC.

City Attorney

By: _____
President of Board