

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This Professional Services Agreement (the "Agreement") is made and entered into this day by and between Williamson County, Texas, a political subdivision of the State of Texas, (the "County") and Austin Area Mobile Veterinary Surgery, PLLC (the "Vet").

WHEREAS, County and the Board of the Williamson County Regional Animal Shelter manages and operates a countywide regional animal shelter, which is more formally known as the Williamson County Regional Animal Shelter (the "Shelter");

WHEREAS, County desires to obtain professional veterinarian services for perform professional veterinary orthopedic and specialty surgical services, on an as need basis, at the Shelter;

WHEREAS, Vet has the professional ability and expertise to provide the Services;

NOW, THEREFORE, County and Vet agree to the performance of the professional services by Vet and the payment for these services by County as set forth herein.

SECTION I RETENTION OF THE VET

County agrees to retain Vet and Vet agrees to perform professional veterinary surgical services as stated in the Sections to follow.

SECTION II AGREEMENT PERIOD

The term for this Agreement shall commence on the date of the last party's execution hereof, and shall continue thereafter until September 30, 2019 (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew on the same terms on annual basis until either County or Vet terminate the Agreement upon sixty (60) days written notice to the other party ("Additional Term").

SECTION III SCOPE OF PROFESSIONAL SERVICES

Vet will perform professional veterinary orthopedic and specialty surgical services, on an as needed basis, to animals belonging to the Shelter (the "Services"). The Services are to be performed on days and times mutually agreed upon by Vet and Shelter staff.

SECTION IV
FEES AND FUNDING

A. **Fee.** The fee paid by the County shall be a fee that is negotiated between the Shelter's Director of Animal Services and the Vet prior to each surgery and such fee shall be based on the type of orthopedic or specialty surgical services required for a particular surgery.

B. **Restrictions:** The following restrictions shall apply to all Services performed by the Vet:

1. Animals must be deemed in reasonable health by the Vet before surgery is performed; and
2. The Vet has the right to refuse to do surgery on any animal due to health concerns.

C. **Appropriation of Funds by County.** County believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement. Vet understands and agrees that the County's payment of amounts under this Agreement is contingent on the County receiving appropriations or other expenditure authority sufficient to allow the County, in the exercise of reasonable administrative discretion, to continue to make fee payments under this Agreement.

D. **Payment, Interest and Late Payments.** County's fee payment for goods and Services shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of an invoice. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify the Vet of such discrepancy. Following County's notification of any discrepancy as to an invoice, the Vet must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

SECTION V
GENERAL ADMINISTRATION

A. Audits. All surgical costs of the Vet may be audited by the office of the Williamson County Auditor. All financial records shall be made available to the County or its authorized representatives during regular business hours. If an independent annual audit or review is performed, a copy of any such audit or review shall be furnished to the County immediately upon its completion.

B. Costs of Surgery. The County shall be solely responsible for all surgery costs, including surgical personnel. The Vet agrees to only perform those surgical procedures authorized in advance by the Shelter staff.

The County shall make available the following to the Vet to facilitate the professional services to be rendered:

1. Two (2) surgical tables;
2. Surgical lights for each table; and
3. Anesthesia drugs.

Any other supplies or materials that are necessary for the Services shall be provided by the Vet hereunder.

SECTION VI
EVALUATIONS AND DISPUTE RESOLUTION

This Agreement shall be reviewed annually as part of the County's budget process. This Agreement shall also be reviewed annually by the Board of the Williamson County Regional Animal Shelter. Except as otherwise expressed herein, if during any term of this Agreement any dispute arises between the Vet and the County, which cannot be resolved by them, they shall be referred to the Williamson County Commissioners. The decisions pertaining to any dispute shall be decided by the Williamson County Commissioners Court and shall be final and binding, subject to any civil remedies otherwise deemed appropriate by the parties hereto.

SECTION VII
FORCE MAJEURE

Except for circumstances of a party's own negligence, neither party will be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its reasonable control including, but not limited to Acts of God, fire, flood, explosion, strikes, lock outs or other industrial disturbances, laws, rules and regulations or orders of any duly constituted government authority or non-availability of materials or transportation (each a "Force Majeure Event").

SECTION VIII
LIABILITY

A. Indemnification by Vet. THE COUNTY SHALL NOT BE HELD LIABLE FOR, AND SHALL BE SAVED AND HELD HARMLESS BY THE VET FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES OF EVERY KIND, FOR INJURY TO AND DEATH OF ANY PERSONS OR ANIMALS AND FOR DAMAGE TO OR LOSS OF PROPERTY, ARISING OUT OF OR ATTRIBUTED, DIRECTLY OR INDIRECTLY, TO THE OPERATIONS, PERFORMANCE, NEGLIGENCE, ANY ACT OR OMISSION OR FAILURE TO ACT OF THE VET UNDER THIS AGREEMENT.

B. No Indemnification by County. Vet acknowledges and agrees that under the Constitution and the laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless any other party, including but not limited to Vet; therefore, all references of any kind to County indemnifying, holding or saving harmless any other party, including but not limited to Vet, for any reason whatsoever are hereby deemed void and deleted.

SECTION IX
MISCELLANEOUS PROVISIONS

A. Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and other entities which might follow that would qualify at law as a successor in interest, and to executors, administrators, legal representatives and assigns. Notwithstanding the foregoing, this Agreement may not be assigned except as agreed upon in writing by both parties.

B. Compliance of Laws. In rendering performance herein, the Vet shall comply with the requirements of applicable federal, state, and local laws and regulations. In the event of a conflict between such laws and regulations and terms and conditions of this Agreement, precedence shall be given to the most restrictive provisions of such laws, regulation, terms and conditions, as determined by the County. Copies of Chapter 826 of the Texas Health and Safety Code and Official Texas Administrative Code Title 25. Health Services Part 1. Texas Department of Health Chapter 169.

C. No Waiver. There shall be no waiver. The failure or delay in the enforcement of the rights at law here inscribed to the parties shall not constitute a waiver of said rights to be considered as a basis for estoppels. The parties may exercise its rights despite said delay or failure to enforce said rights.

D. Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

E. Compliance with Workplace Standards. The County requires that all of its contractors adhere to its workplace standards regarding behavior and professionalism in the workplace. For example, workplace harassment and discrimination is strictly prohibited. Vet shall comply with the County's policies or written manuals as they exist from time to time and are provided to Contractor.

F. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

G. Assignment. No party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all parties to this Agreement.

H. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

I. Incorporation of Exhibits and Attachments. All of the Exhibits and Attachments referred to in this Agreement are incorporated by reference as if set forth verbatim herein.

J. Entity Status. By the signature of the Vet's representative below, Vet hereby certifies that Vet is duly authorized to transact and do business in the State of Texas.

K. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

L. Severability. This Agreement is subject to severability. If any provision herein is, for any reason, held in violation of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such a specific provision shall not be held to invalidate any other provisions, which other provisions shall remain in full force and effect unless removal of invalid parts destroys the legitimate purposes of this Agreement. In the latter case, as determined by the County, this Agreement shall be cancelled.

M. Termination for Breach. Either party may terminate this Agreement if the other party fails to cure a material breach, which substantially impairs the value of the Agreement as a whole to the non-breaching party within ten (10) days of the receipt of written notice being given by the non-breaching party.

N. Termination for Convenience. Either party hereto may terminate this Agreement for convenience and without cause upon sixty (60) days written notice to the other party.

O. Notice. Any notice required or permitted to be given under this Agreement shall be sufficient if written and hand-delivered or sent by registered mail, return receipt requested, as follows:

If to the County:

Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to:

Williamson County Regional Animal Shelter
Attn: Director of Animal Services
855 S.E. Inner Loop
Georgetown, Texas 78626

If to the Vet:

Austin Area Mobile Veterinary Surgery, PLLC
Attn: Dr. Kelly Might, MS, DVM
13221 Overland Pass
Bee Cave, TX 78738
512-910-7794
Dr.might@mvsaustin.com

If an address change occurs by either party a written notice should be given to the other party.

P. Independent Contractor. The parties acknowledge that Vet is a skilled professional Veterinarian who will be rendering professional services pursuant to this Agreement. Vet will use Vet's professional judgment and expertise to accomplish the details of Vet's work. Vet is, and shall for all purposes be considered, an independent contractor, and nothing in this Agreement shall be deemed to create or imply an agency or employment relationship between Vet and the County. In this respect, Vet acknowledges and agrees that Vet shall have no right or authority to commit or obligate the County in any way to any third party or parties unless specifically authorized to do so by the Williamson County Commissioners Court. Further, Vet acknowledges and agrees that Vet will not be entitled to any benefits generally provided by the County to its employees (including, without limitation, health insurance, retirement, severance, vacation, and disability) or any compensation other than what is set forth herein.

It is understood and agreed that Vet shall pay all taxes, licenses, and fees levied or assessed on Vet in connection with or incident to the performance of this Agreement by any governmental agency, including, without limitation, unemployment compensation insurance, old age benefits, social security, or any other taxes upon fees or wages of Vet, Vet's agents, employees, and

representatives. Vet agrees to require the same agreements of Vet's subcontractors and to be liable for any breach of any such agreements by any of Vet's subcontractors. Vet agrees to reimburse the County on demand for all such taxes or governmental charges, state or federal, which the County may be required or deem it necessary to pay on account of employees of Vet or Vet's subcontractors. Vet agrees to furnish the County with the information required to enable it to make the necessary reports and pay such taxes or charges. At its election, the County is authorized to deduct all sums so paid for such taxes and governmental charges from any fee or amounts that may be or become due to Vet.

Q. Non-Appropriation. Notwithstanding any provision contained in this Agreement to the contrary, in the event no funds, or insufficient funds, are appropriated and budgeted by the County or are otherwise unavailable in any fiscal period or month for fee payments due under this Agreement, the County will notify the Vet as soon as practicable of such occurrence and this Agreement shall terminate on the last day of the fiscal period or month for which appropriations have been received or made, without penalty to the County.

R. Entire Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

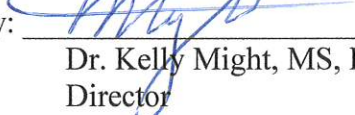
Signed, accepted, and agreed to by the undersigned parties, who execute this legal document within the authorities granted to them by respective entities, to be effective as of the date of the last party's signature below.

WILLIAMSON COUNTY, TEXAS

VET

**Austin Area Mobile
Veterinary Surgery, PLLC**

By _____
Bill Gravell, Jr., County Judge

By: 
Dr. Kelly Might, MS, DVM
Director

Date: _____, 20____

Date: 5/30, 2019