



GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is effective this 15th December, 2010 (the "Effective Date") by and between PetSmart Charities, Inc., an Arizona nonprofit corporation and Internal Revenue Code ("Code") Section 501(c)(3) tax-exempt public charity, whose address is 19601 N. 27th Avenue, Phoenix, AZ 85027 ("PetSmart Charities"), and Williamson County (Regional Animal Shelter) whose address is 1855 SE Inner Loop, Georgetown, TX 78626 (the "Organization"). PetSmart Charities and the Organization are sometimes referred to herein collectively as the "Parties" and each individually as a "Party".

BACKGROUND

A. PetSmart Charities desires to award the Organization from time to time one or more grants (each, a "Grant") in the form of cash or in-kind goods or services in furtherance of the Organization's mission and/or purpose.

B. The Organization desires to accept and use each Grant in accordance with this Agreement and any Grant Statement (as defined below).

C. The Parties are interested in entering into this Agreement to provide the terms and conditions regarding each Grant.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant Statement.** From time to time following execution of this Agreement, PetSmart Charities may award the Organization a Grant on the terms and conditions set forth on any Grant Statement in a form specified by PetSmart Charities (the "Grant Statement") that is executed by the Parties. At a minimum, the Grant Statement will include (a) the amount of cash or in-kind goods or services to be awarded to the Organization (the "Grant Funds"); (b) the distribution schedule for the Grant Funds; (c) the specific purpose(s) for which the Grant Funds may be used by the Organization (the "Grant Purpose"); and (d) the time period during which the Grant Funds will be used by the Organization (the "Grant Period").

2. **Use of Grant Funds.** The Organization will utilize the Grant Funds only for the Grant Purpose and within the Grant Period. No part of the Grant Funds will be used for lobbying or political activities. In the event that the Organization cannot use the Grant Funds for the Grant Purpose or within the Grant Period, the Organization must notify PetSmart Charities immediately. In no event will the Organization use the Grant Funds for any purpose not described in Code Section 501(c)(3). In the event that the Organization has previously received any form of grant from PetSmart Charities, this Agreement is contingent upon successful performance by the Organization under that grant agreement.

3. **Grant Contingencies.** The provisions of this Section 3 shall only be applicable to Grants which include Grant Funds for the purposes specified below:

(a) **Equipment.** If any Grant includes Grant Funds, in whole or in part, for the Grant Purpose of assisting the Organization with the acquisition of any equipment (which may include, but is not limited to, funding equipment for the Organization, assisting the Organization with purchasing equipment, or the in-kind grant of equipment to the Organization) (in any case, the "Grant Equipment"), the provisions of this Section 3 shall apply to such Grant. If at any time the Organization ceases to use any Grant Equipment for the Grant Purpose or is otherwise in breach of this Agreement or any Grant Statement, then, in addition to such other remedies as may be available to PetSmart Charities under this Agreement, at law or in equity, PetSmart Charities may require the Organization to immediately transfer ownership of the Grant Equipment (the "Transfer Option") to PetSmart Charities or an organization designated by PetSmart Charities (in either case, the "Transferee") at no cost to PetSmart Charities or the Transferee. After exercise of the Transfer Option, the Organization will cooperate with PetSmart Charities and any other Transferee with respect to transfer of such Grant Equipment to the Transferee. The Organization shall be responsible for any costs and expenses associated with or arising from the Organization's violation of this Agreement, a failure to cooperate with PetSmart Charities or any other Transferee in exercising the Transfer Option, and any other costs incurred by its own volition.

(b) **Services.** If the Grant includes one or more services ("Services"), the receipt of such Services will be included in the defined term "Grant Funds" as used in the Agreement and relevant Grant Statement. Services provided under any Grant Statement may be provided directly by PetSmart Charities or indirectly through a subsidiary, contractor, representative or agent of PetSmart Charities. In addition to any terms and conditions imposed by the Grant Statement, the Organization will participate in any program, technical assistance, training or other Services within the guidelines, procedures and timelines defined by PetSmart Charities or its authorized representative. Ongoing or periodic receipt of the Services will be contingent upon the Organization's compliance with all terms, conditions and reporting requirements in the Agreement and Grant Statement, as determined by PetSmart Charities in its sole and absolute discretion.

4. **Publicity.**

(a) The Organization hereby grants PetSmart Charities the right to publish, print, transmit, display or otherwise use the Organization's name, logo, and photographs, or any other representation of the Organization, including, but not limited to, its facilities and activities, via all forms of media now known or hereafter devised worldwide, in perpetuity, without notice, attribution or compensation to the Organization. The Organization agrees to provide and/or obtain such written releases, assignments or other documents for itself and/or from any third parties (for themselves and/or their pets) as may be necessary to enforce the rights of PetSmart Charities granted in this Agreement without any compensation of any kind to the Organization or such third parties. The Organization agrees that PetSmart Charities may require the Organization to recognize PetSmart Charities and/or certain donors to PetSmart Charities (including without limitation, naming the building in which the Organization operates; naming or affixing some object of recognition to rooms, equipment, and/or permanent fixtures; creating a donor wall; etc.). Unless otherwise agreed to by the Parties, such recognition shall remain in place in perpetuity or until removal is requested by PetSmart Charities.

(b) If the Organization desires to publicize any information relating to any Grant or otherwise disclose the terms of this Agreement, the Organization must first contact the designated

PetSmart Charities' representative and obtain advanced written permission. All media materials (e.g., press releases, annual reports, newsletters, invitations, etc.) that include any reference to the Grant (including, but not limited to, information relating to the Grant Amount, Grant Purpose or PetSmart Charities) must be reviewed and approved by PetSmart Charities in advance, and may not be made publicly available until such time as PetSmart Charities provides written consent to the Organization to do so and then only in accordance with PetSmart Charities' written consent.

(c) The Organization shall obtain the prior written consent from PetSmart Charities prior to granting to any entity or individual any publicity or sponsorship rights in connection with the Organization's activities that in any way relate to the Grant provided by PetSmart Charities.

5. Confidentiality.

(a) By virtue of this Agreement, each Party may have access to information that is confidential to the other Party. "Confidential Information" is information that, by its nature, ought to be treated as proprietary and confidential or that a reasonable person ought to conclude is confidential, which is disclosed by one Party to the other Party orally or in tangible form that is related to this Agreement or the Parties' relationship, business, technical, financial data, forecasts, marketing information, employee and volunteer information, strategies, and general non-public business information, third-party confidential information that the supplying Party has a duty to maintain as confidential and has so informed the receiving Party of that duty, and other valuable information designated by the supplying Party as confidential information expressly or by the circumstances in which it is provided. Confidential Information of a Party shall not include any information that: (a) is or becomes part of the public domain or which is publicly available through no act or omission of the receiving Party and through no breach of this Agreement; (b) that the receiving Party can demonstrate is known to the receiving Party at the time of disclosure without an obligation to keep it confidential; (c) becomes rightfully known to the receiving Party from another source without restriction on disclosure or use; or (d) the receiving Party can show is independently developed by the receiving Party without the use of or any reference to Confidential Information. At the completion of any Grant Statement or upon request, the receiving Party agrees to return or destroy, at the disclosing Party's election, any and all Confidential Information.

(b) The Parties agree, that unless otherwise set forth in this Agreement, required by law, or pursuant to the written consent of the other, the Parties shall not to make each other's Confidential Information available in any form to any third party for any purpose, except to its own employees, legal and financial advisors, accountants and other agents, having a "need to know." Each Party agrees to take all reasonable steps required to ensure that Confidential Information is secure and is not disclosed or distributed by its directors, officers, employees, agents, volunteers, or subcontractors in violation of the terms of this Agreement.

(c) Notwithstanding the foregoing, Organization's grant application, attachments, reports, Agreement, Grant Statement and related correspondence and the information contained therein shall become the property of PetSmart Charities, and nothing contained herein shall prohibit PetSmart Charities from maintaining, using and/or disclosing such material or information as it deems appropriate in its sole discretion. Further, Organization expressly grants permission to PetSmart Charities or its designees to make inquiries and discuss with, or request documentation from, third parties about the Organization related to the Organization's performance under this Agreement, or any material obtained by PetSmart Charities related to the Organization.

6. **Reporting.** In addition to any reporting obligations set forth in any Grant Statement, PetSmart Charities may request at any time during the Grant Period, and for two (2) years thereafter, (1) that the Organization produce a written report (a) detailing the Grant Funds expenditures; (b) detailing the Organization's performance to date related to the Grant Purpose; and (c) any other report or response to evaluation questions or an assessment questionnaire as may reasonably be requested; and (2) certain financial reports which may include, but shall not be limited to audited and/or unaudited financial statements, and any forms or filings that are required by the Code or any government agency. The Organization will submit such written report to PetSmart Charities no later than five (5) business days after the date of PetSmart Charities' written request. The Organization may also be required, if requested by PetSmart Charities or as otherwise specified in any Grant Statement, to participate in periodic telephone or in person conferences with PetSmart Charities or its designee (which shall also be considered a "report" under this Agreement). PetSmart Charities may withhold any Grant Funds for such period as it determines may be reasonable to request and review any report provided for in this Agreement or applicable Grant Statement, regardless of the form of such report. Any report provided for in this Agreement or any applicable Grant Statement shall be provided by the Organization in a form and format specified by PetSmart Charities.

7. **Audit.** Upon written notice and during normal business hours, at any time during the Grant Period and for two (2) years thereafter, PetSmart Charities or its designee may audit the books, records, and/or operations of the Organization, to ascertain the Organization's compliance with terms and conditions of this Agreement or any Grant Statement. The Organization acknowledges and agrees that any such audit may include, without limitation, (i) an onsite or in person inspection; and (ii) observation of the Organization's facilities and operations. PetSmart Charities may withhold any Grant Funds for such period as it may be reasonable to conduct, and review the results of, any such audit.

8. **Organization's Representations.** As of the date of signing this Agreement and the date of signing of any Grant Statement, the Organization represents to PetSmart Charities that (1) the Organization is either (a) an organization exempt from federal income tax under Code Section 501(c)(3), which is not a private foundation under Section 509(a) of the Code, (b) a governmental entity identified in Section 170(c)(1) of the Code that will use the grant for exclusively public purposes, or (c) an "Indian tribal government," as defined under Section 7701(a)(40) of the Code, that is treated as a State under Section 7871 of the Code and that it will use the grant for exclusively public purposes; (2) the Organization validly holds and maintains all licenses, permits, and registrations, and has satisfied all similar requirements, necessary for its lawful operation; (3) the Organization is in compliance with all applicable local, state, tribal and federal laws, regulations and other requirements to which the Organization is subject; (4) Organization is not on any federal terrorism "watch list" and all Grant Funds will be used in compliance with all applicable anti-terrorist financing and asset control laws, statutes and executive orders; and (5) all representations made by Organization in any grant application and ancillary material are true and accurate in all material respects. The Organization agrees to notify PetSmart Charities promptly in writing of any change in the information represented herein.

9. **Grant Revocation.** If at any time, as determined by PetSmart Charities in its sole and absolute discretion: (a) the Organization has not complied with the requirements of a previous grant from PetSmart Charities; (b) any of the Grant Funds have been used for any purpose other than for the Grant Purpose; (c) any of the Grant Funds remain inappropriately unused by the Organization after the end of the Grant Period; (d) the Organization has not complied with the terms and conditions of this Agreement or any Grant Statement or has taken any action or inaction that does not uphold the spirit of the Grant or this Agreement; (e) the Organization is involved in any investigation or engaged in any action that

appears to be unprofessional, uncharitable or inappropriate; (f) the Organization ceases to operate on a full-time basis, becomes or is adjudicated insolvent or bankrupt, or if a receiver or a trustee is appointed for the Organization or its property, or if the Organization petitions for reorganization or arrangement under any bankruptcy or insolvency law, or if any assignment is made for the benefit of the Organization's creditors; (g) there is any change to the representations made by the Organization in this Agreement or any grant application; or (h) the results of any audit or information contained in any reports are deemed to be unacceptable by PetSmart Charities, then, in addition to such other remedies as may be available to PetSmart Charities under this Agreement, at law or in equity, PetSmart Charities may, in its sole and absolute discretion: (w) immediately terminate this Agreement and any applicable Grant Statement; (x) unilaterally modify the terms of this Agreement and/or applicable Grant Statement; (y) withhold any pending or future payments of Grant Funds; or (z) revoke immediately any Grants and require the Organization to provide a full refund of all Grant Funds to PetSmart Charities.

10. **Miscellaneous.**

(a) Severability. If any portion or portions of this Agreement or any Grant Statement in effect shall be deemed invalid or unenforceable for any reason, the remaining portion(s) shall be valid and enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intention of the Parties hereto. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

(b) Survival. Any provisions of this Agreement creating obligations extending beyond the term of this Agreement shall survive the expiration or termination of this Agreement.

(c) Counterparts. This Agreement may be executed via facsimile or original document image via email transmission, each of which shall be deemed an original, and in several counterparts all of which shall constitute one and the same instrument, provided however, that this Agreement shall not be binding on either party until executed by both parties. The Organization acknowledges and agrees that PetSmart Charities may rescind any offer contained herein at any time until the Agreement has been executed by both parties.

(d) No Third-Party Beneficiary. Neither Party intends to create, nor shall this Agreement create, in any manner whatsoever, an interest or beneficiary in a third party.

(e) Incorporation By Reference. All Grant Statements (and any exhibits or schedules attached thereto) are incorporated into this Agreement in their entirety. Grant Statements shall be numbered for identification. In the event there are any inconsistent, contrary, or conflicting terms contained in any Grant Statement and this Agreement, this Agreement shall control.

(f) Notices. Any notice required by this Agreement or any Grant Statement will be in writing and delivered to the addresses set forth in any Grant Statement. Notices will be deemed effectively given: (a) upon five (5) days after being sent by certified or registered mail, postage prepaid, return receipt requested; (b) upon the next business day after being sent overnight by a major U.S. overnight document courier; or (c) upon receipt of confirmation following transmission via the internet, by electronic mail, or by a facsimile machine if received on a business day during business hours (otherwise, deemed received the next business day) if followed by a hard copy sent by mail using one of the delivery methods in (a) or (b) above.

(g) Legal Fees. Subject to Section 10(k) of this Agreement, in the event either Party brings any action of any nature, arising under or out of this Agreement, the prevailing Party shall be entitled to receive from the other Party its attorneys', experts', investigation, and other related fees, costs, and expenses.

(h) Assignment. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The Organization will not assign or sublicense, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of PetSmart Charities. Notwithstanding anything herein to the contrary, PetSmart Charities may freely assign this Agreement in connection with a transfer to a related party or due to a merger, consolidation, or sale of substantially all of its assets.

(i) Equal Opportunity. The Organization agrees that it will not discriminate by reason of race, color, creed, religion, national origin, age, sexual orientation, disability, veteran status, or gender.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona in the United States without regard to conflict of law provisions or international treaties or conventions. The Parties specifically agree to the venue and jurisdiction being exclusively in the federal and state courts situated in Maricopa County in the State of Arizona, United States.

(k) Dispute Resolution. Any unresolved claim, dispute, or controversy arising from this Agreement or any Grant Statement shall be submitted to arbitration under the rules of the American Arbitration Association (the "AAA") or, by mutual consent, any other recognized arbitration association. The Commercial Arbitration Rules of the AAA or such other association shall apply. The arbitration shall take place in Phoenix, Arizona in the United States of America, and shall be conducted in the English language. The decision of the arbitrator(s) shall be binding upon the Parties. The costs of any such arbitration, including, but not limited to, the administrative fee, arbitrator's fees, attorneys' fees, fees of expert witnesses and travel expenses shall be borne by the losing Party. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for judicial acceptance of the award or an order of enforcement. The prevailing Party in any proceeding to enforce the judgment awarded by the arbitrator shall be entitled to all attorneys' fees, expert witness fees, travel expenses, court costs, and other litigation expenses.

(l) Waiver. Except as otherwise provided for herein, failure of either Party to insist upon strict performance of this Agreement, or to exercise any option herein, shall not be construed as a modification or waiver of any provision, right, or obligation under this Agreement.

(m) Entire Agreement/Amendments. The terms and conditions of this Agreement constitute the complete and final written agreement between the Parties and supersede all other agreements and understandings between the Parties regarding the subject matter of this Agreement, whether written or oral, other than a properly amended version of this Agreement. Any waiver, modification, or amendment of the terms of this Agreement or any Grant Statement is binding only if done in writing and signed by the authorized representatives of both Parties.

(n) Headings; Construction. Headings and/or fonts used in this Agreement are for reference purposes only and in no way define, limit, construe, or describe the scope, extent or intent of this Agreement. This Agreement will not be construed for or against any Party on the basis of which Party

drafted this Agreement, and each Party had the opportunity to review this Agreement with their respective legal counsel to the Party's satisfaction.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective and duly authorized representatives as of the Effective Date set forth above.

“PETSMART CHARITIES”

PETSMART CHARITIES, INC.

Signature: _____

Name: _____

Title: _____

Date: _____

“ORGANIZATION”

WILLIAMSON COUNTY (REGIONAL ANIMAL SHELTER)

Signature:  _____

Name: _____

Title: _____

Date: 1-5-2011

Please make a copy of this document for your records and mail this signed original to:

**PetSmart Charities, Inc.
Attn: GRANTS
19601 North 27th Avenue
Phoenix, AZ 85027**