

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 Margaret MacDonald D.V.M (the "Vet").

WHEREAS, County will manage and operate a countywide regional animal shelter, which is more formally known as the Williamson County Regional Animal Control Shelter (the "Shelter");

WHEREAS, County desires to obtain professional veterinarian services for the spaying and neutering of animals at the Shelter and the administration of rabies vaccinations to animals 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 Services by Vet and the payment for the Services by County as set forth herein.

Section I **Employment of the Vet**

County agrees to employ Vet and Vet agrees to perform professional veterinary services as stated in the Sections to follow. As a condition to employment, it is specifically agreed that any disputes arising hereunder shall be submitted to the County Judge or his designee and/or agent, as designated in writing by the County Judge (individually or collectively the "County Judge"). 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 II. **Agreement Period**

The term for this Agreement shall commence and be effective as of November 1, 2011, and shall continue thereafter until September 30, 2012 (the "Initial Term"). Upon the mutual written agreement of both parties, the Initial Term of this Agreement may be extended for an additional twelve (12) months following the Initial Term (the "Additional Term").

Section III.
Scope of Work

Vet will provide spaying and neutering services, on an as needed basis, to animals belonging to the Shelter before they are released to adopters or post adoption if the adoption occurs prior to the surgery. Surgeries are to be performed on days mutually agreed upon by Vet and Shelter staff, between the hours of 9:00 a.m. and 2:00 p.m. or other times mutually agreed upon between Shelter staff and Vet at the Shelter. In addition to providing the above referenced spaying and neutering services, the Vet shall also administer rabies vaccinations to all eligible animals at the Shelter. The County will provide the vaccines and the Shelter will be responsible for completing necessary paperwork relating to the Vet's vaccination of the eligible animals at the Shelter. The Vet will also provide euthanasia and medical assessment services, as requested by the Director, on an as needed basis. The services described in this Section III shall be collectively referred to herein as the "Services".

Section IV.
Fees; Conditions and Funding

A. Fee for the Initial Term. A fixed fee of \$350.00 per five (5) hour surgical day will be paid to the Vet. A minimum of fifteen (15) animals per surgical day is guaranteed. If the minimum number of animals cannot be scheduled, surgery will be cancelled by the Shelter with no less than seventy two (72) hours notice. If the number of animals scheduled for surgery exceeds fifteen (15) thereby causing the Vet to work in excess of the aforementioned five (5) hours, then the Vet will be compensated at an amount of \$70.00 per hour calculated in ½ hour increments for any additional time.

B. Fees for the Additional Term. In the event that the County and the Vet mutually agree to extend this Agreement for an additional 12 months beginning October 1, 2012, the terms and conditions in Section IV A will remain the same during the Additional Term.

C. Conditions: The following conditions shall apply to all Services performed by the Vet:

1. Animals must be deemed in reasonable health by the Vet before surgery is performed;
2. Animals must be eight (8) weeks of age or older; and
3. The Vet has the right to refuse to do surgery on any animal due to health concerns.

D. 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 payments under this Agreement.

E. Payment, Interest and Late Payments. County's 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. Additionally, an annual on-site audit, at the Vet's office(s), may be conducted by the County. All financial records shall be made available to the County or its authorized representatives during regular business hours at the Vet's office(s). 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 Shelter shall be solely responsible for all surgery costs, including surgical personnel. The Vet agrees to perform only those surgical procedures authorized in advance by the Shelter staff.

The County shall provide the following to the Vet:

1. Two (2) surgical tables;
2. Surgical lights for each table;
3. Anesthesia machines;
4. Large capacity autoclave;
5. Monitoring devices;
6. Isoflurane anesthesia;
7. Oxygen supply;
8. Sedation chamber (for cats and small fractious animals);
9. Pre-anesthetic drugs;
10. Surgical packs;
11. Suture materials;

12. Surgical gloves;
13. Any other supplies or materials that are necessary for the Services to be provided by the Vet hereunder;
14. The County shall obtain a DEA License and Texas Controlled Substance License in the Vet's name. This will allow controlled substances and other drugs to be purchased for use in the performance of the Services. These drugs and associated records will be maintained and used by the Shelter personnel under the Vet's supervision and authority; and
15. The County shall pay for the following associated license fees:
 - a. TX Controlled Substance Registration Fee - \$25.00;
 - b. One-half (1/2) of the Vet's TX State License Fee - \$183.00 (portion related to this contract); and
 - c. Membership to the Association of Shelter Vets - \$75.00

Section VI. Evaluations

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 Control 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 for settlement of the dispute.

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 OR NEGLIGENCE 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.

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. Equal Opportunity in Employment. The parties to this Agreement agree that during the performance of the Services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

J. 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.

K. 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.

L. Insurance. The Vet shall purchase and maintain comprehensive professional liability insurance in the amount of \$5,000 per occurrence. Said insurance shall name the County as an additional insured. The Vet shall provide the County with a Certificate of Insurance evidencing the above, and said Certificate shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the County by certified mail as per the Notice provision in this Agreement..

M. Termination for Cause. 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
c/o: Judge Dan A. Gattis
710 Main Street, Suite 101
Georgetown, Texas 78626

If to the Vet:

Margaret MacDonald D.V.M.
401 Little Texas Lane #913
Austin, TX 78745

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

Q. Independent Contractor. The Vet, in furnishing the Services to the County, is providing services as an independent contractor. The Vet is not to be construed as an employee, agent, or acting as the agent of County in any respect, regardless of any other provisions herein to the contrary.

R. 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 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.

S. 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 this _____ day of _____, 2011, by the undersigned parties, who execute this legal document within the authorities granted to them by respective entities.

WILLIAMSON COUNTY, TEXAS

By: 

Dan A. Gattis, County Judge

12-12-11

VET

By: 

Margaret MacDonald D.V.M