

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY
OF SAN MARCOS, CITY OF KYLE, CITY OF BUDA, AND HAYS
COUNTY RELATING TO THE MANAGEMENT AND OPERATION OF
THE SAN MARCOS REGIONAL ANIMAL SHELTER**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into to be effective on October 1, 2019 by and between the City of San Marcos (“City”), City of Kyle, City of Buda and Hays County (collectively referred to herein as the “Parties” or individually as the “Party”), all of which are political subdivisions of the State of Texas, regarding the regional partnership to manage and operate the San Marcos Regional Animal Shelter (“Shelter”) located at 750 River Road, San Marcos, Texas.

RECITALS:

1. Texas Government Code, Chapter 791, the Interlocal Cooperation Act (“Act”), provides that any one or more public agencies may contract with each other for the performance of governmental functions and for the joint use of facilities or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the Parties.
2. The establishment, management, and operation of the City of San Marcos Regional Animal Shelter is authorized by State law.
3. Each of the Parties have previously entered into separate interlocal cooperation agreements with the City of San Marcos for the provision of animal shelter services.
4. The Parties are mutually committed to having a shelter that is highly successful at saving the lives of homeless and abandoned animals by increasing the number of live outcomes at the Shelter and are currently working together on an Implementation Plan to that end.
5. The Parties acknowledge that the Act requires that payments under an interlocal agreement must be in an amount that fairly compensates the performing party for the services or functions performed under the Agreement.
6. The Parties have been working together over the past several months in collaboration with community partners and animal advocate groups to support the mission of the Shelter, which is to care for, protect, and find quality homes for abandoned and neglected animals, aid in the reduction of animal overpopulation, and provide community education for the mutual benefit of animals and people.

Based on the aforementioned recitals and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. PURPOSE

The purpose of this Agreement is to define the rights and duties of the Parties as they work together in collaboration with community partners and animal advocate groups to care for, protect, and find quality homes for abandoned and neglected animals, aid in the reduction of animal overpopulation, and provide community education for the mutual benefit of animals and people in Hays County. This Agreement reflects the commitment of the Parties to work together and cooperate with each other in good faith at all times during the term of this Agreement in order to achieve the purposes and intent of this Agreement.

SECTION 2. SCOPE OF SERVICES

2.1 City of San Marcos' Rights and Duties.

2.1.1. The City will oversee and be responsible for the daily operations of the Shelter.

2.1.2. Designate the Director of Neighborhood Enhancement as the City's representative in all matters related to this Agreement.

2.1.3. The City is responsible for ensuring that all Shelter activities related to the sheltering and care of animals delivered to the Shelter are conducted in accordance with all applicable statutory requirements including all legal requirements relating to maintaining the Shelter as a State-approved rabies quarantine facility.

2.1.4. The City will maintain all necessary records and reports of Shelter activity as required by State law.

2.1.5. The City will hold all stray animals for the prescribed hold period. If an animal is not reclaimed by the owner at the expiration of the hold period, it becomes the property of the City of San Marcos.

2.1.6. The City will vaccinate and microchip every live animal upon intake as applicable.

2.1.7. The City will appoint designated staff representatives from each of the Parties to the San Marcos Animal Shelter Advisory Committee.

2.1.8. The City will provide access to its shelter management software to the Parties.

2.1.9. The City shall provide a copy of the current Shelter's Standard Operating Procedures and Policies ("Policies") to each of the Parties.

2.2 City of Kyle, City of Buda and Hays County's Rights and Duties.

2.2.1 The Parties have the right to deliver non-livestock animals to the Shelter. If a City Intake Animal Control Officer is not available, or if the Shelter is closed, the delivering party must complete the intake process in accordance with standard operating procedures in effect. When a City Intake Animal Control Officer is available, there may be instances when it will be necessary for the Animal Control Officer delivering the animal to assist with the intake.

2.2.2. Appoint a staff representative to the City of San Marcos Animal Shelter Advisory Committee to be approved by the City of San Marcos City Council.

2.2.3. Designate a representative to represent the Party with regard to all matters related to this Agreement.

2.2.4 The Parties agree to fully comply with the policies and guidelines of the Shelter that now exist or as they may be amended, as well as any State law or agency rules governing the treatment of animals. Any noncompliance with the Shelter's Standard Operating Procedures and Policies may result in termination of this Agreement. The obligation to abide by the policies and guidelines of the Shelter are limited to the Shelter operation and shall not extend to limit or control any animal control regulations applicable to any of the various jurisdictions participating in this agreement.

2.2.5. The Parties agree to pay the City their percentage of costs reflected in Exhibit A to operate the Shelter upon adoption of their fiscal year budget.

2.3 Ordinances. The Parties agree to cooperate in an effort to make each Party's respective animal ordinance as consistent as possible. The City is currently working on an update to its animal ordinance and will seek input from the Parties regarding any proposed changes.

2.4 Parties' Rights Preserved. Nothing in this Agreement shall divest, diminish or affect the Parties' authority to issue notices of violations and court citations for alleged violations of specific ordinances of the respective Parties.

SECTION 3. TERM

3.1 Term. The term of this Agreement shall be five years commencing on October 1, 2019 extending to September 30, 2024 with the City providing an annual projection of costs to each of the Parties before the adoption of their annual budgets. The term of this Agreement will automatically renew for an additional five-year term through 2029 if the Parties do not reach agreement on a revised Agreement on or before September 30, 2024.

3.2 Termination. Any Party may terminate this Agreement for convenience and without cause by providing the Parties ninety (90) days written notice prior to the end of the Fiscal Year of the Party's intent not to participate in the Agreement in the upcoming Fiscal Year.

SECTION 4. COSTS

4.1 Cost Sharing Methodology. As shown in Exhibit A, the cost for the first year of this Agreement was derived from the following: operations, capital outlay, facilities, debt service, and revenue credit. The cost allocation, or percentage charged to each party, was derived from the most recent four-year intake average by Party. In each subsequent year of this Agreement, the cost allocation and total cost will be calculated using the same methodology, except that expenses above the prior year invoice will be included. The City will provide the Parties a projected cost of services for each Fiscal Year as early as possible in order to allow the Parties' governing bodies to include the costs of Shelter services in their respective budgets.

4.2 Appropriations Required. The Parties acknowledge that funding under this Agreement will be made from current revenues available to the Parties for each fiscal year. State law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. None of the Parties can guarantee the availability of funds, and each of the Parties enter into this Agreement only to the extent such funds are made available. None of the Parties will have recourse against any other Party for its failure to appropriate funds for the purposes of this Agreement in any fiscal year. It is agreed that each Party has appropriated the necessary funds for this Agreement in Fiscal Year 2019-2020.

4.3 Unforeseen Costs. In the event of unforeseen circumstances that have a significant financial impact on the operation of the Shelter, the Parties agree to equally share in the costs attributed to the increased costs with the City unless it is an identifiable cost associated with a specific Party, in which case the responsible Party alone will share in financial responsibility with the City. Examples of unforeseen costs may be large animal cruelty seizure cases, natural disasters or breakouts of disease affecting animals.

SECTION 5. DEFENSE PROVISION

The Parties agree to be obligated to defend and hold-harmless one another and their respective employees, agents, officers and servants from and against any and all lawsuits, claims, demands and causes of action of any kind arising from any act, error or omission by the respective Party's employees, agents, officers and servants with respect to the pick-up and delivery of animals to the Shelter or with respect to the care and disposition of any animal delivered by any respective Party to the Shelter or in the performance of any Shelter related activity. Any party receiving a lawsuit, claim, demand or cause of action subject to this provision of this Agreement shall provide each Party a copy of the lawsuit, claim, demand or cause of action and shall deliver it to the Texas Municipal League Intergovernmental Risk Pool and the Texas Association of Counties **Risk** Management Pool (in the case of the claim involving Hays County) for defense and for the coordination of cooperative self-insurance benefits seeking the defense for all respective Parties. All defending Parties shall enter into a Joint Defense Agreement to defend any and all claims. In the event of a lawsuit, claim, demand or cause of action, raised it is determined not to be a covered

claim by the respective Risk Pool or Risk Management Pool, the Party or Parties' whose employees, agents, officers and servants allegedly committed the act or omission that brought rise to the lawsuit, claim, demand or cause of action, shall reimburse all expenses, including, but not limited to, any deductibles paid to any Risk Pool or Risk Management Pool, and any other expenses paid by any other defending Party for attorney's fees, expert fees, administrative costs, costs of court and any damages awarded and paid by any defending Party to the agreement. Such payments are due on an annual basis at the end of each Fiscal Year the matter is pending and shall continue to be due on an annual basis until paid in full after the matter disposed of by final judgment or prejudicial dismissal. This provision survives termination of the Agreement if a claim is pending at the time of termination.

SECTION 6. MISCELLANEOUS PROVISIONS

6.1 Successor Rights. The rights and duties of the Parties defined in this Agreement shall inure to the benefit and be binding upon the administrators, successors and assigns of the Parties.

6.2 Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings and agreements between the Parties regarding such matters. This Agreement may not be modified or amended except by written agreement executed by all Parties. None of the Parties may assign this Agreement without the written consent of the other Parties.

6.3 Interpretation. The Parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Act. All terms and conditions are to be construed and interpreted consistently with the Act.

6.4 Invalid Provision. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful and will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

6.5 Applicable Law. This Agreement is governed by the laws of the State of Texas; exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.

6.6 Public Information Act. The Parties are legally required to comply with the Texas Public Information Act, Chapter 522 of the Texas Government Code. This Agreement and all written information and reports generated under this Agreement may be subject to release under the Texas Public Information Act. The Parties will cooperate in responding to any request for information relating to the Shelter. The City will submit a request for a ruling to the Texas Attorney General if any information is requested that must be withheld pursuant to State or Federal law.

6.7 Governmental Body Approval. Each of the Parties have presented this Agreement for approval to their respective governing bodies as required by the Act and evidenced by the authorized signatures below.

6.8 Retention of Defenses. The Parties agree that, neither this Agreement nor the performance thereunder shall affect, impair nor limit their respective immunities and limitations of liability to the claims of third parties, including third-party claims related to the animal control and animal shelter services provided by the City hereunder. Notwithstanding each Party's acknowledgement that this Agreement is duly authorized, validly existing and binding on all Parties hereto, the Parties agree that no Party has waived its sovereign immunity to the claims of third parties by entering into and performing its obligations under this Agreement.

Executed by the duly authorized representatives of the Parties.

CITY OF SAN MARCOS

By: _____
Bert Lumbreras, City Manager

Date: _____

(separate signature pages for ease of execution)

CITY OF KYLE

By: _____
Scott Sellers, City Manager

Date: _____

CITY OF BUDA

By: _____

City Manager
Kenneth Williams

Date: _____

HAYS COUNTY

By:_____

County Judge
Ruben Becerra

Date:_____