

**CITY OF FORNEY, TEXAS
RESOLUTION NO. 17-_____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF FORNEY AND STONE CREEK VETERINARY HOSPITAL; AUTHORIZING THE INTERIM CITY MANAGER TO TAKE ALL ACTION NECESSARY TO COMPLY WITH THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Forney, Texas (the “City”) desires to execute a Professional Services Agreement for Veterinary Services between the City and Stone Creek Veterinary Hospital, as shown in Exhibit A, attached.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

SECTION 1. The above and foregoing premises are true and correct and are incorporated herein and made part hereof for all purposes.

SECTION 2. That the attached Exhibit “A” Professional Services Agreement Between City of Forney and Stone Creek Veterinary Hospital is hereby approved and the Interim City Manager is authorized to enter into the Agreement.

SECTION 3. This Resolution shall take effect immediately from and after its passage.

PRESENTED AND PASSED by the City Council of the City of Forney, Texas, this the ____ day of _____, 2017.

Rick Wilson, Mayor

ATTEST:

Dorothy Brooks, City Secretary

Exhibit A

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF FORNEY AND STONE CREEK VETERINARY HOSPITAL**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the City of Forney, Texas (“City”), a Texas home-rule municipal corporation, and Stone Creek Veterinary Hospital (“Contractor”), an individual, each individually referred to as a “Party” and collectively referred to as the “Parties.”

AGREEMENT DOCUMENTS:

The Agreement documents shall include the following:

1. This Professional Services Agreement;
2. Exhibit A – Scope of Services;
3. Exhibit B – Payment Schedule; and

Exhibits A and B, which are attached hereto and incorporated herein, are made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibits A and B and the terms and conditions set forth in the body of this Agreement, the terms and conditions of this Agreement shall control.

1. SCOPE OF SERVICES

Contractor hereby agrees, with good faith and due diligence, to provide the City with veterinary services. Specifically, Contractor will perform all duties outlined and described in the Scope of Services, which is attached hereto as Exhibit “A,” referred to herein as the “Services.” Contractor shall perform the Services in accordance with standards in the industry for the same or similar services. In addition, Contractor shall perform the Services in accordance with all applicable federal, state, and local laws, rules, and regulations. If there is any conflict between this Agreement and Exhibit A, the terms and conditions of this Agreement shall control.

2. TERM

This Agreement shall commence upon the effective date, which shall be the date of execution by the Parties, and shall have an initial term of one (1) year, unless terminated earlier in accordance with this Agreement. The term may be extended by mutual written agreement of the Parties, for two additional one-year terms. No compensation in excess of the agreed upon amount will be paid without approval by the City Council in accordance with the City Charter, City Code and any City Procurement Policies.

3. COMPENSATION

City shall pay Contractor for the duration of this Agreement in accordance with the provisions of this Agreement and Exhibit “B,” – Payment Schedule, subject to appropriation of sufficient funds by the City Council. The City shall not be liable for any additional expenses of Contractor not specified by this Agreement unless the City first approves such expenses in writing.

There is no guarantee expressed or implied as to the minimum quantity of work that the City is obligated to provide or the minimum compensation to be paid under this Agreement. This Agreement is not intended to establish an absolute exclusive provider relationship and the City retains the right to retain the services of other providers of veterinary services only during times that Contractor is unable to perform the services for the City. Contractor retains the right to provide veterinary services to other persons or entities.

The Contractor shall provide monthly invoices to the City. Invoices shall contain a detailed breakdown to include: type of service performed, date work performed, internal services provided, and external supplies provided.

Payment of services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by the City of Contractor's invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

Acceptance by Contractor of payment shall operate as and shall release the City from all claims or liabilities under this Agreement for any related to, done or furnished in connection with the services for which payment is made, including any act or omission of the City in connection with such services.

4. TERMINATION

4.1 Written Notice. City may terminate this Agreement at any time and for any reason by providing the other Party with 30 days' written notice of termination.

4.2 Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3 Duties and Obligations of the Parties. In the event that this Agreement is terminated prior to the Expiration Date, City shall pay Contractor for Services actually rendered up to the effective date of termination and Contractor shall continue to provide City with Services requested by City and in accordance with this Agreement up to the effective date of termination.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION

5.1 Disclosure of Conflicts. Contractor hereby warrants to City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's Services under this Agreement. In the event that any conflicts of interest arise after

the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to City in writing.

5.2 Confidential Information. Contractor, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by City (“City Information”) as confidential and shall not disclose any such information to a third party without the prior written approval of City.

5.3 Unauthorized Access. Contractor shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Contractor shall notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Contractor shall, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and shall fully cooperate with City to protect such City Information from further unauthorized disclosure.

6. RIGHT TO AUDIT

Contractor agrees that City shall, until the expiration of three (3) years after final payment under this Agreement, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Contractor involving transactions relating to this Agreement at no additional cost to City. Contractor agrees that City shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor not less than ten (10) days written notice of any intended audits.

Contractor further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor not less than ten (10) days written notice of any intended audits.

7. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Contractor shall operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as AN agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Contractor shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, consultants and subcontractors. Contractor acknowledges that the doctrine of respondeat superior shall not apply as between City, its officers, agents, servants and employees,

and Contractor, its officers, agents, employees, servants, Contractors and subcontractors. Contractor further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Contractor. It is further understood that City shall in no way be considered a co-employer or a joint employer of Contractor or any officers, agents, servants, employees or subcontractors of Contractor. Neither Contractor, nor any officers, agents, servants, employees or subcontractors of Contractor shall be entitled to any employment benefits from City. Contractor shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subcontractors. Contractor waives and releases the City from any claims related to classification or alleged misclassification as an independent contractor, including but not limited to claims relating to taxes, insurance, overtime and benefits.

The Parties acknowledge and agree that this is a non-exclusive Agreement; Contractor is free to perform veterinary services for other clients and the City is free to contract with other veterinarians only during times where Contractor is unable to perform the services. Further, this Agreement shall not regulate the use of other veterinarian services donated or paid for by funds from some other source rather than City funds. In performing obligations and duties under this Agreement, Contractor is expected to exercise his independent judgement and discretion as a veterinarian license by the State of Texas.

8. LIABILITY AND INDEMNIFICATION

8.1 ***LIABILITY - CONTRACTOR SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

8.2 ***GENERAL INDEMNIFICATION - CONTRACTOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CONTRACTOR'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

9. ASSIGNMENT AND SUBCONTRACTING

9.1 ***Assignment.*** Contractor shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee shall execute a written agreement with City and Contractor under which the assignee agrees to be bound by the duties and obligations of Contractor under this

Agreement. Contractor and Assignee shall be jointly liable for all obligations of Contractor under this Agreement prior to the effective date of the assignment.

9.2 Subcontract. If City grants consent to a subcontract, subcontractor shall execute a written agreement with Contractor referencing this Agreement under which subcontractor shall agree to be bound by the duties and obligations of Contractor under this Agreement as such duties and obligations may apply. Contractor shall provide City with a fully executed copy of any such subcontract and a copy of subcontractor's insurance certificate(s) in accordance with the specifications in Section 10.2 of this Agreement, including but not limited to the endorsement naming the City as an additional insured and the waiver of subrogation.

10. INSURANCE

Contractor shall provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence
\$2,000,000 - Aggregate

(b) Worker's Compensation (If Contractor's employees are used in the performance of the Agreement):

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the work is being performed.

Employers' liability:

\$100,000 - Bodily Injury by accident; each accident/occurrence
\$100,000 - Bodily Injury by disease; each employee
\$500,000 - Bodily Injury by disease; policy limit

(c) Professional Liability (Errors & Omissions):

\$100,000 - Each Claim Limit
\$300,000 - Aggregate Limit

The above described Professional Liability coverage is required for each licensed veterinarian performing any duties under the Agreement. Professional Liability coverage may be provided through an endorsement to the Commercial General Liability (CGL) policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage shall be claims-made, and maintained for the

duration of the Agreement and for two (2) years following completion of Services provided. An annual certificate of insurance shall be submitted to City to evidence coverage.

10.2 General Requirements

- (a) The workers' compensation policy shall include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (b) A minimum of thirty (30) days' notice of cancellation or reduction in limits of coverage shall be provided to City. Ten (10) days' notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the Director of Community Development, City of Forney, P.O. Box 826, Forney, Texas 75126, with copies to the Forney City Attorney at the same address.
- (c) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of City is required.
- (d) Any failure on the part of City to request required insurance documentation shall not constitute a waiver of the insurance requirement.
- (e) Certificates of Insurance evidencing that Contractor has obtained all required insurance shall be delivered to the City prior to Contractor proceeding with any work pursuant to this Agreement.

11. LICENSES AND COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS

Contractor agrees that in the performance of its obligations hereunder, it shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Contractor of any violation of such laws, ordinances, rules or regulations, Contractor shall immediately desist from and correct the violation.

Contractor certifies and warrants that on the day any work is to commence under this Agreement and during the duration of the Agreement, contractor shall have and maintain all of the current, valid and appropriate federal, state, and local licenses and permits necessary for the provision of services under this Agreement. Contractor shall notify City within twenty-four (24) hours of any lapse, revocation, or actual or proposed disciplinary action by a licensing authority with regard to Contractor or any employee. Contractor also certifies that if any employee or subcontractor is used in the performance of this Agreement, that such employee or subcontractor

shall have and maintain all of the current, valid, and appropriate federal, state and local licenses and permits necessary for the provision of services under this Agreement.

Further, in accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of Contractor verifies that Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

12. NON-DISCRIMINATION COVENANT

Contractor, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Contractor’s duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY CONTRACTOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORS OR SUCCESSORS IN INTEREST, CONTRACTOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

13. NOTICES

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other Party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other Party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Forney
Attn: Peter Morgan
P.O. Box 826
Forney, Texas 75126
Facsimile: (972) 552-1538

To CONTRACTOR:

Stone Creek Veterinary Hospital
Attn: Dr. Brent Brewer
1300 FM 741
Forney, Texas 75126
Facsimile: (972) 468-9180

With copy to Forney City Attorney’s Office at same address.

14. GOVERNMENTAL POWERS

It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

15. NO WAIVER

The failure of City or Contractor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of City's or Contractor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16. GOVERNING LAW/VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Kaufman County, Texas.

17. SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18. FORCE MAJEURE

City and Contractor shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19. HEADINGS NOT CONTROLLING

Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

20. REVIEW OF COUNSEL

The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or Exhibits A and B.

21. AMENDMENTS/ MODIFICATIONS/ EXTENSIONS

No amendment, modification, or extension of this Agreement shall be binding upon a Party hereto unless set forth in a written instrument, which is executed by an authorized representative of each Party.

22. ENTIRETY OF AGREEMENT

This Agreement, including Exhibits A and B, contains the entire understanding and agreement between City and Contractor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

24. WARRANTY OF SERVICES

Contractor warrants that its Services will be of a professional quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the Services are completed. In such event, at Contractor's option, Contractor shall either (a) use commercially reasonable efforts to re-perform the Services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Contractor for the nonconforming Services.

25. IMMIGRATION NATIONALITY ACT

City actively supports the Immigration & Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Contractor shall verify the identity and employment eligibility of all employees who perform work under this Agreement. Contractor shall complete the Employment Eligibility Verification Form (I-9), maintain photocopies of all supporting employment eligibility and identity documentation for all employees, and upon request, provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor shall establish appropriate procedures and controls so that no Services will be performed by any employee who is not legally eligible to perform such Services. By executing this Agreement, Contractor agrees to comply with the verification requirements required by this Agreement. Contractor shall indemnify City from any penalties or liabilities due to violations of this provision. City shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

26. SIGNATURE AUTHORITY

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of the respective Party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Contractor whose name, title and signature is affixed to this Agreement. Each Party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in Multiples
this ____ day of _____, 2017.

[Signature Page to Follow]

CITY OF FORNEY:

**STONE CREEK
VETERINARY HOSPITAL:**

Wendle Medford, Interim City Manager

Dr. Brent Brewer

Date: _____

Date: _____

ATTEST:

Dorothy Brooks, City Secretary

EXHIBIT A
SCOPE OF SERVICES

Perform spay/neuter surgery, recovery, discharge and other tasks associated with spay/neuter procedures. Animals will be selected for surgery by City employees.

The Contractor (veterinarian) will conform to all surgical standards as dictated by the Texas Veterinary Medical Practices Act.

Follow-up care shall be provided by the Contractor.

Prices for pet sterilization included within this Agreement are comprehensive. They include and assume:

1. All veterinary staff is fully licensed and insured within Texas to practice veterinary medicine.
2. All drug and pet sterilization records will be recorded and will be maintained by the City as required by Texas law.
3. City staff will fill out surgery forms for animals to accurately track all services and provide surgery documentation for each animal serviced.
4. Contractor will have the ability to decline animals the Contractor determines are not good surgery candidates at all times.
5. City staff will deliver animals to Contractor's facility for surgical procedures and return the animals to City facilities unless the animals are picked up by a third party adopter. Any animals returned to City facilities after a surgical procedure will be monitored daily by City staff during cage cleaning. The Contractor will be alerted for any concerns that City staff may have about animals post-surgery as soon as problems develop. Post-surgical issues will be addressed on a case-by-case basis.

EXHIBIT B
PAYMENT SCHEDULE

Feline Spay w/Rabies	\$70.00
Canine Spay w/Rabies	\$75.00
In-Heat/Pregnant	\$30.00 (in addition to Spay fee)
Feline Neuter w/Rabies	\$40.00
Canine Neuter w/Rabies	\$65.00
Cryptorchid	\$30.00 (in addition to Neuter fee)
Umbilical Hernia Repair	\$20.00 (in addition to alteration surgery fee)
Clinic Services	60% discount off basic services including exams
Prescriptions	60% discount (excluding HWP, Flea/Tick, OTC products, OTC and Rx diets)
Veterinarian hourly rate	\$75/hr – when services are required to be performed at shelter
Technician hourly rate	\$25/hr – when services are required to be performed at shelter