

AGREEMENT

Between

BROWARD COUNTY

and



for

TRAP NEUTER RETURN PROGRAM ("TNR")

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TRAP NEUTER RETURN PROGRAM ("TNR")

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, ("COUNTY") and , ("PROVIDER"), collectively referred to as the "Parties".

WHEREAS, on September 10, 2015, COUNTY adopted Resolution No. 2015-434 authorizing the Broward County Animal Care and Adoption Division ("Division") to create sterilization programs to reduce local pet overpopulation; and

WHEREAS, the Division has created the Trap, Neuter and Return Program ("TNR") in order to reduce the number of unwanted cats entering the COUNTY animal shelter; and

WHEREAS COUNTY acknowledges the need to address the permanent presence of community cats living in an outdoor environment, independent of human intervention; and

WHEREAS, COUNTY desires to enter into this Agreement with PROVIDER to participate in TNR; and

WHEREAS, PROVIDER is able and willing to participate in TNR, in accordance with the terms and conditions of this Agreement; and

WHEREAS, COUNTY shall reimburse PROVIDER at the rates listed herein for the sterilization, vaccination, ear notching, and other treatment of feral/free-roaming cats; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and PROVIDER agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - This document, Articles 1 through 7, inclusive.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Contract Administrator** - The Broward County Administrator, the Director of the Broward County Animal Care and Adoption Division, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with PROVIDER and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **COUNTY** - The Board as defined in Section 1.2, unless expressly provided otherwise.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 **Community cat** - Any free-roaming, unowned cat living in an outdoor environment that may or may not be a part of a cat colony. A community cat may or may not be feral.
- 1.7 **Program** - The Trap, Neuter and Return Program ("TNR") as described below in Article 2.
- 1.8 **Provider** - Licensed veterinarians, rescue groups, or humane societies serving as the second party to this Agreement.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 Responsibilities of COUNTY:
- 2.1.1. COUNTY agrees to publicize the Program in such a manner and for such time periods as COUNTY, in its sole discretion, shall determine.
- 2.1.2. COUNTY shall provide written information to the public explaining the

services covered by this Agreement.

- 2.1.3. COUNTY's payment to PROVIDER for TNR services performed herein shall include a rabies vaccine, sterilization, pain injection, and ear notch for qualified community cats.
 - 2.1.4. COUNTY shall pay PROVIDER the fee(s) set forth in Exhibit A, "Fee Schedule," for services rendered in accordance with the terms and conditions of this Agreement.
 - 2.1.5. COUNTY shall make such payment to PROVIDER only upon receipt of a proper invoice, bearing PROVIDER's signature or stamp, and includes a statement certifying that the services invoiced have been performed as billed.
 - 2.1.6. COUNTY shall make such payments to PROVIDER once monthly.
- 2.2 Responsibilities of PROVIDER:
- 2.2.1. PROVIDER represents that he or she is a licensed veterinarian or works with a licensed veterinarian in the state of Florida at all times veterinary services are performed hereunder. Only a duly licensed veterinarian shall perform all such services.
 - 2.2.2. PROVIDER agrees to accept the fee listed in Exhibit A, "Fee Schedule," as full and complete compensation for the services listed thereon, and agrees that the fee includes: all facilities and services relating to routine spaying or neutering of the community cat, including, without limitation, hospital admission and examination; anesthesia; the surgical procedure; pain injection; stitch removal, as required; rabies vaccination; and ear notch. PROVIDER further agrees that, if trapping services are required to obtain a community cat under this Program, requests shall be made in writing to COUNTY prior to the date when such services are needed. PROVIDER shall only be paid fees by COUNTY pursuant to this Program when the Division authorizes such services in advance and in writing. Trapping fees shall not exceed the fee listed in Exhibit A, and PROVIDER agrees that the fee includes: driving to the location, trapping and transporting the community cat to the facility for sterilization services, and returning the community cat to its original location. PROVIDER agrees that they shall only be paid one (1) trapping fee for each authorized trip regardless of the number of community cats or attempts required to trap the community cat(s).
 - 2.2.3. Should PROVIDER determine, at the time of presentation of a community cat under this Program, that the community cat requires services other than those covered by the Program, PROVIDER agrees to advise the community cat caretaker of such additional required procedures prior to the sterilization operation that said procedures are not covered by the Program, and to make separate fee arrangements with the caretaker as necessary for such additional services or procedures. PROVIDER further agrees not to seek reimbursement from COUNTY for any such additional services.

- 2.2.4. PROVIDER shall submit invoices to COUNTY on a monthly basis. Electronic submission (scanned and PDF) is highly preferred. Invoices shall include: a copy of the Division's prior written authorization for services for which PROVIDER seeks compensation under this Agreement, completed Division reimbursement form, and the amount due and payable to the PROVIDER. In addition, for each rabies vaccination performed by PROVIDER, PROVIDER shall submit a rabies certificate to the Division. In no event shall invoices and rabies certificates be presented to COUNTY more than sixty (60) days after expiration or termination of this Agreement.
- 2.2.5. Invoices received from the PROVIDER shall be reviewed by the Division and upon approval shall be sent to the County's Finance Department for final approval and payment. COUNTY agrees to reimburse PROVIDER within thirty (30) calendar days of receipt of PROVIDER's proper invoice, as required by the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. In the case of a dispute involving the amounts due to the PROVIDER, payment may be delayed. Payment may be delayed if missing information is not provided by the PROVIDER.
- 2.2.6. PROVIDER may reject community cats presented by caretakers for services included in this Program only if, in PROVIDER's professional opinion, the requested services cannot be safely performed due to the existing health condition of the community cat.

ARTICLE 3

TERM AND TERMINATION OF AGREEMENT

- 3.1 The term of this Agreement shall commence upon execution by both parties and shall conclude on September 30, [REDACTED] ("Initial Term"), unless sooner terminated as provided herein. This Agreement may be renewed automatically at the end of each term at the sole option of the Contract Administrator for two (2) additional one-year periods (each individually referred to as an "Option Period"). The Initial Term and both Option Periods shall be collectively referred to as "Agreement Term." However, this Agreement may be terminated in accordance with the provisions contained in Section 3.2 below. Since the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes.
- 3.2 This Agreement may be terminated by either party for convenience upon thirty (30) days' prior written notice.

ARTICLE 4

CHANGE IN SCOPE OF SERVICES

- 4.1 Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 7.14 below.

ARTICLE 5

INDEMNIFICATION

- 5.1 PROVIDER shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due PROVIDER under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 6

INSURANCE

- 6.1 PROVIDER shall maintain at its sole cost and expense maintain in force at all times during the term of this Agreement the insurance coverage set forth in this Article, in accordance with the terms and conditions required by this Article.
- 6.2 Such policy shall be issued by companies authorized to do business in the State of Florida, and acceptable to the Broward County's Risk Management Division. PROVIDER shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming Broward County as an additional insured on a primary and non-contributory basis under the Commercial General Liability Policy as well as on any Excess Liability Policy. The official title of the certificate holder is Broward County.
- 6.3 Professional Liability Insurance. Professional Liability Insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each occurrence. Any deductible amount shall not exceed One Hundred Thousand Dollars (\$100,000.00) for each occurrence.
- 6.4 Commercial Liability Insurance. Commercial General Liability Insurance with

minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage liability and One Million Dollars (\$1,000,000.00) per aggregate.

- 6.5 Workers' Compensation Insurance. Workers' Compensation insurance shall apply for all employees in compliance with Chapter 440, Florida Statutes, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) each accident.

- 6.6 PROVIDER shall furnish to COUNTY's Contract Administrator proof of insurance in the form of a Certificate of Insurance and endorsements, evidencing the insurance coverage specified by this Article within fifteen (15) calendar days of execution of this Agreement. PROVIDER's failure to provide to COUNTY proof of insurance shall provide the basis for the termination of the Agreement.
- 6.7 Coverage is not to cease and is to remain in force until all performance required of PROVIDER is completed. A certified copy of any policy required by this Article shall be provided to COUNTY upon request. If any of the insurance coverage will expire prior to the completion of the work, renewal certificates shall be furnished upon expiration.
- 6.8 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.

ARTICLE 7

MISCELLANEOUS

7.1 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of PROVIDER that are related to this Program. PROVIDER shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Program. All books, records, and accounts of PROVIDER shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, PROVIDER shall make same available at no cost to COUNTY in written form.

PROVIDER shall preserve and make available, at reasonable times, for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida

Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to PROVIDER's records, PROVIDER shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by PROVIDER. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

7.2 EEO COMPLIANCE

PROVIDER shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. PROVIDER shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, PROVIDER shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

PROVIDER's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

PROVIDER shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

By execution of this Agreement, PROVIDER represents, and COUNTY hereby materially relies on such representation in entering into this Agreement, that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from PROVIDER all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

7.3 PUBLIC ENTITY CRIME ACT

PROVIDER represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant, or other

provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, PROVIDER further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether PROVIDER has been placed on the convicted vendor list.

7.4 INDEPENDENT CONTRACTOR

PROVIDER is an independent contractor under this Agreement. Services provided by PROVIDER pursuant to this Agreement shall be subject to the supervision of PROVIDER. In providing such services, neither PROVIDER nor its agents shall act as officers, employees, or agents of the COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to PROVIDER any authority of any kind to bind COUNTY in any respect whatsoever.

Further, COUNTY, through the Program, is only a third-party payor for services rendered by PROVIDER in accordance with this Agreement, and the veterinarian client-patient relationship shall exist directly between PROVIDER and any pet owner participating in the Program. PROVIDER recognizes that no exclusive rights or interests are conveyed by this Agreement, and that pet owners participating in this Program may choose any veterinarian participating in the Program.

7.5 THIRD PARTY BENEFICIARIES

The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Thomas Adair, Director
Animal Care and Adoption Division
1870 SW 39th Street
Fort Lauderdale, FL 33315

FOR PROVIDER:

[REDACTED]
[REDACTED]
[REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

7.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, PROVIDER shall not subcontract any portion of the work required by this Agreement.

PROVIDER represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

PROVIDER shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of PROVIDER's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

7.8 WAIVER OF BREACH

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.9 COMPLIANCE WITH LAWS

PROVIDER shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.10 SEVERANCE

In the event a material portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or PROVIDER elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

7.11 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

7.12 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 7 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 7 shall prevail and be given effect.

7.13 JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit and venue for litigation arising out of this Agreement shall be in such state courts. By entering into this Agreement, PROVIDER and COUNTY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement.

7.14 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and PROVIDER.

7.15 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.16 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party.

7.17 MULTIPLE ORIGINALS

This Agreement may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, signing by and through its Director of the Animal Care and Adoption Division, authorized to execute same by Board action on the ____ day of _____, 20__, and PROVIDER, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its
Director of the Animal Care and
Adoption Division

Signature

By _____
Thomas Adair, Director

Print/Type Name Above

____ day of _____, 20__

Signature

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Print/Type Name Above

Insurance Requirements
Approved:

By _____
John E. Naclerio III
Assistant County Attorney

By _____
Risk Management Division

JEN/
TNR Shell Agreement
FINAL (12-10-15)

AGREEMENT BETWEEN BROWARD COUNTY AND _____,
FOR THE TRAP NEUTER RETURN PROGRAM

PROVIDER

WITNESSES:



Signature

Authorized Signature

Print or Type Name Above

Print/Type Signatory's Name and Title

___ day of _____, 20___

Signature

Print or Type Name Above

(Seal)

Attest:

Secretary

EXHIBIT A
Fee Schedule

Community Cat Sterilization TNR **\$50**

Includes: sterilization, male or female, ear notch and rabies vaccination

TNR Trapping: **\$25**

Includes: fee to drive to the site, trap, and re-release. Only one fee per authorized trip regardless of the number of community cats or attempts required to trap the community cat(s).