

**AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR TRAP NEUTER
RETURN PROGRAM**

This Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and _____, a [a licensed veterinarian/corporation/limited liability company] ("Provider") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. On September 10, 2015, the Board adopted Resolution No. 2015-434 authorizing the Broward County Animal Care Division ("Division") to create sterilization programs to reduce local pet overpopulation.

B. The Division created the Trap Neuter Return Program ("TNR") to reduce the number of unwanted cats entering County's animal shelter.

C. County acknowledges the need to address the permanent presence of community cats living in an outdoor environment, independent of human intervention.

D. County desires to enter into this Agreement with Provider to participate in TNR.

E. Provider is able and willing to participate in TNR, in accordance with the terms and conditions of this Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

1.3. **Code** means the Broward County Code of Ordinances.

1.4. **Community cat** means any free roaming, unowned cat living in an outdoor environment that may or may not be part of a cat colony. A community cat may or may not be feral.

1.5. **Contract Administrator** means the Director of the Animal Care Division or such other person designated by the Director of the Animal Care Division in writing.

1.6. **Services** means all work required of Provider under this Agreement, including without limitation all deliverables, consulting, training, project management, and other services specified in the Scope of Services attached as Exhibit A.

ARTICLE 2. EXHIBITS

Exhibit A	Scope of Services
Exhibit B	Payment Schedule
Exhibit C	Minimum Insurance Coverages

ARTICLE 3. SCOPE OF SERVICES

Provider shall perform all Services, including, without limitation, the work specified in Exhibit A (the "Scope of Services"). The Scope of Services is a description of Provider's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Provider impractical, illogical, or unconscionable.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. **Term.** This Agreement begins on the date it is fully executed by the parties ("Effective Date") and continues through September 30, 2026 ("Initial Term"), unless otherwise terminated or extended as provided in this Agreement. The Initial Term, Extension Term(s), and any Additional Extension as defined in this article are collectively referred to as the "Term."

4.2. **Extensions.** County may extend this Agreement for up to two additional one (1) year terms (each an "Extension Term") on the same rates, terms, and conditions stated in this Agreement by sending notice to Provider at least thirty (30) days prior to the expiration of the then-current term. The Contract Administrator is authorized to exercise any Extension Term(s), and notice of same to Provider only by electronic mail shall be effective and sufficient.

4.3. **Additional Extension.** If unusual or exceptional circumstances, as determined in the sole discretion of the Contract Administrator, render the exercise of an Extension Term not practicable, or if no Extension Term remains available and expiration of this Agreement would, as determined by the Contract Administrator, result in a gap in Services deemed necessary by County, then the Contract Administrator may extend this Agreement for period(s) not to exceed three (3) months in the aggregate ("Additional Extension") on the same rates, terms, and conditions as existed at the end of the then-current term. The Contract Administrator may exercise the Additional Extension by written notice to Provider at least thirty (30) days prior to the end of the then-current term stating the duration of the Additional Extension.

4.4. **Fiscal Year.** The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

4.5. Time of the Essence. Time is of the essence for Provider's performance of the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 5. COMPENSATION

5.1. Compensation. Payment shall be made only for Services actually performed and completed pursuant to this Agreement as set forth in Exhibit B (Payment Schedule), which amount shall be accepted by Provider as full compensation for all such Services. Provider acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County's obligation to compensate Provider for goods and Services. These maximum amounts, however, do not constitute a limitation of any sort upon Provider's obligation to perform all Services.

5.2. Method of Billing and Payment.

5.2.1. Unless otherwise stated in Exhibit B, Provider must submit invoices no more often than once monthly, but only after the Services invoiced have been completed. Invoices are due within fifteen (15) days after the end of the month covered by the invoice, except that the final invoice must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices shall describe the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator.

5.2.2. Invoices shall be in the amounts set forth in Exhibit B for the applicable Services, minus any agreed upon retainage as stated in Exhibit B. Retainage amounts shall only be invoiced upon completion of all Services, unless otherwise stated in Exhibit B.

5.2.3. County shall pay Provider within thirty (30) days after receipt of Provider's proper invoice in accordance with the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Code. To be deemed proper, all invoices must: (a) comply with all applicable requirements set forth in this Agreement or the Code; and (b) be submitted on the then-current County form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Provider to comply with a term, condition, or requirement of this Agreement.

5.3. Reimbursable Expenses. Provider shall not be reimbursed for any expenses incurred in connection with the Services, including, without limitation, travel costs.

5.4. Withholding by County; Overcharges. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Provider's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County. If an audit reveals overcharges of any nature by Provider in excess of five percent (5%) of the total

amount billed in the invoice where the overcharge occurred, Provider must refund the overbilled amount and pay liquidated damages in the amount of fifteen percent (15%) of the overbilled amount within forty-five (45) days after demand by County as just compensation for damages incurred by County due to the overbilling, including, but not limited to, County's administrative costs, loss of potential investment returns, and interest.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1. Representation of Authority. Provider represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Provider, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Provider has with any third party or violates Applicable Law. Provider further represents and warrants that execution of this Agreement is within Provider's legal powers, and each individual executing this Agreement on behalf of Provider is duly authorized by all necessary and appropriate action to do so on behalf of Provider and does so with full legal authority.

6.2. Contingency Fee. Provider represents that Provider has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.3. Public Entity Crime Act. Provider represents that Provider is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that Provider's entry into this Agreement will not violate that Act. Provider further represents that there has been no determination that Provider committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that Provider 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.

6.4. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Provider represents that Provider has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that Provider is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Provider represents and certifies that Provider is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Provider represents that Provider is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.5. Claims Against Provider. Provider represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Provider, threatened against or affecting Provider, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Provider to perform Provider's obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Provider or on the ability of Provider to conduct Provider's business as presently conducted or as proposed or contemplated to be conducted.

6.6. Verification of Employment Eligibility. Provider represents that Provider has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Provider violates this section, County may immediately terminate this Agreement for cause and Provider shall be liable for all costs incurred by County due to the termination.

6.7. Warranty of Performance. Provider represents and warrants that all person(s) providing Services pursuant to this Agreement possess the knowledge, skill, experience, and financial capability required to perform and provide all Services, and that each person maintains a valid veterinary license pursuant to Florida law, is duly qualified to perform such Services, and is sufficiently experienced and skilled in the area(s) for which such person will render Services. Provider represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

6.8. Disciplinary Actions. Provider represents and warrants that all person(s) providing Services pursuant to this Agreement have had no significant disciplinary action from the regulatory board of any state governing the practice of veterinary medicine within the past five (5) years. "Significant disciplinary action" as used herein includes any reprimand, corrective action, or suspension or revocation of a veterinary license. Letters of Concern issued by the Florida Department of Business and Professional Regulation (or the equivalent disciplinary action in another state) are not considered significant disciplinary actions. During the Term, Provider shall notify County as soon as practicable but no later than three (3) business days after any significant disciplinary action against Provider or any veterinarian employed by or affiliated with Provider who is performing Services pursuant to this Agreement. Such person(s) shall immediately cease performance of Services if their veterinary license is suspended or revoked. Failure by Provider or the individuals employed by or affiliated with Provider who are providing Services to maintain a valid veterinary license shall be cause for immediate termination of this Agreement for cause.

6.9. Prohibited Telecommunications Equipment. Provider represents and certifies that Provider does not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Provider represents and certifies that Provider shall not provide or use such covered telecommunications equipment, system, or services during the Term.

6.10. Breach of Representations. Provider acknowledges that County is materially relying on the representations, warranties, and certifications of Provider stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this

Agreement without any further liability to Provider; (c) set off from any amounts due to Provider the full amount of any damage incurred; and (d) debarment of Provider.

ARTICLE 7. INDEMNIFICATION

Provider shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Provider, or any intentional, reckless, or negligent act or omission of Provider, Provider's officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Provider shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Provider under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. INSURANCE

8.1. Throughout the Term, Provider shall, at Provider's sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Provider shall maintain insurance coverage against claims relating to any act or omission by Provider, Provider's agents, representatives, or employees in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2. Provider shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

8.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, Provider shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Provider shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4. Provider shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required by Provider has been completed, as determined by Contract Administrator. Provider or Provider's insurer shall provide notice to County of any cancellation or modification of any

required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of Provider's updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

8.6. If Provider maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Provider.

8.7. Provider shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Provider shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Provider to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Provider agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Provider agrees to obtain same in endorsements to the required policies.

8.8. Unless prohibited by the applicable policy, Provider waives any right to subrogation that any of Provider's insurers may acquire against County, and agrees to obtain same in an endorsement of Provider's insurance policies.

8.9. If Provider fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Provider.

8.10. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Provider must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

ARTICLE 9. TERMINATION

9.1. Termination for Cause. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may be terminated for cause by County for reasons including, but not limited to, Provider's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices.

Termination for cause by County may be made by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and Provider shall be eligible for the compensation provided in Section 9.2 as Provider's sole remedy.

9.2. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days advance written notice to Provider. Provider acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance notice to Provider of such termination in accordance with this section. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If this Agreement is terminated by County pursuant to this section, Provider shall be paid for any Services properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable, and County shall have no further obligation to pay Provider for Services under this Agreement.

9.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4. In addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY

10.1. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

10.2. By January 1 of each year, Provider must submit an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

ARTICLE 11. MISCELLANEOUS

11.1. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Provider to manage and supervise the performance of this Agreement. Provider acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

11.2. Public Records. Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Provider is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Provider shall:

11.2.1. Keep and maintain public records required by County to perform the Services;

11.2.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

11.2.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to County; and

11.2.4. Upon expiration of the Term or termination of this Agreement, transfer to County, at no cost, all public records in possession of Provider or keep and maintain public records required by County to perform the services. If Provider transfers the records to County, Provider shall destroy any duplicate public records that are exempt or confidential and exempt. If Provider keeps and maintains the public records, Provider shall meet all requirements of Applicable Law for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Provider receives a request for public records regarding this Agreement or the Services, Provider must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Provider must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Provider contends constitutes or contains Provider’s trade secrets under Chapter 688, Florida Statutes, or (b) for which Provider asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Provider must, simultaneous with the submission of any Restricted Material, provide a sworn affidavit from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Provider must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Provider as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Provider, or the claimed exemption is waived. Any failure by Provider to strictly comply with the requirements of this section shall constitute Provider’s waiver of County’s obligation to treat the records as Restricted Material. Provider must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROVIDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 359-1313, ACAD_PRR@BROWARD.ORG, 2400 S.W. 42ND ST., FORT LAUDERDALE, FLORIDA 33312.

11.3. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Provider that are related to this Agreement. Provider shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts 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 in written form at no cost to County. Provider shall provide County with reasonable access to Provider’s facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Provider shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or

termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Provider expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Provider hereby grants County the right to conduct such audit or review at Provider's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Provider shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

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. If an audit or inspection in accordance with this section reveals overpricing or overcharges to County of any nature by Provider in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the overcharges, Provider shall pay the reasonable cost of County's audit. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Provider.

11.4. Independent Contractor. Provider is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services, neither Provider nor Provider's agents shall act as officers, employees, or agents of County. Provider shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

11.5. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

11.6. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

11.7. Third-Party Beneficiaries. Neither Provider nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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.

11.8. Notice and Payment Address. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous

email is also sent). Payments shall be made to the noticed address for Provider. Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Animal Care Division
Attn: Emily Wood, Director
2400 S.W. 42nd Street
Fort Lauderdale, Florida 33312
Email address: emwood@broward.org

FOR PROVIDER:

11.9. Assignment. Provider shall not subcontract any of the Services. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Provider. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

11.10. Conflicts. Neither Provider nor Provider's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of judgment and care related to Provider's performance under this Agreement. During the Term, none of Provider's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Provider is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Provider or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding.

11.11. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.12. Compliance with Laws. Provider and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

11.13. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.14. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11.15. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

11.16. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

11.17. Law, 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. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.18. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Provider.

11.19. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and

contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.20. Payable Interest

11.20.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Provider for any reason, whether as prejudgment interest or for any other purpose, and Provider waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.20.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.21. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.22. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.23. Use of County Name or Logo. Provider shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

11.24. Living Wage Requirement. If Provider is a "covered employer" within the meaning of the "Broward County Living Wage Ordinance," Sections 26-100 through 26-105 of the Code, Provider shall fully comply with the requirements of such ordinance and shall pay to all of Provider's employees providing "covered services," as defined in the ordinance, a living wage as defined therein.

11.25. Polystyrene Food Service Articles. Provider shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement:
BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through
the Director of the Animal Care Division authorized to execute same by Board action on the _____
day of _____, 20__, and Provider, signing by and through
_____ duly authorized to execute same.

COUNTY

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

By: _____
Director

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: _____
De'Anne A. Jackson (Date)
Assistant County Attorney

DAJ/cv
TNR Agreement
12/30/2022
#616723_v4

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

PROVIDER

PROVIDER NAME

By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 20____

Exhibit A
Scope of Services

A. Responsibilities of County:

County agrees to publicize TNR to the Broward County community by explaining in writing the Services offered pursuant to this Agreement. The marketing and promotion of TNR will occur in such a manner and for such time periods as County, in its sole discretion, shall determine.

B. Responsibilities of Provider:

1. Services. Provider agrees to provide all facilities and services relating to routine spaying or neutering of the community cat, including, without limitation, hospital admission and examination; anesthesia; surgical procedure; pain injection; rabies vaccination; sterilization; and ear notch.
2. Additional Services. If, at the time of presentation of a community cat under this program, the community cat requires services other than those covered by TNR, Provider agrees to advise the community cat caretaker in writing, prior to the sterilization operation, of such additional required procedures that are not covered by TNR. Provider shall 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.

Exhibit B
Payment Schedule

The rates specified below shall be in effect for the entire Term, unless otherwise expressly stated below. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

If, due to an animal's unforeseen medical condition, Provider is unable to complete the sterilization services, Provider will be compensated at the rates specified below for sterilization services that were initiated.

Services	Cost
Community Cat Sterilization TNR	\$75.00

Except as provided in the preceding paragraph, Provider shall only invoice for and payment shall be made only for Services that are actually performed and completed pursuant to this Agreement, which amount shall be accepted by Provider as full compensation for all Services.

Exhibit C

Minimum Insurance Requirements

Project: Trap Neuter Return Program
Agency: Animal Care and Adoption Division

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
GENERAL LIABILITY - Broad form ☒ Commercial General Liability ☒ Premises-Operations ☐ XCU Explosion/Collapse/Underground ☒ Products/Completed Operations Hazard ☒ Contractual Insurance ☒ Broad Form Property Damage ☒ Independent Contractors ☒ Personal Injury ☒ Garage Liability Per Occurrence or Claims-Made: ☒ Per Occurrence ☐ Claims-Made Gen'l Aggregate Limit Applies per: ☐ Project ☐ Policy ☐ Loc. ☐ Other _____	☒	☒	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	\$2,000,000
			Personal Injury		
			Products & Completed Operations		
AUTO LIABILITY ☐ Comprehensive Form ☐ Owned ☐ Hired ☐ Non-owned ☐ Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>			Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage		
☐ EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: ☐ Per Occurrence ☐ Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>					
☒ WORKER'S COMPENSATION <i>Note: U.S. Longshoremen & Harbor Workers' Act & Jones Act is required for any activities on or about navigable water.</i>	N/A	* ☒	Each Accident	STATUTORY LIMITS	
☒ EMPLOYER'S LIABILITY			Each Accident	\$100,000	
☒ PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)	N/A		Each:	\$300,000	
			*Maximum Deductible:	\$100,000	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractors insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work. *Waiver of subrogation is required for Workers Compensation if any portion of the work/services will be performed on County Property.					

CERTIFICATE HOLDER:

Broward County
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Digitally signed by
COLLEEN A. POUNALL
Date: 2022.08.26
14:59:43 -04'00'

Risk Management Division