



Contract Number: CT.HD. 14 \* 501  
 Effective Date: 9-1-14  
 Term Date: 8-31-17  
 Cost: \$600,000.-  
 Revenue: \_\_\_\_\_  
 Total: \_\_\_\_\_ NTE: \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Renewal By: \_\_\_\_\_  
 Term: 6-1-17  
 Reviewed by: YR 8-31-17

**BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: August 5, 2014

**ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

The Pima Animal Care Center (PACC) is committed to reducing pet overpopulation and its burden on our community. The proposed agreement between the County/PACC and the Best Friends Animal Society (Best Friends), a Utah based non-profit, animal advocacy organization, aims to trap, neuter and return at least 15,000 target area, eligible, free-roaming cats over a three year period from September 1, 2014 through August 31, 2017. Best Friends agrees to hire a minimum of one full-time project coordinator and two part-time employees and to provide two transport vans and some necessary supplies. Project costs incurred by Best Friends are estimated to be at least \$900,000 over the three year period. Best Friends will facilitate the trapping, transport to spay/neuter providers, and return of eligible cats.

This agreement calls for the County to provide up to \$200,000 in funding for up to 4,000 spay/neuter surgeries to be performed during each year of the three year term. Every year the County provides funding for spay/neuter efforts. The County FY14/15 budget has \$600,000 dedicated to spay/neuter. If this Agreement is approved, \$200,000 of this \$600,000 will be allocated to Best Friends for this project. Other requirements of the Agreement include PACC coordination with Best Friends, vaccinations for project cats and housing for up to 30 cats at a time, pre/post-surgery.

CONTRACT NUMBER (If applicable): 14\*0501

STAFF RECOMMENDATION(S): **Approval**

CORPORATE HEADQUARTERS: Kanab, Utah

Ver. - 1  
 Vendor - 1  
 Pgs. 15

To: CHH - 7-24-14  
 CoB - 7-31-14  
 Agenda 8-5-14  
 Addendum (1)

Procure Dept 07/23/14 PM04:08

CLERK OF BOARD USE ONLY: BOS MTG. \_\_\_\_\_

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \$600,000 and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): PACC Special Revenue Fund  
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

		YES	X	NO
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**Board of Supervisors District:**

1		2		3		4		5		All	X
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**IMPACT:**

**IF APPROVED:**

This program will allow for the local free-roaming cat problem to be addressed without placing a significant additional burden on PACC. In calendar year 2013 PACC euthanized 1,269 "feral" cats; it is estimated that PACC will be handling 1,400 of these cats this year. Project goals include reducing cat euthanasia in the target areas by no less than 35 percent.

**IF DENIED:**

If this Agreement is not approved, Pima County will not be able to take advantage of these resources that are being offered to the County by Best Friends through a grant they received from PetSmart Charities in order to mitigate our community's contentious free-roaming cat issue.

DEPARTMENT NAME: Health

CONTACT PERSON: Sharon Grant TELEPHONE NO.: 243-7842

<b>CONTRACT</b>
NO. <u>CT-HD-14000000000000000000 501</u>
AMENDMENT NO. _____

**PROJECT AGREEMENT**

Contract number must appear on all invoices, correspondence and documents pertaining to this contract.

This Project Agreement (the "Agreement") is entered into between Pima County (the "County"), a political subdivision of the State of Arizona, on behalf of Pima Animal Care Center ("PACC") and Best Friends Animal Society ("Best Friends") a Utah non-profit corporation.

**RECITALS**

**WHEREAS**, Best Friends owns and manages an animal sanctuary in Kanab, Utah, and from this headquarters location is also engaged in a wide range of activities all oriented around the theme of "No More Homeless Pets."® These activities include, among other things, (a) national public awareness campaigns, (b) extensive animal rescue operations, including public-private partnerships, and (c) the promotion and sponsorship of local and regional projects oriented around the goal of bringing about a day of No More Homeless Pets, including high volume spay and neuter clinics, trap-neuter-return (TNR), and other non-lethal projects intended to address management issues associated with community cats;

**WHEREAS**, PACC is a Division of the Pima County Health Department working on collaborative solutions to end pet overpopulation and reduce the euthanasia of dogs and cats in Pima County, Arizona. PACC is committed to providing timely service to residents and compassionate care to animals, while working to support public safety, find homes for homeless animals, educate the community about responsible pet ownership, and improve animal welfare throughout the region;

**WHEREAS**, Best Friends, the County, and PACC desire to cooperate on a project targeting community cats in areas located in Pima County, known as the Community Cats Project (the "Project");

**WHEREAS**, the purpose of this Agreement is to reduce to writing the terms and conditions of Best Friend's and PACC's participation in the Project, and to define the obligations, expectations, and responsibilities of Best Friends, the County, and PACC.

**NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:**

**I. TERM**

- 1.1 Subject to the termination provisions of Section 8 below, this Agreement shall be for a term of thirty-six months, beginning September 1, 2014 and ending August 31, 2017.
- 1.2 Subject to the termination provisions of Section 8 below, the parties agree that any monetary obligation of the parties to fund the Project and all other obligations of the parties set forth herein will automatically terminate August 31, 2017, unless renewed pursuant to a further written agreement of the parties.

## II. SCOPE OF SERVICES

- 2.1 Target Area. The nine ZIP codes included within the Project's Target Area are:
- 2.1.1 85705, 85719, 85716, 85712, 85711, 85710, 85713, 85714, 85706;
  - 2.1.2 ZIP codes may be added to or deleted from the Target Area during the course of the Project by mutual agreement of the parties.
- 2.2 Project Goals. The Parties agree that the primary goals of the Project are as follows:
- 2.2.1 To spay/neuter and return (or transfer for adoption) a combined total of no fewer than 15,000 of the following described cats by the end of the Project (achieving interim goals of 5,000 per year):
    - 2.2.1.1 Eligible cats admitted or impounded to PACC from the Target Area. An "eligible cat" is defined as a free-roaming cat that lacks visible owner identification, appears healthy, and is of appropriate age and weight to be sterilized and returned. Cats generally not eligible for release are owner surrendered cats, unhealthy cats that cannot be treated, cats under age/weight for sterilization, declawed cats, and cats that do not appear to be cared for (i.e. deceased, starving, ill, or injured);
    - 2.2.1.2 To make a good faith effort to spay/neuter all stray and healthy appearing cats in colonies to which Project cats transferred from PACC are returned;
    - 2.2.1.3 To provide TNR services, as resources allow, to cat caregivers residing in the Target Area.
  - 2.2.2 To reduce annual PACC cat euthanasia in the Target Area by no less than 25% (compared to 2013 baseline) throughout the Agreement's effective term;
  - 2.2.3 To reduce PACC cat intake in the Target Area (compared to 2013 baseline) by at least 10% by June 31, 2015 and sustain annual reduction throughout remainder of Agreement term;
  - 2.2.4 To increase PACC cat live release rate in Target Area (compared to 2013 baseline) by at least 35% by the end of the Project:
    - 2.2.4.1 The live release rate will be calculated by dividing the total of live outcomes by total cat intake, excluding DOA.
    - 2.2.4.2 The live release target goal can be determined by multiplying the 2013 baseline live release rate by 1.35.
  - 2.2.5 To help heighten the status of community cats and promote non-lethal approaches to their management.

2.3 Changes in Scope. Any change in Scope or Project Goals that materially changes the nature of the Project shall be by formal written amendment executed by the parties hereto.

### **III. OBLIGATIONS OF BEST FRIENDS ANIMAL SOCIETY**

3.1 In conjunction with the implementation of the Project during the term covered by this Agreement, Best Friends will do the following at its own expense:

- 3.1.1 Hire a minimum of one full-time employee Project Coordinator, and two part-time employee Project Assistants to be employed by Best Friends who will oversee Project;
- 3.1.2 Best Friends shall have sole control over the work hours and other terms and conditions of the Project Coordinator's and Assistants' employment;
- 3.1.3 Provide key PACC staff with the opportunity to attend onsite and off-site trainings;
- 3.1.4 Provide two transport vans and some supplies necessary for Project Coordinator to implement work plan. Maintenance, upkeep, management and operation of the transport vans and supplies will be solely the responsibility of Best Friends or its employees;
- 3.1.5 Collaborate with other key stakeholders to help create and effectively implement work plan;
- 3.1.6 Help identify which cats are eligible for release;
- 3.1.7 Facilitate trapping, transport to spay/neuter provider, and return of eligible Project cats. BFAS will use reasonable efforts to observe the health of the colony at the time that animals are trapped or returned, with referral to PACC for action if, in BFAS' determination, any animal is in distress;
- 3.1.8 Work with PACC staff to help resolve cat nuisance complaints;
- 3.1.9 Provide funding for direct and indirect Project costs as laid out in Article V, Project Budget; and
- 3.1.10 Best Friends acknowledges and agrees that the nature of the Project may require the modification of the Parties' responsibilities depending on the exact nature of the work plan adopted. Best Friends will use good faith efforts to reach agreement with PACC in the event such modification of responsibilities is required.

#### IV. OBLIGATIONS OF THE COUNTY/PACC

- 4.1 To facilitate the success of the Project, the County, by and through PACC, agrees that it will:
- 4.1.1 Provide a suitable work space for use by the Best Friends Project Coordinator and Assistants;
  - 4.1.2 Collaborate with Best Friends to help create and effectively implement the work plan, including revising operating procedures where necessary
  - 4.1.3 Designate a member of the PACC staff to function as primary liaison with the Best Friends Project Coordinator and spay/neuter provider(s) and work with the Project Coordinator, and other key stakeholders to ensure program success;
  - 4.1.4 Use its best efforts to ensure all eligible cats within the Target Area are transferred to the custody of—i.e. outcomed to—Best Friends in a timely fashion;
  - 4.1.5 Vaccinate for FVCRP all eligible or adoptable cats entering the shelter upon impound;
  - 4.1.6 Provide the Project Coordinator or Assistants with the exact location of admitted or impounded eligible cats along with any relevant case information which includes cat description and photo if available;
  - 4.1.7 Work with Best Friends staff to help resolve cat nuisance complaints;
  - 4.1.8 Help identify which cats are eligible for release and allow all eligible cats to be immediately released for purposes of sterilization and return;
  - 4.1.9 Refuse to impound eligible cats brought to the shelter by for-profit businesses or individuals who charge a fee for cat removal services. PACC and Best Friends will help these businesses/individuals facilitate TNR.
  - 4.1.10 Remove the following information from the PACC website ([http://webcms.pima.gov/community/animal\\_care/reporting\\_complaints/loose\\_animals/](http://webcms.pima.gov/community/animal_care/reporting_complaints/loose_animals/)): “Pima Animal Care Center does not have the authority to pick up free-roaming cats, although we respond to cat complaints involving bite and welfare cases. Nuisance cats may be humanely trapped and taken to our animal shelter. Check with local feed stores for trap rentals since we do not rent or sell traps. You may also contract with a local nuisance wildlife control company to have the animals removed. Check the phone book under “PEST CONTROL.”
  - 4.1.11 Replace the above information with “Pima County Animal Care Center does not have the authority to pick up free-roaming cats, although we respond to cat complaints involving bite and welfare cases. For information on how to humanely keep cats away from areas where they aren’t wanted see: <http://bestfriends.org/Resources/Solutions-To-Cat-Related-Issues/>”.

- 4.1.12 Provide pre/post-surgery holding space on-site (Pima Animal Care Center, 4000 N. Silverbell Road, Tucson, AZ) to accommodate up to thirty (30) cats, estimated at 500-700 sq. ft. This housing area must be accessible to project staff both during and after regular business hours;
  - 4.1.12.1 PACC shall use its best efforts to obtain and provide recovery space/housing for Project cats that require more than average recovery time.
- 4.1.13 Continue other efforts to increase adoption and lower intake of cats entering shelter;
- 4.1.14 Work to communicate the Project's successes to the Pima County Board of Supervisors, Board of Health, and other local elected officials including PACC's cost savings associated with the decrease in cat intake and euthanasia;
- 4.1.15 PACC acknowledges and agrees that successful implementation of the Project will require the time and effort of PACC employees. Best Friends is not responsible for costs or expenditures related to PACC's employees except as expressly agreed by Best Friends.
- 4.1.16 In furtherance of the Project goals the County agrees to provide up to \$200,000 in funding per year of the Agreement, for up to 4,000 s/n surgeries each year, at a cost of no greater than \$50.00/surgery.
  - 4.1.16.1 Best Friends will submit invoices to the County (through PACC) for payment on a monthly basis. Monthly invoices will detail the number of spay/neuter surgeries performed. Invoices approved by the County will be paid by the County within 30 days of receipt. Any invoices that are disputed by the County will be paid within 30 days of resolution of the dispute.
  - 4.1.16.2 Spay/neuter funding for Project will not displace or diminish the base line investment provided for in the County Fiscal Year 2013-2014 Budget for existing spay and neuter services or contracts with existing organizations/veterinarians.
  - 4.1.16.3 Notwithstanding any other provision in this Agreement, this Agreement may be terminated if, for any reason, there are not sufficient appropriated and available monies for County or other public entity obligations under this Agreement. In the event of such termination, County shall have no further obligation to Best Friends other than for payment for reasonable services rendered prior to termination and post-project data pursuant to Article 6.2.
- 4.1.17 Provide funding for project commitments as per Articles 4.1.16 and V. Project Budget.

4.1.18 PACC acknowledges and agrees that the nature of the Project may require the modification of the Parties' responsibilities depending on the exact nature of the work plan adopted. PACC will use good faith efforts to reach agreement with Best Friends in the event such modification of responsibilities is required.

## V. PROJECT BUDGET

Each party commits to the following financial responsibilities to ensure the success of the project:

	<b>Budget for 3 Year Term (9/1/14 - 8/31/17)</b>		
	<b>Best Friends</b>	<b>County/PACC</b>	<b>Total Project</b>
Program staff and benefits	\$ 325,000		\$ 325,000
Surgery costs	\$ 150,000	\$ 600,000	\$ 750,000
Vehicles and vehicle operating expenses	\$ 100,000		\$ 100,000
Non-surgical veterinary medical costs	\$ 20,000		\$ 20,000
Installation of pre/post-surgery holding space (maximum amount)		\$ 30,000	\$ 30,000
Operating supplies	\$ 50,000		\$ 50,000
Promotions and marketing	\$ 30,000		\$ 30,000
Meetings and training (incl. travel)	\$ 25,000		\$ 25,000
Indirect administrative staffing and support services	\$ 200,000		\$ 200,000
<b>Total Three Year Expense</b>	<b>\$ 900,000</b>	<b>\$ 630,000</b>	<b>\$ 1,530,000</b>

Best Friends will submit to County quarterly financial reports of their expenses in the above categories. County acknowledges that expenses allocated toward indirect administrative staffing and support services are reasonable, good faith estimates that may not be able to be determined with precise certainty.

Variances over 20% in any budget category require approval from the other party.

## VI. PACC DATA TRACKING & REPORTING REQUIREMENTS

6.1 MONTHLY AND QUARTERLY REPORTS TO BEST FRIENDS. PACC agrees that it will gather, track, and provide both raw data and data reports to Best Friends on any intake and outcome as requested by Best Friends. Information requested may include, but is not necessarily limited to, the following:

- Monthly reports to Best Friends detailing spay/neuter services performed as part of the Project, broken down by the number of neuters, spays, in heat, and pregnant.
- Monthly and Quarterly reports to Best Friends showing:
  - Intake Data
    - Total cat intake (including adult, kitten, and neonatal kitten);
    - Neonatal kitten (under 8 weeks) intake;

- Kitten (8-25 weeks) intake;
  - Adult cat (26 weeks plus) intake;
  - # of cats and kittens which have been intaked more than once, and the outcome for each occasion of intake;
- Cat euthanasia data
  - Total cat euthanasia (including adult, kitten, and neonatal kitten);
  - Neonatal euthanasia;
  - Kitten euthanasia;
  - Adult cat;
  - “Euthanasia” data will be broken down by sick, injured, aggressive, owner requested, or any other cause;
- Cat adoption data
  - Total cat adoptions;
  - Neonatal adoptions;
  - Kitten adoptions;
  - Adult adoptions;
- Cats transferred to other animal welfare organizations
  - Total cats;
  - Neonatal;
  - Kittens;
  - Adult cats;
  - Outcomes of cats transferred to other animal welfare organizations;
- Non-project cats transferred for TNR-returned to field
  - Total cats;
  - Kittens;
  - Adult cats;
- Data on cats transferred to Project and outcome of each transfer, broken down by zip code.
  - Total cats;
  - Neonatal;
  - Kittens;
  - Adult cats;
  - Outcome data includes:
    - Spayed/neutered and returned to colony;
    - Previously spayed/neutered and returned to colony;
    - Spayed/neutered and relocated;
    - Previously spayed/neutered and relocated,
    - To adoption/foster
    - Died and/or euthanized;
- Data on cats returned to owner/caregiver
  - Total cats
  - Adult cats
  - Kittens
  - Neonatal

6.2 POST-PROJECT DATA. Upon request, PACC will provide Best Friends with three years of post-Project data to include all the types of data listed above in Section 5.1. Assuming the Project is completed, this obligation shall apply with respect to calendar years 2017, 2018, and 2019, respectively. The obligation to provide 3 years of post-project data shall remain in full force and effect even if the Project or this Agreement is terminated early.

## **VII. MARKETING, PROMOTION AND PUBLICITY**

7.1 Best Friends shall have the right to publicize the Project and all marketing, promotion and publicity of the Project shall be coordinated by Best Friends, in coordination with County. PACC agrees to cooperate with Best Friends and facilitate Best Friends' promotion of the Project. Said promotion may take place through Best Friends' website, newsletters, electronic news distributions, press releases, and other media outlets. Any such publicity efforts proposed by Best Friends shall be submitted by Best Friends to County for review and approval not less than 48 hours in advance of the proposed dissemination date. Materials may not be disseminated without the express approval of the County, which approval will not be unreasonably withheld.

7.2 PACC acknowledges and agrees that the Project, including the transport vans, will be co-branded with PetSmart Charities' name, mark, and logos. The transport van's wrap design is subject to prior written approval by PetSmart Charities. PACC may not use PetSmart Charities' name, logo, trademarks or copyrighted material without the express approval and consent of Best Friends and PetSmart Charities (as obtained by Best Friends).

7.3 PACC agrees that the Project will be referred to by a name to be agreed upon between Best Friends and PetSmart Charities, in consultation with the County, and that it shall refer to the Project by that name.

7.4 To facilitate the performance of Best Friends' obligations to PetSmart Charities regarding Project branding and promotion, all Project related press, news, or other media releases and other forms of publicity relating to the Project, including web-based communications and social media posts must be pre-approved by Best Friends. Any such publicity efforts proposed by PACC shall be submitted by PACC to Best Friends (Project Coordinator and Holly Sizemore) for review and approval not less than 48 hours in advance of the proposed dissemination date. Materials may not be disseminated without the express approval of Best Friends, which approval will not be unreasonably withheld.

7.5 PACC shall use its best efforts to provide Best Friends with the opportunity to photograph, video, and audio record events related to the Project, consistent with Pima County's policies and procedures for such event(s). Best Friends shall be permitted to use these photographs and video/audio recordings for publicity purposes subject to release.

7.6 Neither party may use each other's logos, trademarks, or other intellectual property without express permission.

## VIII. INSURANCE

8.1 Best Friends' insurance shall be primary insurance and non-contributory with respect to all other available sources. Best Friends shall obtain and maintain at its own expense, during the entire term of this Agreement the following type(s) and amounts of insurance:

- (i) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage. Pima County is to be named as an additional insured for all operations performed within the scope of the Contract between Pima County and Best Friends;
- (ii) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Agreement with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
- (iii) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
- (iv) If required by law, workers' compensation coverage including employees' liability coverage.

8.2 Best Friends shall provide County with current certificates of insurance. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

## IX. INDEMNIFICATION

9.1 Best Friends shall indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Best Friends, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Agreement.

9.2 Best Friends warrants that all products and services provided under this Agreement are non-infringing. Best Friends will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this Agreement or from the provision, license, transfer or use for their intended purpose of any products provided under this Agreement.

## X. TERMINATION

10.1 Termination by the County. The County may terminate this Agreement upon written notice to Best Friends in the event of the following events of default and where Best Friends fails to cure said default within 15 calendar days after receipt of notice thereof:

- (i) By its actions or statements, Best Friends materially harms the reputation of the County and/or PACC, as determined by the County in its reasonable judgment; or
- (ii) Best Friends fails to carry out its obligations as set out within this Agreement, including spending at least 80% of the total funds committed in Article X, Project Budget, subject to any modifications to the Project Budget mutually agreed upon by the parties; or
- (iii) Best Friends or PetSmart Charities files for bankruptcy, or sells, assigns or transfers the majority of its assets to another entity, or ceases to operate as an animal supply and services company.

10.2 Termination by Best Friends.

10.2.1 Best Friends may terminate this Agreement upon written notice to the County in the event of the following events of default and where the County fails to cure said default within 15 calendar days after receipt of notice thereof:

- (i) The County and/or PACC fails to carry out its obligations as set out within this Agreement, including, as within the reasonable judgment of Best Friends, failing to carry out the Project in the spirit in which it is entered and with the goal of saving as many animal lives as possible; or
- (ii) The County and/or PACC fails to allocate the funds for spay/neuter surgeries as referenced in Paragraph 4.1.16 above; or
- (iii) By its actions or statements, the County and/or PACC materially harms the reputation of Best Friends, as determined by Best Friends in its reasonable judgment.

10.2.2 Best Friends may immediately terminate this Agreement without penalty or any further obligation upon written notice to the County in the event:

- (i) The grant from PetSmart Charities to Best Friends, upon which Best Friends relies to fund the Project, is for any reason, not finalized or is terminated after the Project is commenced; or
- (ii) If on any other good faith basis, Best Friends determines that it lacks the financial ability to continue to support the Project.

## **XI. NOTICES**

11.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the County:

Pima Animal Care Center  
3950 S. Country Club, Ste. 100  
Tucson, AZ 85714  
Email: Kim.Janes@pima.gov

If to Best Friends:

Best Friends Animal Society  
5001 Angel Canyon Road  
Kanab, UT 84741  
Email: hollys@bestfriends.org

## **XII. RELATIONSHIP OF PARTIES**

13.1 Nothing in this Agreement shall be construed or interpreted as creating a joint venture or legal partnership relationship between the parties. Except as expressly provided by this Agreement, neither party shall have, nor shall it hold itself out as having any right, power, or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the other party, or to pledge the other party's credit or extend credit in the other party's name, unless the other party consents thereto in advance in writing. Neither party shall disseminate any written or oral press releases, advertisements or other communications representing itself as an authorized representative of the other party. Except as expressly provided herein, neither party shall have the right to exercise any control whatsoever over the activities or operations of the other party.

## **XIII. AUTHORITY**

14.1 By affixing their signatures below, the individuals signing on behalf of the Parties warrant they are authorized to enter into this Agreement and intend to be bound by same.

## **XIV. SEVERABILITY**

15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to county ordinances of Pima County, Arizona, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XV. NON-DISCRIMINATION**

16.1 The parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors**. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website [http://www.azgovernor.gov/dms/upload/EO\\_2009\\_09.pdf](http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf) which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, Best Friends shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

## **XVI. AMERICANS WITH DISABILITIES ACT**

17.1 Both parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

## **XVII. CANCELLATION FOR CONFLICT OF INTEREST**

18.1 This Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

## **XVIII. LEGAL ARIZONA WORKERS ACT COMPLIANCE**

19.1 Best Friends hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws") that relate to its employees. Best Friends shall further ensure that each subcontractor who performs any work for Best Friends under this Agreement likewise complies with the State and Federal Immigration Laws.

19.2 Upon reasonable notice, duly authorized representatives of the County shall have the right at any time to inspect the books and records of Best Friends and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

19.3 Any breach of Best Friends' or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting Best Friends to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Best Friends shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

19.4 Best Friends shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that County may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

19.5 Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Best Friends.

#### **XIX. INDEPENDENT CONTRACTOR**

20.1 The status of Best Friends shall be that of an independent contractor. Neither Best Friends, nor Best Friends' officer's agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Best Friends shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Agreement and shall indemnify and hold County harmless from any and all liability which County may incur because of Best Friends' failure to pay such taxes. Best Friends shall be solely responsible for program development and operation.

#### **XX. SUBCONTRACTOR**

21.1 Best Friends will be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the Best Friends is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

#### **XXI. FULL AND COMPLETE PERFORMANCE**

22.1 The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

## **XXII. BOOKS AND RECORDS**

23.1 Best Friends shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of County.

23.2 In addition, Best Friends shall retain all records relating to this Agreement at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

## **XXIII. PUBLIC INFORMATION**

24.1 Any information submitted to County pursuant to this Agreement that Contractor reasonably believes to be proprietary, a trade secret or otherwise confidential must be appropriately and prominently marked as CONFIDENTIAL by Contractor.

In the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless Contractor has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. Contractor shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

24.2 County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor shall County be in any way financially responsible for any costs associated with securing such an order.

## **XXIV. ASSIGNMENT**

25.1 Best Friends shall not assign its rights to this Agreement, in whole or in part, without prior written approval of the County. Approval may be withheld at the sole discretion of County, provided that such approval shall not be unreasonably withheld.

## **XXV. ENTIRE AGREEMENT**

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the County and Best Friends.

**XXVI. COUNTERPARTS**

27.1 For convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS THEREOF, the parties have affixed their signatures to this Agreement on the date written below.

**Pima County**

**Best Friends Animal Society**

\_\_\_\_\_  
Chair, Board of Supervisors

By: 

Title: CEO

\_\_\_\_\_  
Date

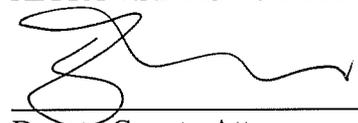
Date: 6/19/14

ATTEST

\_\_\_\_\_  
Clerk of Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy County Attorney

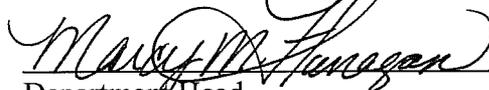
SONATHAN PINKNEY-BAIRD

Print DCA Name

6/24/14

Date

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
Department Head

6.24.14

Date