

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	<u>→ See below</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	-	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Fund:
Unit:

✗ There is no fiscal impact associated with this agenda item; however this agreement will provide future funding opportunities.

C. Departmental Fiscal Review: Stephanie Sepioke 2/3/15

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Susan Henry 2/9/15
OFMB
2/6 AM 2/9

Dr. J. Jacobson 2/10/15
Contract Administration
2-10-15 B Wheeler

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

THIS AGREEMENT AND RELEASE ("Agreement") is made by and between Best Friends Animal Society, a Utah nonprofit corporation ("Best Friends") and Palm Beach County, Florida, a political subdivision of the state of Florida, ("Designated Organization"), as of the "Effective Date" specified in section 8 below.

1. RECITALS. The following statement of facts (a) is understood by the parties hereto to be materially accurate, and (b) is relied upon by the parties in entering into this Agreement and accepting as legally binding all of the terms and conditions hereof.

1.1 Best Friends Animal Society is a nonprofit organization building no-kill programs and partnerships that will bring about a day when there are No More Homeless Pets[®]. The society's leading initiatives in animal care and community programs are coordinated from its Kanab, Utah, headquarters, the country's largest no-kill sanctuary. This work is made possible by the personal and financial support of a grassroots network of members and community partners across the nation.

1.2 The parties desire that Designated Organization become a member of the Best Friends No More Homeless Pets Network (f.k.a. Network Charities) as provided for in this Agreement. As used hereinafter, the term "Network Partner" shall include Designated Organization as the context dictates.

2. APPLICATION AND MAINTENANCE OF ELIGIBILITY.

2.1 Designated Organization shall submit such information as required by Best Friends to verify that, to the extent permitted by law, it: (1) engages in charitable endeavors compatible with the objectives of Best Friends; (2) has all necessary permits/licenses required to solicit charitable donations according to the laws of the various states; (3) is in good standing in its state of organization; and (4) is otherwise qualified to become a Best Friends No More Homeless Pets Network Partner pursuant to the terms and conditions of this Agreement. Approval of any No More Homeless Pets Network application is at the sole discretion of Best Friends.

2.2 Following initial approval as a Network Partner: Best Friends may, at its discretion and at any time, verify the continuing eligibility of participating Network Partner by checking with Guidestar's Charity Check and other publicly available sources.

2.3 Network Partner status may be terminated at any time and for any reason at the sole discretion of Best Friends.

3. NETWORK PROCESS, DONATION PROCESS AND OBLIGATIONS OF NETWORK PARTNER.

3.1 Upon approval of Designated Organization to become a Network Partner:

(a) Best Friends will include Network Partner on the Best Friends website master list of Network Partner Organizations with a hyperlink to Network Partner's own website location.

(b) When possible, Network Partner agrees to provide information to Best Friends regarding donation totals received as a result of various Best Friends promotions and agrees that Best Friends may post the "running total" for Network Partner on the Network and in Best Friends promotional materials.

(c) Network Partner agrees that it will receive emails and other communications from Best Friends providing news, opportunities for participation in events, grants or other opportunities, requests for help in animal situations, or other topics related to the No More Homeless Pets mission. Network Partner agrees that while there is no obligation to respond to such emails and other communications, it will not be permitted to "opt out" of such communications and will provide a valid email address at which it agrees to be contacted.

(d) Network Partner agrees that it will report monthly intake, outcome and spay/neuter data to Best Friends using the Best Friends online data reporting system, or other data reporting system designated and approved by Best Friends. Network Partner understands that data reporting is a requirement for continued participation in all promotions, events, and grant opportunities offered by the No More Homeless Pets Network.

(e) Network Partner acknowledges that "No More Homeless Pets" is a registered trademark of Best Friends Animal Society, and agrees that Best Friends shall remain the owner of the Network, the No More Homeless Pets Network program, and all physical and intellectual property associated therewith, and all content, trademarks, brands, logos, symbols and other data associated with the same. Network Partner shall not be deemed to have acquired any interest in the same, other than the right to participate in the No More Homeless Pets Network program as provided for herein.

(f) Network Partner acknowledges and agrees that the following constitute "Confidential Information": any secret or proprietary information relating directly to Best Friends business, including, but not limited to, the Network and Donation Process, services, members, donor and volunteer lists, business policies, employment records and policies, operational methods, marketing plans and strategies, business development plans, new personnel acquisition plans, technical processes, designs and design projects, inventions and research programs, trade know-how, trade secrets, specific software, algorithms, computer processing systems, object and source codes, user manuals, systems documentation, and

other business and financial affairs of Best Friends. Network Partner agrees that it will not disclose, transmit, publish or communicate any Confidential Information other than to Best Friends during the term of this Agreement, and for a period of five (5) years, unless such disclosure is first made by Best Friends. Notwithstanding the foregoing, Designated Organization shall at all times comply with Chapter 119, Florida Statutes.

(g) Network Partner shall remain the owner of its trademarks, brands, logos, symbols and other intellectual property. However, during the effective period of this Agreement and to the extent permitted by law, Network Partner grants to Best Friends a non-exclusive license to use such trademarks, brands, logos, and symbols on the Best Friends No More Homeless Pets Network website in furtherance of the No More Homeless Pets Network program and as otherwise necessary to carry out the terms of this Agreement.

4. REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGMENTS OF NETWORK PARTNER.

4.1 To the extent provided by law, Network Partner hereby represents and warrants that it is currently in compliance with all federal, state, and local regulations governing charitable organizations, including those related to solicitation of funds from the public and other charitable fundraising regulations. Network Partner agrees that for the duration of this Agreement, it shall remain in compliance with same. Network Partner acknowledges that it is solely responsible for ensuring its own compliance with any and all such regulations in any and all jurisdictions in which it engages in fundraising activities.

4.2 Network Partner acknowledges that its animal welfare activities may be governed by a variety of federal, state, and local laws. By way of example, community cat trap/neuter/return programs may be prohibited or otherwise regulated by local law. Network Partner hereby warrants that it shall use its best efforts to comply with all applicable laws and shall not knowingly violate same. Network Partner acknowledges that it is solely responsible for ensuring its own compliance with any and all such regulations.

5. MODIFICATION, TERMINATION, AND WITHDRAWAL OF NO MORE HOMELESS PETS NETWORK PROGRAM.

5.1 *Modification or Termination of No More Homeless Pets Network Program.* Best Friends reserves the right in its sole discretion to modify or to terminate the No More Homeless Pets Network program entirely. In such event, the sole obligations of Best Friends shall be to provide Network Partner with commercially reasonable notice of any modifications to, or termination of, the No More Homeless Pets Network program.

5.2 *Termination or Withdrawal of a Network Partner.* Best Friends retains the right in its sole discretion to terminate Network Partner's participation in the No More Homeless Pets Network program at any time. Similarly, Network Partner shall have the right at any time to withdraw from the No More Homeless Pets Network program. In either event, Best Friends shall remove the Network Partner from the Best Friends website and take such other steps as are necessary to effectuate the termination within a reasonable time after providing or receiving notice of same.

6. DISCLAIMER OF WARRANTIES AND RELEASE OF LIABILITY.

6.1 *Absence of Warranties.* Best Friends disclaims any and all express or implied warranties relating to the No More Homeless Pets Network program, including warranties of fitness and merchantability, and shall have no liability for damages incurred by Network Partner as a result of its use of or participation in the No More Homeless Pets Network program.

6.2 *Release.* As consideration for being permitted by Best Friends to participate in the No More Homeless Pets Network program, Network Partner agrees that it will not make a claim against, sue, or attach the property of Best Friends for injury or damage resulting from any act, omission, negligence or other act, by any officer, director, employee, agent, or affiliate of Best Friends relating to the No More Homeless Pets Network program.

7. **INDEMNIFICATION BY NETWORK PARTNER.** To the extent permitted by law, in the event of any third-party claim, demand, legal action or other legal proceeding against Best Friends, including any officer, director, employee, agent or affiliate of Best Friends which arises from, or occurs by reason of (a) any actual or alleged material breach of this Agreement by Network Partner, including the representations or warranties set forth in paragraph 4 above, (b) any false or misleading content about Network Partner provided by Network Partner to Best Friends, or (c) Network Partner's failure to comply with applicable rules and regulations governing charitable fundraising, then Network Partner shall fully indemnify and hold Best Friends harmless from any and all losses, damages, awards, judgments, settlements, decrees and expenses, arising from or connected with such claim, demand or legal action/proceeding..

8. **EFFECTIVE DATE.** This Agreement shall become effective upon execution of this Agreement by Network Partner, subject to Best Friends' prior approval of Network Partner's application.

9. GENERAL PROVISIONS.

9.1 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

9.2 *Further Assurances.* Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to implement this Agreement.

9.3 *Entire Agreement.* This Agreement contains the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement, is intended as a final expression of such parties' agreement, is intended as a complete

and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede the execution of this Agreement.

9.4 *Partial Invalidity.* Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision of such application of such provision is essential to this Agreement.

9.5 *Notices.* Notices under this Agreement shall be deemed effective upon receipt, if delivered by messenger, facsimile, email, or overnight courier, and if by regular U.S. mail, on the third day following deposit in the U.S. mail, postage prepaid. All notices shall be sent as follows:

If to Best Friends:

Liz Finch, Senior Manager

Fax: 866.869.9786

Email: nmhpnetwork@bestfriends.org

No More Homeless Pets Network

Best Friends Animal Society

5001 Angel Canyon Road, Kanab, UT 84741

9.6 *No Partnership/Joint Venture.* This Agreement shall not be construed to constitute any form of partnership, agency or joint venture between Best Friends and Network Partner. Neither party is responsible in any way for the debts of the other or any other party, or any breach of any law, rule, regulation, complaint, grievance, custom, or guideline of the other. Neither party has authority to bind the other to any contractual or other agreements and in no event shall either party represent or hold itself out as acting on behalf of the other party hereto.

9.7 *Successors-in-Interest and Assigns.* Neither party may assign, transfer or delegate all or any of the rights and obligations created by this Agreement without the express written consent of the other party. Subject to the preceding restriction, this Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and permitted assigns of each party to this Agreement. Nothing in this paragraph shall create any rights enforceable by any person not a party to this Agreement, except for the rights of the successors-in-interest and assigns of each party to this Agreement.

9.8 *Waiver.* Any waiver of any term of this Agreement must be in writing and shall not be a waiver of any other term concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

9.9 *Form of Signature.* This Agreement may be executed by means of electronic or hand-written signature. Signatures submitted to Best Friends via facsimile shall be binding and may be relied upon by Best Friends to the same extent as an original.

By signing below, Designated Organization indicates it has read and agreed to the terms and conditions set forth in all pages of this Agreement, and agrees to be bound by them.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

BY: _____
Deputy Clerk

DATE: _____
(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: _____
Assistant County Attorney

PALM BEACH COUNTY, a political subdivision of the State of
Florida

BY: _____
Mayor Shelley Vana

DATE: _____

APPROVED AS TO TERMS AND
CONDITIONS:



Vincent J. Bonvento, Director
Department of Public Safety

IN WITNESS WHEREOF the parties hereto
have executed this Agreement as of the
Effective Date.

Best Friends Animal Society

By: Gregory Castle

Title Director and CEO

Signature: 