

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 19, 2015

[X]	Consent	[]	Regular
[]	Ordinance	[]	Public Hearing

Department: Department of Public Safety
Submitted By: Department of Public Safety
Submitted For: Division of Animal Care and Control

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) Approve** a Tier 1 Shelter Partners in Protection Program Agreement with Merial, Inc. at no cost to utilize NexGard, Frontline and Heartgard brand products for dogs and cats that are in the care of Palm Beach County's Division of Animal Care and Control. The term of the agreement is retroactive to January 1, 2015 through December 31, 2015; and
- B) Authorize** the County Administrator or his designee to sign all future time extensions, task assignments, certifications, and other forms associated with the Agreement, and necessary minor amendments that do not change the scope of work or terms and conditions of the Agreement.

Summary: This agreement will provide the Division of Animal Care and Control (Division) with NexGard, Frontline and/or Heartgard products at no cost to the County. The Division agrees to exclusively apply NexGard and/or Frontline for the prevention of fleas and ticks, and provide Heartgard for the prevention of heartworms to all cats and dogs admitted into the shelter. The Division will display Merial's NexGard, Frontline and Heartgard brand products through material provided by Merial such as marketing collateral and coupons. This program saves the Division approximately \$22,000 each year. **Countywide (DW)**

Background and Justification: The Division has used Frontline on all shelter animals successfully for more than 17 years. In 2012, Merial requested the Division participate in a pilot program for animal shelters whereby Frontline and a partner heartworm preventative drug – Heartgard – would be supplied at no charge for adoptable animals. This saved the Division approximately \$22,000 a year. The first agreement with Merial, LLC was in 2012. Merial, LLC is a world leading animal health company that provides a comprehensive range of products to enhance the health, well-being and performance of a wide range of animals. The NexGard and Frontline products are used for flea and tick control in dogs and cats, and the Heartgard is used for heartworm prevention in dogs and cats. NexGard, Frontline, and Heartgard are registered trademarks of Merial, Inc.

Attachments:

- ## 1) Merial, Inc. – Tier 1 Shelter Partners in Protection Program Agreement

Recommended by: Stephanie Selmor
Department Director

4/15/15
Date

Approved By:

Assistant County Administrator

4/25/12
Date

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	<u>(16,500)*</u>	<u>(5,500)*</u>			
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>(16,500)</u>	<u>(5,500)</u>			
No. ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes X No
Budget Account No.: Fund 0001 Department 660 Unit 2230
Object 65230 Reporting Category

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

* The products provided by Merial, are provided at no cost to the County. This program saves ACC approximately \$22,000 per year which is utilized to provide others services in ACC.

C. Departmental Fiscal Review: Stephanie Synnoka


III. REVIEW COMMENTS

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

5/1/15
7/20
OFMB AK
4/21/15
5/1/15

Dr. J. Jacobson
Contract Dev. and Control
4-23-15 *B. White*

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

**TIER 1 SHELTER
PARTNERS IN PROTECTION® PROGRAM AGREEMENT**

This TIER 1 SHELTER PARTNERS IN PROTECTION PROGRAM AGREEMENT (this "Agreement"), is dated May 19, 2015 and made effective retroactive to January 1, 2015 (the "Effective Date"), between **Merial, Inc.**, with a place of business at 3239 Satellite Boulevard, Bldg. 500, Duluth, Georgia 30096 ("Merial") and **Palm Beach County**, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, with an address at 7100 Belvedere Road, West Palm Beach, FL 33411 ("PBC").

W I T N E S S E T H:

WHEREAS, Shelter is a recognized leader in animal protection and care and provides care and adoption services for thousands of dogs and cats each year; and

WHEREAS, Shelter desires to receive Merial's NexGard® for dogs, FRONTLINE® for dogs, FRONTLINE® for cats ("Flea and Tick Control Products") and HEARTGARD® (ivermectin) brand products (individually, a "Product" and collectively, "Products") at no cost to provide to dogs and cats in its care, and to promote the use of those Products by adopting owners to help the treatment and control of fleas and ticks as well as control parasites and improve the health of pets adopted from the Shelter (the "Program"); and

WHEREAS, Merial wishes to provide Flea and Tick Control Products and HEARTGARD branded products to Shelter and to have Shelter promote its Products;

NOW, THEREFORE, in consideration of the mutual agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Obligations of Shelter

During the Term of this Agreement, Shelter agrees:

- (a) to maintain its status as a publicly supported animal care and control agency;
- (b) to maintain an onsite shelter medical clinic or have regular routine onsite visits and support from a licensed veterinarian;
- (c) that each Product provided to Shelter shall be given or applied as a single dose for each cat and/or dog admitted into and housed onsite at the Shelter, in accordance with each Product label and that the applicable Product is used under the supervision of a licensed veterinarian;
- (d) that each Product provided to Shelter may not be sold or otherwise distributed to any third party in any manner not specifically provided for in this Agreement;
- (e) to exclusively apply or give Flea and Tick Control Products for the treatment and control of fleas and ticks in accordance with each Product label, to all cats and/or dogs admitted into the Shelter at the time of receipt of the Flea and Tick Control Products and exclusively provide HEARTGARD branded products

Attachment # 1

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for the prevention of heartworm disease to all cats and dogs admitted into the Shelter at the time of receipt of the HEARTGARD branded products, unless the regular Shelter veterinarian determines that for medical reasons such as an animal adverse reaction, another product must be used;

- (f) to maintain an effective pet adopter counseling program, and agree to continue to provide counsel with every dog or cat adoption that Flea and Tick Control Products have been applied or given as the flea and tick treatment and control, and/or HEARTGARD branded products have been administered as the heartworm preventive treatment of the Shelter;
- (g) to agree to ask all pet adopters to provide Merial with their full name and email addresses for the purpose of Merial sending them promotional material and other animal health information;
- (h) to prominently post collateral to be provided by Merial that clearly communicates that Flea and Tick Control Products have been applied or given as the flea and tick treatment and control, and/or HEARTGARD branded products have been administered as the heartworm preventive treatment of the Shelter and the Shelter veterinarian (or community veterinarian supporting the Shelter), and are used exclusively by the Shelter for all adopted cats and dogs;
- (i) to continue to distribute product information including the "*Healthy tips for healthy pets*" pet owner brochure with coupons for each applicable Product to every new pet adopter, and to continue counseling pet adopters to visit their veterinarian for continued maintenance of the proper pet wellness care routine established by the Shelter;
- (j) to require that all Shelter adoption counselors, operations personnel and clinical staff attend or participate in introductory program and product training, to be completed onsite by one or more Merial sales or field veterinary services representatives, prior to initiation of Program; and
- (k) to utilize the forms delivered electronically to Shelter by Merial entitled "Merial Partners in Protection® – Account Form, Shelter Contact & Account Information" and "Shelter Location Product, Partners in Protection® Shelter Account Form, Estimated Product Needs" to provide Program information to Merial or its agents.

2. Obligations of Merial

During the Term of this Agreement, Merial agrees:

- (a) to provide the Shelter with the amount of Products that Merial deems appropriate, in its sole discretion, for use in connection with the Program;
- (b) to provide the Products described in Section 2(a) above at no cost to the Shelter;

- (c) to provide the Shelter with such Products and pet counseling collateral as it deems appropriate for display at the Shelter's adoption centers as described in Section 1(g) above, including the coupons described in Section 1(h) above;
- (d) to provide Shelter with such introductory program and product training as it deems appropriate to allow the Shelter to comply with its obligations in Section 1(i) above;
- (e) to provide Shelter with a new adopter brochure with Shelter uniquely coded, high-value product coupons redeemable at any veterinary clinic;
- (f) to provide Shelter with onsite and web-based veterinary, clinical and caregiver staff continuing education programming, including programming that may be requested by the Shelter;
- (g) to provide Shelter with support for 1 - 4 onsite program orientations for Shelter's local community veterinarians

3. Disclaimer of Warranties

ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS, ARE DISCLAIMED BY MERIAL.

4. Confidentiality

- a. Merial and Shelter have, and may in the future have, certain proprietary, confidential, and or trade secret information ("Information"), and each is willing to disclose to the other that portion of its Information which each decides in its own discretion is necessary for the purpose set forth in this Agreement.
- b. A party receiving Information hereunder, hereafter referred to as "Recipient", agrees to use the Information only for the purpose of this Agreement, and further agrees that it will not disclose to a third party or publish such Information without the prior written consent of the disclosing party. Recipient agrees to use the same level of care to prohibit disclosure of the Information and to prohibit the unauthorized use of the Information as Recipient uses to protect its own confidential information, but in no event less than reasonable care.
- c. The foregoing restrictions shall not apply to:
 - (i) information which is or becomes publicly known through no fault of Recipient;
 - (ii) information learned from a third party entitled to disclose such information;

- (iii) information already known to or developed by Recipient prior to receipt hereunder, or information independently developed, at any time, by Recipient's personnel not privy to the proprietary information, as shown by Recipient's written records; or
 - (iv) information required to be disclosed by operation of law or court order, provided Recipient gives the disclosing party prompt notice prior to such disclosure and allows the disclosing party a reasonable time to oppose such process before disclosing any Information.
- d. All Information, without limitation, shall remain the personal and proprietary property of the disclosing party. Recipient shall not acquire any license or other intellectual property interest in any Information disclosed to it by the disclosing party.
 - e. The obligation of confidentiality imposed by this provision shall expire five (5) years following the expiration or termination of this Agreement.
 - f. In the event the Recipient is required by judicial or administrative process to disclose any or all of said Information or is under an obligation to disclose to competent government authorities to the extent necessary for properly carrying out the Agreement, the Recipient shall promptly notify the disclosing party and, subject to the judicial or administrative process, allow the disclosing party a reasonable time to oppose such process before disclosing any Information.

5. Representations and Warranties

- a. Each party represents and warrants that it has the full power and authority to enter into this Agreement and to perform all of its obligations hereunder without violating the legal or equitable rights of any third party.
- b. Each party recognizes the great value of the goodwill associated with the other party's logo and trademarks ("Marks") and acknowledges that such Marks and all rights and goodwill therein belong exclusively to the other party or its licensors. Each party represents and warrants that it will not use, in any way, the Marks or name of the other party, except solely to perform obligations as required under this Agreement, and that none of the other party's Marks shall be used in any way which could cause harm to the goodwill associated with such Marks.
- c. No party shall do anything to attack the title rights of the other party or its licensors, as the case may be, in the other party's Marks or attack the validity of this Agreement.

6. Ethical Conduct

Neither party shall knowingly commit any act that is or shall be an offense involving the violation of any public policy, law or regulation, or otherwise engage in any conduct that intentionally or willfully violates any public policy, law or regulation or

that brings either party into public disrepute, contempt, scandal or ridicule, or which injures the successes of either party or any of its products or services. At the time of any such act or at any time after either party learns of such act, that party shall have the right, in addition to its other legal and equitable remedies, to immediately terminate this Agreement.

7. Indemnification

Merial shall indemnify, defend and hold harmless Shelter, its officers, directors, agents, and employees from and against any and all claims, demands, actions, causes of action, fines, losses or damages whatsoever and any cost and expense related thereto, including reasonable attorney's fees, arising from the performance of this Agreement or otherwise resulting from the work, services, equipment or materials furnished to, or on behalf of Shelter, to the extent such liability results from the acts or omissions of Merial.

The provisions of this Article 7 shall survive any termination, expiration or cancellation of the Agreement.

8. Term and Termination

- (a) This Agreement shall be deemed effective from the Effective Date through and until December 31, 2015 (the "Term").
- (b) Merial may immediately terminate this Agreement should Shelter make any statement or claim regarding Merial that is not previously approved in writing by Merial and which is materially inconsistent with statements that have been approved or provided by Merial.
- (c) Merial may immediately terminate this agreement if it determines, in its sole discretion, that Shelter or any of its employees or agents has misused or sold any free product that has been delivered to Shelter pursuant to this Agreement, or if it determines, in its sole discretion, that Shelter has failed to abide by the exclusivity set forth in Section 1(e) above.
- (d) Merial may terminate this agreement if it determines, in its sole discretion, that Shelter no longer meets the qualifications for the Program pursuant to Sections 1(a), (b) or (f) above or that Shelter has failed to meet its obligations under Sections 1(c), (d), or (g) – (i) above.
- (e) Termination shall not extinguish obligations and liabilities of the parties accrued prior to termination.
- (f) Shelter may terminate this Agreement without cause, by providing Merial ten (10) days written notice of its intent to terminate this Agreement and return to Merial any unused product.

9. Independent Contractor

The parties expressly intend that with regard to the provisions of this Agreement they are independent contractors, and no party hereto shall receive any other

benefits besides those expressly provided for herein. Further, it is the express intent of the parties hereto that no agent, servant, contractor, or employee of one party be deemed an agent, servant, contractor, or employee of the other party. No party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of, or in the name of, the other party, or to bind the other party in any manner whatsoever. All personnel of Shelter rendering services pursuant to the Agreement shall be employees or agents of Shelter. Regardless of anything else contained in or implied from this Agreement, any employee of Shelter who may be performing the services herein described shall remain an employee of Shelter, subject at all times to Shelter's policies and procedures, and in no way shall such employee be deemed an employee of Merial.

10. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflicts of law rules. Venue for any legal action shall be held in Palm Beach County, Florida.

11. Integration

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or verbal. No waiver, modification or addition to this Agreement shall be valid unless in writing and signed by the parties. If any part of this Agreement is rendered invalid or unenforceable, such rendering shall not affect the validity or enforceability of the remainder of this Agreement.

12. Publicity

Except as may be otherwise provided herein, neither party shall release or distribute any materials or information containing the name or Marks of the other party without the prior written approval of an authorized representative of the other party, which approval shall not be unreasonably withheld. If the non-releasing party does not provide notice to the releasing party within ten (10) days of receipt of materials from the releasing party, such approve shall be deemed granted.

13. Inspector General Language

Shelter has established the Office of the Inspector General in Palm Beach County *Code, Section 2-421 - 2-440*, as may be amended. The Inspector General's authority includes but is not limited to the power to review those books and records past, present and proposed County contracts, transactions, accounts, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Merial, its officers, agents, employees and lobbyists material to the services provided to the Shelter under this Agreement in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

14. Third Party Beneficiary Language

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any right to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of PBC and Merial.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

MERIAL, INC.

By: 
Elizabeth Fox, Director, Consumer Marketing

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO TERMS
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: 
for Department Director

MERIAL LEGAL
JW/sah
31 March 2015