

Santaquin City Resolution 05-01-2015

A RESOLUTION APPROVING AN AGREEMENT WITH BEST FRIENDS ANIMAL SANCTUARY REGARDING FERAL CATS

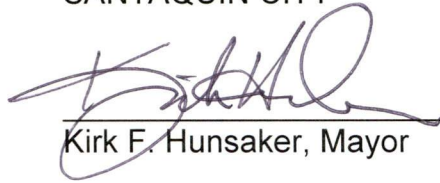
WHEREAS, Santaquin City is a fifth class city within the State of Utah and has the responsibility for the public health and safety which includes animal control; and

WHEREAS, Santaquin City has a growing issue regarding the management of feral cats; and

NOW THEREFORE, be it resolved by the City Council of Santaquin City to approve the attached agreement with Best Friends Animal Sanctuary for the handling of cats at large.


ADOPTED AND PASSED by the City Council of Santaquin City, Utah, this 3rd day of June, 2015.

SANTAQUIN CITY



Kirk F. Hunsaker, Mayor

Attest



Susan B. Farnsworth, City Recorder

AGREEMENT BETWEEN BEST FRIENDS ANIMAL SOCIETY AND SANTAQUIN CITY REGARDING COMMUNITY CATS

This AGREEMENT is made this 3rd day of June, 2015, between Santaquin City, a Utah municipal corporation (“City”), and Best Friends Animal Society, a Utah non-profit corporation (“Best Friends”).

RECITALS

Whereas, City potentially has a population of community cats, also known as stray or feral cats (collectively referred to herein as “community cats”), which caused a nuisance to the City population, and

Whereas, it takes the City, and sometimes its citizens, time and effort to trap, impound, feed, house, and possibly euthanize such cats; and

Whereas, Best Friends is a 501(c)(3) non-profit corporation that in furtherance of its charitable mission assists municipalities with the development and implantation of community cat trap, neuter and return programs; and

Whereas, such services reduce not only the population of community cats, but also the need for euthanasia of healthy impounded cats; and

Whereas, Best Friends and City can better decrease the euthanasia requirements common in the shelter through the cooperative efforts detailed in this Agreement; and

Whereas, Best Friends and City can better decrease the euthanasia requirements common in the shelter through the cooperative efforts detailed in this Agreement; and

Whereas, the parties have developed a Community Cat Program, pursuant to Utah’s Community Cat Act (Utah Code Ann. 11-46-302 *et. seq.*, available at: http://le.utah.gov/code/TITLE11/htm/11_46_030100.htm), which will accomplish the individual goals and common interests of each party, to reduce the nuisances caused by, and improve services provided to community cats found in the City; and

Whereas, City finds this program to be in the best interests of its citizens;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT

1. TERM.

- a. This Agreement shall commence upon the date of execution and shall continue for one year, subject to the term expressed below.
- b. This Agreement may be renewable upon the written agreement of both parties, and subject to the consent and appropriation of funds by the Santaquin City Municipal Council. A request to renew this Agreement must be made sixty (60) days before termination date.
- c. Either party may terminate this Agreement at any time for any or no cause upon giving the other party thirty (30) days written notice. In the event of early termination by the City, City shall not be entitled to a refund of compensation already paid to Best Friends. In compensation paid to it pursuant to paragraph 3 below.

2. Scope of Work.

- a. City Responsibilities. City shall alert Best Friends of community cats (“cats”) and of nuisance cat problem areas within the City boundaries.
- b. Santaquin to provide Best Friends with information regarding the locations of un-owned cats upon incoming calls so that Best Friends may help identify additional cats in the area in need of TNR assistance.
- c. Best Friends Responsibilities.
 - (1) Best Friends shall respond to calls from City and from citizens or other persons within Santaquin City boundaries regarding cats within City boundaries. Best Friends shall work with such complainants to resolve the nuisances caused by these cats.
 - (2) Best Friends may spay and neuter owned pets of low income pet owners residing within City limits, as Best Friends’ resources allow. Qualification for this program and availability of resources shall be determined solely by Best Friends.
 - (3) In performing any work under this agreement, Best Friends shall work in consultation with the Santaquin City Police Departments and its Animal Control Division. Best Friends shall notify and receive approval from City for any changes or cancellations in the above-specified services.
 - (4) Best Friends warrants that it shall perform the above specified services in accordance with the standards of care and diligence normally practiced by companies performing services of a similar nature.
 - (5) Best Friends shall provide City a copy of its current Business License, State Registration and/ or License.
 - (6) Best Friends to provide Community Cat spay/neuter vouchers to residents of Santaquin City within the limits of Best Friends’ budget;

(7) Best Friends to provide a person to actively canvas and trap in applicable sites containing 10 or more cats as needed up to one site per week.

(8) Best Friends to provide a person to release TNR eligible cats.

3. Compensation.

City shall compensate Best Friends for the service performed pursuant to this agreement as follows. City shall not be liable for any charges or expenses except as those which are specifically set forth herein.

- a. City shall pay Best Friends the lump sum of \$2,500 for the performance of this Agreement.

4. Publicity/Co-Branding

The City shall use its best efforts to ensure that onsite signage, press releases, interviews and other communications efforts related to the Community Cat Program, and any events held in conjunction with the Community Cat Program, indicate the support and involvement of Best Friends.

All press, news, or other media releases and other forms of publicity relating to the Community Cat Program, including web-based communications, shall be submitted by the City to Best Friends (Arlyn Bradshaw) for review and comment not less than 48 hours prior to dissemination by the City. Any use of Best Friends' logos or trademarks in conjunction with the same is subject to the express approval of Best Friends. Failure by Best Friends to respond within 48 hours shall be deemed consent to the dissemination of the materials submitted. Best Friends shall not unreasonably withhold its approval of any such materials. Best Friends shall have the right to independently publicize its efforts regarding the Community Cat Program, via Best Friends website, newsletters, electronic news distributions, press releases, and other media outlets.

The City grants to Best Friends the right to photograph, video and audio record, subject to the provisions below, City's facilities related to the Community Cat Program. Prior to Best Friends taking any photographs or making any audio or visual recordings, Best Friends shall additionally obtain written permission from the individual animal control officer/s to be photographed or recorded. Best Friends shall further ensure that the security and confidentiality of the animal control facility and the City is not compromised. If all appropriate waivers and releases have been obtained, Best Friends shall be permitted to use these photographs, video and audio recording for publicity purposes.

If the City determines, in its absolute and sole discretion, that the Community Cat Program has proven to be successful, the City may cooperate with Best Friends to provide testimonials or other similar publicity regarding the success of the Community

Cat Program with the goal of encouraging other towns and municipalities to adopt similar programs.

Neither Party may use the other's logo, trademarks, or other intellectual property without prior express written permission.

5. **Independent Contractor Status.**

Work rendered by Best Friends under this Agreement is not rendered as a city employee and amounts paid under this Agreement do not constitute compensation paid to an employee. The parties expressly agree that Best Friends is an independent contractor and is not an agent or employee of the City and, as such, is solely responsible for Best Friends' own employment taxes, workers compensation premiums and similar expenses. Best Friends represents and warrants that it is in compliance, and will remain in compliance during the term of this Agreement, with all federal, state and local laws relating to the payment of employment taxes, worker's earnings, income tax and social security to the applicable federal and state agencies. If Best Friends is required by law to carry worker's compensation insurance, Best Friends shall provide City a copy of the certificate of such coverage. Any and all subcontractors performing work under this Agreement that are required by law to carry worker's compensation insurance shall likewise provide certificates of worker's compensation coverage to City.

6. **Relationship of Parties and No Third-party Rights.**

This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor any rights or benefits to third parties.

7. **Indemnification.**

- a. Best Friends shall indemnify, defend and hold harmless the City, its officers, agents, employees and insurers of and any claim, demand, lawsuit or action of any kind for injury to or death of persons and damage or destruction to any property arising out of: (1) negligent or willful acts or omissions of Best Friends, its agents, employees or subcontractors; (2) the exercise by Best Friends of the privilege or rights given herein; and (3) the performance by Best Friends of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by the City in defending such claims, demands, lawsuits or actions, including but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Best Friends shall pay any costs that may be incurred by the City in enforcing this indemnity, including reasonable attorney fees. Notwithstanding the forgoing, Best Friends' obligations pursuant to this Section shall not extend to (1) claims, demands, lawsuits or actions for liability attributable to

the gross negligence or willful misconduct of the City, its directors, officers, employees, contractors, successors or assigns; or (2) to claims, demands, lawsuits or actions, whether for injunctive relief or otherwise, relating to the legality of the City's Community Cat Program to trap and spay/neuter/return community cats.

- b. City shall likewise indemnify and hold harmless Best Friends for any claims, loss, and damages or liabilities whatsoever, resulting from the negligence of City's employees, agents or assigns.

8. **Insurance.**

- a. Best Friends shall obtain and maintain commercial general liability insurance. This provision shall require a minimum of One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury or property damage, and not less than Two Million Dollars (\$2,000,000.00) in the aggregate. The general aggregate limit shall apply separately to this project/location, the activities to be performed pursuant to this Agreement, or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage. Any reference to City, either in the provisions of this paragraph entitled "Insurance" or in any policies provided under this Agreement shall include the City, its employees, officers, officials, agents, volunteers and assigns.
- b. Insurance shall be placed with insurers with an AM Best rating of no less than an A Carrier, with a rating of VII or higher.
- c. Best Friends shall furnish City with certificates of insurance and original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy at any time. Best Friends shall provide such copies prior to the execution of this Agreement.
- d. Each insurance policy required by this Agreement shall be endorsed to state that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits, except after thirty (30) days prior written noticed by certified mail.

If any of the required policies are, or at any time, becomes unsatisfactory to the City as to form or substance, or if a company issuing any such policy is or at any time becomes unsatisfactory to City, Best Friends shall promptly obtain a new policy, submit the policy to the City for approval, and thereafter submit verification of the coverage as required by City. Upon failure to furnish, deliver or maintain such insurance as provided herein, City may declare Best Friends to be in default, and may pursue any and all remedies City may have at law or in equity, including immediately suspending, discontinuing or terminating this Agreement.

9. **Assignment of Rights.** The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express and written consent of the other party.
10. **Entire Agreement.** This Agreement, and any Exhibits attached hereto, constitutes the entire Agreement between the parties. There are no other promises or conditions between the parties, whether oral or written. This Agreement supersedes any prior oral or written agreement between the parties. This Agreement may only be modified or amended by written agreement signed by both parties.
11. **Applicable Law.** This Agreement and Best Friends' obligations and services hereunder are made and must be performed in compliance with all applicable federal, state, and local laws. The interpretation and enforcement of this Agreement shall be pursuant to the laws of the state of Utah.
12. **Court Costs.** In the event of default by one or the parties to this Agreement, the non-defaulting party shall be entitled to reasonable attorneys' fees and all costs incurred in the enforcement of this Agreement, regardless of whether an action is commenced or prosecuted to judgment.
13. **Notices.** Any notice or communication required or permitted to be given hereunder shall be sufficiently given when received by the other party and must be delivered or mailed by certified mail, return receipt requested, postage prepaid. Registered mail, postage prepaid as follows:

Best Friends:

Best Friends Animal Society Utah
Attn: Arlyn Bradshaw, Executive Director
2005 South 1100 East
Salt Lake City, UT 84106

Santaquin City:

Chief Rodney Hurst
City of Santaquin
275 West Main
Santaquin, Utah 84655

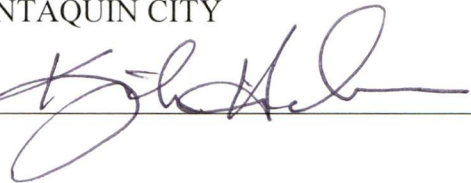
14. **No Waiver.** Failure of either party to insist on strict performance of any provision of this Agreement by the other party shall not constitute a waiver of any provision of this Agreement, waiver of another default, or continuing waiver of the provisions in question.
15. **Severance.** If any part of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby and shall remain binding on the parties. If any provision of this Agreement becomes, in its performance, inconsistent with federal, state or local law, or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with federal, state or local law, as the case may be, and the balance of this Agreement shall remain in full force and effect.
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17. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the City, Best Friends and its respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement to be effective as of the day and year first written above.

SANTAQUIN CITY

By:  _____

Its: _____

BEST FRIENDS ANIMAL SOCIETY

By: _____

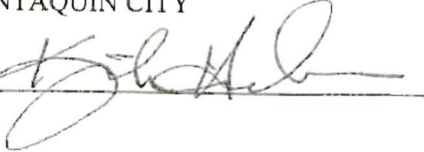
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SANTAQUIN CITY

By: 

Its: _____

BEST FRIENDS ANIMAL SOCIETY

By: 

Its: 6/9/2015