



2020 CITY OF LAKELAND SWAN SALE AGREEMENT

THIS AGREEMENT made on this ____ day of October 2020 (“Effective Date”), by and between the **City of Lakeland**, Florida, a municipality organized and existing in accordance with the laws of the State of Florida on behalf of its Parks and Recreation Department (hereinafter “**City**”), located at 228 S. Massachusetts Avenue, Lakeland, Florida 33801 and _____, (hereinafter “**Buyer**”) whose address is _____, whose telephone number is _____. The term "Agreement" shall be deemed to include any Special Terms and Conditions attached to this Agreement.

WITNESSETH:

WHEREAS, the in accordance with the City’s Purchasing Policies and Procedures, the City is authorized to sell personal property, goods and equipment that it no longer requires or can use; and

WHEREAS, the City has determined it necessary to sell a specified quantity of its “Mute Swans” (hereinafter “Swan(s)”) which inhabit the City’s lakes due to overpopulation resulting in the inability of such lakes to support the entirety of the Swan habitat; and

WHEREAS, the City has determined it is in the best interest of its Swan habitat to sell a specified number of Swans in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Buyer seeks to purchase said Swan(s) in accordance with the terms and conditions specified herein; and

NOW THEREFORE, for and in consideration of the sum hereinafter the parties hereby agree as follows:

TERMS AND CONDITIONS

1. **Purchase**

Buyer is entitled to purchase no more than two (2) Swans in accordance with the terms and conditions of this Agreement. Buyer has elected to purchase _____ Swan(s) for the Purchase Fee set forth in this Agreement. Buyer acknowledges that all Swan(s) are pinioned and cannot fly.

2. **Conditions of Purchase**

A. Buyer agrees to provide a healthy and safe habitat for the Swan(s), which shall include, but may not be limited to: a water source such as a pond or lake sufficient to support the Swan(s) habitat; and veterinary care for Swan(s) at a minimum of an annual basis and as necessary.

B. Upon sale and purchase of the Swan(s), Buyer shall be responsible for the safe transport of Swan(s), including all costs associated therewith, prior to City releasing Swan(s) into Buyer’s care, custody and control. The City will not hold Swan(s) for Buyer if Buyer does not claim and pick up Swan(s) as

specified by 9:00 a.m. on October 29, 2020. City reserves the right to sell said Swan(s) to another purchaser if Buyer fails to pick up Swan(s) as specified herein.

C. All Swan(s) are microchipped with a registered number. City shall provide Buyer with a microchip number at the time of pick up. City shall also provide Buyer with the medical history of the Swan(s) being purchased in accordance with the individual Swan's microchip number through My Pets Animal Hospital in Lakeland, Florida.

D. The City provides no warranty or guarantee that any male and female Swan will mate.

E. The City provides no warranty or guarantee regarding the life expectancy of any Swan(s) purchased.

3. Termination

Any material misrepresentation, as determined by the City, whether written or oral by the Buyer pursuant to the purchase specified in this Agreement, where the City relied on such misrepresentation in selling Buyer Swan(s), shall be grounds for the immediate denial of purchase and termination of the Agreement without a refund. In addition, in the event of default by the Buyer in performance of any of the terms of this Agreement, the City may terminate the Agreement and fee paid by the Buyer shall be retained by the City.

The City reserves the right to cancel this Agreement upon reasonable notice to Buyer in the event the Swan(s) is no longer available for the type of use granted by this Agreement or for other good and sufficient cause deemed by the City. In such event the City shall refund Buyer's Purchase Fee.

4. Purchase Fee

In consideration for the purchase of a Swan, the Buyer agrees to pay the City an amount of Four Hundred Dollars and 00/100 (\$400.00) per Swan. Buyer has chosen to purchase ____ Swan(s) for a total sum due and owing of _____. Upon execution of this Agreement, payment must be made payable to the "City of Lakeland" by Cashier's Check or Credit Card to: ATTN: Swan Sale – Parks & Recreation Department, City of Lakeland, 228 S. Massachusetts Ave., Lakeland, FL 33801 with payment of _\$_____ to be paid on or before 12 p.m. noon October 23, 2020.

Buyer's failure to pay any of the amounts set forth above in full by the dates when due shall result in termination of this Agreement.

5. Waiver, Indemnity and Hold Harmless

Buyer shall waive, release, defend, indemnify and hold harmless the City arising from the purchase of Swan(s) from the City in accordance with **Exhibit "A"**, which is attached hereto and incorporated herein by reference.

6. BUYER'S SIGNATURE ON THIS AGREEMENT AFFIRMS THAT BUYER HAS READ, UNDERSTANDS, AND WILL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH ABOVE AS WELL AS ANY TERMS AND CONDITIONS ATTACHED HERETO. ALL SWAN(S) ARE BEING SOLD "AS IS, WHERE IS" AND ALL SALES ARE "FINAL". THE CITY MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE CITY HEREBY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED.

7. Miscellaneous

A. User may not assign this Agreement, or any rights or any monies due or to become due hereunder.

B. Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God: Fire; Flood; windstorm; explosion; riot; war; sabotage; strikes; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes.

C. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida. Venue shall be Polk County, Florida, or the United States District Court in and for the Middle District of Florida, Tampa, Division.

D. In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the validity and enforceability of the remaining parts thereof shall otherwise be fully enforceable.

E. Waiver by either party of any terms, condition, provision, or breach of this Agreement shall not be considered a waiver of that term, condition, provision, or breach in the future.

F. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

G. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Buyer.

H. This Agreement, including the fully executed Exhibits or other documents attached hereto, constitute the entire agreement between the City and the Buyer with respect to the matters set forth herein and all previous representations relative thereto, either written or oral, are hereby annulled and superseded.

I. Buyer shall be responsible for obtaining all licenses, permits, and authorizations necessary for Buyer's purchase of said Swan(s).

J. The City of Lakeland shall not be responsible for any indirect, special, or consequential damages, whether arising, by tort, contract, or any other theory or liability.

K. The Buyer hereby acknowledges having read this Agreement and the terms and conditions set forth herein and agrees to adhere thereto. Buyer's failure to follow the Guidelines regarding the Mute Swan Sale attached hereto as **Exhibit "B"** shall be a default under this Agreement.

L. Pursuant to Florida Statute Chapter 119, the Florida Public Records Act, this Agreement is a public record that may be inspected and/or copied.

M. Buyer shall pay all taxes, fees and charges prescribed by law.

Buyer acknowledges that Buyer is at least eighteen (18) years of age and Buyer takes full responsibility for the purchase of each Swan. Buyer has read and agrees to follow the City's terms and conditions pursuant to this Agreement for the purchase of Swan(s), including the Exhibits attached hereto, as well as all applicable laws, rules, and ordinances of local, state, and federal agencies.

Mail or deliver this agreement to: Swan Sale – Parks & Recreation Department, City of Lakeland, 228 S. Massachusetts Ave., Lakeland, FL 33801

Buyer: _____
(Signature)

Printed Name: _____

Date: _____

City of Lakeland, Parks and Recreation Department

By: _____
Bob Donahay, Director, Parks and Recreation Department

Date: _____

Exhibit "A"

The City of Lakeland Swan Sale Waiver, Release and Indemnification/Hold Harmless Agreement

This is to certify that _____ ("Buyer") hereby agrees to waive, release, absolve, and covenant not to sue the City of Lakeland, including any of its officers, employees, volunteers, organizers, sponsors, participants, representatives, and agents, for any and all claims, including claims for equitable or injunctive relief, actions, damages, loss or injury of any kind including personal injury, bodily injury, death, and property damage, liabilities, and expenses, including reasonable attorneys' fees and costs, in connection with or arising from Buyer's purchase, participation and/or travel in any activities of any kind in any way connected to the purchase of Swan(s) from the City of Lakeland's 2020 Mute Swan Sale.

Buyer further agrees to assume liability for and indemnify, hold harmless, and defend the City of Lakeland, including any of its officers, employees, volunteers, organizers, sponsors, participants and agents of, from, and against all liability and expense, including reasonable attorneys' fees in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind of nature, including claims for personal injury, property damage, relief, or loss of use, arising out of my purchase, participation and/or travel in any activities of any kind in any way connected to the purchase of Swan(s) from the City of Lakeland's 2020 Mute Swan Sale, including all of its officers, employees, volunteers, organizers, sponsors, participants, representatives and agents. The obligations contained in this provision shall survive the termination of this Agreement and shall not be limited by any amount of insurance required to be obtained or maintained under this Agreement. Nothing contained herein shall be construed as a waiver of any immunity or limitation of liability the City of Lakeland may be entitled to under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

By signing this Agreement, Buyer agrees to abide by all rules and policies set forth by the City of Lakeland as it relates to the City of Lakeland's 2020 Mute Swan Sale. If any portion of this Agreement is held to be invalid, the balance notwithstanding shall continue in full force and effect. Please read carefully before signing. **This Waiver, Release & Hold Harmless Agreement is signed of Buyer's own free act and will.**

Printed Name of Buyer

Date

Signature of Buyer

Exhibit "B"

City of Lakeland 2020 - Mute Swan Sale - Information

Mute Swan- Of all water birds, swans are without a doubt the most decorative and interesting. The raising on one's property can be most rewarding and challenging. To successfully raise swan, you need access to a body of protected water such as a pond, lake, or stream and an understanding of swan needs. Swans are aquatic species; they live and breed on water. It should be remembered that a Mute Swan, even semi-domesticated, is primarily a wild bird. They may become friendly if well-treated, but they will never be docile like a goose or duck. ***(City of Lakeland/Parks Division and other swan owners have used Williams Fence Company to build swan pens.)***

Distribution- The Mute Swan is the royal swan of England and has been introduced to parks and lakes all over the world. Although definitely a wild swan of Northern Europe, there are today a number of semi-wild flocks in North America. Mute Swan is at home from Canada to Florida in North America.

Food- The Mute Swan is a voracious vegetarian. The birds will eat water surface scum and a majority of submerged aquatics. Their physical activity on a body of water will help maintain a clean bank and their movement on the water keeps plants from establishing due to water agitation. Swans that are kept on grounds that are highly maintained may have difficulty finding enough food. If that is the case, then supplemental feeding will be necessary. A diet of cracked corn offered in a feeder placed over the water will meet the swan dietary needs for most of the year. When swans begin nesting they will need a feed high in protein and calcium for breeding, egg laying, and raising young. ***(City of Lakeland/Parks Division used 50/50 ratio mix of cracked corn and layena pellets purchased from Lays Feed Store approximately 4 times per week.)***

Transportation of Swans – City of Lakeland recommendations for long distance Travel we suggest you buy/bring an XL enclosed pet carrier. Put some hay in the bottom with water and feed. We suggest/recommend you check on your swans every hour on trip home. If all possible, try and put water on your swan by water hose if accessible or pouring water down their backs. Water is their friend. If traveling a short distance, you can use an open XL dog crate with hay in the bottom with feed and water in the cage.

To travel by Airline, swans will need to find a non-stop Flight. The City of Lakeland has used Delta Airlines in the past for shipping swans to Chicago. Shipping Live Animals this time of the year cause its cooler for them.

Longevity- Records in England show longevity at 44 years. In Central Florida the oldest bird recorded by the City of Lakeland is 20 years old.

Predation and Problems- About the only predators are large dogs and alligators. Usually a swan can fend off a single dog, but when approached by two or three they tend to lose confidence. Swans are large birds that a small alligator may think twice about taking. To a mature gator, swan would make a nice meal. Young cygnets are sometimes preyed on by snapping turtles and crows. In Florida swan may sometimes have a problem with botulism during the hot summer months.

Nesting and Incubation- Swan need certain basic requirements for nesting. It has been found that swan like to nest on a site similar to the one from which they were hatched. In other words, if they hatched out on an island, the **(cobb) male** who builds the nest will search for an island. If the site had been on shore at the base of a tree, generally they will search out such a place. They like as much privacy as possible and will often select out of the way places to nest. The nest will be from one to two feet high and four to six feet across. They will readily accept contributions of nesting material, especially when they nest on grounds that are highly maintained where green debris is not available. Swan prefer nesting material compose of compost, reeds, cattails, sedges, and grasses. Hay can substitute as a nesting material but can be slippery to the birds. Swan in Florida will begin nesting in late January, February and March. They usually lay an egg every other day until a completed clutch comprises from 3 to 8 eggs. The incubation period is 40-45 days. The downy cygnets weigh about one half pound at hatching with proper feeding grow very rapidly reaching 15 pounds within three months. At this time, they are feathered out and look like their parents except for their lighter bill color and grayish color around the head and neck region. During times of nesting, especially in urban environments swans should be penned. Pens provide protection from the urban setting, dogs, humans, and such. Pens also offer protection to curious humans that might be considered a threat to the nest and the **pen (female)** by the **cobb**. Swans become very territorial especially during mating and nesting. Pens should be large enough to accommodate an entire swan family. A minimum of 300 sq. ft. should surface. Half of the pen should be on the lake bank and half of the pen should be in the water. Be aware of changing water levels in the pen during the nesting season.

Royal or Polish- The terms "Royal" and "Polish" are used with reference to the Mute Swan. Royal Mutes, to the wildfowler, has meant those swans descended from the Queens' Royal flock in England. They are characterized by having a deep red bill and jet-black feet. Cygnets are a dusky gray when hatched. Polish Mute Swans in contrast has a brighter orange bill and light buff colored feet. Their cygnets are nearly white when hatched, with a tingeing of buff.