

SILICON VALLEY
ANIMAL CONTROL AUTHORITY

AGENDA ITEM

Wildlife Center of Silicon Valley

RECOMMENDED MOTION

That the annual agreement for FY 2018-19 with the Wildlife Center of Silicon Valley be received and filed.

DOCUMENTS ATTACHED

Agreement with the Wildlife Center of Silicon Valley

FISCAL IMPACT

\$26,175.00 in the FY 2018-19 Operating Budget

APR 06 2018

**AGREEMENT BY AND BETWEEN THE
SILICON VALLEY ANIMAL CONTROL AUTHORITY
AND
WILDLIFE CENTER OF SILICON VALLEY**

This agreement ("Agreement") is made and entered into on this 5th day of April, 2018 ("Effective Date"), by and between the Silicon Valley Animal Control Authority, a California Joint Powers Agency ("SVACA"), and Wildlife Center of Silicon Valley, a non-profit Corporation incorporated under the laws of the State of California ("WCSV"). SVACA and WCSV may be referred to individually as a "Party" or collectively as "Parties" or the "Parties to this Agreement."

AGREEMENT PROVISIONS:

The Parties further agree as follows:

1. FUNDING AND APPROPRIATION

SVACA has appropriated an amount not to exceed twenty-six thousand one hundred and seventy-five dollars (\$26,175.00), to be paid to WCSV to be utilized during the time period between July 1, 2018, and June 30, 2019, ("Utilization Period") for the purpose of meeting the goals and objectives outlined in Exhibit A, entitled, "SCOPE OF SERVICES" ("Program"), attached and incorporated by this reference, to primarily benefit local injured, sick and orphaned wildlife. The funds will be paid as follows: Six thousand five hundred forty-three dollars and seventy-five cents (\$ 6, 543.75) beginning on or about July 1, 2018 ("Effective Date") providing the terms and conditions of this Agreement and the obligations of the WCSV are being met.

2. PROGRAM COORDINATION

- A. WCSV shall assign a single Program Director who shall have overall responsibility for the progress and execution of this Agreement.
- B. Notices: All notices or other correspondence required or contemplated by this Agreement shall be sent to the Parties at the following addresses:

SVACA: Silicon Valley Animal Control Authority
Attn: Dan Soszynski, Executive Director
3370 Thomas Road
Santa Clara, CA 95054

WCSV: Wildlife Center of Silicon Valley
Attn: Laura Hawkins, Executive Director
3027 Penitencia Creek Road
San Jose, CA 95132

3. **OBLIGATION OF WCSV**

A. Organization of WCSV: WCSV shall:

1. Provide SVACA, within thirty (30) days of the beginning of the Effective Date of this Agreement, and within thirty (30) days of a change in status of any of the following documents, with:
 - a. A copy of Articles of Incorporation under the laws of the State of California;
 - b. A copy of current Bylaws of WCSV's organization;
 - c. Verification and documentation of Internal Revenue Service nonprofit status under Title 26, Section 501(c)(3) of the Internal Revenue Code;
 - d. Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code;
 - e. Names and addresses of current Board of Directors of WCSV.
2. Report in writing any changes in the WCSV's Articles of Incorporation, Bylaws, tax-exempt status and/or Board membership immediately to SVACA's Executive Director.
3. Post on its website an email address for the public to correspond with the Board of Directors.

B. Program Performance of WCSV: WCSV shall:

1. File semi-annual reports with SVACA on the type and number of services rendered to beneficiaries through the operation of the Program. Such reports shall evaluate the manner in which the Program is achieving its objectives and goals according to standards established by SVACA.
2. Coordinate its services with existing organizations providing similar service in order to foster community cooperation and to avoid unnecessary duplication of services;
3. Seek out and apply for other sources of revenue in support of its operation or services from county, state, federal and private sources; and,

4. Include an acknowledgment of SVACA funding and support in all editions of the WCSV newsletter and on the WCSV website using words to the effect that WCSV services are funded in part by the Silicon Valley Animal Control Authority.

C. Fiscal Responsibilities of WCSV: WCSV shall:

1. Establish and maintain a system of accounts that shall be in conformance with Generally Accepted Accounting Principles (GAAP) as designated by the Financial Accounting Standards Board (FASB);
2. Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, and/or other official documentation evidencing in proper detail the nature and propriety of all charges;
3. Perform an independent fiscal review at least every year, in conformance with the generally accepted principles of accounting. Provide SVACA with a copy of the annual 501(c)(3) filings, including tax returns. The costs for such reviews shall be at WCSV's expense. Copies of the completed reviews must be provided to SVACA; and,
4. Certify insurability by complying with the insurance requirements set forth in Exhibit B, entitled "INSURANCE REQUIREMENTS," attached and incorporated by this reference.

D. Records, Reports and Audits of WCSV

1. Examination of Records and Facilities:
 - a. At any time during normal business hours, and as often as may be deemed necessary, WCSV agrees that SVACA, and/or any duly authorized representatives shall, until expiration of five years after final payment under this Agreement have access to and the right to examine its offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement, excepting those falling within the attorney-client privilege and those falling within the attorney work-product privilege.
 - b. WCSV agrees that SVACA, or any duly authorized representatives, have the right to audit, examine and make excerpts or transcripts of and from, such records, and to make audits of all contracts and subcontracts, invoices, materials and all other data directly relating to matters covered by this Agreement.

- c. Any SVACA written reports and/or findings of non-compliance by WCSV with this Agreement shall be reviewed by WCSV's Board of Directors.
 2. SVACA Audits: SVACA may require an independent audit. Such audits may cover Program compliance as well as fiscal matters. WCSV will be notified in advance that an audit will be conducted. WCSV will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Cost of such audits will be borne by SVACA.
- E. Compliance with Ethical Standards: As a condition precedent to entering into this Agreement, WCSV shall:
 1. Read the attached Exhibit C entitled, "ETHICAL STANDARDS," attached and incorporated by this reference; and,
 2. Execute the affidavit attached as Exhibit D entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS," attached and incorporated by this reference.

4. CONTRACT COMPLIANCE

- A. Monitoring and Evaluation of Services: Evaluation of the Program performance shall be the mutual responsibility of both Parties. WCSV shall furnish all reports necessary for the Executive Director to monitor, review and evaluate the performance of WCSV. The results of WCSV's performance will be recorded on a standard monitoring and evaluation form.
- B. Contract Noncompliance: With receipt by SVACA of any information that evidences a failure by WCSV to comply with any provision of this Agreement, SVACA shall have the right to require corrective action to enforce compliance. Corrective action, which may include termination of the agreement, shall be taken if any of the following, as examples only, occur:
 1. If WCSV (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to SVACA in connection with the Program;
 2. If there is pending litigation with respect to the performance by WCSV of any of its duties or obligations under this Agreement which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Program;
 3. If WCSV shall have taken any action pertaining to the Program which requires SVACA approval without having obtained such approval;

4. If WCSV is in default under the provisions of this Agreement;
5. If WCSV makes improper use of funds paid by SVACA;
6. If WCSV fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof; or,
7. If WCSV submits to SVACA any reports which are incorrect or incomplete in any material respect.

C. Corrective Action: After all administrative remedies have been exhausted, SVACA shall have the right to require the presence of any of WCSV's officers at any hearing or meeting called for the purpose of considering corrective action within seven (7) business days of issuing such notice. WCSV will have an opportunity to participate fully in corrective action deliberations.

5. OBLIGATIONS OF SVACA

- A. Contract Compliance: SVACA staff shall provide assistance to WCSV in connection with:
1. Obtaining conformity of the Program with SVACA's policies and procedures and all SVACA resolutions, policies, directives and laws; and,
 2. Review of Agreement for compliance purposes and evaluating Program based on semi-annual reports received from WCSV and on-site monitoring of client and service based data.
- B. Method of Payment: SVACA shall provide WCSV with a total sum of twenty-six thousand one hundred and seventy-five dollars (\$26, 175.00). The funds will be paid as follows: Six thousand five hundred forty-three dollars and seventy-five cents (\$6,543.75) beginning on or about July 1, 2018 ("Effective Date") providing terms and conditions of this Agreement and the obligations of the WCSV are being met. SVACA may at any time and in its absolute discretion, elect to suspend or terminate payment to WCSV, in whole or in part, under this Agreement or not to make any particular payment under this Agreement in the event of unsatisfactory performance or noncompliance.

6. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

- A. The relationship of WCSV to SVACA is that of an independent contractor. WCSV has full rights to manage its employees subject to the requirements of the law. All persons employed by WCSV in connection with this Agreement shall be employees of WCSV and not employees of SVACA in any respect. WCSV shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.

- B. No subcontractor of WCSV will be recognized by SVACA as such. All such subcontractors brought onto WCSV's site for construction, remodeling and associated physical repairs and/or improvements are to be licensed contractors with appropriate insurance coverage current. At its choosing, SVACA has the right to establish the types and amounts of insurance which it deems to be appropriate.

7. NON-DISCRIMINATION

WCSV covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

8. COMPLIANCE WITH LAW

- A. Compliance: WCSV shall make reasonable efforts to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees which are relevant to all aspects of its business and operation.
- B. Assurances: Failure of WCSV, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve WCSV of its responsibility to adhere to same and WCSV herein acknowledges this responsibility. WCSV shall hold SVACA, its SVACA Board of Directors, officers and employees harmless from WCSV's failure(s) to comply with any requirement imposed on WCSV by virtue of the utilization of SVACA funds. WCSV shall reimburse SVACA for any disallowed costs and/or penalties imposed on SVACA because of WCSV's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

9. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual Agreement in writing of the Parties hereto.

10. INTEGRATED DOCUMENT

This Agreement embodies the Agreement between SVACA and WCSV and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of SVACA prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal

agreement shall be considered as unofficial information and in no way binding upon SVACA.

11. **HOLD HARMLESS**

WCSV hereby releases and agrees to protect, defend, hold harmless, and indemnify SVACA, its Board of Directors, its officers, employees, officials and volunteers from and against all claims, injury, liability, loss, cost and expense, or damage, however same may be caused, including all costs and reasonable attorney's fees in providing the defense to any claim arising as a direct result of negligence on the part of WCSV and/or its employees.

12. **WHEN RIGHTS AND REMEDIES WAIVED**

In no event shall any payment by SVACA or any acceptance of payment by WCSV hereunder constitute or be construed to be a waiver by SVACA or WCSV of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of SVACA or WCSV, and the making of any such payment while any such breach or default exists shall in no way impair or prejudice any right or remedy available to SVACA or WCSV with respect to such breach or default.

13. **TERMINATION**

Termination for Convenience: SVACA or WCSV may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. Both Parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

14. **MISCELLANEOUS PROVISIONS**

- A. Severability Clause: In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.
- B. No Pledging of SVACA's Credit: Under no circumstances shall WCSV have the authority or power to pledge the credit of SVACA or incur any obligation in the name of SVACA. WCSV shall save and hold harmless SVACA, its Board of Directors, its officers, employees, and volunteers from expenses arising out of this Agreement.
- C. Venue: In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

- D. WCSV Financial Disclosure Requirements: WCSV services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Financial Disclosure Statement by Title 2, California Code of Regulations, Section 18700(2) (A) and (B).

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of SVACA and WCSV that this Agreement shall become operative on the Effective Date defined in Section 1 above.

SILICON VALLEY ANIMAL CONTROL AUTHORITY

By: 

DAN SOSZYNSKI
Executive Director
3370 Thomas Road
Santa Clara, CA 95054
Telephone: 408-764-0344
Fax: 408-980-9192

WILDLIFE CENTER OF SILICON VALLEY

By: 

LAURA HAWKINS
Executive Director
3027 Penitencia Creek Road
San Jose, CA 95132
Telephone: (408)929-WILD (9453)
Fax: (408)928-5853

**AGREEMENT BY AND BETWEEN THE
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EXHIBIT A

SCOPE OF SERVICES

1. Wildlife Center of Silicon Valley ("WCSV") is an independent, non-profit organization that provides care for injured, sick and orphaned wildlife, public education and community telephone support. The mission of WCSV is to rehabilitate and then release these animals back into the wild.
2. Members of the public may take injured, sick and/or orphaned wildlife to WCSV. The facility is open 7 days a week (except major holidays) and accepts incoming animals from 9:00 a.m. to 5:00 p.m.
3. The WCSV will accept each and every injured, sick and/or orphaned wild animal brought to the WCSV by residents or agents from SVACA's member cities or that the WCSV picks up from the SVACA animal shelter or its contract shelter(s) on behalf of SVACA's member cities except adult deer and reptiles.
4. SVACA staff will coordinate "orphaned animal" calls with WCSV staff; SVACA will pick up orphaned and injured wildlife during normal business hours, as time permits. SVACA will then attempt to transport each animal directly to the WCSV. The WCSV recognizes that SVACA may need to transfer some animals to the SVACA animal shelter or its contract shelter(s) for disposition and pick-up by the WCSV.

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EXHIBIT B

WCSV, and its subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "SVACA" shall include the duly elected or appointed Board of Directors, officers, agents, employees, and volunteers of SVACA individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to SVACA:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);
\$1,000,000 for personal injury liability;
\$1,000,000 aggregate for products-completed operations; and,
\$1,000,000 general aggregate applying separately to this project.

b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL").** (A Workers' Compensation Policy is required only if Contractor has employees or volunteers.)

These policies shall include at least the following coverage and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by WCSV and approved by SVACA before work is begun pursuant to this Agreement. At the option of SVACA, WCSV shall either reduce or eliminate such deductibles or self-insured retentions or provide a financial guarantee satisfactory to SVACA guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. **Additional Insured** SVACA, its Board of Directors, officers, volunteers and employees are hereby added as additional insureds in respect to liability arising out of the WCSV's work for SVACA, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. **General Aggregate** The general aggregate limits shall apply separately to WCSV's work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
- c. **Primary Insurance** This policy shall be considered primary insurance with respect to any other valid and collectible insurance SVACA may possess, including any self-insured retention SVACA may have, and any other insurance SVACA does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- d. **Notice of Cancellation** No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to SVACA at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, BAL & WC/EL & PL).

4. **ABSENCE OF INSURANCE COVERAGE.**

SVACA may direct WCSV to immediately cease all activities with respect to this Agreement if SVACA determines that WCSV fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered WCSV's delay and expense. At SVACA's discretion, under conditions of lapse, SVACA may purchase appropriate insurance and charge all costs related to such policy to WCSV.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to SVACA by each of WCSV's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. SVACA reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for WCSV shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Silicon Valley Animal Control Authority
Attn: Dan Soszynski, Executive Director
3370 Thomas Road
Santa Clara, California 95054

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EXHIBIT C

ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

In the event of a material breach of this Agreement by either party, the other party shall notify the breaching party of such material breach and that such breach must be cured within sixty calendar days of the notice. In the event the breaching party does not cure the material breach within sixty calendar days, the notifying party may immediately terminate this Agreement.

In the event of termination by SVACA, WCSV will be paid for all approved work on a pro rata schedule for all approved work performed until termination. WCSV shall have no right to, or claim against SVACA, for the balance of the contract amount.

- A. SVACA may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If WCSV does any of the following:
 - a. Is convicted¹ of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty²;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of an offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a SVACA contractor or subcontractor; and/or,

¹ For purposes of this Agreement, the words "convicted" or "conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

² As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, or employee associated with WCSV can be imputed to WCSV when the conduct occurred in connection with the individual's performance of duties for or on behalf of WCSV, with WCSV's knowledge, approval or acquiescence, WCSV's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. SVACA may also terminate this Agreement in the event any one or more of the following occurs:
1. If SVACA determines that WCSV no longer has the financial capability³ or business experience⁴ to perform the terms of, or operate under, this Agreement; or,
 2. If SVACA determines that WCSV fails to submit information, or permits false information, which is required in order to perform or be awarded funding by SVACA, including, but not limited to, WCSV's failure to maintain any required state or federal licenses or permits, failure to obtain a business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

³ Corporation becomes insolvent, transfers assets in fraud of creditors, makes an assignment for benefit of creditors, files a petition under any section or chapter of the Federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Corporation.

⁴ Loss of personnel deemed essential by the SVACA for the successful performance of the obligations of the Corporation to the SVACA