

**SILICON VALLEY
ANIMAL CONTROL AUTHORITY**

AGENDA ITEM

Found Animals Foundation, Inc.

RECOMMENDED MOTION

That the service contract with Found Animals Foundation Inc. to provide microchip supplies for FY 2018-19 be received and filed.

DOCUMENT ATTACHED

Microchip Purchase Agreement

FISCAL IMPACT

Approximately \$2,500 annually

**CONSULTANT AGREEMENT
THE MICHELSON FOUND ANIMALS FOUNDATION, INC.**

This agreement is made this 16th day of April 2018, by SILICON VALLEY ANIMAL CONTROL AUTHORITY, a California Joint Powers Authority ("AUTHORITY") and THE MICHELSON FOUND ANIMALS FOUNDATION, INC., a California corporation ("CONSULTANT").

RECITALS

WHEREAS, the Silicon Valley Animal Control Authority desires to retain a consultant to provide microchip supplies; and

WHEREAS, The Michelson Found Animals Foundation, Inc. has submitted a satisfactory proposal to provide such services, which is attached and incorporated herein as Attachment A and entitled, "Microchip Registration Agreement".

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall cover services rendered July 1, 2018 to June 30, 2019.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of services described in Attachment A. CONSULTANT will be responsible for any record keeping and will provide documentation of services upon request from AUTHORITY.
3. **Compensation.** CONSULTANT will be paid per month for services described in Attachment A. Payment shall be made per monthly invoice provided by CONSULTANT.
4. **Termination.** AUTHORITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice.
5. **Insurance Requirements.**
 - A. **Workers' Compensation.** If CONSULTANT employs any employees, CONSULTANT shall maintain during the term of this Agreement Workers' Compensation Insurance in conformance with the laws of the State of California. Such coverage such include a waiver of subrogation in favor of the AUTHORITY.
 - B. **General Liability Insurance.** CONSULTANT shall also procure and maintain at all times during the performance of this Agreement (1) General Commercial Liability Insurance covering CONSULTANT and AUTHORITY for liability arising out of the operations of CONSULTANT and any subcontractors; and

(2) Automobile Liability Insurance including coverage for all owned and non-owned vehicles, licensed or unlicensed, used by or on behalf of CONSULTANT in the performance of work under this Agreement. The policies shall be subject to a limit for each occurrence of One Million Dollars (\$1,000,000) with an annual aggregate of One Million Dollars (\$1,000,000) naming as an additional insured, in connection with CONSULTANT's activities, the AUTHORITY, and its directors, officers, employees and agents. The insurers shall agree that their policies are Primary Insurance and that they shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering AUTHORITY.

C. Evidence of Insurance. CONSULTANT shall furnish to AUTHORITY Certificates of Insurance indicating compliance with the requirements of this section. The Certificates shall stipulate that thirty (30) days advance written notice of cancellation, non-renewal or reduction in limits of the required policy shall be given to AUTHORITY.

6. Non-Liability of Officials and Employees of AUTHORITY. No official or employee of AUTHORITY shall be personally liable for any default or liability under this Agreement.
7. Compliance with Law. CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
8. Ownership of Work Project. All documents or other information developed or received by CONSULTANT shall be the property of AUTHORITY, except for CONSULTANT'S database and microchip registry.
9. Notices. All notices shall be personally delivered or mailed, via first class mail, to the below listed addresses. These addresses shall be used for delivery of service of process:
10. Familiarity with Work. By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed, (2) it has investigated the site of the work and is aware of all conditions there, and (3) it understands the difficulties, and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by AUTHORITY, it shall immediately inform AUTHORITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from AUTHORITY.
11. Limitations upon Subcontracting and Assignment. Neither this Agreement or any portion shall be assigned by CONSULTANT nor shall CONSULTANT subcontract any services hereunder without prior written consent of AUTHORITY.

12. Indemnification. CONSULTANT agrees to protect, hold harmless and defend AUTHORITY and its board, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with performance of the Agreement by CONSULTANT, its agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT, excepting only those claims, liabilities, expenses, and damages that arise from AUTHORITY's sole negligence. This indemnification shall apply to all liability regardless of whether any insurance policies are applicable and shall not be limited by any insurance policy limits.
13. Modification. This Agreement constitutes the entire agreement between the parties, unless there is a subsequent mutual written agreement executed by AUTHORITY and CONSULTANT.
14. California Law. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.
15. Interpretation. This Agreement shall be interpreted as though prepared by both parties.
16. Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.


IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

SILICON VALLEY ANIMAL CONTROL AUTHORITY

By 
Dan Soszynski, Executive Director

Date 4/3/18

THE MICHELSON FOUND ANIMALS FOUNDATION, INC

By 
Aimee Gilbreath, Executive Director

Date 4/10/18

Found Animals. Registry

MICROCHIP REGISTRATION AGREEMENT

This Microchip Registration Agreement (the "Agreement") is made and dated as of April 3rd, 2018, by and between The Michelson Found Animals Foundation, Inc. ("Found Animals") and Silicon Valley Animal Control Authority (SVACA) ("Client") (collectively the "Parties").

RECITALS

WHEREAS, Found Animals is a non-profit organization dedicated to minimizing shelter euthanasia. Found Animals believes that all lost pets deserve to be found and the effective use of pet microchips is a key component of this effort;

WHEREAS, Found Animals offers U.S. animal welfare organizations affordable, high quality microchips along with free access to the Found Animals Registry;

WHEREAS, Found Animals and Client understand that while microchips have incredible potential for getting lost pets home, the microchip itself is only one component in a technology system involving microchips and registries. All components of the system have to work together to ensure a happy reunion for a lost pet;

WHEREAS, Found Animals expects Client to be proactive in the mission of reunification of pets to their owners, which includes, but is not limited to, training all relevant staff on Registry features and functions, registering microchips with required customer data, and providing educational materials to customers regarding how to access and use the Found Animals Registry; and

WHEREAS, Client wishes to purchase microchips from Found Animals and to freely access the Found Animals Registry.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties hereto agree to the following:

AGREEMENT

1. Definitions.
 - a. "Customer Data" is defined as customer name (first and last), email address, mailing address, home and cell phone numbers, species of animal, sex of animal, approximate date or year of animal's birth, microchip number, and date of service (i.e., date of adoption, microchip implantation, or record update).
 - b. "Microchip Program" is Found Animals' program through which it promotes microchipping of pets as an important way to greatly increase the likelihood of a lost pet being reunited with its owner and decrease the likelihood of the pet being euthanized. Found Animals reserves the right to provide microchips by any manufacturer. Found Animals agrees to provide 134.2 kHz (ISO) microchips to Client under this Agreement.
 - c. "Optional Customer Data" is defined as secondary mailing address, customer's work phone number, animal's name, and animal's primary and secondary breed.
 - d. "Registry" refers to an online microchip registry that Found Animals owns and maintains, which contains Customer Data received through the Microchip Program, as well as Customer Data for organizations or private parties who elect to join the Registry. Client has access to search pets by microchip number and can initiate a Found Pet Alert, which is an automatic owner notification process, via the Registry.

Found Animals[™] Registry

MICROCHIP REGISTRATION AGREEMENT

2. **Term.** This contract shall be effective as of July 1st, 2018 and will continue until terminated by either Party. Either Party may terminate this Agreement at any time for any cause with thirty (30) days written notice to the other Party.
3. **Services.**
- a. **Supplies and Fees.**
- i. **Microchip.** Found Animals agrees to supply microchips to Client priced as follows:
 - i. For orders of 25, 50, or 75 chips: \$5.95 per microchip.
 - ii. For orders of 100 or more \$4.95 per microchip.
 - ii. Orders of more than 100 microchips must be in units of 100. For example, an order may be for 25, 50 or 75 microchips, but may not be for 150 microchips.
 - iii. Client's orders under this Agreement are fulfilled on a monthly basis.
 - iv. Client has no obligation to order every month during the Term.
- b. **Client's Obligations.**
- i. **Customer Data.** For each microchip Found Animals supplies, Client agrees to use its best efforts to provide Found Animals with Customer Data for customers who receive a microchip. Client understands that Found Animals will periodically monitor or audit Client's Customer Data to verify that all microchips are being registered with Customer Data and may exercise corrective action, including its right to revoke this Agreement, should Client fail to take reasonable measures to provide Found Animals with complete and accurate Customer Data.
 - ii. **Customer Data Uploads.** Client agrees to enter directly or upload the Customer Data and any Optional Customer Data to the Registry within one week of implantation of each microchip and at a minimum frequency of once per week following a format provided by Found Animals.
 - iii. **Training.** Client agrees to train all relevant staff on how to use the Registry. Found Animals offers extensive online resources to support this training.
 - iv. **Maximum Fee for Implanted Microchip.** Client agrees to charge no more than \$25 in administrative fees for each implanted microchip.
 - v. **Competitive Marketing.** Client agrees to remove marketing materials from competitor microchip companies from whom Client does not purchase microchips.
- c. **Customer Notices and Forms.** Client's customers must be provided with Found Animals-provided printed materials explaining Found Animals' Microchip Program and be advised that they will be contacted by Found Animals. For every microchip supplied by Found Animals, Client agrees to provide the customer with Registry paperwork including how to access the customer's Registry account, the microchip number, and information on updating contact information.
- d. **Registry.** Found Animals agrees to provide Client with access to its Registry, which will provide Client with an opportunity to look up microchip numbers and initiate a Found Pet Alert for customers whose Customer Data is contained in the Registry. Found Animals strongly encourages Client to import Customer Data of microchip records for the previous five (5) years into the Registry during the Term. Found Animals further encourages Client to display the Registry's website link on Client's website and to use the Registry as its primary tool for reuniting lost pets with their owners.
- e. **Transfer of Supplies.** Client agrees to not transfer any microchips supplied by Found Animals to any entity or person for distribution or resale unless Client receives prior written approval from Found Animals. If microchip is transferred before implantation, Client is responsible for fielding calls on unregistered microchips.
- f. **Returns.** Found Animals agrees to accept returns of microchips that are defective on a case by case basis and on a reasonable determination by Found Animals, in exchange for original price paid or for new microchips per the terms of the Warranties stated below in Paragraph 8.

Found Animals Registry

MICROCHIP REGISTRATION AGREEMENT

4. **Invoices.**
 - a. **Due dates.** Payment of fees as described in Section 3(a) is due to Found Animals within thirty (30) days from date of invoice. For municipal and high volume chip clients (who order over 1,000 chips per year), payment of fees as described in Section 3(a) is due to Found Animals within sixty (60) days from date of invoice.
 - b. **Penalties.** Penalties of 1.5% of the balance past due will be assessed for late payments.
5. **Publicity.** Found Animals agrees to provide marketing materials regarding the Microchip Program to Client, which Client agrees to provide to its customers.
6. **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the Parties hereto, except that either Party may assign this Agreement to any division and/or any subsidiary, provided that such assignee assumes all of the rights, obligations and liabilities of the Party hereunder.
7. **Agreement Modification.** Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of Client and Found Animals.
8. **Warranties.** Except as otherwise specifically provided in this Agreement or hereby excluded by mutual agreement, Found Animals hereby disclaims any and all representations and warranties, express, implied, statutory or otherwise, concerning any product, including, but not limited to, any warranty or merchantability or fitness for a particular purpose with respect to the products, whether used alone or in combination with other products or materials.
 - a. **Microchips.** Found Animals will replace any faulty microchip for a period equal to the lesser of (i) ten (10) years after the date of implantation of the microchip and (ii) one hundred forty-four (144) months after the date the microchip is received by the Client from Found Animals.
9. **Arbitration.** The Parties hereby agree that any controversy or claim arising out of or relating in any way to this Agreement shall be subject to final and binding arbitration through Judicial Arbitration and Mediation Services ("JAMS") or its successor, or if neither then exists, the American Arbitration Association.
10. **Notices and Payments.** All notices and payments required or permitted under this Agreement shall be in writing. Notices delivered personally or notices delivered via electronic mail will be deemed delivered as of actual receipt; mailed notices will be deemed delivered three (3) business days after mailing. Until further written notice, notices shall be addressed to the respective Parties as follows:

Found Animals (for legal notices):
Brian Chase
Found Animals Foundation, Inc.
4079B Redwood Avenue
Los Angeles, CA 90066
b.chase@foundanimals.org
310-574-5784

Client:
See end of contract for contact
information.

Found Animals (for Microchip Program and Registry support):
microchipsales@found.org
844-523-3872

Found Animals Registry

MICROCHIP REGISTRATION AGREEMENT

11. **Relationship of Parties.** For the purposes of this Agreement, each Party is an independent contractor and not an agent or employee of the other Party. Neither Party shall have authority to make any statements, representations, or commitments of any kind, or to take any action which shall be binding on the other Party, except as may be explicitly provided for in this Agreement or authorized in writing by the other Party.
12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument.
13. **Headings.** All headings contained in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.
14. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.
15. **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement.
16. **Attorney's Fees.** Should either Party bring any claim or action to enforce or adjudicate any of the terms of this Agreement, the losing Party shall pay to the prevailing Party its costs and reasonable attorney's fees.
17. **Choice of Law.** This Agreement shall be governed under the laws of the State of California.
18. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements or understandings between the Parties relating to its subject matter.

Found Animals[™] Registry

MICROCHIP REGISTRATION AGREEMENT

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate as of the day and year first above written.

THE MICHELSON FOUND ANIMALS
FOUNDATION, INC.


By: Aimee Gilbreath
Title: Executive Director

Date

Silicon valley Animal Control Authority (SVACA)
Client Organization Name

DocuSigned by:

By: Gina DeMartini
Title: Executive Director

April 3rd, 2018
Date

3370 Thomas Rd
Mailing Street Address

Santa Clara, CA 95054
City, State and Zip Code

408-764-0344
Telephone Number

gina@svaca.com
Email Address

Please return the signed Agreement via DocuSign.