RESOLUTION NO. R-2021-2722

A RESOLUTION APPROVING AN AGREEMENT BETWEEN WASHINGTON COUNTY AND SANTA CLARA-IVINS FOR ANIMAL SHELTER SERVICES

WHEREAS, the cities of Santa Clara and Ivins ("SCI") currently owns, operates, and maintains an animal shelter ("Shelter"), in conjunction with the City Animal Control program operated by the SCI Police Department; and

WHEREAS, County has no animal control program or shelter; and

WHEREAS, Shelter currently has space available for sheltering animals that have been picked up within the limits of Washington County but outside of the city limits of SCI ; and

WHEREAS, County has no immediate plans to operate an animal control program and/or animal shelter; and

WHEREAS, County is interested in contracting with SCI to provide limited impound or sheltering services, and is willing to fairly and reasonably compensate SCI for the same; and

WHEREAS, SCI is interested, at least while surplus space is or may be made available in its animal shelter, to provide such impound and sheltering services; and

WHEREAS, it is in furtherance of public purposes and in the best interests of the citizens of SCI and of the County that this MOU be approved and signed; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COMMISSION OF WASHINGTON COUNTY, UTAH, that the attached agreement is approved and shall be executed.

VOTED UPON AND PASSED BY THE WASHINGTON COUNTY COMMISSION AT A REGULAR MEETING ON THE 2ND DAY OF FEBRUARY, 2021.

(Signature block on following page.)

WASHINGTON COUNTY

GIL ALMQUIST, Chair
Washington County Commission

ATTEST:

Kim M. Hafen
Washington County Clerk-Auditor

Commissioner Almquist voted Aye
Commissioner Cox voted Aye
Commissioner Iverson voted Aye

Approved as to Form:

Deputy Washington County Attorney

808

MEMORANDUM OF UNDERSTANDING

(Animal Shelter Services)

This Memorandum of Understanding is made and entered into, by and between **Santa Clara Ivins**, a Political Subdivision of the State of Utah, with its offices located at 2603 Santa Clara Drive, Santa Clara Utah 84765, hereinafter referred to as "SCI", and **Washington County**, a Political Subdivision of the State of Utah, with its offices located at 197 E Tabernacle, St. George, Utah 84770, hereinafter referred to as "County".

WHEREAS, SCI currently owns, operates, and maintains an animal shelter ("Shelter"), in conjunction with the City Animal Control program operated by the SCI Police Department; and

WHEREAS, County has no animal control program or shelter; and

WHEREAS, Shelter currently has space available for sheltering animals that have been picked up within the limits of Washington County but outside of the city limits of SCI ; and

WHEREAS, County has no immediate plans to operate an animal control program and/or animal shelter; and

WHEREAS, County is interested in contracting with SCI to provide limited impound or sheltering services, and is willing to fairly and reasonably compensate SCI for the same; and

WHEREAS, SCI is interested, at least while surplus space is or may be made available in its animal shelter, to provide such impound and sheltering services, as herein set forth, and for the amount of compensation offered and set forth herein; and

WHEREAS, it is in furtherance of public purposes and in the best interests of the citizens of SCI and of the County that this MOU be approved and signed; and

NOW THEREFORE, in consideration of the covenants and promises herein contained, and other good and valuable consideration, **IT IS HEREBY AGREED** by SCI and County as follows:

1. **Animal Shelter Services**

   a. It is understood and agreed that this is not a full-service animal control and sheltering agreement; that, until otherwise agreed, such services apply to dogs and cats; that sheltering is available on a space-available basis only (with SCI animals taking priority); that, except for "animal surrenders" at the shelter, such services shall only be provided for animals outside of SCI pursuant to a request for services and referral by and from a Deputy of the Washington County Sheriff's Office ("WCSO"); and that prosecution services for animal-related offenses outside SCI but within the limits of Washington County shall be the duty of WCSO, not the duty of SCI.

b. Services hereunder shall include (as space and SCI personnel are available) impound services for all law-enforcement referred animal incidents within the limits of Washington County *e.g.,* dispatching, taking possession of and transporting animals, and requisite food, sheltering, storage, vaccinations, and reporting.

c. Services hereunder shall also include the acceptance and sheltering of a dog or cat which the owner thereof, on proof of such ownership, may desire to surrender to the SCI Animal Shelter for safekeeping and disposition.

d. Provide WCSO with access to any animal control or shelter reports pertinent or in accordance with the provisions of this MOU and the Utah Government Records Access and Management Act ("GRAMA").

2. SCI agrees to provide such services, subject to the following:

a. Space and personnel availability.

(1) Services hereunder shall *not* include animal control services which are requested and at a time when SCI law enforcement or animal control officer is not available or otherwise engaged in official law enforcement duties or animal control duties at the time such services are requested.

(2) SCI specifically reserves the right to refuse to impound, accept surrender of, or continue the sheltering of any WCSO animals if the Animal Shelter is already *at capacity* or if additional space is required to make room for the sheltering of more animals.

b. Preference being given to the transporting and/or sheltering of SCI animals.

c. County being current in its payment of compensation, as provided herein.

d. County not being in default in any other requirement or provision of Section 3 hereof.

3. It is also understood and agreed that:

a. SCI may assess and collect from County the impound and other applicable fees in place at the time of entering into this Agreement for any and all animals treated or sheltered from outside of the city limits of SCI . Animals shall be treated (for fee-assessment purposes) as though they are from unincorporated areas of Washington County.

b. The compensation provided to SCI hereunder covers only a portion of the costs and expenses that SCI incurs in providing the services provided herein, such costs include, but are not limited to, those related to personnel, building and infrastructure, utilities, vehicle costs and maintenance, dispatch, reporting, vaccinations, food, storage, etc.

c. County will not have any ownership interest in, or preferential access to, any structure, facility, vehicle, personnel, or other asset of SCI financed in any way by or from the compensation provided to SCI herein.

4. County agrees to:

a. Provide the SCI Animal Shelter with the requisite owner records, on a timely basis, to facilitate the prompt return of dogs to their owners or lawful caretakers.

b. Pay—in advance and without demand, to SCI the sum of **One thousand Five Hundred ($1500.00)** monthly, not later than the 5th day of the month in which such payment is due.

5. Regarding *all services* provided hereunder, SCI agrees to:

a. Hold harmless and indemnify County and WCSO for all claims made against County or WCSO as a result of the acts or omissions of any employee or person employed or retained by SCI and providing services under the authority of this agreement.

b. Abide by the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000d, et seq.), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin.

c. Abide by the provisions of Executive Order No. 11246, as amended, which prohibits discrimination on the basis of age.

d. Abide by the provisions of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap or disability.

e. Treat as confidential any information concerning the business of County or WCSO, its financial affairs, its relations with employees, and any other information designated by WCSO as confidential, except that information which is a matter of public record.

6. **Interlocal Cooperation Act Requirements:** The following terms are included in this agreement in order to comply with the requirements of the ICA:

a. The parties herein represent that each of them has lawfully entered into this agreement, having complied with all relevant and applicable statutes, ordinances, resolutions, by-laws, and other legal requirements.

b. This agreement shall be interpreted according to the laws of the State of Utah.

c. This agreement does not establish a separate legal administrative entity.

d. There is anticipated to be no jointly acquired, owned, or held personal and/or real property under this agreement, and hence no property that shall require disposition by the parties upon termination of this agreement. All property (not animals) acquired during the agreement shall be the property of the entity that acquired it.

e. The parties hereto shall each file a copy of this agreement with its respective custodian of records (*i.e.,* clerk or recorder).

f. The respective governing bodies of the parties hereto have adopted resolutions authorizing this MOU; and legal counsel for each party has approved the agreement as being in proper form and compatible with the laws of the State of Utah.

g. This agreement shall be in effect from the date that it is signed by both parties hereto **until February 28, 2022**, and shall, unless terminated or amended by the Parties and subject to the provisions of Section 7b below, be **automatically renewed for each following year thereafter on an annual basis.**

7. **Modifications/Amendments:**

a. No alterations, modifications, or waivers of any provision or provisions of this Agreement shall be valid or effective unless it is first reduced to writing, approved by the governing body of each Party, duly signed, and filed with the original signed copy of this Agreement.

b. The compensation provided to SCI pursuant to Section 4b of this Agreement is subject to annual review by both Parties.

(1) If an increase in the requested compensation is anticipated by SCI, it shall provide notice, in writing, to County at least ninety (90) days prior to the end of the current term. County shall then, at least sixty (60) days prior to the end of the current year, sign and return to SCI the proposed amendment or communicate to SCI its decision to terminate the Agreement.

(2) If no increase in compensation is requested by SCI, and/or neither Party serves the other a notice of termination of this Agreement at least sixty (60) days prior to the end of the current year, then this Agreement (as then currently-modified) shall automatically renew for another year.

8. **Termination:** Notwithstanding the provisions of Section 7(b)(2), in the event that either party should determine that the other party's performance is unsatisfactory, it may terminate this Agreement upon thirty (30) days' prior written notice to the other party. Failure of dog owners and/or caretakers who reside outside the boundaries of SCI to pay the assessed fees under and pursuant to Section 3 above *shall*, for purposes of this Section, be attributable to County, and *may*, at SCI option, result in and provide the basis and/or grounds for a notice of termination of the Agreement by SCI.

9. **Suspension:** In the event of late payment or a failure to pay the agreed-upon compensation, as and when agreed to herein, SCI may, at its option, suspend service until such time as the compensation due hereunder is paid in full and/or give notice to terminate this Agreement.

10. **Fair Notice of Default:** The parties are desirous of giving one another fair notice of any default before sanctions other than termination of this Agreement under Section 8 or suspension under Section 9 are or may be sought. *[These provisions do not bind or affect the ability to terminate or suspend under Sections 8 and 9 above.]* In the event of an act of default with respect to any provision of this agreement, neither party may institute legal action with respect to such default without first complying with the following conditions:

a. Notice of such event of default must be given in writing and mailed to the other party by U.S. certified mail, return receipt requested.

b. Such written notice shall set forth the nature of the alleged default in the performance of the terms of this Agreement and shall designate the specific section(s) hereof which relate to the alleged act of default.

c. Such notice shall also contain a reasonable understandable description of the action to be taken or performed by the other party to cure the alleged default and the date by which the default must be remedied; and said date may not be fewer than fourteen (14) business days from the date of mailing of the notice of default.

11. **Good Faith -- Fees and Costs:** If either party fails to comply with any of the provisions of this agreement and the other party takes action to enforce such provisions or to enforce any payment stipulated in this agreement, the losing party will pay to the prevailing party the reasonable costs and expenses of such action, but not including attorneys fee. Each party shall be responsible for its own attorney fees. All lawsuits under this agreement, unless otherwise specified, shall be filed in the county where this agreement is executed and be governed by Utah law.

12. **Waiver:** The waiver by any party of a breach of any provision of this agreement shall not operate or be construed as a waiver of said provision or any subsequent breach thereof.

13. **Duplicate Originals:** That it is acknowledged that this Agreement, consisting of five (5) typewritten pages, exclusive of exhibits, has been executed in **duplicate** and that an original copy hereof has been retained by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers.

Ivins City

By: _____

Mayor

Date: _____

Washington County

By: _____

Gil Almquist, Commission

Date: 2-2-21

Approved as to form and compatibility with the laws of the State of Utah:

_____

Name
City Attorney
Ivins City

_____

Deputy Washington County Attorney