



MEETING DATE: 04/05/04

ITEM NO. 5

COUNCIL AGENDA REPORT

DATE: MARCH 25, 2004
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER
SUBJECT: AUTHORIZE AGREEMENT AMONG THE SILICON VALLEY ANIMAL CONTROL AUTHORITY AND ITS MEMBER CITIES REGARDING PURCHASE OF THOMAS ROAD PROPERTY

RECOMMENDATION:

Authorize agreement among the Silicon Valley Animal Control Authority and its member cities regarding purchase of Thomas Road property.

BACKGROUND:

Council voted on January 5, 2004 to proceed with contract negotiations with the City of San Jose for animal control service and approved withdrawing from the Joint Exercise of Powers Agreement effective June 30, 2004. Since that time, the remaining cities; Santa Clara, Campbell, and Monte Sereno have continued to proceed as a Joint Powers.

DISCUSSION:

The remaining cities in the Joint Exercise of Powers Agreement; Santa Clara, Campbell, and Monte Sereno, are proceeding with the purchase of the Thomas Road property for the animal shelter site. This agreement establishes an arrangement for the remaining cities to purchase the property and ensures that no funds from the withdrawing cities (Los Gatos, Saratoga and Cupertino), are encumbered or used in the property transaction. It also states that individually, and as a group, the withdrawing cities release any right, title, interest or entitlement of any kind in the property.

CONCLUSION:

Staff supports this agreement and recommends council approval.

PREPARED BY: Scott R. Seaman
Chief of Police

Signature of Scott R. Seaman

Reviewed by: PSJ Assistant Town Manager, Town Attorney, Clerk, Finance, Community Development
Revised: 3/29/04 10:16 am

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MAYOR AND TOWN COUNCIL  
SUBJECT:  
March 25, 2004

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

FISCAL IMPACT:

None.

Attachments:

- 1) Purchase Agreement for Thomas Road property
- 2) Board of Directors Agenda Item #12
- 3) Section 8.1 - Joint Powers Agreement

Distribution:

General

**AGREEMENT AMONG SVACA AND ITS MEMBER CITIES  
REGARDING PURCHASE OF THOMAS ROAD PROPERTY**

This Agreement is entered into among the Silicon Valley Animal Control Authority ("SVACA") and its member Agencies, Santa Clara, Campbell, Cupertino, Los Gatos, Saratoga and Monte Sereno, on the dates hereafter indicated.

**WHEREAS**, SVACA and its current six Member Agency cities approved and executed the Second Restated and Amended Joint Exercise of Powers Agreement Creating the Silicon Valley Animal Control Authority in October and November of 2003 ("Joint Powers Agreement"); and

**WHEREAS**, three Member Agencies, Cupertino, Los Gatos and Saratoga, have given notice to SVACA of their intent to withdraw from SVACA as of June 30, 2004 ("Withdrawing Cities"); and

**WHEREAS**, three Member Agencies, Santa Clara, Campbell and Monte Sereno, have elected to remain in SVACA and to carry out its mission, including the construction of an animal shelter ("Continuing Cities"); and

**WHEREAS**, SVACA's Operating Budget for FY 03-04 ("Budget") excluded capital expenditures related to the animal shelter as some Member Agencies were weighing their long-term participation in SVACA when the Budget was developed; and

**WHEREAS**, SVACA is in contract to purchase 3370 Thomas Road ("Property") for its animal shelter but SVACA does not have sufficient funds to cover said purchase based on the agreed upon contributions from Member Agencies to support the Budget; and

**WHEREAS**, the Continuing Cities desire to establish an arrangement to purchase the Property which ensures that no contributions or funds from the Withdrawing Cities are encumbered or used in the Property transaction; and

**WHEREAS**, the Withdrawing Cities recognize their obligation under Section 8.1 of the Joint Powers Agreement not to affect the ability of SVACA and the Continuing Cities to carry out and fulfill the purposes of SVACA; and

**WHEREAS**, in order to achieve these objectives, SVACA and its current Member Agencies have agreed to proceed with the purchase of the Property in accordance with the terms and conditions set forth below.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The Continuing Cities will arrange among themselves to tender sufficient funding to SVACA to cover the full purchase price of the Property in the amount of \$2,450,000, plus any amounts that may be needed to cover transactional costs of the Property acquisition ("Payment").

The Payment will be provided to SVACA in a timely manner such that SVACA can meet its financial obligations under the Purchase Agreement for the Property.

2. SVACA will place \$100,000 of the Payment from the Continuing Cities in its current operations reserve account to reimburse SVACA for the \$100,000 now on deposit in escrow for the Property and previously paid out of SVACA's operations reserve. SVACA will place the balance of the Payment from the Continuing Cities in a separate and segregated account for the purchase of the Property. SVACA will only use funding from this segregated account to cover any and all financial obligations related to and necessary for the acquisition of the Property.

3. SVACA shall maintain a complete and accurate accounting of the funding received from the Continuing Cities pursuant to this agreement and the manner in which the funding in the segregated account for the Property acquisition is expended.

4. Upon consummation of the Property acquisition, SVACA shall hold title to the Property, as contemplated by the Purchase Agreement for the Property.

5. The Withdrawing Cities, individually and as a group, hereby release, relinquish, discharge and forever disclaim any right, title, interest or entitlement of any kind in the Property.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereupon duly authorized and their official seals to be hereto affixed on the dates as shown herein.

#### MEMBER AGENCIES

APPROVED AS TO FORM:

CITY OF CAMPBELL, a municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its; \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF CUPERTINO, a municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF MONTE SERENO, a municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF SANTA CLARA, a municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF LOS GATOS, a municipal corporation

By: \_\_\_\_\_

Its; \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF SARATOGA, a municipal corporation

By: \_\_\_\_\_

Its; \_\_\_\_\_

Date: \_\_\_\_\_

SILICON VALLEY  
ANIMAL CONTROL AUTHORITY

**AGENDA ITEM**

**Agreement Among SVACA and Its Member Cities  
Regarding Purchase of Thomas Road Property**

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**RECOMMENDED MOTION**

That the Board of Directors approve the Agreement Among SVACA and Its Member Cities Regarding Purchase of Thomas Road Property

**DISCUSSION**

TAC representatives from the three remaining SVACA city members, SVACA legal counsel and staff met on March 4, 2004 to discuss the manner in which SVACA can proceed with the purchase of the Thomas Road property without impacting the current year's budget. The attached agreement establishes an arrangement to purchase the Property which ensures that no contributions or funds from the Withdrawing Cities are encumbered or used in the Property transaction. The agreement was written by legal counsel with input from the TAC members and staff.

The Withdrawing Cities recognize their obligation under Section 8.1 (see attachment) of the Joint Powers Agreement not to affect the ability of SVACA and the continuing Cities to carry out and fulfill the purposes of SVACA. At the same time, the Continuing Cities desire to purchase the Thomas Road property in a manner that keeps faith with the understanding that the Withdrawing Cities will not be required to contribute funds toward the capital improvement expenditures for the animal shelter. In order to carry out these objectives, SVACA and its current Member Agencies would agree to proceed with the purchase of the Property in accordance with the following:

1. The Continuing Cities will arrange among themselves to tender sufficient funding to SVACA to cover the full purchase price of the Property in the amount of \$2,450,000, plus any amounts that may be needed to cover transactional costs of the Property acquisition ("Payment"). The Payment will be provided to SVACA in a timely manner such that SVACA can meet its financial obligations under the Purchase Agreement for the Property.

2. SVACA will place \$100,000 of the Payment from the Continuing Cities in its current operations reserve account to reimburse SVACA for the \$100,000 now on deposit in escrow for the Property and previously paid out of SVACA's operations reserve. SVACA will place the balance of the Payment from the Continuing Cities in a separate and segregated account for the purchase of the Property. SVACA will only use funding from this segregated account to cover any and all financial obligations related to and necessary for the acquisition of the Property.
3. SVACA shall maintain a complete and accurate accounting of the funding received from the Continuing Cities pursuant to this agreement and the manner in which the funding in the segregated account for the Property acquisition is expended.
4. Upon consummation of the Property acquisition, SVACA shall hold title to the Property, as contemplated by the Purchase Agreement for the Property.
5. The Withdrawing Cities, individually and as a group, hereby release, relinquish, discharge and forever disclaim any right, title, interest or entitlement of any kind in the Property.

SVACA legal counsel has distributed the Agreement to the City Attorneys of all of the Member Agencies for review and comment.

## **CONCLUSION**

Staff believes that this agreement benefits all of the parties by clarifying the financial responsibility of the Continuing Cities for the purchase of the Thomas Road property and releasing the Withdrawing Cities from any responsibility for or interest/entitlement in this property. Finally, the agreement ensures that the current year budget will not be impacted by the capital expenditures for purchase of the Property.

## **DOCUMENTS ATTACHED**

Agreement Among SVACA and Its Member Cities Regarding Purchase of Thomas Road Property

Section 8.1 of the Joint Powers Authority Agreement

**FISCAL IMPACT**

SVACA's current operations reserve account will increase by the \$100,000 Payment from the Continuing Cities to reimburse SVACA for the \$100,000 now on deposit in escrow for the Property.



set forth in this Agreement. The Member Agencies acknowledge and agree that the contributions required pursuant to Section 6.3 of a Member Agency that enters into such a contract with the Authority may be modified accordingly, with the approval of the Board of Directors, to account for the greater or lesser level of service being provided to that Member Agency by the Authority. Member Agencies requesting other animal related services from the Authority in addition to those Animal Control Services specified in Exhibit "A" of this Agreement shall be held financially responsible for direct additional costs incurred or encumbered by the Authority in the implementation of special programs, projects, and services.

## **ARTICLE VII ENFORCEMENT**

**Section 7.1.** Reserved.

**Section 7.2.** Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law, to enforce this Agreement.

## **ARTICLE VIII WITHDRAWAL OF A MEMBER AGENCY**

**Section 8.1.** Agreement Continues. Notwithstanding the provisions of Section 9.1, each Member Agency agrees that the withdrawal of a Member Agency pursuant to this Article VIII is not intended to and will not terminate this Agreement or affect the ability of the Board of Directors or the remaining Member Agencies to carry out and fulfill the purposes of this Agreement.

**Section 8.2.** Withdrawal. A Member Agency may withdraw from the Authority and this Agreement by filing written notice thereof with the Authority. Withdrawal will take effect on July 1 of any year provided there is a least six months advance notice. The withdrawal of any Member Agency from the Authority shall in no way affect the rights and obligations of the remaining Member Agencies. A withdrawing Member Agency is still obligated for all payments due from it for the fiscal year of the withdrawal. Further, in the event of withdrawal of a Member Agency, the following terms and conditions will apply:

**Section 8.2.1.** Withdrawal shall not relieve the party of its proportionate share of any debts, liabilities or other contractual commitments incurred by the Authority prior to the effective date of the party's notice of withdrawal; and

**Section 8.2.2.** If Bonds have been issued and the withdrawing Member Agency benefits directly or indirectly from the Bonds issued and outstanding, the Member Agency shall not withdraw from the Authority until such time as all of those Bonds and the interest thereon shall first have been paid in full or provision for such full payment shall first have been contractually made with the Authority and approved by the Board of Directors; and

