

AN ORDINANCE      2012-10-18-0828

**AUTHORIZING A DONATION AGREEMENT WITH WILDLIFE RESCUE & REHABILITATION FOR RELOCATION OF ANIMALS AT RED BERRY ESTATE, 856 GEMBLER ROAD IN DISTRICT 2.**

\* \* \* \* \*

**WHEREAS**, Wildlife Rescue & Rehabilitation is a non-profit organization dedicated to rescuing and rehabilitating wildlife, and educating the public about wildlife, and has arrangements with various ranch owners in Central and South Texas with no-kill policies for wildlife on their properties, which ranch properties are approved by Wildlife Rescue & Rehabilitation for the relocation of wildlife; and

**WHEREAS**, agreement has been reached with Wildlife Rescue & Rehabilitation, to accept donation of approximately 52 hoofed game animals and two peacocks which the City acquired as part of the acquisition of the 84-acre Red Berry Estate in July 2012, which animals Wildlife Rescue & Rehabilitation has agreed to accept for the public purpose of relocating the animals for their protection and in order to provide the animals with a no-kill, natural habitat for the remainder of their lives, and in order to reduce the risks to the public of having the animals at the Red Berry Estate and eliminate the expense to the City of feeding and caring for the animals; and

**WHEREAS**, as part of the Donation Agreement, the City has agreed to reimburse Wildlife Rescue and Rehabilitation for its expenses incurred in re-locating the animals; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee is authorized to execute the Donation Agreement with Wildlife Rescue and Rehabilitation, set forth in **Attachment I**. The City Manager or her designee should take all actions necessary or convenient to effectuate the Donation Agreement, including agreeing to and executing all necessary or convenient instruments and agreements.

**SECTION 2.** Funding in the amount of \$24,999.00 for this Ordinance is available in Fund 29654000, Cost Center 3401040001, General Ledger 5201040, as part of the Fiscal Year 2013 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Wildlife Rescue and Rehabilitation Center and should be encumbered with a purchase order.

**SECTION 4.** Funds generated by this Ordinance will be deposited into Fund 29654000, Internal Order 234000000002 and General Ledger 4407710.

**SECTION 5:** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

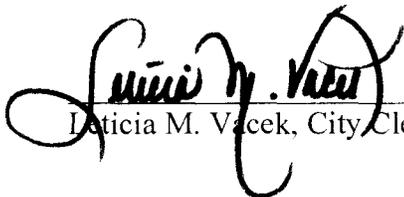
**SECTION 6.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 18<sup>th</sup> day of October, 2012.



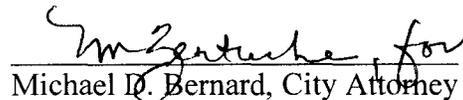
M A Y O R  
Julián Castro

**ATTEST:**

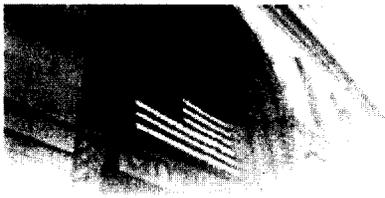


Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

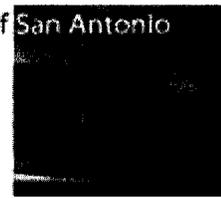


Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 15B

<b>Name:</b>	15A, 15B						
<b>Date:</b>	10/18/2012						
<b>Time:</b>	09:36:12 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving a Donation Agreement between the City of San Antonio and Wildlife Rescue & Rehabilitation for the relocation of animals currently living at the Red Berry Estate.						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				

# **ATTACHMENT 1**

**DONATION AGREEMENT  
FOR  
ANIMALS AT RED BERRY MANSION  
*Wildlife Rescue & Rehabilitation***

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”), and WILDLIFE RESCUE & REHABILITATION, a Texas 501(c)(3) non-profit corporation, by and through its Board of Directors (“WRR”), both of which may be referred to herein collectively as the “Parties”. This Agreement is authorized pursuant to Ordinance \_\_\_\_\_, and is effective as of the date of said Ordinance (“Effective Date”).

WHEREAS, on July 6, 2012, City acquired an approximately 84 acre tract of land located at 856 Gembler Road, San Antonio, Bexar County, Texas, together with Mansion and other structures (hereinafter “Red Berry Property”); and

WHEREAS, as part of the property sale transaction, the City acquired approximately 52 hooved game animals and two peacocks from the City’s predecessor-in-interest, which animals have lived exclusively on the Red Berry Property, a list of which is attached hereto and incorporated herein by reference as **Exhibit “A”** (hereinafter “Red Berry Animals”); and

WHEREAS, the City’s prospective plan for the Red Berry Property is to enter into a public-private agreement for the development of the property, which prospective development will not be able to accommodate the Red Berry Animals; and

WHEREAS, the City wishes to re-locate the animals to a natural habitat where their needs will be met and where they may live out the remainder of their lives in peace, and in order to reduce the risks to the public of having the Red Berry Animals at the Red Berry Property and to eliminate the expense to the City of feeding and caring for the Red Berry Animals; and

WHEREAS, WRR is a non-profit organization dedicated to rescuing and rehabilitating wildlife, and educating the public about wildlife, and has arrangements with various ranch owners in Central and South Texas with no-kill policies for wildlife on their properties;

WHEREAS, WRR has agreed to accept donation of the Red Berry animals for the public purpose of re-locating the hooved game animals of the Red Berry Animals to WRR-approved no-kill ranch properties with fencing and water; and

WHEREAS, WRR has agreed to accept donation of the two peacocks at the Red Berry Property for the public purpose of re-locating them to its sanctuary at Kendalia, Texas; and

WHEREAS, the City and WRR have entered into a separate Funding Agreement, attached hereto and incorporated herein by reference as **Exhibit "B"**, for WRR to be reimbursed by the City for expenses incurred for neutering the males of certain of the hooved game species and for rounding up and transporting the hooved game animals to ranch properties chosen by WRR;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, City and WRR agree as follows:

1. Donation of Red Berry Animals. City agrees to donate, and WRR agrees to accept the donation of, the Red Berry Animals listed on **Exhibit "A,"** for the public purposes stated in this Agreement.
2. Donation Conditions. WRR agrees to retain veterinarian services to neuter, at the veterinarian's discretion and if medically advisable, the males of the hooved game species, unless prohibited by endangered species laws. WRR will retain professional animal movers to round up the animals at the Red Berry Property and transport the animals to the WRR sanctuary or to WRR-approved designated no-kill ranches in Central and South Texas with which ranches WRR has agreements to re-locate the Red Berry Animals. The Red Berry Animals shall not be sold to third parties and shall not be hunted. The donation of the Red Berry Animals by the City, and acceptance of the donation by WRR, is solely for the public purpose of re-locating the animals to a natural habitat where they may live out their lives in peace. All WRR-approved ranches are fenced and provide water for wildlife.
3. Compliance with Laws. WRR agrees to comply with all federal, state, and local laws and regulations regarding the treatment and relocation of the Red Berry Animals.
4. Completion Date for Re-location. WRR agrees to commence rounding-up and transporting the Red Berry Animals from the Red Berry Property as of the Effective Date of this agreement, and shall complete the re-location of the Red Berry Animals by December 31, 2012.
5. Peacocks. WRR shall re-locate the two peacocks at the Red Berry Property to the WRR sanctuary in Kendalia, Texas or other WRR-approved site.
6. Reimbursement of Expenses. The City agrees to reimburse WRR for expenses incurred for veterinarian services and for rounding up and

transporting the Red Berry Animals pursuant to the terms of the Funding Agreement (**Exhibit “B”**).

7. Execution of Documents. City Manager, or her delegee, is authorized, and WRR agrees to execute any and all documents necessary to effect the transfer of ownership of the Red Berry Animals and for transfer of the Red Berry Animals to their ultimate habitat, or as required for compliance with state, federal and/or local laws.
8. Notice. For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed via registered or certified mail, postage prepaid, to the addresses set forth below:

If intended for City, to:

City of San Antonio  
Director, Center City Development  
Office  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for WRR, to:

Bill Wilkinson  
Executive Director  
Wildlife Rescue & Rehabilitation  
P.O. Box 369  
Kendalia, Texas 78027

7. Insurance.

A) Prior to the commencement of any work under this Agreement or the Funding Agreement, WRR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Center City Development Office, which shall be clearly labeled “*Red Berry Mansion Animal Relocation*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Center City Development Office. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) WRR's financial integrity is of interest to the City; therefore, subject to WRR's right to maintain reasonable deductibles in such amounts as are approved by the City, WRR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at WRR's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

D) WRR agrees to require, by written contract, that all sub-contractors providing goods or services hereunder obtain the same insurance coverages required of WRR herein, and provide a certificate of insurance and endorsement that names the WRR and the CITY as additional insureds. WRR shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the sub-contractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). WRR shall be required to comply with any such

requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. WRR shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Center City Development Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) WRR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, WRR shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend WRR's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon WRR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order WRR to stop work hereunder, and/or withhold any payment(s) which become due to WRR hereunder until WRR demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which WRR may be held responsible for payments of damages to persons or property resulting from WRR's or its sub-contractors' performance of the work covered under this Agreement.

J) It is agreed that WRR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) WRR and any Sub-contractors are responsible for all damage to their own equipment and/or property.

7. Indemnity.

**WRR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to WRR'S activities under this Agreement, including any acts or omissions of WRR, any agent, officer, director, representative, employee, consultant or sub-contractor of WRR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT WRR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. WRR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or WRR known to WRR related to or arising out of WRR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at WRR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving WRR of any of its obligations under this paragraph.

8. Miscellaneous.

- A) The Recitals above are hereby incorporated into this Agreement.
- B) This Agreement shall be binding upon and inure to the benefit of the City and WRR, their successors and assigns.
- C) WRR may not assign this Agreement without consent of City Council.
- D) This Agreement may be amended, modified, superseded or cancelled only by written instrument executed by the Parties.
- E) THE VALIDITY, ENFORCEMENT, INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.
- F) Time is of the essence of this Agreement.

**CITY OF SAN ANTONIO**

**WRR**

Wildlife Rescue & Rehabilitation  
A Texas 501(c)(3) non-profit corporation

\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Printed Name: **William F. Wilkinson**

Title: \_\_\_\_\_

Title: **III**

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

Date: **Executive Director**

Approved as to Form:

**9/27/2012**

\_\_\_\_\_  
Assistant City Attorney

**Exhibit A**  
**List of Red Berry Animals\***

9 oryx (also referred to as antelopes), 3 males

31 gazelles (also referred to as black buck), number of males unknown

12 fallow, number of males unknown

2 peacocks

\*All numbers are approximate only and subject to change.

**Exhibit B**  
**Funding Agreement**

**FUNDING AGREEMENT  
FOR  
RELOCATION OF ANIMALS  
RED BERRY MANSION  
*Wildlife Rescue & Rehabilitation***

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through Lori Houston, Director, Center City Development Office and WILDLIFE RESCUE & REHABILITATION, a Texas 501(c)(3) non-profit corporation, by and through its Board of Directors (“WRR”), both of which may be referred to herein collectively as the “Parties”.

This Agreement is being entered in order for the City to provide funding to WRR for expenses WRR incurs in the relocation of approximately 52 hooved game animals and 2 peacocks from the Red Berry Mansion property (“RBM”) in order to assist the City during the transition of ownership of RBM from the City’s predecessor-in-title to the City. Because of WRR’s prior experience in assisting with the removal and relocation of wildlife from urban areas, and because of the unique nature of the Red Berry Property, WRR’s services are required by the City. The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“WRR” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of City’s Center City Development Office.

“RBM” or “the Property” shall mean the Red Berry Mansion and surrounding structures and acreage.

**II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2012, unless the parties mutually agree to extend the term by written agreement in order to complete the relocation of the animals.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation. This Agreement is an exhibit to and is incorporated by reference within a Donation Agreement by and between the parties, which Donation Agreement is subject to City Council approval. If the Donation Agreement is not approved by City Council, this Funding Agreement shall be null and void.

### **III. SCOPE OF SERVICES**

3.1 WRR agrees to provide the services described in the attached Exhibit A entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 WRR shall be responsible for sub-contracting for veterinarian services and for professional animal round-up and transport services. WRR shall pay the sub-contractors directly for the services rendered and invoice City, or, at its option, WRR may submit the sub-contractor invoices directly to the City; however, all City remittances shall be made payable to WRR, which shall then be responsible for payment to sub-contractors.

### **IV. COMPENSATION TO WRR**

4.1 In consideration of WRR's agreement to remove and relocate the animals from RBM, City agrees to reimburse WRR for expenses incurred by WRR for veterinarian services, for the services of professional animal movers, and insurance costs incurred by WRR solely for performance of the relocation of the animals, in an amount not to exceed \$24,999.99. Estimated costs of the services to be provided are set forth in **Exhibit A**.

4.2 WRR shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Center City Development Office, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 No additional fees or expenses of WRR shall be charged by WRR nor be payable by City. The parties hereby agree that all compensable expenses of WRR have been provided for in the total payment to WRR as specified in Section 4.1 above. Total payments to WRR cannot exceed that amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and, if required, approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of services require written approval by City. The approval official shall be Director. Payment will be made to WRR following written approval of the final services by Director. City shall not be obligated or liable under this Agreement to any party, other than WRR, for the payment of any monies or the provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by WRR pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by WRR.

5.2 WRR understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

6.1 WRR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 WRR shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, WRR shall retain the records until the resolution of such litigation or other such questions. WRR acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require WRR to return the documents to City at WRR's expense prior to or at the conclusion of the retention period. In such event, WRR may retain a copy of the documents.

6.3 WRR shall notify City, immediately, in the event WRR receives any requests for information from a third party, which pertain to the documentation and records referenced herein. WRR understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 60 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should WRR default in the performance of this Agreement in a manner stated in this Section 7.4 below, which default shall by its nature be subject to cure by WRR, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. WRR shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If WRR fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another WRR to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new WRR against WRR's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, WRR shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by WRR, or provided to WRR, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by WRR in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at WRR's sole cost and expense. Payment of compensation due or to become due to WRR is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, WRR shall submit to City its claims, in detail, for

the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by WRR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by WRR of any and all right or claims to collect moneys that WRR may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, WRR shall cease all operations of work being performed by WRR or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue WRR for any default hereunder or other action.

## VIII. NOTICE

For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed via registered or certified mail, postage prepaid, to the addresses set forth below:

If intended for City, to:

City of San Antonio  
CCDD Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for WRR, to:

Bill Wilkinson  
Executive Director  
Wildlife Rescue & Rehabilitation  
P.O. Box 369  
Kendalia, Texas 78027

## IX. *[Intentionally Omitted]*

## X. INSURANCE

A) Prior to the commencement of any work under this Agreement, WRR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development Office, which shall be clearly labeled "Red Berry Mansion Animal Relocation" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City.

The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development Office. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) WRR's financial integrity is of interest to the City; therefore, subject to WRR's right to maintain reasonable deductibles in such amounts as are approved by the City, WRR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at WRR's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

D) WRR agrees to require, by written contract, that all sub-WRRs providing goods or services hereunder obtain the same insurance coverages required of WRR herein, and provide a certificate of insurance and endorsement that names the WRR and the CITY as additional insureds. WRR shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the sub-WRR. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement.

Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). WRR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. WRR shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Center City Development Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

F) WRR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, WRR shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend WRR's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon WRR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order WRR to stop work hereunder, and/or withhold any

payment(s) which become due to WRR hereunder until WRR demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which WRR may be held responsible for payments of damages to persons or property resulting from WRR's or its sub-WRRs' performance of the work covered under this Agreement.

J) It is agreed that WRR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) WRR and any Sub-WRRs are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

**WRR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to WRR'S activities under this Agreement, including any acts or omissions of WRR, any agent, officer, director, representative, employee, consultant or sub-contractor of WRR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT WRR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. WRR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or WRR known to WRR related to or arising out of WRR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at WRR'S cost. The

CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving WRR of any of its obligations under this paragraph.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 WRR shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of WRR. WRR, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding, and this Agreement is made in reliance thereon, that WRR intends to use the subcontractors listed in Exhibit B in the performance of this Agreement. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Manager, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of WRR. City shall in no event be obligated to any third party, including any subcontractor of WRR, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Manager. All agreements with vendors and subcontractors shall be between WRR and the vendor and/or subcontractor, and WRR shall be responsible for any and liabilities as between the vendor/subcontractor and the WRR.

12.4 Except as otherwise stated herein, WRR may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Manager. As a condition of such consent, if such consent is granted, WRR shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor WRR, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should WRR assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of WRR shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by WRR shall in no event release WRR from any obligation under the terms of this Agreement, nor shall it relieve or release WRR from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

WRR covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that WRR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and WRRs; that the doctrine of “respondeat superior” shall not apply as between City and WRR, its officers, agents, employees, contractors, subcontractors and WRRs, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and WRR. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the WRR under this Agreement and that the WRR has no authority to bind the City.

### ***XIII. [Intentionally Omitted]***

### **XIV. CONFLICT OF INTEREST**

15.1 WRR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, WRR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. WRR further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and WRR. Manager shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVIII. LICENSES/CERTIFICATIONS**

WRR warrants and certifies that WRR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XIX. COMPLIANCE**

WRR shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXI. LAW APPLICABLE**

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXII. LEGAL AUTHORITY**

The signer of this Agreement for WRR represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of WRR and to bind WRR to all of the terms, conditions, provisions and obligations herein contained.

## **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXV. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

- |                  |                        |
|------------------|------------------------|
| <b>Exhibit A</b> | Scope of Services      |
| <b>Exhibit B</b> | List of Subcontractors |

## **XXVI. ENTIRE AGREEMENT**

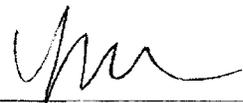
This Agreement, its exhibits, and the Donation Agreement, together with its authorizing ordinance, to which this Funding Agreement is an Exhibit, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, written or oral, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments. This Agreement replaces and supersedes all prior agreements regarding the subject matter herein.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**WRR**

Wildlife Rescue & Rehabilitation, a  
Texas 501(c)(3) non-profit corporation



(Signature)

Printed Name:

Lori Houston

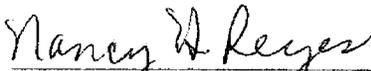
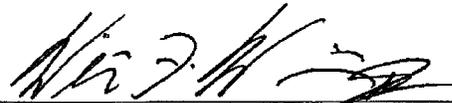
Title:

Director

Date:

10/2/12

Approved as to Form:

  
Assistant City Attorney

(Signature)

Printed Name:

**William F. Wilkinson  
III**

Title:

**Executive Director**

Date:

9/27/12

**Exhibit A**  
**Scope of Services**

**I. List of Red Berry Animals\***

9 oryx (also referred to as antelopes), 3 males

31 gazelles (also referred to as black buck), number of males unknown

12 fallow, number of males unknown

2 peacocks

\*All numbers are approximate only and subject to change.

**II. Services to be Provided**

1. Round up hooved game animals (oryx, gazelles, and fallow) @ \$150/animal (estimated cost for 52 animals = \$7,800)
2. Veterinarian services for neutering male hooved game animals, at the veterinarian's discretion and if medically advisable (if permitted by law) @ \$350/animal, estimated 20 males = \$7,000
3. Estimated transportation charges for oryx (\$2.50/mile) to a ranch location about 45 miles from Red Berry Property is \$112.50/trip.
4. Estimated transportation charges for gazelles and fallow to a ranch location about 160 miles from Red Berry Property is \$400/trip.
5. Multiple trips may be required if all animals cannot be rounded up at one time.
6. WRR will be responsible for all required paperwork for transport of the animals in compliance with local, state, and federal laws and regulations.
7. Relocate 2 peacocks to the WRR sanctuary in Kendalia, Texas or other WRR-approved site.
8. Insurance rider: \$300.

Current estimated total, assuming one trip for the oryx and one trip for the gazelles and fallow, is **\$15,612.50.**

**Exhibit B**  
**WRR Subcontractors for Red Berry Animal Donation and Relocation**

WRR will select from the following listed providers.

**Veterinarian Services**

Dr. Cheryl Hoggard & Dr. Frank Shuman  
Houston SPCA  
900 Portway Drive  
Houston, Texas 77024

Dr. Travis Nichols & Dr. Seth Jones  
Kendall County Equine Clinic  
141 Hwy 46 E  
Boerne, TX 78006  
830-336-2041

Dr. Lamar Crossland  
3710 US Highway 290 East  
Dripping Springs, TX 78620  
512-894-0266

Dr. Damon O'Gan  
20640 Highway 150  
Driftwood, TX 78619  
512-858-0058

**Professional Animal Transporters**

Bodie Knapp  
11212 Hwy 359  
Mathis, TX 78368

Bob Littlefield  
Bexar Exotic Wildlife  
250 County Road 4314  
Hondo, TX 78861