

RD:RLT
3/22/2004

EXECUTORY COPY FOR Los Gatos

4/6/04
4.5(k)
72038
OFFICE OF THE TOWN CLERK

AGR 04.083

IHH _____

ORD _____

REC _____

RESO _____

**ANIMAL SERVICES AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE TOWN OF LOS GATOS**

This Animal Services Agreement ("AGREEMENT") is entered into this 29th day of June 2004, by and between the TOWN OF LOS GATOS, a municipal corporation (hereinafter "LOS GATOS"), and the CITY OF SAN JOSE, a municipal corporation (hereinafter "SAN JOSE"). LOS GATOS and SAN JOSE are hereinafter collectively referred to as the "PARTIES."

RECITALS

WHEREAS, LOS GATOS desires to provide certain animal control services to its residents and citizens; and

WHEREAS, SAN JOSE has the personnel and facilities necessary to provide the animal control services.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this AGREEMENT, the PARTIES hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

SAN JOSE shall perform those services specified in detail in Exhibit A, entitled "SCOPE OF SERVICES" ("Animal Services"), which is attached hereto and incorporated herein.

SECTION 2. TERM

The term of this AGREEMENT shall be from July 1, 2004 to June 30, 2024, inclusive. SAN JOSE shall begin providing Animal Services pursuant to this AGREEMENT on July 1, 2004.

SECTION 3. CAPITAL CONTRIBUTION

Within thirty-five days of the execution of this AGREEMENT, LOS GATOS shall pay a one-time capital contribution payment to SAN JOSE of Three Hundred Thousand Dollars (\$300,000). The capital contribution is to be used toward the SAN JOSE'S new animal shelter, a new animal control vehicle, and overhead costs related to the expansion of the shelter facility. In the event, LOS GATOS or SAN JOSE terminates the AGREEMENT as specified under SECTION 12 of this AGREEMENT, SAN JOSE shall refund LOS GATOS' capital contribution based on the following schedule for effective date of termination and amount:

July 1, 2004 through June 30, 2005	\$300,000
July 1, 2005 through June 30, 2006	\$200,000
July 1, 2006 through June 30, 2007	\$100,000

If the effective date of the termination is after June 30, 2007, no refund shall be paid.

SECTION 4. MONTHLY PAYMENT PROVISIONS.

A. Payment Schedule

LOS GATOS shall make payments in equal monthly installments for services provided after execution of this AGREEMENT. All installment payments by LOS GATOS shall be due and payable on the first day of the month and shall be delinquent on the fifteenth (15) business day thereafter without demand or notice to LOS GATOS. SAN

JOSE will provide LOS GATOS an invoice at least fifteen (15) calendar days prior to the payment due date.

B. Payment Amounts

For Animal Services provided by SAN JOSE to LOS GATOS under this AGREEMENT, LOS GATOS shall pay SAN JOSE compensation for the period of July 1, 2004 through June 30, 2005 in accordance with Section 4.A. at the following base rate, to be adjusted as described herein:

Field and Shelter Services	\$164,000
----------------------------	-----------

The cost for Field and Shelter services will be based on the number of live domestic animals impounded by SAN JOSE. This cost incorporates all administrative costs, Medical Services, and Dead Animal Services. The PARTIES agree to estimate the number of animals to be impounded at the beginning of each fiscal year. The PARTIES also agree that any overages will be separately billed and any underages separately rebated at the end of each fiscal year. Any adjustments during the Fiscal Year 2004-2005 will be from the base rate of \$164,000.

The compensation for Animal Services under this AGREEMENT shall adjust each fiscal year. The PARTIES agree that the adjusted rate shall be based on the formula detailed in Exhibit B, which is attached hereto and incorporated herein.

In the event SAN JOSE provides services to LOS GATOS prior to execution of this AGREEMENT, LOS GATOS shall compensate SAN JOSE in accordance with the terms set forth in SECTION 4 of this AGREEMENT.

SECTION 5. INSPECTION OF FINANCIAL BOOKS AND RECORDS.

During the term of this AGREEMENT, SAN JOSE shall keep its financial books and records directly pertaining to the provision of Animal Services under the AGREEMENT open to inspection and audit by LOS GATOS or LOS GATOS' designated representative(s), upon request of LOS GATOS, and during normal business hours. Any audit of SAN JOSE's financial books and records conducted by LOS GATOS shall be at the expense of LOS GATOS.

SECTION 6. CONFIDENTIALITY.

SAN JOSE agrees that to the extent consistent with the California Public Records Act and applicable California law, it shall maintain in confidence and shall not disclose to any third party reports or other documents prepared in connection with the performance of Animal Services under the AGREEMENT.

SECTION 7. PROJECT MANAGER.

The PARTIES shall each designate a Project Manager through whom any necessary review of the Animal Services performed under the AGREEMENT will occur.

SECTION 8. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between SAN JOSE and LOS GATOS pursuant to Government Code section 895.6, SAN JOSE and LOS GATOS agree that all losses or liabilities incurred by a party shall not be shared pro rata as defined in Government Code section 895.6, but instead SAN JOSE and LOS GATOS agree that pursuant to Government Code section 895.4, each of the PARTIES hereto shall fully indemnify and hold the other party, their officers, board members, employees and agents, harmless from any claim, expense or

cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of and only to the extent of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No party, nor any officer, board member, employee or agent thereof shall be responsible to the extent any damage or liability occurs by reason of the negligent acts or omissions or willful misconduct of other party hereto, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this AGREEMENT.

SECTION 9. INDEPENDENT CONTRACTOR RELATIONSHIP.

This AGREEMENT shall in no way be construed to constitute SAN JOSE as the partner, legal representative, or employee of LOS GATOS or LOS GATOS of SAN JOSE for any purpose whatsoever, or as the agent of LOS GATOS or SAN JOSE, and neither party shall act or attempt to act or represent itself directly or by implication as having such status or relationship. The PARTIES shall have the relationship of independent contractors, and except as specifically provided in this AGREEMENT, each party shall be solely responsible for all obligations and liabilities pertaining to the business, activities, and facilities of that party. As an independent contractor, the PARTIES shall obtain no rights to retirement benefits or other benefits, which accrue, to the PARTIES' respective employees, and the PARTIES hereby expressly waive any claim either of them may have to any such rights.

SECTION 10. ASSIGNABILITY.

SAN JOSE and LOS GATOS acknowledge and agree that the expertise and experience of SAN JOSE are material considerations inducing LOS GATOS to enter into this AGREEMENT. LOS GATOS acknowledges and accepts that a portion of the services provided under this AGREEMENT shall be provided by a handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors. Neither PARTY shall assign or transfer any interest in this AGREEMENT, or the performance of any obligations hereunder, other than those services provided by the handler of dead deer and livestock, wildlife services, and/or independent veterinary doctors, without the prior written consent of the other, and any attempt by either of the PARTIES to assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 11. NONDISCRIMINATION.

Neither PARTY shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT

SECTION 12. TERMINATION OF AGREEMENT.

A. Termination

This AGREEMENT may be terminated earlier at any time:

1. Upon the written consent of both SAN JOSE and LOS GATOS;
2. By either SAN JOSE or LOS GATOS immediately upon notice to the other, if the other breaches any material obligation under this AGREEMENT and

such breach remains unremedied for at least thirty (30) days following written notice thereof to the breaching party; or

3. Upon at least one hundred eighty (180) days prior written notice by LOS GATOS to SAN JOSE or SAN JOSE to LOS GATOS of that party's desire to terminate this AGREEMENT. If LOS GATOS does not appropriate the full amounts due to SAN JOSE under this AGREEMENT for any fiscal year on or before June 30 of the year directly preceding the fiscal year for which Animal Services are provided by SAN JOSE, then that action shall, as of the same June 30, constitute the start of the 180-day notice of termination of this AGREEMENT by LOS GATOS pursuant to this SECTION.

B. Effects of Termination

Upon the effective date of any termination of this AGREEMENT, SAN JOSE's obligation to provide Animal Services to LOS GATOS under this AGREEMENT shall cease, and LOS GATOS' obligation to make payments hereunder for periods of time after the effective date of termination shall cease, provided that the PARTIES shall have any and all remedies available under law for any breach of this AGREEMENT. The PARTIES may also elect to negotiate a new agreement for the provision of Animal Services at any time after the effective date of termination.

C. Termination Costs

In the event LOS GATOS elects to terminate this AGREEMENT, SAN JOSE shall be reimbursed for stray animals that were sheltered for LOS GATOS but not paid for prior to termination for a period of twelve (12) months from the date of termination. The reimbursement will be at the rate per animal agreed upon by the PARTIES for that fiscal year. SAN JOSE shall notify LOS GATOS of the number of animals it shelters during the twelve (12) month period through and in a monthly report provided by SAN JOSE in the same format and manner as the monthly impound

report. LOS GATOS shall pay SAN JOSE for shelter services in accordance with SECTION 4.A.

SECTION 13. COMPLIANCE WITH LAWS.

Each PARTY shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. GIFTS.

- A. LOS GATOS is familiar with SAN JOSE's prohibition against the acceptance of any gifts by a SAN JOSE officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. LOS GATOS agrees not to offer any SAN JOSE officer or designated employee gifts prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the AGREEMENT by LOS GATOS. In addition to any other remedies SAN JOSE may have in law or equity, SAN JOSE may terminate this AGREEMENT for such breach as provided in Section 12.A.2 of this AGREEMENT.

SECTION 15. RETROACTIVE SERVICES PROVIDED.

It is understood and agreed that SAN JOSE may have provided services pursuant to the provisions of this AGREEMENT, but prior to the execution of this AGREEMENT by the PARTIES, in anticipation of this execution. LOS GATOS shall compensate SAN JOSE for those services in accordance with the terms of this AGREEMENT. However, in no instance shall SAN JOSE be compensated under this AGREEMENT for work performed for LOS GATOS prior to July 1, 2004.

SECTION 16. INSURANCE.

SAN JOSE shall, at its own expense, maintain a program of self-insurance and/or insurance as specified in EXHIBIT C "INSURANCE," which is attached hereto and incorporated herein.

SECTION 17. NOTICES AND INVOICES.

All notices and invoices required or permitted hereunder shall be deemed to have been received when delivered in person or if mailed, on the third (3rd) business day after the date on which mailed, postage prepaid, and addressed to each party as follows:

To SAN JOSE:

Director
San Jose Animal Care and Services
1821 Zanker Road
San Jose, CA 95112

To LOS GATOS:

Chief of Police
Los Gatos/Monte Sereno Police
Department
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95032

The PARTIES agree to notify each other in writing of any change in the address no later than thirty (30) days prior to the change in location for receipt of notice.

SECTION 18. VENUE.

In the event that suit shall be brought by either party to this AGREEMENT, the PARTIES agree that venue shall be exclusively vested in the state courts of the State of

California, County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 19. GENERAL PROVISIONS.

A. Entire Agreement

This AGREEMENT constitutes the entire agreement between the PARTIES hereto relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written commitments, understandings and agreements. No changes or modifications to this AGREEMENT shall be valid or binding unless contained in a written amendment duly executed by the PARTIES.

B. Waivers

No delay or failure of either party to exercise or enforce at any time any right or provision of this AGREEMENT shall be considered a waiver of such right or provision or of such party's right thereafter to exercise or enforce each and every right and provision of this AGREEMENT. In order to be valid, any waiver shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver. Neither the acceptance by LOS GATOS of the performance of any work or services performed by SAN JOSE nor the acceptance of compensation by SAN JOSE shall be deemed to be a waiver of any term or condition of this AGREEMENT.

C. Interpretations

In construing or interpreting this AGREEMENT, the word "including" shall not be limiting. The PARTIES agree that this AGREEMENT shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party.

D. Invalid Provisions

If any provision of this AGREEMENT shall be held illegal, invalid, or unenforceable, in full or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the other provisions of this AGREEMENT shall not be affected thereby.

E. Further Documents

The PARTIES agree, upon request, to sign and deliver such other documents as may be reasonably required to carry out the intent and provision of this AGREEMENT.

F. California Law

This AGREEMENT shall be governed by and construed and enforced in accordance with the laws of the State of California.

G. Counterpart Execution

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document.

RD:RLT
3/22/2004


IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of

29th day of June, 2004.

"SAN JOSE"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation



ROSAL L. TSONGTAATARII
Associate Deputy City Attorney

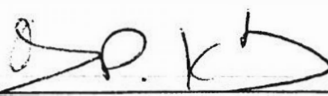
By 

PETER JENSEN
Assistant to the City Manager

APPROVED AS TO FORM:

"LOS GATOS"

TOWN OF LOS GATOS, a municipal
corporation

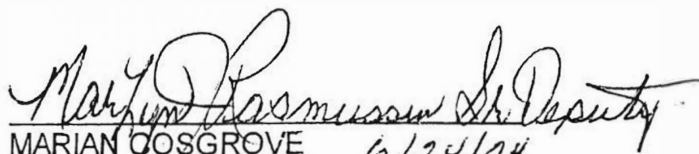


DARRYL P. KORB
Town Attorney

By 

DEBRA J. FIGONE
Town Manager

ATTEST:



MARIAN COSGROVE
Clerk of the Town 6/24/04

EXHIBIT A
SCOPE OF SERVICES

SECTION 1. **SERVICES PROVIDED.**

For the consideration set forth herein, SAN JOSE shall provide to LOS GATOS Field, Licensing and Sheltering Services. These categories of service are collectively referred to as "Animal Services." Calls for animal related services which are not provided by SAN JOSE shall be referred by SAN JOSE to the appropriate enforcement agency of LOS GATOS in writing or by electronic mail.

SECTION 2. **DEFINITIONS.**

- A. "Critically sick or injured animals" means those animals that have life-threatening conditions.
- B. "Dangerous Animals" means any wild, exotic, or venomous animal, or other animal which because of its size, disposition or other characteristics, would constitute a danger to persons or property as defined in the Los Gatos Town Code §4.10.010(g).
- C. "Emergency Calls" means complaints of animal bites or attacks on humans or domestic animals that are in progress, a high risk animal bite to human or domestic animal, or, where a bite has occurred and the animal remains a threat to humans or domestic animals.
- D. "Holidays" are New Years Day, Martin Luther King Day, President's Day, Caesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve Day, Christmas Day and New Years Eve Day.

- E. "Dangerous Dog" or "Potentially Dangerous Dog" means a dog that has attacked, without provocation, humans or other domestic animals or has threatened the safety of humans or domestic animals as defined in the Los Gatos Town Code §4.10.010(r).
- F. "Wildlife" means any animal that is native to this region and recognized as an indigenous species such as opossums, raccoons, skunks or squirrels.

SECTION 3. FIELD SERVICES.

A. FIELD SERVICES

SAN JOSE shall provide vehicles, communications equipment, hardware and software requirements, office supplies, field and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Field Services") upon a request or complaint from LOS GATOS or from a person within the boundaries of LOS GATOS:

- (1) Pick up of confined stray dogs, cats and other small animals, including but not limited to, rabbits, chickens, turkey, geese, birds and ducks, and excluding Wildlife;
- (2) Pick up injured or sick stray dogs, cats, birds, and other small animals that are located on public property or readily accessible on private property with the consent of the property owner or the property owner's authorized agent;
- (3) Pickup of injured or sick Wildlife, and livestock;
- (4) Pick up dead animals in accordance with SECTION 5 of this Exhibit A;
- (5) Investigate complaints of animal bites or attacks on humans, including the preparation of a report, interviewing the parties involved, quarantining animals which have bitten humans, preparing and transporting biting

animals for rabies testing, and investigating alleged violations of a quarantine order;

- a) The investigation contemplated under this SECTION 3.A.5 may be conducted by telephone when the owner and victim are the same person. In all other cases, SAN JOSE will meet and conduct a personal interview(s) with the owner in order to complete the investigation and quarantine the animal as necessary;
- (6) Investigate and refer complaints of Dangerous Dog, Potentially Dangerous Dog, and/or Dangerous Animals to the appropriate enforcement agency of LOS GATOS for resolution. Investigations shall include preparation of a report, interviewing the parties involved, and collecting available historical data;
- (7) Respond to complaints of dogs running at large, attempt to capture them and provide follow-up patrol if appropriate;
- (8) Respond to police assist calls on animal-related issues which may include taking control of an animal at the direction of a police officer on the scene;
- (9) Investigate complaints of activities criminal in nature, such as animal cruelty, neglect and fighting including preparation of a report, interviewing the parties involved, and collecting available historical data for referral to the Santa Clara County District Attorney's Office. SAN JOSE shall provide LOS GATOS a copy of the investigative packet and in each case obtain LOS GATOS' decision and authorization to refer the case to the Santa Clara County District Attorney's Office. If needed or appropriate, SAN JOSE personnel shall appear for court proceedings at no additional cost to LOS GATOS;

- (10) Investigate and refer complaints of animal abuse or neglect, under the Los Gatos Town Code, to the appropriate enforcement agency of LOS GATOS for resolution. Investigations shall include preparation of a report, collecting available historical data, and may include interviewing the parties involved;
- (11) Investigate and refer complaints of excessive animals, under the Los Gatos Town Code, to the appropriate enforcement agency of LOS GATOS for resolution;
- (12) Respond to complaints in progress of domestic animals causing a nuisance, except domestic animals making noise, and provide follow-up patrol if appropriate. SAN JOSE may issue citations for certain nuisances caused by domestic animals, as defined under the Los Gatos Town Code §4.10.070 pursuant to the authority conferred by Los Gatos Town Code §4.10.055; and
- (13) Respond to complaints of venomous or other dangerous snakes and bats that are located on public property or readily accessible on private property with the consent of the property owner or the property owner's authorized agent.

The PARTIES agree that during the course of administering field services, police assistance may be necessary. Upon request from SAN JOSE, LOS GATOS shall provide the police assistance necessary to administer said Field Services.

B. RESPONSE TIME PERFORMANCE STANDARDS

SAN JOSE shall make all reasonable efforts to respond to complaints and requests received by LOS GATOS or from persons within the boundaries of LOS GATOS at a performance standard level that is no less than the following during normal business hours:

- (1) PRIORITY 1 – Response to Emergency Calls; police assist; bites to human and/or domestic animal from bats and skunks; at large Dangerous or Potentially Dangerous Dog; at large quarantined animal; critically sick or injured animal; and animals in distress.
 - a) Response shall be on a twenty-four (24) hours per day, seven (7) days per week basis and shall be within one hour or less from the time the call for service is received by SAN JOSE to the time SAN JOSE's personnel arrive on scene.
- (2) PRIORITY 2 – Response to complaints of bites; animals on school grounds; animals that pose a traffic hazard on the streets of LOS GATOS; animals in traps; animals suffering from cruelty or neglect; and confined strays.
 - a) Response shall be during normal business hours and shall be within two business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrive on the scene Monday through Friday and within four business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrives on scene on Saturdays, Sundays and Holidays.
- (3) PRIORITY 3 – Response to any calls remaining from PRIORITY 1 and 2; dead animal pick up; and dogs running at large.
 - a) Response shall be during normal business hours and shall be within four business hours from the time the call for service is received by SAN JOSE to the time SAN JOSE personnel arrive on the scene Monday through Friday and within eight business hours from the time the call for service is received by SAN JOSE to the

time SAN JOSE personnel arrives on scene on Saturdays,
Sundays and Holidays.

C. RESPONSE AFTER BUSINESS HOURS

SAN JOSE shall respond to PRIORITY 1 calls during and after normal business hours, twenty-four hours per day, seven days per week including Holidays. SAN JOSE shall make all reasonable efforts to respond to PRIORITY 2 calls received after normal business hours no later than 11:00 a.m. the following business day. SAN JOSE shall make all reasonable efforts to respond to PRIORITY 3 calls received after normal business hours no later than 3 p.m. the following business day.

D. EXCLUDED SERVICES

The following services are not included in the services provided by SAN JOSE under this AGREEMENT:

- (1) Removal and disposal of dead marine mammals;
- (2) Pick up and transportation of uninjured or healthy, living Wildlife;
- (3) Pick up animals for surrender at the owner's request except that SAN JOSE may provide these services in SAN JOSE's discretion and charge a fee to be paid by the owner separate and apart from this AGREEMENT;
- (4) Permitting or inspection of events with animals;
- (5) Investigation of complaints that only relate to domestic animals or Wildlife making noise.

SECTION 4. SHELTER SERVICES.

A. SHELTER SERVICES

SAN JOSE shall provide the shelter facilities, supplies, animal attendants, supervisors and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services (the "Shelter Services"):

- (1) Shelter of abandoned, impounded, lost or stray domestic animals brought to the shelter by LOS GATOS, its residents, or SAN JOSE personnel;
- (2) Quarantine of biting animals;
- (3) Rabies testing of suspect animals;
- (4) Provide facilities for surrender and reclaim of abandoned, lost or stray domestic animals during established business hours;
- (5) Euthanization and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and fail to meet the written SAN JOSE temperament standards for adoption; and
- (6) Provision of animal license to dogs, or other animals to which licensing is applicable, at the animal shelter.

B. MEDICAL SERVICES

As part of the Shelter Services, SAN JOSE shall provide office facilities, supplies, and professional and trained personnel, employed or under contract, reasonably necessary to perform the following services (the "Medical Services"):

- (1) Providing veterinarian services twenty-four (24) hours per day to treat and provide veterinarian care to stray, injured, or sick dogs, cats, and other impounded animals;
- (2) Monitor impounded quarantined biting animals;
- (3) Provide vaccination services; and
- (4) Have available, free of charge to the public, rabies control information.

C. OPERATING SCHEDULES

SAN JOSE shall also provide Shelter Services for the animals in the facility twenty-four (24) hours a day, seven (7) days a week. SAN JOSE shall provide or under contract provide emergency veterinary services and shall make animals available to the public in accordance with state law.

SECTION 5. DEAD ANIMAL SERVICES.

SAN JOSE shall provide storage facilities, disposal mechanisms, field and administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services (the "Dead Animal Services"):

- (1) Pick up of dead animals, including Wildlife, from the streets of LOS GATOS, or from private property within LOS GATOS with the consent of the property owner or the property owner's authorized agent in accordance with this SECTION 3.B.3;
- (2) Handle or refer dead deer and livestock to handler for dead deer and livestock;
- (3) Identification of and notification to the owner of the dead animal, whenever possible;
- (4) Scan each dead animal for microchip identification, if available; and
- (5) Disposal of the body of the dead animal.

SECTION 6. RECORDS REGARDING ANIMAL SERVICES.

A. MAINTENANCE OF RECORDS

SAN JOSE shall maintain accurate records regarding its performance of Animal Services for a period of three (3) years from the date such records are created. Such records shall include Shelter Services records regarding receipt, care, reclaim, and

disposition of owner surrendered, abandoned, impounded, lost or stray domestic animals, including names and addresses of persons reclaiming animals, Dead Animal Services records regarding receipt and disposal of dead animals, and fees collected for the LOS GATOS.

B. INSPECTION OF RECORDS

SAN JOSE shall make available for inspection by LOS GATOS or LOS GATOS' designated representative(s) records regarding Animal Services under this AGREEMENT, upon request of LOS GATOS during SAN JOSE's normal business hours.

C. MONTHLY REPORT

SAN JOSE shall provide within 30 days of the end of each month, a monthly Animal Control and Impound Report summarizing Field Services, Shelter Services, Licensing Services, Medical Services and Dead Animal Services provided by SAN JOSE to LOS GATOS. This report shall include, but not be limited to, the following information:

- (1) Total number of calls for service, complaints relating to animal bites or attacks, complaints relating to vicious or dangerous dogs, and other activities;
- (2) Total number of licenses sold to LOS GATOS residents;
- (3) Number of incoming live animals, including Wildlife, brought to the shelter (surrender and field);
- (4) Number of dead animals picked up by SAN JOSE and brought to the shelter; and
- (5) Number and type of animals provided Medical Services along with a brief description of service; and
- (6) Response time performance standard report for Priority 1 through 3 calls.

D. YEARLY REPORT

SAN JOSE shall complete and submit to the County of Santa Clara Public Health Department the Annual Report of Local Rabies Control Activities for the Town of Los Gatos. SAN JOSE shall also provide an annual report of activities and accomplishments detailed in SECTION 6.C of this Exhibit A to LOS GATOS.

SECTION SEVEN. PROGRAM REVENUE.

A. FEES COLLECTED BY SAN JOSE

SAN JOSE shall collect fees, charges, and penalties (the "Program Fees") from the public in connection with a portion of the Animal Services provided under this AGREEMENT, including but not limited to items such as impound, quarantine, and boarding fees. These Program Fees shall be at the rates established by LOS GATOS. If no fee or charge has been established by LOS GATOS, the PARTIES shall mutually determine the appropriate fee or charge for the particular service at issue and shall be imposed by SAN JOSE after it has been duly adopted by LOS GATOS and become effective.

B. PAYMENT OF PROGRAM FEES TO LOS GATOS

All Program Fees collected by SAN JOSE in connection with the Animal Services provided to LOS GATOS, except fees collected for emergency veterinary services which are paid to contract veterinary providers by SAN JOSE, shall be paid or credited monthly by SAN JOSE to LOS GATOS by the fifteenth (15th) business day of the month immediately following the month in which the Program Fees were collected.

C. MONTHLY FEE STATEMENT

SAN JOSE shall provide to LOS GATOS with each monthly payment of Program Fees, a statement of Program Fees collected that shows the total amount of Program Fees

collected and the total amounts collected in each fee category, such as impound, quarantine and board fees.

D. ANIMAL LICENSING FEES

SAN JOSE shall remit licensing fees paid for the licensing of dogs and cats residing in LOS GATOS to LOS GATOS on a monthly basis. The licensing fees shall be at the rates established by LOS GATOS. If no fee has been established by LOS GATOS, the PARTIES shall mutually determine the appropriate fee for the particular license at issue and SAN JOSE shall impose the fee after it has been duly adopted by LOS GATOS and become effective.

SECTION EIGHT. OTHER RESPONSIBILITIES.

A. ADMINISTRATIVE HEARINGS

SAN JOSE shall not be responsible for nor bear the costs of scheduling or conducting any required hearings regarding Dangerous or Potentially Dangerous Dogs, or any other matter subject to an administrative hearing. If needed or appropriate, SAN JOSE personnel shall appear as a witness at any such hearing at no additional cost to LOS GATOS.

EXHIBIT B
FORMULA FOR COMPENSATION

LOS GATOS shall compensate SAN JOSE for Animal Services utilizing the Fiscal Year 2004-2005 base rate of \$164,000 (hereinafter "Base Rate"). The Base Rate shall apply to the first year of this Agreement (i.e. through June 30, 2005). Compensation for Animal Services shall be adjusted once a year effective July 1 of the next fiscal year (i.e. 2005, 2006, 2007 etc.). The PARTIES agree that each increase for Animal Services shall be based on the percentage increase in total compensation provided to all SAN JOSE animal control officers or the February to February Consumer Price Index-Urban Wage Earners and Clerical Workers for San Francisco-Oakland-San Jose, CA (maintained by the Bureau of Labor Statistics) (hereinafter "CPIU") plus 1.5% as set forth in the Calculation Formula below, whichever is less.

The PARTIES agree to estimate the number of animals to be impounded at the beginning of each fiscal year. The PARTIES also agree that any overages will be separately billed and any underages separately rebated at the end of each fiscal year. Any adjustments during the Fiscal Year 2004-2005 will be from the base rate of \$164,000.

Calculation Formula

ANNUAL COST OF LIVING INCREASE IN TOTAL COMPENSATION:

"Total Compensation" refers to the amount SAN JOSE provides for total compensation (salary and benefits) at top step for a 40-hour per week animal control officer. On July 1st of each fiscal year, the percentage change in Total Compensation will be derived from the new Total Compensation amount divided by the Total Compensation effective from July 1st of the prior fiscal year (e.g. Total Compensation Percentage Change

RD:RLT
3/22/2004

$$(\text{Fiscal Year 2005-2006}) = (\text{Total Compensation (Fiscal Year 2005-2006)} / \text{Total Compensation (Fiscal Year 2004-2005)} - 1).$$

The annual projected budget increase in contract costs shall be computed as follows:

Fiscal Year 2004-2005 Base Year = \$164,000

Fiscal Year 2005-2006 and thereafter = (Animal Services Compensation for Preceding Fiscal Year) x (Percentage Change in Total Compensation for the previous fiscal year) or (CPI-U for the previous fiscal year + 1.5%), whichever is less. In the event the percentage change in CPIU for any given fiscal year is negative, the percentage change in CPIU shall be deemed zero (0).

EXHIBIT C
INSURANCE

SAN JOSE represents and warrants that, at SAN JOSE'S sole cost and expense, it will maintain for the duration of this AGREEMENT self-insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by SAN JOSE, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 01/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 (Ed. 01/96); and
2. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions, when applicable.

B. Minimum Limits of Insurance

SAN JOSE self-insurance maintained limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

C. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. SAN JOSE self-insured coverage shall apply to LOS GATOS, its officers, employees, agents and contractors as respects: Liability arising out of activities performed by or on behalf of, SAN JOSE; products and completed operations of SAN JOSE; premises owned, leased or used by SAN JOSE; and automobiles owned, leased, hired or borrowed by SAN JOSE. Said self-insurance shall apply fully to any indemnity for LOS GATOS, its officers, employees, agents and contractors.
 - b. SAN JOSE's insurance coverage shall be primary insurance as respects LOS GATOS, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by LOS GATOS, its officers, employees, agents or contractors shall be excess of SAN JOSE's self-insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by SAN JOSE shall not affect coverage provided LOS GATOS, its officers, employees, agents, or contractors.
 - d. Coverage shall state that SAN JOSE's self-insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. **Verification of Coverage**

SAN JOSE shall furnish LOS GATOS with Affidavit of insurance affecting coverage required by this AGREEMENT at the time of contracting and upon expiration of each certificate.

E. **Subcontractors**

SAN JOSE shall obtain separate certificates and endorsements for each subcontractor and furnish LOS GATOS with a copy of the certificates and endorsements at the time of contracting or expiration of each certificate.

RD:RLT
3/22/2004

RESOLUTION NO. 72038

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AGREEMENTS WITH THE CITIES OF CUPERTINO, LOS GATOS AND SARATOGA FOR ANIMAL SERVICES

WHEREAS, the Animal Care and Services Division of the Parks, Recreation and Neighborhood Services Department of the City of San José ("City") was created in July, 2001, assuming all animal field services, including code enforcement, stray animal removal, vicious dog permits, and animal licensing; and

WHEREAS, it is anticipated that construction of the City's new animal care facility will be completed in the summer of 2004, and upon its completion, the City will assume all remaining animal services currently provided by the Humane Society Silicon Valley, which services include sheltering of animals, immunization clinics and public education programs; and

WHEREAS, the cities of Cupertino, Los Gatos, and Saratoga have requested that the City provide complete animal services for their jurisdictions, including animal field services and animal sheltering; and

WHEREAS, the City desires to negotiate and execute agreements with the cities of Cupertino, Los Gatos, and Saratoga to provide such animal services for a period of 20 years, anticipated to commence in the summer of 2004, which agreements will include annual payments for operations as well as a one-time capital contribution;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager is hereby authorized to negotiate and execute the following agreements to provide animal services for a twenty year term commencing July 1, 2004:

1. An agreement with the City of Cupertino in the amount of \$166,000 per annum in operating costs and a one-time capital contribution of \$500,000.
2. An agreement with the City of Los Gatos in the amount of \$164,000 per annum in operating costs and a one-time capital contribution of \$300,000.
3. An agreement with the City of Saratoga in the amount of \$155,000 per annum in operating costs and a one-time capital contribution of \$300,000.

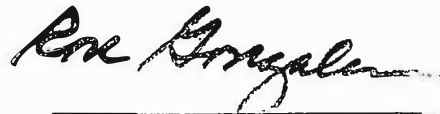
ADOPTED this 6th day of April, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES
Mayor

ATTEST:



DEANNA J. SANTANA
Acting City Clerk