

**FIRST AMENDMENT TO AGREEMENT FOR ANIMAL SERVICES
BETWEEN THE CITY OF SAN JOSE
AND THE CITY OF MILPITAS**

This FIRST AMENDMENT is made and entered into this ____ day of _____, 2021, by and between the CITY OF SAN JOSE, a municipal corporation, (hereinafter “SAN JOSE”), and the CITY OF MILPITAS, a municipal corporation, (hereinafter “MILPITAS”), collectively referred to as the “PARTIES.”

RECITALS

WHEREAS, on September 5, 2018, SAN JOSE and MILPITAS entered into an agreement entitled “AGREEMENT FOR ANIMAL SERVICES BETWEEN THE CITY OF SAN JOSE AND THE CITY OF MILPITAS” (“AGREEMENT”); and

WHEREAS, SAN JOSE and MILPITAS desire to amend the AGREEMENT to extend the term of the AGREEMENT and increase the compensation;

NOW, THEREFORE, the PARTIES agree to amend the AGREEMENT as follows:

SECTION 1. Section 2, “TERM OF AGREEMENT,” is amended to read as follows:

“The term of this AGREEMENT is from July 1, 2018 through June 30, 2022, inclusive, subject to the provisions of SECTION 8 of this AGREEMENT.”

SECTION 2. Section 3, “COMPENSATION,” is amended to read as follows:

“The rate and schedule of payment to be paid to SAN JOSE is set out in REVISED EXHIBIT B, entitled “COMPENSATION,” which is attached hereto and incorporated herein.”

SECTION 3. Section 8, “TERM AND TERMINATION OF AGREEMENT,” is amended to read as follows:

“A. **Termination**

This AGREEMENT may be terminated earlier at any time:

1. Upon the written consent of both MILPITAS and SAN JOSE;
2. By either MILPITAS or SAN JOSE 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;
3. Immediately upon written notice by MILPITAS to SAN JOSE if SAN JOSE has a receiver appointed for all or substantial part of its business or assets, if a bankruptcy proceeding is brought by or against SAN JOSE as a debtor, or if SAN JOSE ceases its business operations; and
4. Upon at least one hundred eighty (180) days prior written notice by MILPITAS to SAN JOSE or SAN JOSE to MILPITAS of that party’s desire to terminate this AGREEMENT. If MILPITAS does not appropriate the full amounts due to SAN JOSE under this AGREEMENT for FY 2018-2019 or FY 2019-2020 or FY 2020-2021 or FY 2021-2022 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 MILPITAS 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 MILPITAS under this

AGREEMENT shall cease, and MILPITAS' 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 upon the effective date of termination.

C. Termination Costs

In the event MILPITAS elects to terminate this AGREEMENT with SAN JOSE, SAN JOSE shall be reimbursed for stray animals that were sheltered for MILPITAS prior to termination at the rate of One Hundred Sixty-Five Dollars (\$165.00) per animal for a period of twelve (12) months from the date of that termination. SAN JOSE shall notify MILPITAS of the number of animals it shelters during that 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. MILPITAS shall pay SAN JOSE for shelter services in accordance with REVISED EXHIBIT B Subsection A.”

SECTION 4. EXHIBIT B, “COMPENSATION,” is amended to read as shown in REVISED EXHIBIT B, which is attached and incorporated into this FIRST AMENDMENT.

SECTION 5. All of the terms and conditions of the original AGREEMENT not specifically modified by this FIRST AMENDMENT shall remain in full force and effect.

SECTION 6. Unless otherwise prohibited by law or SAN JOSE policy, the PARTIES agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by SAN JOSE.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

CHRISTOPHER J. DIAZ
City Attorney

CITY OF MILPITAS, a municipal
corporation

By _____
STEVEN G. McHARRIS
City Manager

APPROVED AS TO FORM:

MARK J. VANNI
Senior Deputy City Attorney

CITY OF SAN JOSE, a municipal
corporation

By _____
LELAND WILCOX
Chief of Staff, Office of the City
Manager

REVISED EXHIBIT B
COMPENSATION

A. Payment Schedule

All monthly installment payment by MILPITAS shall be due and payable on the first day of the month and shall be delinquent on the tenth (10th) business day thereafter without demand or notice to MILPITAS. SAN JOSE will provide MILPITAS an invoice in advance at least fourteen (14) calendar days before the date that the payment is due.

B. Payment Amounts

For all Animal Services to be provided by and for the performance of all other obligations of SAN JOSE to MILPITAS under this AGREEMENT, MILPITAS agrees to pay SAN JOSE within thirty-five (35) days after the execution of this AGREEMENT the following sums for the period of July 1, 2018 through June 30, 2022, in accordance with the payment schedule:

July 2018 through June 2019:	\$392,170
July 2019 through June 2020:	\$403,935
July 2020 through June 2021:	\$416,053
July 2021 through June 2022	\$416,053
Total Amount of Compensation:	\$1,628,211