

**FIRST AMENDMENT TO LEASE AGREEMENT
BY AND BETWEEN THE COUNTY OF SANTA CLARA
AND THE CITY OF MILPITAS**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (“AMENDMENT”) is made and entered into by and between the **COUNTY OF SANTA CLARA**, a political subdivision of the State of California (“**COUNTY**” or “**LESSOR**”), and **THE CITY OF MILPITAS**, a municipal corporation (“**LESSEE**”), and incorporates by reference that certain LEASE AGREEMENT entered into by and between the PARTIES on February 25, 2003 (“**LEASE**”). As referred to herein, both COUNTY and CITY OF MILPITAS are the “**PARTIES**” and individually each a “**PARTY**” to this AMENDMENT.

RECITALS

WHEREAS, COUNTY originally entered into a 15-year LEASE with LESSEE on February 25, 2003 for operation of dog park facilities at certain property located in Ed Levin Park, as more particularly described in the LEASE (“**PREMISES**”); and,

WHEREAS, the LEASE provides that LESSEE may extend the LEASE for an additional ten (10) years; and,

WHEREAS, the LEASE by its terms expired on February 25, 2018 and LESSEE has been continuing in a holdover status;

WHEREAS, due to staffing shortages in part caused by the COVID-19 pandemic, the PARTIES were not able to timely exercise the ten (10) year renewal option, but the PARTIES desire to extend the Lease through February 25, 2028 through retroactive approval of this AMENDMENT, in addition to amending the insurance and indemnity provisions of the LEASE; and,

WHEREAS, the Director of the Santa Clara County Department of Parks and Recreation has determined that this no-cost retroactive extension serves the public interest and will not interfere or conflict with the COUNTY’S use of the PREMISES.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COUNTY and CITY OF MILPITAS agree to the foregoing and as follows:

- 1. INCORPORATION BY REFERENCE.** The LEASE between COUNTY and CITY OF MILPITAS remains in full force and effect and the terms and Exhibits of the LEASE are incorporated herein by reference as **Exhibit A**, unless otherwise stated. All of the terms of the LEASE shall apply to this AMENDMENT, unless otherwise stated.

- 2. AMENDMENTS TO LEASE.**
 - a. Extension.** The Term of the LEASE is hereby extended for a period of ten (10) years (including the Holdover Period) beginning on February 25, 2018 and expiring

on February 25, 2028 unless sooner terminated in accordance with the terms of the LEASE.

- b. Holdover Period; Waiver and Indemnity.** LESSEE acknowledges that the terms and conditions of the LEASE were in full force and effect during the Holdover Period. PARTIES acknowledge that no additional consideration is due for the Holdover Period due to the no-cost nature of the LEASE. In consideration for the retroactive LEASE extension, LESSEE agrees to release, waive, and discharge all claims against the COUNTY, its officers, agents, and employees that arose from LESSEE'S use of the PREMISES during the Holdover Period. LESSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the Holdover Period, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the COUNTY.
 - c. Holding Over.** Any holding over by LESSEE after the expiration of the Term of this AMENDMENT or any extension thereof shall be construed as a tenancy from month to month under the same terms and conditions herein.
 - d. Indemnity.** The second sentence of Section 13 of the LEASE is deleted in its entirety and replaced with the indemnification requirements contained in Exhibit B to this AMENDMENT, attached hereto and incorporated herein.
 - e. Insurance.** Exhibit D of the LEASE is deleted in its entirety and replaced with the insurance requirements contained in Exhibit B to this AMENDMENT, attached hereto and incorporated herein.
- 3. DEFINITIONS.** Capitalized terms used in this AMENDMENT without definition shall have the same meaning ascribed to such terms in the LEASE.
- 4. FORCE AND EFFECT.** Except as modified by this AMENDMENT, the terms and conditions of the LEASE are hereby ratified and confirmed and are and shall remain in full force and effect. Should any inconsistency arise between this AMENDMENT and the LEASE as to the specific matters which are the subject of this AMENDMENT, the terms and conditions of this AMENDMENT shall control. Upon the Effective Date, this AMENDMENT shall be construed to be a part of the LEASE and shall be deemed incorporated into the LEASE by this reference.
- 5. ENTIRE AGREEMENT, AMENDMENT.** The LEASE, as amended by this AMENDMENT, constitutes the full and complete agreement and understanding by and between the PARTIES relative to the subject matter of the LEASE and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the same subject matter. Any prior or contemporaneous oral or written representations relating to the same subject matter is hereby revoked and extinguished by the LEASE, as amended by this AMENDMENT, and this AMENDMENT shall only be effective upon the full execution by all PARTIES hereto.

6. COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES. This

AMENDMENT may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the PARTIES have fully executed the AMENDMENT. Unless otherwise prohibited by law or COUNTY policy and provided all PARTIES have first executed the applicable AMENDMENT, the PARTIES agree and intend that an electronic copy of the AMENDMENT or an electronically signed AMENDMENT, has the same force and legal effect as if the AMENDMENT had been executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

7. SUBMISSION OF FIRST AMENDMENT TO LEASE; NONBINDING UNTIL SIGNED.

The PARTIES agree, accept, and understand that a submission of this AMENDMENT for examination, review, editing, or signature by either PARTY, in any form or by electronic or digital means, by email, facsimile or DocuSign, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the AMENDMENT and this AMENDMENT shall only be legally binding and enforceable upon full execution by all PARTIES. The PARTIES acknowledge and agree that this AMENDMENT is nonbinding on either PARTY and neither PARTY may claim any legal rights against the other by reason of the existence of this AMENDMENT, or by reason of actions taken in reliance upon this AMENDMENT (including, but not limited to, any obligation to continue negotiations) unless and until this AMENDMENT is fully executed by all of the PARTIES.

8. CONSTRUCTION. This AMENDMENT shall not be construed more strongly against either PARTY regardless of who is more responsible for its preparation.

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9. SIGNING AUTHORITY. By signing below, each signatory for a PARTY warrants and represents that he/she executed this AMENDMENT, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this AMENDMENT.

IN WITNESS WHEREOF, THE CITY OF MILPITAS and the COUNTY have entered into and executed this AMENDMENT effective on the last date signed by all the PARTIES below (“Effective Date”).

Lessor:

**COUNTY OF SANTA CLARA,
a political subdivision of the State of
California**

MIKE WASSERMAN, President
Board of Supervisors

Signed and certified that a copy of this document
has been delivered by electronic or other means
to the President, Board of Supervisors.

Attest:

TIFFANY LENNEAR,
Acting Clerk of the Board of Supervisors

Approved as to form and legality:

CHRISTOPHER CHELEDEN,
Lead Deputy County Counsel

Lessee:

**CITY OF MILPITAS,
a municipal corporation**

RICH TRAN,
Mayor

Attest:

WENDY WOOD,
City Clerk

Approved as to form:

CHRISTOPHER J. DIAZ,
City Attorney

Exhibits:

Exhibit A: Lease Agreement by and between County of Santa Clara and City of Milpitas
(Approved February 25, 2003)

Exhibit B: Insurance and Indemnification Requirements