

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

This SECOND AMENDMENT (hereinafter “SECOND AMENDMENT”) is made and entered into this 30th day of June, 2022, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter “SAN JOSE”), and the CITY OF MILPITAS, a municipal corporation (hereinafter “MILPITAS”). SAN JOSE and MILPITAS are sometimes referred to hereinafter collectively as the “PARTIES.”

RECITALS

WHEREAS, the PARTIES executed that certain AGREEMENT FOR ANIMAL SERVICES BETWEEN THE CITY OF SAN JOSE AND THE CITY OF MILPITAS, effective September 5, 2018 (hereinafter “AGREEMENT”);

WHEREAS, the PARTIES executed that certain first amendment to the AGREEMENT, effective July 1, 2021, to extend the term of the AGREEMENT through June 30, 2022 and to increase the compensation due and payable to SAN JOSE; and

WHEREAS, the PARTIES desire to further amend the AGREEMENT according to the terms set forth herein this SECOND AMENDMENT to extend the term of the AGREEMENT and to increase the compensation due and payable to SAN JOSE;

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

SECTION 1. Section 2, “TERM OF AGREEMENT,” is deleted and amended to read in its entirety as follows:

“SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT is from July 1, 2018 through June 30, 2023, inclusive, subject to the provisions of SECTION 8 of this AGREEMENT.”

SECTION 2. Section 3, “COMPENSATION,” is deleted and amended in its entirety to read as follows:

“SECTION 3. COMPENSATION.

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

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

“SECTION 8. TERM AND TERMINATION OF AGREEMENT.

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 or FY 2022-2023 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.

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 Section A of the SECOND REVISED EXHIBIT B."

SECTION 4. The REVISED EXHIBIT B, "COMPENSATION," is amended to read as

shown in the SECOND REVISED EXHIBIT B, "COMPENSATION," which is attached hereto and incorporated herein this SECOND AMENDMENT by this reference to the same extent as though set forth in full.

SECTION 5. All terms and conditions of the AGREEMENT, as amended, not specifically modified by this SECOND AMENDMENT, shall remain in full force and effect. Any conflict between the provisions of this SECOND AMENDMENT and the AGREEMENT, as amended, shall be resolved in favor of the provisions of this SECOND AMENDMENT.

SECTION 6. The recitals set forth above are true and incorporated herein this SECOND AMENDMENT by this reference as though set forth in full.

SECTION 7. 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.

[Signatures to follow on next page.]

[The remainder of this page is intentionally blank.]

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



Email: mmutalipassi@milpitas.gov

06/30/2022 GMT-07:00

MICHAEL MUTALIPASSI
City Attorney

CITY OF MILPITAS, a municipal



Email: smcharris@milpitas.gov

06/30/2022 GMT-07:00

By _____
STEVEN MCHARRIS
City Manager



Email: sarah.zarate@sanjoseca.gov

06/30/2022 GMT-07:00

ENRIQUE A. FERNANDEZ
Deputy City Attorney

CITY OF SAN JOSE, a municipal



Email: enrique.fernandez@sanjoseca.gov

06/30/2022 GMT-07:00

By _____
Sarah Zarate
Director, Office of the City Manager

SECOND 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, 2023, 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
July 2022 through June 2023	\$510,000
Total Amount of Compensation:	\$2,138,211