

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

This AGREEMENT is entered this ____ day of _____ 2012, 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

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on Exhibit A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

SAN JOSE shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from July 1, 2012 through June 30, 2015, inclusive subject to the provisions of SECTION 8 of this AGREEMENT.

SECTION 3. COMPENSATION.

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

SECTION 4. INDEPENDENT CONTRACTOR RELATIONSHIP.

This AGREEMENT shall in no way be construed to constitute SAN JOSE as the partner, legal representative, or employee of CUPERTINO or CUPERTINO of SAN JOSE for any purpose whatsoever, or as the agent of CUPERTINO 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 5. ASSIGNABILITY.

SAN JOSE and MILPITAS acknowledge and agree that the expertise and experience of SAN JOSE are material considerations inducing MILPITAS to enter into this AGREEMENT. MILPITAS 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 6. INDENMIFICATION.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code section 895.6, the PARTIES 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

MILPITAS agree that pursuant to Government Code section 895.4, each of the PARTIES hereto shall fully indemnify and hold each of 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 parties hereto, their 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 7. NONDISCRIMINATION.

The PARTIES shall not 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 8. TERM AND TERMINATION OF AGREEMENT

A. Termination.

This AGREEMENT may be terminated earlier at any time:

1. Upon the written consent of both the 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 2012-2013 or FY 2013-2014 or FY 2014-2015 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 EXHIBIT C Subsection A.

SECTION 9. GOVERNING LAW.

The PARTIES agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 10. COMPLIANCE WITH LAWS.

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

SECTION 11. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for the PARTIES in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the PARTIES, or as required by law.

SECTION 12. WAIVER.

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 thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this AGREEMENT. The PARTIES agree that waiver of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by MILPITAS of the performance of any work or services by the SAN JOSE shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 13. GIFTS.

- A. The PARTIES are familiar with the prohibition against the acceptance of any gift by an officer or designated employee of SAN JOSE or MILPITAS.
- B. SAN JOSE agrees not to offer any MILPITAS officer or designated employee any gift prohibited by MILPITAS. MILPITAS agrees not to offer any SAN JOSE officer or

designated employee any gift prohibited by SAN JOSE.

- C. The offer or giving of any gift prohibited by SAN JOSE or MILPITAS shall constitute a material breach of the AGREEMENT. In addition to any other remedies the PARTIES may have in law or equity, the PARTIES may terminate this AGREEMENT for such breach as provided in SECTION 8 of this AGREEMENT.

SECTION 14. NOTICES.

Any notices or other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows::

To SAN JOSE: San Jose Animal Care and Services
2750 Monterey Rd
San Jose, CA 95111

To MILPITAS: City of Milpitas
Department of Planning & Neighborhood
Services
455 E. Calaveras Blvd
Milpitas, CA 95035

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 15. VENUE

In the event that suit shall be brought by any party to this AGREEMENT against another party, the PARTIES agree that the 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 16. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire

understanding of the PARTIES as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 17. **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.

SECTION 18. **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.

SECTION 19. **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.

SECTION 20. **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
4/17/12

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the EFFECTIVE DATE set forth above.

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF MILPITAS, a municipal corporation

By _____
CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ROSA TSONGTAATARII
Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

By _____
NORBERTO DUENAS
Deputy City Manager

EXHIBIT A
RECITALS

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

WHEREAS, SAN JOSE has the necessary professional expertise, training, skills and ability to provide the animal control services.

NOW, THEREFORE, the purpose of this AGREEMENT is to retain SAN JOSE to MILPITAS to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

For the consideration set forth herein, SAN JOSE shall provide to MILPITAS the Field Services, Shelter Services, and Dead Animal Services as described in this AGREEMENT. These three categories of service are sometimes collectively referred to herein as the “Animal Services,” and each category of services is sometimes hereinafter referred to as a “Program Unit.” Calls for animal-related services which are not provided by SAN JOSE shall be referred by SAN JOSE to the appropriate code enforcement agency of MILPITAS, either in writing or by electronic mail. The Animal Services shall be provided by SAN JOSE in accordance with all applicable federal, state and local laws and ordinances.

SECTION 1. DEFINITIONS

- A.** “Critically Sick or Injured Animals” means those animals that have life-threatening conditions.
- B.** “Dangerous Animals” means any animal which, because of its size, disposition or other characteristics, would constitute a danger to humans, including any dog classified as a Level 3, 4, or 5 potentially dangerous dogs as defined in the Milpitas Municipal Code Chapter 210.
- C.** “Emergency Calls” means complaints of animal bites or attacks on humans or domestic animals that are in progress, or, where a bite or attack has occurred, where the animal remains an immediate threat to humans.
- D.** “Holidays” are New Year’s Eve, New Year’s Day, Easter Sunday, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas Day, and the day before and the day after Christmas Day.
- E.** “Vicious Dog” means a dog that has attacked, without provocation, humans or other domestic animals or has threatened the safety of humans or domestic animals.

SECTION 2. FIELD SERVICES

A. Field Services

SAN JOSE shall provide vehicles, communications equipment, 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 MILPITAS or from a person within the boundaries of MILPITAS:

1. Pick up of stray dogs, stray cats, and other small domestic animals, including rabbits, chickens, turkey, geese, and ducks, and excluding confined wildlife as defined in Section 711.2 of the California Fish and Game Code, such as opossums, raccoons, skunks, or squirrels, that have been confined by MILPITAS or by a person within the boundaries of MILPITAS;
2. Pick up of dead animals, including wildlife, in accordance with SECTION 4;
3. Pick up of injured stray dogs or cats and other small domestic animals, without regard to weight, excluding birds, and injured wildlife that weigh fifty pounds (50 lbs.) or less, 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;
4. Response to Emergency Calls;
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. An incident report is to be provided to the designated appropriate MILPITAS Code Enforcement official within 5 business days of the incident.
 - a) The quarantine investigation contemplated under this Section may be conducted by telephone when the owner and victim is 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 Vicious Dogs to the appropriate code enforcement agency of MILPITAS for resolution. Investigations shall include preparation of a report and may include interviewing the parties involved, and collecting available historical data;
7. Investigate and refer complaints of Dangerous Animals to the appropriate code enforcement agency of MILPITAS for resolution. Investigations shall include taking a report and may include interviewing the parties involved, and collecting available historical data;
8. Respond to complaints of dogs running at large, attempt to capture them, and provide follow-up patrol if appropriate and subject to the availability of SAN JOSE staff;
9. Respond to complaints in progress of domestic animals causing a nuisance, except domestic animals making noise, and provide follow-up patrol if appropriate and subject to the availability of SAN JOSE staff;
10. Respond to police assist calls on animal-related issues which may include taking control of an animal on the scene; and
11. Investigate and refer to the appropriate code enforcement of MILPITAS for resolution of complaints regarding the lack of proper care, condition, or attention of domestic animals by their owners.

B. Response Time Performance Standards

1. SAN JOSE shall make all good faith efforts to respond to complaints and requests received by SAN JOSE at a performance standard level that is no less than the following:
 - a) PRIORITY 1 – Response to Emergency, Police Assist, Dangerous Animal, and Critically Sick or Injured Animal calls for assistance.
 - 1.) Response shall be twenty-four (24) hours per day, seven (7) days per week. Eighty-five (85%) of responses on all PRIORITY 1 calls shall occur within one (1) hour or less from the time the call for service is received by the SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.

- b) PRIORITY 2 – Pick up animals that were running at large and that are now confined by MILPITAS or by a person within the boundaries of MILPITAS and calls regarding urgent, but not immediately life threatening animal-related requests for assistance.
 - 1.) Eighty percent (80%) of responses on all PRIORITY 2 calls received between 7:00am and 5:00pm shall be within six (6) hours or less from the time the call for service is received by the SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.
 - 2.) Response to calls received between the hours of 5:00pm and 7:00am shall be responded to no later than 7:00pm the following day.
- c) PRIORITY 3 – Response to calls relating to non-emergency attacks, non-critically injured or sick animals, quarantine calls, animals running at large, animals causing a nuisance and pick up of dead animals.
 - 1.) Seventy-five percent (75%) of responses on all PRIORITY 3 calls received between 7:00am and 5:00pm shall be within twelve (12) hours or less from the time the call for service is received by the SAN JOSE staff to the time SAN JOSE personnel arrive on the scene.
 - 2.) Response to calls received between the hours of 5:00pm and 7:00am shall be responded to no later than 11:00pm the following day.
 - 3.) Response to these complaints will only after PRIORITY 1 and 2 complaints are met for MILPITAS. Responding to these complaints may include taking a report, contacting parties and witnesses by telephone, or dispatching personnel to the scene.

C. Response After Business Hours

Between the hours of 5:00 p.m. and 7:00 a.m., SAN JOSE shall be required to respond to PRIORITY 1 calls only. The hours between 5:00 p.m. and 7:00 a.m. shall not be included in calculating the response time length for PRIORITY 2 and 3 calls

when including these hours would result in a failure by the SAN JOSE to meet the performance standards set forth above.

D. Operating Schedules

1. SAN JOSE shall be required to respond to all complaints and requests in accordance with SECTION 3.B. and SECTION 3.C., except SAN JOSE shall respond only to PRIORITY 1 calls on Sundays.
2. Except with respect to PRIORITY 1 calls, SAN JOSE shall have no obligation to respond on Holidays or outside of the regularly scheduled shift hours of SAN JOSE. SAN JOSE shall respond to PRIORITY 1 calls twenty-four (24) hours per day, every day, including all Holidays.

E. Excluded Services

While SAN JOSE may already perform some of the following services under other authority, in addition to the specific exclusions listed in SECTIONS 3(A)(1) through 3(A)(11), the following services are not included in the services to be provided by SAN JOSE under this AGREEMENT:

1. Removal and disposal of dead marine animals;
2. Pick up and transportation of uninjured or healthy, living wildlife;
3. Pick up of alive or dead animals for surrender at an owner's request. SAN JOSE may provide these services and charge a fee therefore as a part of its operations separate and apart from this AGREEMENT;
4. Issuance of citations for violations in accordance with MILPITAS ordinances; and
5. Investigation and resolution of activities that may be criminal in nature, such as neglect, cruelty, and animal fighting, including the preparation of documents for criminal prosecution by the District Attorney's office and testifying in court;
6. Permitting or inspection of events with animals; and
7. Investigation of complaints that only relate to domestic animals making noise.

SECTION 3. SHELTER SERVICES

A. Shelter Services

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

1. Shelter of abandoned, impounded, lost or stray domestic animals brought to the shelter by MILPITAS, its residents, or SAN JOSE personnel;
2. Quarantine of biting animals;
3. Rabies testing of suspect animals;
4. Provision for reclaim of abandoned, lost or stray domestic animals during established business hours; and
5. Euthanization and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and fail to meet the written health and temperament standards of San Jose Animal Care and Services.

B. Medical Services

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

1. Provision of 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 quarantined animals; and
3. For a fee conduct vaccination clinics and have available, free of charge to the public, rabies control information.

C. Operating Schedules

SAN JOSE shall provide or under contract shall provide Shelter Services for the animals twenty-four (24) hours a day, seven (7) days a week. SAN JOSE shall

provide or under contract provide emergency veterinary services in accordance with Section 597 (f) of the California Penal Code.

SECTION 4. DEAD ANIMAL SERVICES

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

1. Pick up of dead animals, including wildlife and except livestock, from streets and public property within MILPITAS, or from private property within MILPITAS with the consent of the property owner, or the property owner’s authorized agent in accordance with SECTION 3.B.1.(c);
2. Identification of and notification to the owner of the dead animal, whenever possible; and
3. Disposal of the body of the dead animal.

SECTION 5. RECORDS REGARDING ANIMAL SERVICES

A. Monthly Report

SAN JOSE shall deliver to MILPITAS during the term of this AGREEMENT, and within thirty (30) days of the end of each month, a monthly Animal Control and Impound Report summarizing monthly and year-to-date services provided by SAN JOSE for MILPITAS. This report shall include, but not be limited to, the following information:

1. The total number of calls for service provided by SAN JOSE under this AGREEMENT, separated by type of service call established by SAN JOSE, so long as the numbers for the different types of PRIORITY service calls are each shown separately and as a subgroup;

B. Optional Reporting

MILPITAS may request and receive from SAN JOSE reports of complaint information

and any available historical data relating to the following:

1. Monthly Response Times:
 - a) The average response time, the shortest and longest response times for calls in each of the following PRIORITIES. For PRIORITY 1, 2 and 3 calls, SAN JOSE shall report average response times, and shortest and longest response times by each type of call within that priority.
 - b) Response times for PRIORITY 1 calls shall be in minutes, rounded off to the nearest minute. Response times for PRIORITY 2 calls shall be in hours and minutes, rounded off to the nearest minute. Response times for PRIORITY 3 calls shall be in hours, rounded off to the nearest hour.
 - c) The percentage of calls grouped by PRIORITY 1, 2, and 3, that met the response time performance standards, along with the total number of responses in each priority category.
2. Field Services Calls
 - a) Complaints relating to Animal bites or attacks.
 - b) Complaints relating to Vicious Dogs.
 - c) Complaints relating to Dangerous Animals.

SECTION 6. OTHER RESPONSIBILITIES

A. Delivery of Animals to SAN JOSE

Animals to be impounded by SAN JOSE that are taken into custody by MILPITAS shall be promptly delivered to SAN JOSE's shelter or held in a humane way at a designated holding area until such animals can be picked up by SAN JOSE; provided however, that any such animal may be reclaimed as appropriate, from MILPITAS by its owner.

B. Responsibility for Administrative Hearings

SAN JOSE shall not be responsible for nor bear the costs of scheduling and conducting any required hearings regarding Vicious Dogs. If needed or appropriate, SAN JOSE personnel shall appear at any such hearing at no additional cost to

MILPITAS.

C. Licensing

SAN JOSE shall maintain a license database and administer license processing, issuance, and renewals on behalf of MILPITAS. SAN JOSE shall collect all associated license fees on behalf of MILPITAS, at the fee amounts set by MIPLITAS. Any license fees or late fees collected from dog and cat owners in MIPLITAS shall be remitted to MILPITAS on a monthly basis.

EXHIBIT C
COMPENSATION

A. Payment Schedule

MILPITAS shall make payments to SAN JOSE in equal monthly installments after payment for services provided prior to the execution of this contract have been received by SAN JOSE. All installment payments 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 within thirty-five (35) calendar days from 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 35 days after the execution of this AGREEMENT the following sums for the period of July 1, 2012 through June 30, 2015, in accordance with the payment schedule:

| | |
|------------------------------|-----------|
| July 2012 through June 2013: | \$348,438 |
| July 2013 through June 2014: | \$348,438 |
| July 2014 through June 2015: | \$348,438 |