

**AGREEMENT BETWEEN MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT  
AND THE CITY OF SAN JOSE,  
FOR THE HAPPY HOLLOW PARK & ZOO - ZOO EDUCATION PROGRAM**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between MOUNTAIN VIEW WHISMAN School District (hereinafter referred to as "District") and City of San José, a municipal corporation in the State of California (hereinafter referred to as "City").

City is authorized by Education Code Section 81644 and Government Code Section 53060 to perform services as described under "General Conditions, 1. Services to be Performed." The term of this Agreement shall be in effect on the date of execution through td 5/25 -5/27, 2021, unless terminated by either party upon thirty (30) days written notice. or 6/1

**GENERAL CONDITIONS**

**1. Services to be Performed**

City's Happy Hollow Park & Zoo ("HHPZ") is providing a fee-based school outreach program that teaches curriculum to children with live animals (hereinafter referred to as "Program"). Examples of animals include hedgehogs, turtles, snakes and owls.

In consideration of the payments as described in Section 2, City shall perform services for the District as set forth below:

- a) City's staff from HHPZ will provide HHPZ animal education presentations to BUBB ELEM. District Elementary, Middle, and High Schools.
- b) HHPZ will provide all educational materials and animal transportation to District Schools.
- c) As an Association of Zoos and Aquariums (AZA) accredited facility, HHPZ must adhere to the highest standard set for the husbandry, training, and transport of exotic and domestic animals. The facility is subject to random USDA and USFW inspection annually, and is required to maintain up-to-date permitting for all species exhibited. All animal handlers are trained professionals employed by the City of San José, who adhere to strict safety guidelines in order to ensure public and animal safety.
- d) Clean-up rules: City's staff must always carry equipment sufficient to clean up the animal's waste to immediately remove the waste, and be responsible for the proper disposal of the animal's waste.

**2. Payment in Consideration of the Services and Materials Described in Section 1**

Title I schools that are eligible to receive scholarships through the Happy Hollow Foundation Title I Scholarship Fund may be awarded up to six (6) classroom programs or two assembly programs. These scholarships are available on a first-come, first-serve basis, as funds are

available. For additional presentations, or for those schools that do not receive scholarships, District shall pay to City per pricing schedule, two weeks prior to Program date.

**PRICING SCHEDULE**

<b>HHPZ EDZOOICATION PROGRAM</b>	<b>First Program Cost</b>	<b>Additional Program Cost (Discounted)*</b>	<b>Discount Month Pricing First program (Sep., Nov., Dec., Jan.)</b>	<b>Discount Month Pricing Additional program (Sep., Nov., Dec., Jan.)</b>
Classroom Programs (Up to 35 Students)	\$140 per program	\$125 per program	\$126.00	\$112.50
Assembly Programs (Up to 36-300 Students)	\$325 per program	\$275 per program	\$292.50	\$247.50

\*Discounted Program Cost is only available when booking multiple programs within the same transaction, and does not apply to the initial program.

**3. Relationship of the Parties**

It is understood that this is an agreement by and between City and District and is not intended to, and shall not be construed to create the relationship, of agent, employee, partnership, joint venture or association or any other relationship whatsoever. City is not eligible for and shall not participate in any employer pension plan, health, or other fringe benefit plan of the District.

**4. Mutual Indemnification and Insurance**

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 but instead the District and the City agree that pursuant to Government Code Section 895.4, each party (“indemnifying party”) hereto shall fully indemnify and hold each other’s party, its 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 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 for any damage or liability occurring 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.

The City of San José is self-insured covering third-party claims arising out of general operations and is self-insured covering workers' compensation claims.

**5. Nonassignability**

City shall not assign performance under this Agreement or any portion thereof to a third party without the prior written consent of District. Any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.

**6. Copyrights**

City performing copyrighted musical or literary works is responsible for securing the necessary permission or pay any royalties or fees required to perform such works.

**7. Equipment and Facilities**

City will provide all necessary equipment and facilities to render City services pursuant to this Agreement unless the parties to this Agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.

City agrees to comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this agreement.

**8. Withholding**

District shall not withhold or set aside any money on behalf of the City for federal income tax, state income tax, social security tax, unemployment insurance, disability insurance or any other federal or state fund whatsoever. It shall be the sole responsibility of City to account for all of the above according to law.

**9. Changes or Alterations**

No changes, alternations or variations of any kind to this Agreement are authorized without the written consent of the District.

**10. Termination**

District may terminate this Agreement and be relieved of the payment of any consideration to City, should City fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, District may proceed with the work in any manner deemed proper by District. The cost to the District shall be deducted from any sum due City under this Agreement, and the balance, if any, shall be paid to City on demand.

Without cause, either party may terminate this Agreement after giving 30 days' written notice to the other of intent to terminate without cause. The parties shall deal with each other in good faith during the 30-day period after any notice of intent to terminate without cause has been given.

With reasonable cause, either party may terminate this Agreement effective immediately upon the giving of written notice of termination for cause. Reasonable cause shall include: (a)

material violation of this Agreement, (b) any act exposing the other party to liability to others for personal injury or property damage; and (c) improper or unsatisfactory performance.

Any notice given in connection with this Agreement shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

**11. Severability**

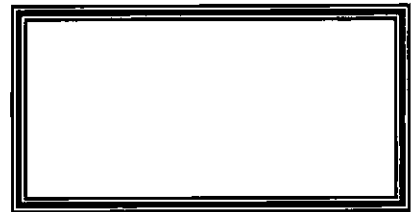
In the event any portion of Agreement shall be finally determined by any court or competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of agreement shall continue in full force and effect.

City Use Only:

\_\_\_\_\_, PRNS Director Date

School District Only:

Authorized Signature Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
MVWSD School District



LO      PROGRAM      SP      USP      ACCOUNT      SA  
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