

ENROLLED ORDINANCE 171-28

APPROVE LEASE AGREEMENT BETWEEN THE HUMANE ANIMAL
WELFARE SOCIETY AND WAUKESHA COUNTY

WHEREAS, the Humane Animal Welfare Society of Waukesha County, Inc. (HAWS) has leased approximately 0.8 acres of airport land from the County since 1989, and

WHEREAS, HAWS wishes to expand their parking lot on land owned by Waukesha County, and

WHEREAS, the location of their dog walking trails must be relocated due to Federal Aviation Administration (FAA) regulations, and

WHEREAS, the new lease includes 2.44 acres for \$500 per acre adjusted annually by the Consumer Price Index (CPI) for an initial term of 20 years with two consecutive 20 year extensions.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Lease Agreement between the Humane Animal Welfare Society of Waukesha County, Inc. and Waukesha County dated 1 July, 2016 is approved.

IT IS FURTHER ORDAINED that the Director of the Department of Public Works or her designee is authorized to execute the Lease Agreement on behalf of Waukesha County and any other additional documents as may be necessary to effectuate the purposes of the Lease Agreement.

FISCAL NOTE

APPROVE LEASE AGREEMENT BETWEEN THE HUMANE ANIMAL WELFARE
SOCIETY AND WAUKESHA COUNTY

This ordinance approves replacing an existing agreement between the County and the Humane Animal Welfare Society (HAWS) of Waukesha County for lease of land along Northview Road in the City of Waukesha. The old lease for approximately 0.8 acres would be expanded to about 2.44 acres, and the added space would be used for additional parking and dog walking trails. Total annual rent paid by HAWS to the County would increase from \$300 per year under the old agreement to \$1,220 per year (at \$500 per acre) under the new agreement, for an annual increase of \$920. The annual rent under the new lease will be adjusted annually for changes in the Consumer Price Index, with a minimum increase of 3.5% and a maximum of 7.5%.

The lease will have an initial term of 20 years, with options for two 20-year extensions thereafter.

This ordinance results in no additional direct tax levy impact.



Lawrence M. Dahl

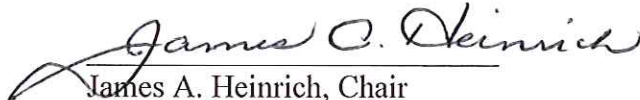
Accounting Services Manager

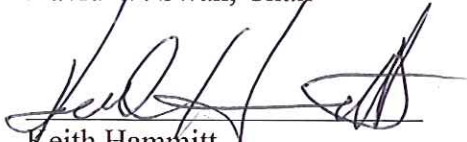
APPROVE LEASE AGREEMENT BETWEEN THE HUMANE ANIMAL WELFARE SOCIETY AND WAUKESHA COUNTY

Presented by:
Public Works Committee


Approved by:
Finance Committee


David W. Swan, Chair


James A. Heinrich, Chair

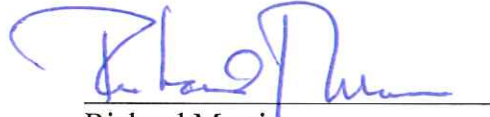

Keith Hammitt

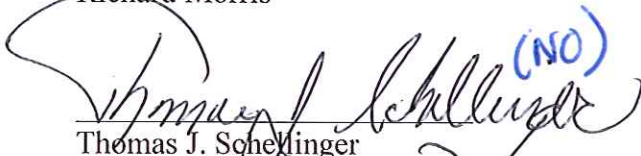

Timothy Dondlinger

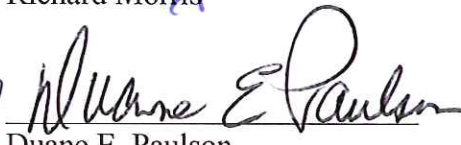

Darlene M. Johnson



Thomas A. Michalski

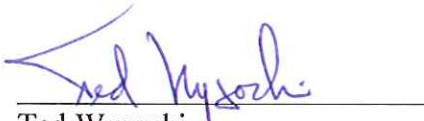
ABSENT
Richard Morris

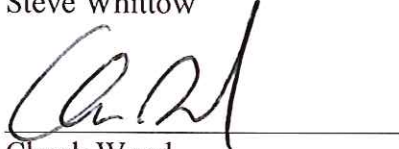

Richard Morris

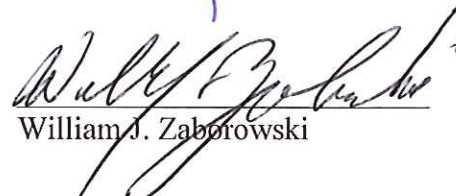

Thomas J. Schellinger


Duane E. Paulson



Steve Whittow


Ted Wysocki


Chuck Wood


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 8/23/16, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 8/29/16, 
Paul Farrow, County Executive

LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of the 1st day of July, 2016 between Waukesha County, a municipal corporation, ("County") and the Humane Animal Welfare Society of Waukesha County, Inc., a domestic non-stock corporation with a principal place of business at 701 Northview Road, Waukesha, WI 53188 ("Tenant").

1. Termination of Prior Lease. County currently leases to Tenant a parcel of Waukesha County Airport land hereafter described as Leased Area A pursuant to that certain Lease between County and Tenant dated April 6, 1989 ("Current Lease") for the singular and specific purpose of a parking lot. Tenant desires to lease additional land from County and expand the permitted uses of the leased premises. County is willing to lease such additional Airport lands and expand such uses provided that the Current Lease is terminated and on the additional terms set forth herein. Upon full execution of this Lease Agreement, the Current Lease shall automatically terminate, except for any monetary obligation incurred but still unpaid and any provisions therein that expressly survive termination, and this Lease Agreement shall thereafter govern Tenant's lease of Leased Area A and Leased Area B, defined below (collectively, the "Leased Premises"). Any rents paid under the Current Lease for rents due after the termination of the Current Lease shall be applied to rents due pursuant to this Lease Agreement.
2. Leased Premises. The County hereby leases to Tenant the following parcels of land more particularly shown and described in attached Exhibits A and B and incorporated herein by reference:
 - a. Leased Area A: An irregular shaped parcel of land on Northview Road in the City of Waukesha being a part of Lot 2 of Certified Survey Map 6111 adjacent to and west of Lot 1 of Certified Survey Map 6111 owned by Tenant approximately 105 feet wide along Northview Road and 437 feet deep and comprising approximately 0.8337 acres more or less as more particularly shown on Exhibit A and described in Exhibit B.
 - b. Leased Area B: An irregular shaped parcel of land immediately south of Leased Area A approximately 450 feet deep and 178 feet wide and comprising approximately 1.6056 acres more or less as more particularly shown on Exhibit A and described in Exhibit B.

Expressly excluded from the Leased Premises and each of Leased Area A and Leased Area B are any Airport lands owned by the County and designated as "Runway Protection Zone" by the Federal Aviation Administration ("FAA"). County represents that no part of the Leased Premises is currently designated as a Runway Protection Zone. The County shall notify Tenant if, at any time during the term of this Lease Agreement, the FAA designates any part of the Leased Premises as Runway Protection Zone.

3. Use of Leased Premises. Tenant shall be permitted only the following uses of the Leased Premises for Tenant and its officers, directors, employees, volunteers, patrons, customers, vendors and invitees:
 - a. Leased Area A shall be used exclusively as a parking lot and dog run area.
 - b. Leased Area B shall be used exclusively for the maintenance and use of dog walking trails.
4. Improvements. No permanent or temporary improvements, structures or objects shall be constructed and/or left upon the Leased Premises unless first approved in advance by the Airport Manager. Notwithstanding the foregoing, the addition of parking stalls to the existing parking lot, the location of the "Existing Dog Run" within Leased Area A as shown on the site plan attached as Exhibit C, which is incorporated by reference, and the addition of a berm or bridge/walkway over the low area to access Leased Area B, are expressly approved. Tenant shall be solely responsible for obtaining any permits or other local, state or federal approvals necessary to construct any improvement, including all necessary FFA approvals. At Tenant's request, County shall cooperate with Tenant to obtain such necessary approvals for any approved improvement, structure or object to be constructed.
5. Term. Subject to the County's termination rights described in this Lease Agreement, the term of this Lease Agreement shall be twenty (20) years commencing effective July 1, 2016 and ending June 30, 2036. Tenant shall have the right to renew this Lease Agreement under the same terms and conditions hereof for two (2) successive twenty (20) year periods provided that all of the terms and conditions of this Lease Agreement shall have been complied with, Tenant is not then in default, and the FAA has not requested or required the County to terminate this Lease Agreement.
6. Rent. Tenant shall pay an annual rental for the Leased Premises of \$1,220.00 (calculated at \$500 per acre x 2.440 acres), with the prorated amount for the year 2016 to be \$610.00 to be paid upon execution of this Lease Agreement. Credit shall be given for any rents paid for the period of July 1, 2016 through December 31, 2016 under the Current Lease.

For the year 2017, the annual rental payment for the Leased Premises shall be adjusted on the basis of the percentage by which the average of the United States Consumer Price Index – All Urban Consumers of U.S. City Average (or its successor or replacement index) for the previous twelve calendar months ending June, 2016 increased over the average for the prior twelve calendar months ending June, 2015. The same adjustment in the amount of annual rent shall be made according to the same formula for each succeeding year (i.e., the annual rent for year 2018 will be adjusted based upon the percentage increase of the index average from the twelve-month average ending June 2016 to the twelve-month average ending June 2017), including during any renewal term. The County shall notify Tenant of the succeeding year's annual rent not later than December 1 of each year. Notwithstanding the foregoing, the percentage increase over the prior year's annual rental payment shall not be less than 3.5% or greater than 7.5%.

Beginning with the annual rental payment for year 2017, and each year thereafter, the annual rental shall be paid in a single installment on January 1st. Payments shall be made payable to Waukesha County and be mailed or delivered to the following for delivery no later than the payment due date:

Waukesha County Airport
Attn: Airport Manager
2525 Aviation Drive
Waukesha, WI 53188

7. Indemnification/Hold Harmless. Tenant will not hold the County liable for any damage to property or injury or death to person when the damage, injury or death is in any way connected or related to the Tenant's obligations under or its performance of this Lease Agreement, its use or occupancy of the Leased Premises, or any of its operations permitted or required by the Lease Agreement. This hold harmless provision will not apply if the damage, injury or death was caused by 1) an intentional act of the County, or 2) a negligent act of the County, in which case the County's liability shall be limited to the percentage of negligence attributable to it.

If any demand, claim, lawsuit or proceeding is brought against the County and is in any way connected or related to the Tenant's performance of, or its obligations under this Agreement, its use or occupancy of the Leased Premises, or the operations permitted or required by this Lease Agreement, Tenant shall fully defend the County against the demand, claim, lawsuit or proceeding. The County shall give the Tenant prompt notice of any such demand, claim, lawsuit or proceeding. If such demand, claim, lawsuit or proceeding is brought the County shall have the right, but not the duty, to (1) investigate and settle the demand, claim, lawsuit or proceeding, and (2) participate in the defense of the demand, claim, lawsuit or proceeding.

If a demand, claim, lawsuit or proceeding as described in the preceding paragraph is brought, the Tenant shall pay all expenses, costs, losses, damages, fees, including reasonable attorney fees, fines, forfeitures, judgments and awards that result from the demand, claim, lawsuit or proceeding. If the demand, claim, lawsuit or proceeding was settled by the County, the Tenant shall have no payment obligation unless it approved the settlement.

The County shall not be liable for any damage to the Leased Premises or improvements of Tenant located on the Leased Premises nor for any damage to personal property of anyone in any way whatsoever related to Tenant's use of the Leased Premises except as described in this Lease Agreement. The County shall not be liable for loss of or damage by theft, act of God or in any manner whatsoever to anyone by virtue of entering into this Lease Agreement or the use of the Leased Premises.

In this section, "County" includes Waukesha County and the Waukesha County Airport Commission and all of their members, employees, officials, officers and agents acting in their capacity on behalf of the County.

8. Insurance. Tenant agrees that it will at all times during the term of this Lease Agreement, keep in force and effect insurance policies as outlined below, issued by a company or companies authorized to do business in the state of Wisconsin and satisfactory to the County. Such insurance shall be primary. Tenant shall furnish the County with a certificate of insurance evidencing the required insurance which references this Lease Agreement and additional insured status of the County. The County shall be given ten (10) days advance notice of cancellation or nonrenewal of required insurance during the term of this Lease Agreement.
 - a. Commercial General Liability Insurance covering premises and operations, personal injury, blanket contractual and independent contractors coverage for the Leased Premises with a limit of liability not less than \$1,000,000.00. Waukesha County, its boards, commissions, agencies, officers, employees and representatives shall be named as additional insured and so stated on the certificate of insurance.
9. War, National Emergency, Riot, or Natural Disaster. During time of war, national emergency, riot or natural disaster, the County shall have the right to lease the entire Airport or any part thereof (including the Leased Premises) to the United States or State of Wisconsin for military or national Guard use and, in such event, the provisions of this Lease Agreement, insofar as they are inconsistent with the provisions of any lease to any such unit of government, shall be suspended for the term of such government lease. In such event, County shall provide advance written notice to Tenant as reasonably practical.
10. Access to Leased Premises. To the extent necessary to protect the rights and interests of the County, or to investigate compliance with the terms of this Lease Agreement, the Airport Manager or his designee shall at any and all times have the right to inspect the Leased Premises, including all buildings, structures, and improvements erected thereon.
11. Government Use of Airport. This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between the County and the United States Government, relative to the operation or maintenance of the Airport, the execution of which has been, or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
12. Discrimination. Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that a) no person on the grounds of race, sex, color, physical handicap, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said Leased Premises, b) that in the construction of any improvements on, over, or under such Leased Premises and the furnishings of services, thereon, no person on the grounds of race, sex, color, physical handicap, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and c) that the Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21,

Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

13. Costs of Enforcement. Tenant covenants and agrees to pay and discharge all reasonable costs, attorneys' fees, and expenses that shall be made and incurred by the County in enforcing the covenants and agreements of this Lease Agreement.
14. Liens. Tenant agrees to promptly pay all sums legally due and payable on account of any labor performed on, or materials furnished for the Leased Premised. Tenant shall not permit any liens to be placed against the Leased Premises on account of labor performed or material furnished, and in the event such a lien is placed against the Leased Premises, Tenant agrees to save the County harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.
15. Assignment/Subleasing. This Lease Agreement may not be assigned or transferred in any way by the Tenant, nor may the Leased Premises be sublet without the advanced written consent of the County.
16. Default and Termination. This Lease Agreement will automatically terminate and Tenant shall have no further right herein in the event that there exists any violation of this Lease Agreement which continues to exist for a period of ten (10) days with respect to the payment of rent and thirty (30) days with respect to any non-monetary violation (except that such thirty (30) day period shall be automatically extended for such additional time reasonably necessary to cure such violation provided Tenant commences the process of curing such violation and diligently prosecutes such cure) after the County gives Tenant written notice of such default. Tenant shall comply with the rules of the Airport Industrial Park applicable to Tenant, unless the County has given permission to Tenant not to abide by said rules. Further, Tenant shall be subject to all rules, regulations and requirements of the FAA. The failure to comply with applicable Airport Industrial Park Rules or applicable rules, regulations and requirements of the FAA shall constitute a default under this Lease, and be subject to the same notice and right to cure provisions noted above.
17. Additional Termination Rights. The County may terminate this Lease Agreement if any of the following events occur:
 - a. A determination by the Waukesha County Board of Supervisors, by resolution or ordinance, that termination is necessary to secure federal funding for Airport development. In this event, the County shall use all reasonable efforts to give Tenant sixty (60) days advance written notice of its intent to terminate the Agreement. It is understood that the length of this advance written notice may be dependent upon federal or state government requirements pertaining to funding, but at no time shall such notice be less than thirty (30) days. At the expiration of the notice period, title to any and all improvements made by Lessee upon the Leased

Premises not removed by Tenant shall immediately vest in the County without further proceedings, conveyances or compensation, and the County may immediately enter and take possession.

- b. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Tenant, for a period of at least sixty (60) days, from its operations.
- c. The FAA requires or requests use of the demised property for airport related purposes following ninety (90) days written notice to Tenant.

18. Rent Abatement/ Tenant Termination. In the event Tenant is prohibited from using all or a material portion of the Leased Premises pursuant to Sections 9, 11, or 17 of this Lease Agreement, then Tenant's rent obligation shall abate until Tenant's use is restored, and any pre-paid rent shall be refunded. If Tenant is deprived of such use for a period exceeding six (6) consecutive months, then Tenant shall have the right to terminate this Lease Agreement by providing written notice to County.

19. Remedies Cumulative/No Waiver. All of the rights and remedies given to the County in this Lease Agreement are cumulative and no one is exclusive of any other. The County shall have the right to pursue any one or all of such remedies or any other remedy or relief that may be provided by law, whether stated in this Lease Agreement or not.

The failure of the County to take action with respect to any breach by Tenant of any covenant, condition or obligation in this Lease Agreement shall not be a waiver of such covenant, condition or obligation or a subsequent breach of the same or any other covenant, condition or obligation. The acceptance by the County of any rent or other payment shall not be a waiver by it of any breach by Tenant of any covenant, condition or obligation.

20. Authority. County and Tenant, by executing this Lease Agreement, represent and warrant to each other, that: all necessary approvals and consents have been obtained; the necessary authorities have duly approved in the process required by law the individuals signing on behalf of each entity to enter into this Lease Agreement; entering into this Lease Agreement does not violate any other agreement made with any other entity or individual.

21. Consistent Uses Allowed. The County hereby retains the right to utilize the Leased Premises for the purposes of utility and other easements which do not interfere with the Tenant's use of the Leased Premises. In the event the County exercises its right to permit easements for utilities or other purposes across the Leased Premises, the County shall be responsible for installation and maintenance thereof and shall return the Leased Premises to Tenant after installation and maintenance thereof in the same condition as previous to the installation and maintenance.

22. Governing Law/Venue. This Lease Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Wisconsin. Any lawsuit related to or arising out of disputes under this Lease Agreement shall be commenced and tried in the circuit court of Waukesha County, Wisconsin, and the County and the Tenant submit to the exclusive jurisdiction of the circuit court for such lawsuits.
23. Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.
24. Severability. In the event that any provision in this Lease Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Lease Agreement, provided that the invalidity of any such provision does not materially prejudice either the County or Tenant in their respective rights and obligations contained in the valid provisions of this Lease Agreement.
25. Survival of Obligations. The Tenant shall be responsible for the obligations in Section 7 in perpetuity. Additionally, any payment obligation and repair obligation that exists as of the termination or cancellation of this Lease Agreement shall extend until the obligation is satisfied.
26. Successors Bound. All of the provisions, covenants, and stipulations in this Lease Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties.
27. Entire Agreement. This Lease Agreement, together with any exhibits, contains and embodies the entire agreement between the County and the Tenant and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether they are written or oral.
28. Notices. Notices to the County or Tenant provided for in this Agreement shall be hand delivered or sent by certified mail, postage prepaid, addressed to:

County
 Airport Manager
 Waukesha County Airport
 2525 Aviation Drive
 Waukesha, WI 53188

Tenant
 Lynn Olenik
 Humane Animal Welfare Society
 701 Northview Road
 Waukesha, WI 53188

or to such other addresses as the parties may designate to each other in writing from time to time, and such notices shall be deemed to have been given when so sent.

29. Memorandum of Lease. Upon request of Tenant, the County and Tenant shall execute, and Tenant shall have the right to record with the Office of the Register of Deeds of Waukesha

County, a memorandum of this Lease Agreement in a form prepared by Tenant and approved by the County, which approval shall not be unreasonably withheld.

30. Prior Lease Termination. By execution of this Lease Agreement Tenant hereby waives any right, title or interest it may have had in any previous lease with Waukesha County, including the Current Lease, and understands that all previous leases and arrangements with the County are hereby terminated and deemed to be of no effect and Tenant releases the County and its assigns from any and all obligations the County or its assigns may have had under any previous leases.

IN WITNESS WHEREOF, the parties have hereto have caused this Lease Agreement to be executed by their proper officers, as of the ____ day of _____, 2016.

WAUKESHA COUNTY:

HUMANE ANIMAL WELFARE SOCIETY
OF WAUKESHA COUNTY, INC. (Tenant)

Kurt S. Stanich
Airport Manager

Name:
Title:

4852-2505-8868, v. 1

D1 - Kolb	AYE	D14 - Wood	AYE
D2 - Zimmermann	AYE	D15 - Mitchell	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Paulson	AYE
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Zaborowski	(2) AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Swan	(M) AYE	D23 - Hammitt	AYE
D11 - Howard	AYE	D24 - Whittow	Absent
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		

171-O-024

Recording 171-O-024 Results

Majority Vote

