



COUNTY OF ERIE
DEPARTMENT OF ENVIRONMENT & PLANNING
DIVISION OF SEWERAGE MANAGEMENT

MARK C. POLONCARZ
 COUNTY EXECUTIVE
 THOMAS J. DEARING
 COMMISSIONER
 JOSEPH L. FIEGL, P.E.
 DEPUTY COMMISSIONER

** MEMORANDUM **

FROM: Joseph Fiegl, P.E. – Deputy Commissioner *JF*
TO: Karen McCarthy – Clerk, Erie County Legislature
DATE: March 7, 2016
RE: Legislative Comm. 24E-3 (2015)
 Lease Agreement – Payment Terms and Cconditions

Pursuant to Legislative Comm. 14E-18 (2015), the County of Erie executed an agreement with the Town of Lancaster to purchase 3789 Walden Avenue (Rear), Lancaster, New York (SBL No. 104.08-7-7.1). This property was the location of the Town of Lancaster's (Town's) dog control operations for many years. Near the end of 2015, the Town requested that the County of Erie lease this property on a short-term basis while it solidified plans for future dog control operations.

The Division of Sewerage Management had determined that a short-term lease of 3789 Walden Avenue (Rear) would not adversely impact the County. In an effort to assist the Town, Legislative Comm. 24E-3 (2015) was submitted to the County Legislature. The final amended version of Legislative Comm. 24E-3 (2015) included the below clause:

“RESOLVED, that this Honorable Body be notified of the payment terms and conditions included in the finalized lease agreement”

Enclosed is a copy of the final lease agreement. The lease agreement became effective the date of the property transfer. The following is a summary of the payment terms and conditions:

- \$500 / month (until 6/30/16)
- \$600 / month (7/1/16 – 9/30/16)
- \$700 / month (10/1/16 – 12/31/16)

The Town had indicated prior to development of the lease agreement that it only needed to utilize this property until approximately mid-Spring 2016. At that time, the Town would have a new location for its dog control operations.

If you have any questions, please contact me at (716) 858-7537 or joseph.fiegl@erie.gov. Thank you.

Encl.

Cc: J. Rivera
 J. Carr/D. Millar/0.11.0. Leg. Ltr.

Comm. 6D-6
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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") made and entered into this ___ day of February, 2016 (the "Effective Date") by and between the County of Erie on behalf of the Erie County Sewer Districts, with offices at 95 Franklin Street, Buffalo, New York 14202 ("Landlord") and the Town of Lancaster, a municipal corporation with offices at 21 Central Avenue, Lancaster, New York 14086 ("Tenant")

The parties agree as follows:

1. Premises:

Subject to the terms, conditions and covenants in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord the building located at **3789 Walden Avenue, Lancaster, New York 14086** (the "Building"), together with all parking areas, sidewalks, driveways, loading platforms, ramps, landscaped areas, easements and appurtenances related thereto (collectively, the "Premises"). The land upon which the Premises are located is more particularly depicted on **Exhibit "A"** attached hereto.

2. Permitted Uses:

Tenant may use the Premises for a **municipal animal control shelter** and no other use or purpose without Landlord's prior consent. Tenant will use the Premises in a careful, safe, and proper manner. Tenant will not use or permit the Premises to be used or occupied for any purpose or in any manner prohibited by any applicable laws. Tenant will not commit waste or suffer or permit waste to be committed in, on, or about the Premises. Tenant will conduct its business and control its employees, agents, and invitees in such a manner as not to create any nuisance.

3. Lease Term:

The term of this Lease shall commence on February 12, 2016 (the "Commencement Date") and shall continue until the earlier of: (1) the date that Tenant informs Landlord that it no longer needs the Premises for its use; or (2) June 30, 2016 (the "Expiration Date"; such period, the "Term").

4. Premises Condition

Tenant is leasing the Premises in their present "AS-IS" condition with no representations or warranties (express or implied) by Landlord or its agents.

5. Rent/Utilities/Taxes:

Starting on the Commencement Date, and on or before the first day of each calendar month thereafter during the Term, Tenant shall pay Landlord monthly installments of rent

each in the amount of \$500.00 ("Rent"). If the Term commences and/or ends on a day other than the first day of a month, Rent for such month or months shall be prorated.

Tenant agrees to pay directly to the service providers as and when the same become due and payable, all charges for electricity, gas, heat, steam, hot water, telephone and other utilities supplied to the Premises during the Term.

6. Notices:

All notices required hereunder between Landlord and Tenant shall be given in writing, by United States certified mail, return receipt requested, or by nationally recognized overnight courier service, to Landlord or Tenant at the address shown in the opening paragraph of the Lease. All payments due hereunder shall be given to Landlord or Tenant, as the case may be, at the address shown in the opening paragraph of the Lease.

7. Alterations/Maintenance:

Tenant may not make any alterations, improvements, additions or other changes to the Premises (whether structural or not), without Landlord's prior consent.

Tenant, at its sole cost and expense, shall take good care of the Premises and shall keep, repair, replace and maintain the Premises (including any electrical, plumbing, heating, ventilation, air conditioning and other mechanical systems servicing the Premises and Tenant's equipment, personal property and trade fixtures located in the Premises) in good order, condition and repair, and each and every part thereof (including, without limitation, painting and decorating), excepting only such matters that are expressly stated herein to be within the Landlord's obligation to maintain, and shall not cause nor permit any snow, ice, dirt, debris or rubbish to be put, placed or maintained on the sidewalks, driveways, parking lots, yards, entrances and curbs, in, on or adjacent to the Premises. Tenant further agrees not to use the Premises or permit the Premises to be used in any manner as to cause excessive depreciation of or to the Building, and agrees not to cause nor permit waste of or damage or nuisance to, in, or about the Premises or the Building.

8. Tenant's Signs:

Tenant existing signage may remain in place during the Term.

9. Damages to Premises:

If the Premises are damaged or destroyed by fire or other casualty, Landlord may elect to terminate this Lease as of the date on which the damage occurred by giving the Tenant of its decision to terminate.

10. Condemnation: Intentionally omitted.

11. Default:

The occurrence of any of the following events shall constitute an event of default (an "Event of Default") by Tenant and a breach of this Lease:

- (a) Failure of Tenant to pay Rent or any other charge or sum to be paid to Landlord by Tenant within ten (10) days of its due date;
- (b) Failure by Tenant to comply with any of the rules, regulations, agreements, covenants, terms and conditions contained or referred to herein (other than the failure to pay Rent and other sums of money) for a period of ten (10) days after receipt of written notice of the default; or
- (c) Tenant breaches any of the other agreements, terms, covenants, or conditions that between Landlord and Tenant, and such breach continues for a period of 30 days after written notice from Landlord to Tenant.

12. Landlord's Remedies.

If any one or more Events of Default set forth in Section 11 occurs then Landlord has the right, at its election:

- (a) To give Tenant fifteen (15) days' written notice of the expiration of the Term and upon the giving of such notice and the expiration of such fifteen (15) day period, Tenant's right to possession of the Premises will cease and this Lease will be terminated, except as to Tenant's liability, as if the expiration of the term fixed in such notice were the end of the Term;
- (b) Without further demand or notice, to reenter and take possession of the Premises or any part of the Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or other amounts payable under this Lease or as a result of any preceding breach of covenants or conditions; or
- (c) Without further demand or notice to cure any Event of Default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees, provided that Landlord will have no obligation to cure any such Event of Default of Tenant.

Should Landlord elect to reenter as provided in subsection (2), or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part of the Premises in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Premises) as Landlord, in its reasonable discretion, may determine, and Landlord may collect and receive the rent. Landlord will in no way be responsible or liable for any failure to relet the Premises, or any part of the Premises, or for any failure to collect any rent due upon such reletting. No such reentry or taking possession of the Premises by Landlord will be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. No written notice from Landlord under this Section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such reentry or reletting to exercise its right to terminate this Lease by giving Tenant such written notice, in which event this Lease will terminate as specified in such notice.

13. Insurance:

At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the following insurance, in the amounts specified below or such other amounts as Landlord may from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord:

- (a) Commercial general liability insurance with coverage for bodily injury and property damage liability, with a combined single occurrence limit of not less than \$1,000,000.00;
- (b) "All risk" property insurance covering the Premises and all Tenant's furniture and fixtures, office machinery, equipment, stock, and any other personal property owned and used in Tenant's business and found in, on, or about the Premises, in an amount not less than \$48,840.00. Landlord will be named as "loss payee" on such insurance.

Certificates of insurance, together with copies of the endorsements, when applicable, naming Landlord as an additional insured or loss payee, will be delivered to Landlord upon the Commencement Date. All commercial general liability or comparable policies maintained by Tenant will name Landlord as an additional insured, entitling Landlord to recover under such policies for any loss sustained by Landlord, its agents, and employees as a result of the acts or omissions of Tenant.

Landlord and Tenant each waive any and all rights to recover against the other or against any other tenant or occupant of the Premises, or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of such other party or of such other tenant or occupant of the Building, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such party pursuant to this Section or any other property insurance actually carried by such party to the extent of the limits of such policy. Landlord and Tenant from time to time will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Building or the Premises or the contents of the Building or the Premises.

14. Indemnity:

During the Term, Tenant shall defend, indemnify and hold Landlord harmless from and against any losses, costs, damages, liabilities, claims, or other expenses (including reasonable legal fees) incurred by Landlord by reason of or arising out of Tenant's use or occupancy of the Premises.

Tenant agrees that all personal property in the Premises shall be and remain at Tenant's sole risk, and Landlord shall not be liable for any damage to, or loss of such personal property arising from any acts or omissions constituting negligence of any persons or from fire, or from the leaking of the roof, or from the bursting, leaking, or overflowing of water, sewer, or steam pipes, or from malfunctions of heating, plumbing, or electrical systems, or from any other causes whatsoever.

13. Assignment or Subletting:

Tenant shall not be entitled to assign this Lease or sublet the Premises, without the prior written consent of Landlord.

14. Force Majeure:

Notwithstanding anything herein to the contrary, neither Landlord nor Tenant shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease if any failure of performance is due to any strike, lockout, civil commotion, war, war-like operation, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, or any other cause beyond the reasonable control of the party obligated to perform.

15. Waiver:

It is understood and agreed that waiver by Landlord or Tenant of any default or breach of any covenant, condition or agreement herein shall not be construed to be a waiver of that covenant, condition or agreement or of any subsequent breach thereof. The acceptance of rent by Landlord with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No delay or omission by Landlord or Tenant to exercise any right or power arising from any default on part of the other shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence thereto.

16. Counterparts:

This Lease may be executed in counterparts all of which taken together shall be deemed an original.

17. Amendment and Modification:

This Lease embodies the full agreement of the parties and supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. Any modification or amendment must be in writing and signed by both parties.

18. Binding Effect:

This Lease shall be binding upon and inure to the benefit of the parties hereto, their assigns, administrators, successors, estates, heirs and legatees respectively, except as herein provided to the contrary.

19. Subordination:

Tenant shall, upon request by Landlord subordinate all or any of its rights under this Lease to any and all mortgages and deeds of trust now existing or hereafter placed on the Premises.

20. Holding Over:

If Tenant continues to occupy the Premises after the last day of the Term hereof and Landlord elects to accept rent thereafter, a month-to-month tenancy shall be created with the same terms and conditions as provided herein, except that monthly rent will be equal to 120% of the rent otherwise payable hereunder for the first three months after the original Expiration Date (i.e. July, August and September 2016) and 140% for months four through six after the original Expiration Date (i.e. October, November, December 2016). Either party shall have the right to end such tenancy by giving to the other party of 30 days written notice to that effect.

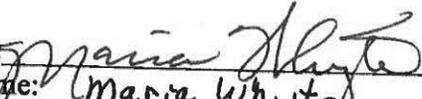
23. Access to the Leased Premises:

Landlord (and/or its authorized representatives) will have the right to enter the Premises (following notices to Tenant, except for urgent repairs) at all times during the term of the Lease. Landlord shall have the right to visit or make any other potential tenant visit the Premises prior to the expiration of the Lease or any renewal of Lease.

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IN WITNESS WHEREOF, the parties have signed this agreement as of the day and year first above mentioned.

COUNTY OF ERIE

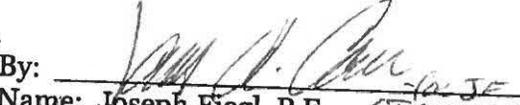
By: 
Name: Maria Whyte
Its: Deputy County Executive

TOWN OF LANCASTER

By: _____
Name: Johanna Coleman
Its: Supervisor

RECOMMENDED AS TO CONTENT

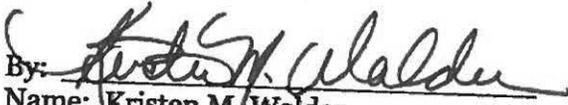
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By: 
Name: Joseph Fiegl, P.E. (JAMES A. CHER) (in SE)
Title: Deputy Commissioner of Sewerage Management

APPROVED AS TO CONTENT

By:  - 2/8/10
Name: Thomas Dearing
Title: Commissioner of Environment & Planning

APPROVED AS TO FORM

By: 
Name: Kristen M. Walder
Title: Assistant County Attorney
Document No.: 16.90.8P
Date: 2/10/10

IN WITNESS WHEREOF, the parties have signed this agreement as of the day and year first above mentioned.

COUNTY OF ERIE

By: _____
Name: Joseph Fiegl, P.E.
Its: Deputy Commissioner

TOWN OF LANCASTER

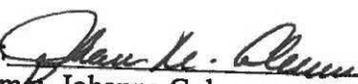
By:  _____
Name: Johanna Coleman
Its: Supervisor

EXHIBIT A
PREMISES DEPICTION

