

CITY COUNCIL MEETING

AGENDA ITEM II



From: Elizabeth Dragon – City Manager
Subject: Granite State Animal League lease

Suggested Motions:

1. Councilor moves:

“I move that the Franklin City Council authorize the City Manager execute the proposed ten year lease with the Granite State Animal League. “

2. Mayor asks for a second, discussion, and calls the vote.

Discussion:

In the past, the City Council has approved yearly lease agreements for the animal shelter located on Punch Brook Road. This building and property is part of the transfer station tract of land and is owned by the City of Franklin. The building has fallen into great disrepair.

Over the past year the Granite State Animal League (currently operating the shelter) has stepped up their efforts to build their volunteer base and improve their financial situation into the future. The group would like to make significant improvements to the building but would feel more comfortable asking people to invest in these improvements if their lease was a longer commitment. Therefore, instead of a year to year lease I have worked with the Animal League and Attorney Fitzgerald to create the proposed ten year lease with option to renew. This lease will provide more security to the organization while still protecting the city's interest in the property should it be needed for any future expansions at the transfer station.

LEASE AGREEMENT

City of Franklin

and

Granite State Animal League

AGREEMENT made this ____ day of January, 2014 by and between the City of Franklin, a New Hampshire municipal corporation located in the County of Merrimack and with a place of business at Memorial Hall, Central Street, in said Franklin, hereinafter referred to as the “Lessor” and Granite State Animal League, a voluntary organization chartered by the State of New Hampshire and authorized as a 501(c)3 with a place of business at 71 Punch Brook Road, Franklin, New Hampshire, hereafter referred to as the “Lessee”.

- I. **Leasehold.** The Lessor agrees to lease to the Lessee a portion of a certain lot of land, including a structure currently being used by the Lessor as an animal shelter, owned by the City, said lot being located on Punch Brook Road in the City of Franklin. This parcel is a portion of a 6.71 acre tract currently owned by the City with one portion thereof dedicated to the use and maintenance of a solid waste transfer station. The parcel is more specifically referred to as tax map parcel #083-012-00. The diagram attached to this lease as “Attachment 1” shows the actual area to be leased by the Lessee and is hereby incorporated by reference into this agreement.

- II. **Purpose.** The sole purpose for which the property shall be used by the Lessee is to establish and maintain a temporary shelter for stray, lost and abandoned dogs, cats and other domestic house pets found or relinquished within the City of Franklin and adjacent towns. The Lessee shall be solely and completely responsible for the operation of the temporary shelter in legal and humane fashion for the care of the animals committed to the organization. The Lessor's responsibilities shall be limited to those imposed by law or contained within this agreement.

- III. **Term.**
 - a. **Initial Term.** Commencing January 1, 2014, this Lease shall be for a period of ten (10) years (expiring on December 31, 2024 or as otherwise stated herein or at the expiration of any permits granted to the Lessee for the operation of this facility by the Lessor or any of its municipal departments or regulatory boards, including but not limited to the Planning Board and Zoning Board of Adjustment, whichever may occur first. This lease shall also terminate upon a determination that the Lessee has failed to obtain or maintain any license or permit required by the State of New Hampshire or any of its agencies for the operation of such a shelter. In that event, the Lessee shall return the premises to the Lessor in same or

better condition and all improvements made thereto during the term of this contract will inure to the benefit and ownership of the Lessor.

- b. **Extension.** This Lease shall not automatically renew. However, in the event that the Lessee is not in breach of the terms of this agreement at its conclusion and the Lessor desires to continue services identical or similar to those provided by the Lessee upon the same premises, then this Lease may be extended by mutual consent upon terms similar to those contained herein with the exception that the financial terms shall be subject to renegotiation at that time.

- c. **Additional Events of Termination.** The Lessor shall have the right to terminate this Lease upon ninety (90) days notice to the Lessee upon the occurrence of any of the following events:
 - i. Insolvency on the part of the Lessee.
 - ii. Failure on the part of the Lessee to maintain its legal existence or its tax exempt status.
 - iii. The factual or legal inability to the Lessee to perform its duties as required herein which continues for a period in excess in the aggregate of ten (10) days. The destruction or damage to the premises to such an extent that it is impossible or impractical to carry out the Lessee's mission shall not constitute grounds for termination pursuant to this section providing that the Lessee commences repairs or rebuilding of the shelter within sixty (60) days of the date of loss and prosecutes such rebuilding and repairs diligently.
 - iv. A determination on the part of the City, whose decision shall be final, that the facility or the location occupied by the facility is required by the City for the provision of services other than those provided by the Lessee.

- d. **Immediate Termination.** In addition to the above, the Lessor may immediately terminate this Lease upon the occurrence of any of the following events:
 - i. Any material breach by the Lessee of any term of this Lease which continues for a period in excess of ten (10) days.
 - ii. Failure on the part of the Lessee to continue to provide services within the City of Franklin.

The Lessee recognizes that in the event the City deems it necessary to terminate immediately that the City may have an urgent or emergency need for the use of the Shelter to continue to offer the services contemplated under this agreement. Therefore, upon such conditions the Lessee shall have the right to enter and to occupy the Shelter and to operate it for the purposes stated.

- IV. **Remedy.** The parties recognize that the occurrence of an event of termination may result in termination action being taken under one or more of the above sections as may be relevant. In the event of the occurrence of any of the events listed in subsections C or D,

above, the Lessee shall be allowed a period of forty-five (45) days to cure such event before the Lessor shall have the right of termination unless another time limitation is specifically set herein.

- V. **Termination by Lessee.** Should the Lessee locate or acquire another facility from which it can satisfactorily discharge its obligations to the Lessor as stated herein and in any other agreement between the parties, then the Lessee shall have the right to terminate this lease upon forty-five (45) day's notice to the Lessor and shall return the premises to the Lessee in accordance with the terms contained in Section 3.A., above.
- VI. **Termination by Lessor.** Should the Lessor require early termination of the lease for any other reason not listed above, the Lessor shall provide one year's termination notice in writing to the Lessee. The Lessee agrees to hold the Lessor harmless for any and all relocation associated costs.
- VII. **Consideration.**
- a. **Annual Rent.** Rent shall be paid annually, in advance, in the sum of One Dollar (\$1.00) per year in addition to consideration in the form of the other mutual covenants and agreements contained herein,
 - b. **Animal Control Fee.** Based upon a July 1st fiscal year, the Lessor agrees to pay to the Lessee a fee of Twenty Thousand Dollars (\$20,000.00) annually (based upon a calendar year) payable in quarterly installments for each quarter that this Lease or any extension hereof is in effect. The said installments shall be paid in advance and shall be subject to the annual municipal appropriation process. The Lessor may, but shall not be obligated, to increase annual payments as part of its annual budget review and passage process but shall not, during the term that this agreement is in effect, reduce payments beyond those stated for the initial term.
- VIII. **Covenants of the Lessor.** The Lessor hereby agrees and covenants to maintain at no cost to the Lessee the following services during the term of this lease agreement:
- a. Adequate electrical power;
 - b. An adequate supply of fresh, cold water sufficient to be used for drinking purposes by the animals as well as in a quantity sufficient to generally clean and maintain the premises as may be required;
- IX. **Covenants of the Lessee.** The Lessee covenants that it shall at all times operate the shelter in a satisfactory manner in accordance with the laws of the State of New Hampshire, appropriate state regulations, city ordinances, and terms of this lease. The shelter shall be kept clean and secure and shall be used for no purpose except those described herein. Further, the Lessee covenants that it shall at all times have one or more members responsible to respond to a request from the city administration or its designated agent, such as the Franklin Police Department, with regard to matters such as excessive noise, an escaped animal, or any other troublesome condition existing due to the location or the operation of the shelter. The Lessee shall provide annually proof of appropriate liability and other required insurances for shelter operation, with maximum coverages equivalent to those then being held by the City.

- X. **Hold Harmless.** The Lessee further covenants and agrees to assume all liabilities arising from its activities and operations and to hold Lessor harmless of all such liabilities as may be asserted by any and all third parties or the agents, volunteers, representatives, officers, or employees of the Lessee.
- XI. **Health and Safety.** The Lessee shall be responsible for the operation and maintenance of the shelter in such manner as not to adversely affect the health, safety or welfare of the general public. Additionally, the shelter shall be operated in such a manner so as not to create any nuisance or obnoxious condition. The Lessee shall not store upon the premises any liquid or gas have a flash point of less than 200 degrees Fahrenheit or which is toxic or corrosive either single or in combination with other substances stored thereon, with the exception of using propane for heating purposes.
- XII. **Maintenance and Repair.** It shall be the duty of the Lessee to maintain and repair the building. The Lessee shall maintain the exterior of the building and the immediate surrounding grounds in an attractive manner and keep same free of debris and litter and provide for snow and ice removal on shelter walkways.
- XIII. **Disposition of Animals.** It is agreed and understood by and between the parties that the Lessee is currently acting as a contractor of the City to operate the animal shelter as a city impoundment facility for the disposition of lost and stray canines. The Lessee shall provide 24-hour per day animal impoundment facilities to the City and shall assist the City Police Department in its animal control duties as the Chief of Police shall deem appropriate. The Lessee shall comply with all local, State and Federal regulations for the use, storage and application of any pharmaceuticals utilized in the euthanasia of animals, if any, and for the disposition of animal remains.
- XIV. **Staff.** It is understood that the staff of the facility which may consist of the employees, volunteers, officers, or other representatives of the Lessee are not employees of the Lessor. As such, the staff members are not eligible for worker's compensation insurance under the city's policies. Consequently, the Lessee covenants that it shall obtain such insurance and keep it in full force and effect to the extent required by law for the term of this lease.
- XV. **Financials.** Annually, in the month December, the Lessee agrees to submit updated financial statements and financial projections for the subsequent year to the Lessor.
- XVI. **City Council Authorization.** This agreement was approved by a vote of the Franklin City Council on January __, 2014.
- XVII. **Amendment.** No term or provision of this Agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.

- XVIII. **Entire Agreement.** It is agreed that all understandings and representations heretofore between the parties are merged into this Agreement, which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement.
- XIX. **Agreement Binding.** This Agreement shall be binding upon and be to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.
- XX. **Assignment/Subleasing.** The Lessee shall not assign any rights under this agreement or sublet any portion of the premises without the written permission of the Lessor.
- XXI. **Governing Law.** This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.
- XXII. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and executed this Agreement on the day and year first above written.

Witness

City Manager, City of Franklin
Duly Authorized

Witness

President
Granite State Animal League
Duly Authorized