

ORDINANCE NO. 7295-16

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN LEASE DATED THE 12th DAY OF JULY, 2016, BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND THE NEWPORT NEWS POLICE FOUNDATION.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease dated the 12th day of July, 2016, by and between the City of Newport News, Virginia, and the Newport News Police Foundation.

2. That a copy of the said Lease is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JULY 12, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

LEASE

This **LEASE**, made this 12th day of July, 2016, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a Municipal Corporation of the Commonwealth of Virginia, Lessor, and **NEWPORT NEWS POLICE FOUNDATION**, a non-stock Corporation of the Commonwealth of Virginia, Lessee.

WITNESSETH

1. **DEMISED PREMISES:** That in consideration of the covenants and conditions herein contained which Lessee, its successors and assigns, expressly agrees to do and perform, Lessor does demise unto Lessee the following property, in the City of Newport News, Virginia:

All of that certain lot, piece or parcel of land situate, lying and being in the City of Newport News, Virginia, identified as Parcel A-2 on that certain plat entitled "PLAT OF SUBDIVISION, PARCEL ID: 259000101, 561 MCLAWHORNE DRIVE, CITY OF NEWPORT NEWS, VIRGINIA," dated March 8, 2016, and made by Vanasse Hangen Brustlin, Inc., which said plat is recorded in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia as Instrument No. 160004138, a copy of which is attached hereto as Exhibit A.

Together with a right of ingress and egress to and from McLawhorne Drive across that certain parcel of land, owned by Lessor, commonly known as 570 McLawhorne Drive, and shared use of the parking spaces at 570 McLawhorne Drive in proximity to the parcel A-2.

2. **TERM:**

The initial term of this Lease shall be for a period of one (1) year, commencing on August 1, 2016, unless sooner terminated as a result of abandonment of the demised premises by the Lessee or as otherwise provided herein. At the termination of the initial term of this Lease, and any renewal term, the Newport News City Manager (hereinafter referred to as City Manager), in his sole discretion, may renew this Lease at the request of the Lessee for successive additional one (1) year terms, but the total number of renewals shall not exceed two (2). In no event shall this Lease extend beyond July 31, 2019.

During any term, Lessee may terminate this Lease by giving written notice of termination to Lessor at least thirty (30) days prior to the effective date of the termination.

3. **RENT:**

The Lessee shall pay to the City for the use and occupancy of the demised premises rent at an initial annual rate of ONE DOLLAR (\$1.00). The annual payments are due and payable on execution of this Lease and at the time that any renewal thereof occurs.

4. **USE OF PREMISES:**

The demised premises shall be used only for the construction and operation of a training facility for law enforcement canines and related activities of Lessee and no other activities or uses are permitted without the prior written consent of Lessor.

5. **ABANDONMENT:**

Should Lessee fail to use the demised premises for the use described in Paragraph 4 above for a period of sixty (60) consecutive days, then Lessor shall have the right and option to cancel this Lease.

6. **INSPECTION OF PROPERTY:**

Lessee has examined the demised premises and knows the condition thereof and accepts the same as is and relies on no representation or warranty, implied or express, made by Lessor, except Lessor's representation or warranty that it owns the demised premises and has the authority to lease the demised premises to Lessee.

7. **COVENANTS OF LESSEE:**

A. Should the Lessee use the demised premises for any purpose other than those set forth in paragraph 4, above, then the Lessor shall have the right and option to cancel this Lease and to collect all rentals due and unpaid.

B. Lessee shall not commit any waste on or to the demised premises, normal wear and tear excepted.

C. The use of the demised premises shall be subject to all federal, state and local laws, as well as all regulations issued pursuant thereto.

D. Lessor shall have access to the demised premises at all times for the purposes

of examining, repairing, or investigating the conditions of the property and determining compliance with this Lease.

E. Lessee, upon termination or cancellation of this Lease, shall remove from the demised premises personal property placed thereon by it, except personal property related to the operation of the canine training facility, and shall leave the demised premises clean and clear of all debris. Any property left on the demised premises after the termination of this Lease shall become the property of the Lessor, free and clear of all cost and expense to it.

F. Lessee covenants and agrees that it will not use or employ the said demised premises or any part thereof for any purpose or in any manner which might be construed as contrary to the laws of the land.

G. Lessor reserves the right of prior approval, by the City Manager or his designee, for installation of any improvement, structure or security fence on the demised premises.

8. UTILITIES AND SERVICES:

Lessor shall be responsible for the cost of water, sewer, gas and electric utility services.

9. ADDITIONAL PROVISIONS:

A. Any and all structures erected, improvements made or fixtures affixed to the demised premises during the initial or any additional term of this Lease shall become and remain the property of Lessor at the expiration of any such initial or additional term or in the event this Lease is terminated, unless otherwise agreed in writing.

B. Lessor agrees to clear the site of trees as necessary to facilitate construction of the canine training facility.

C. No employees, agents, representatives, volunteers or officials of Lessee shall be deemed to be employees, agents, representatives or officials of Lessor.

D. All of the obligations of Lessor contained herein are expressly subject to sufficient annual appropriations by the City Council for any of the functions related to Lessor's duties contained in this Lease, and it is acknowledged by the parties that the City Council is under no obligation to make any such appropriation by virtue of this Lease.

10. Intentionally omitted.

11. **ASSIGNMENT:**

Lessee may not sublet the demised premises without Lessor's written consent, which may be withheld by Lessor in its sole discretion.

Lessee may not voluntarily or by operation of law assign this Lease or any interest herein. Lessee agrees as a condition of this Lease, that if any proceeding under the Bankruptcy Act is commenced by or against Lessee, or if Lessee is adjudged insolvent, or if Lessee makes an assignment for the benefit of creditors, or if a writ of attachment or execution is levied on any of Lessee's property located on the demised premises and is not released or satisfied within five (5) days thereafter, or if a receiver is appointed in any proceeding or action to which Lessee is a party with authority to take possession or control of the demised premises, Lessor shall have the right to exercise any one or more of the remedies set forth in this Lease, and this Lease shall, at the option of Lessor, without notice, immediately terminate and shall not be treated as an asset of Lessee after termination by Lessor.

12. **Intentionally omitted.**

13. **INSURANCE:**

Lessee, at its sole cost and expense, and for the mutual benefit of Lessor and Lessee, shall procure and maintain, from a company legally qualified to do business in Virginia, comprehensive general liability insurance, including property damage, insuring Lessee against liability for injury to persons or property occurring in or about the demised premises or arising out of the maintenance, use or occupancy thereof. The liability limits under such insurance shall be not less than One Million Dollars (\$1,000,000.00) single limit. All policies of insurance shall provide by endorsement that Lessor is an additional insured. Lessee shall have the privilege of procuring and obtaining all of such insurance through its own sources. Certificates evidencing policies of insurance affording such coverage and copies of the required endorsements shall be filed with and approved by the Newport News City Attorney. Renewals of all such insurance during the term of this Lease shall be filed with and approved by the Newport News City Attorney. Lessor shall not be liable for the negligent acts or omissions of Lessee, Lessee's agents, employees, volunteers, contractors, subcontractors, and invitees.

14. **IMPROPER USE:**

Lessee, during the term of this Lease, agrees not to use or allow the demised premises or any portion thereof to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the demised premises or any portion thereof, and will not suffer any act to be done or any condition to

exist on the demised premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force on the demised premises.

15. LIENS OR ENCUMBRANCES:

Lessee shall not suffer the demised premises or any improvements thereon to become subject to any lien, charge or encumbrance, and shall indemnify Lessor against all such liens, charges or encumbrances. Lessee shall, within thirty (30) days after written notice thereof from Lessor, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against the demised premises as the result of the act or omission of Lessee.

16. SURRENDER OF PREMISES:

At the expiration or termination of this Lease, Lessee will surrender the demised premises to Lessor.

17. NOTICE:

Any notice that either party hereto desires to give to the other shall be deemed given upon hand delivery, or by placing such notice in U.S. Mail, certified mail, return receipt requested, with postage fully prepaid, addressed as follows:

To Lessor: City of Newport News
Office of the City Manager
2400 Washington Avenue, 10th Floor
Newport News, Virginia 23607

with a copy to: City of Newport News
Office of the City Attorney
2400 Washington Avenue, 9th Floor
Newport News, Virginia 23607

To Lessee: President, Newport News Police Foundation
PO Box 120496
Newport News, Virginia 23612

18. HEADINGS TO BE DISREGARDED:

The captions of the numbered paragraphs of this Lease are for the purposes of identification and convenience only, and they are to be disregarded in the construction or interpretation of this Lease.

19. **GOVERNING LAW, VENUE:**

This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties hereby irrevocably submit themselves to the original jurisdiction of the state courts located within the City of Newport News, Virginia, with regard to any controversy or claim arising out of, relating to, or in any way concerning the parties' execution of, or performance under, this Lease.

20. **AMENDMENTS:**

This Lease may be amended or modified only by a writing signed by the parties. The City Manager, on behalf of Lessor, is authorized to approve and execute amendments to this Lease, provided such amendments do not require public advertisement in accordance with Section 15.2-2105 of the Virginia Code, as amended, and such are reviewed by the City Attorney prior to execution.

21. **WAIVER:**

The failure of Lessor at any time to require performance by Lessee of any provision hereof shall in no way affect the right of Lessor thereafter to enforce the same. Nor shall the waiver by Lessor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

22. **TERMINATION:**

A. If Lessee shall at any time be in default in the performance of any of the covenants, terms, conditions, or provisions of this Lease, and the Lessee shall fail to remedy such default within thirty (30) days after notice of such default from Lessor, this Lease shall terminate, and Lessor may enter upon the demised premises and again have, possess and enjoy the same as if this Lease had not been made.

B. This Lease shall automatically terminate in the event that Lessee is dissolved, is placed into receivership, or is the subject of a bankruptcy proceeding, either voluntary or involuntary.

23. **RECORDATION OF LEASE:**

Either Lessor or Lessee may record this Lease or a memorandum hereof at its sole expense.

24. **ENTIRE AGREEMENT:**

This Lease contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings, other than expressly set forth herein or in a separate writing.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed and sealed as of the day and year first above written.

LESSOR:

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The undersigned Notary Public in and for the jurisdiction aforesaid, hereby certifies that James M. Bourey and Mabel Washington Jenkins, whose names appear as City Manager and City Clerk, respectively, of the City of Newport News, are signed to the foregoing Lease, acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this _____ day of _____, 2016.

Notary Public
My Commission expires: _____
Registration No.: _____

LESSEE:

NEWPORT NEWS POLICE FOUNDATION

By: _____
Its: _____

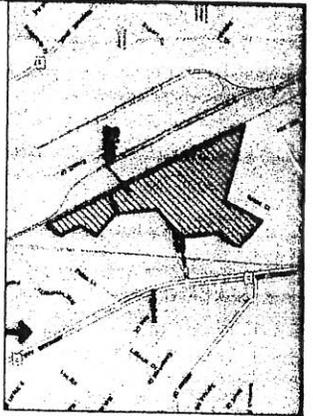
COMMONWEALTH OF VIRGINIA
City/County of _____, to wit:

The foregoing Lease was acknowledged before me this ____ day of _____, 2016,
by _____, as _____ of the Newport News Police Foundation.

Notary Public

My commission expires: _____
Registration No.: _____

sdm14487



Site Location Map
1" = 1,000'

SOURCE OF TITLE
PARCEL ID: 259000101
THE PROPERTY EMANATED WITHIN THE LIMITS OF THIS PLAT IS IN THE NAME OF THE SCHOOL BOARD FOR THE CITY OF NEWPORT NEWS, BY DEED DATED SEPTEMBER 9, 1987, AND DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS, VIRGINIA AS DEED BOOK 1157 PAGE 1082 AND RE-RECORDED IN DEED BOOK 1158 PAGE 521.

CERTIFICATE OF NOTARIZATION

STATE of Virginia
CITY/COUNTY of Newport News
I, K. M. Beck, Notary Public in and for the City and State of Virginia, do hereby certify that James M. Bourney, whose name(s) are signed to the foregoing writing, bearing date on the day of March, 2016, have acknowledged before me in my City and State of Virginia, personally known to me or has/have produced as identification given under my hand this 31 day of March, 2016.

Notary Registration Number: 3303569
BY COMMISSION EXPIRES: 03/31/2019
NOTARY PUBLIC: James M. Bourney

OWNER'S CONSENT

THE PLATING OF THE LAND HEREON SHOWN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS AND PROMOTORS:
ASHER C. WIGGIE, ED.D., SUPERINTENDENT

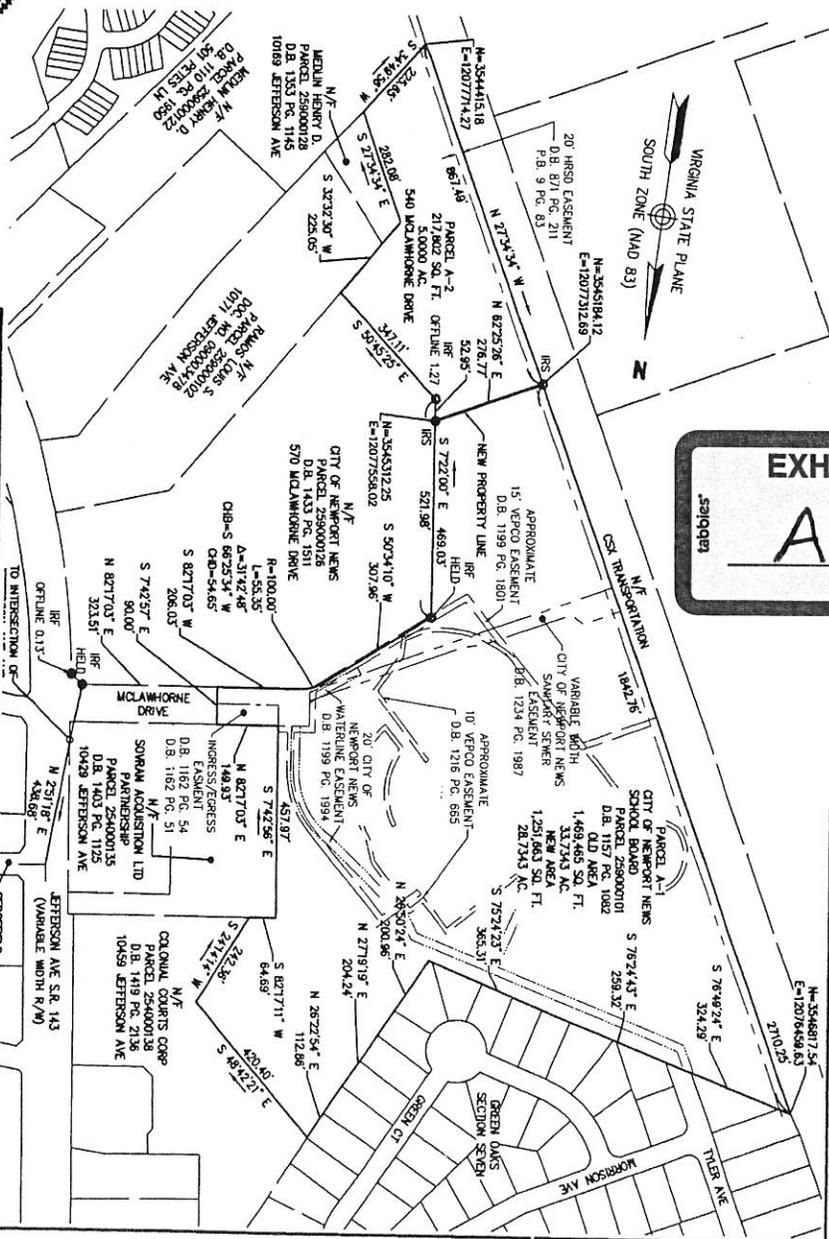
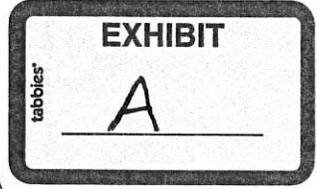


SURVEYOR'S CERTIFICATION
I, HERBERT GENTRY, TRUST TO THE BEST OF MY KNOWLEDGE AND BELIEF HAVE MADE A CORRECT AND ACCURATE SURVEY AND ACCURACY OF 1 FOOT IN 20,000 FEET AND REQUIREMENTS AS SET FORTH IN THE ORDINANCE FOR APPROVING PLATS OF PROPERTY LINE VACATION IN THE CITY OF NEWPORT NEWS, VIRGINIA HAVE BEEN COMPLIED WITH.



- GENERAL NOTES**
1. THE PROPERTY LIES WITHIN A FEMA DESIGNATED FLOOD PLAIN (ZONE X) COMMUNITY PANEL 51010301370, EFFECTIVE DATE: DECEMBER 9, 2014.
 2. PLAT COMPILED FROM INFORMATION OF RECORD.

LEGEND
IR = IRON ROD FOUND
MS = 24 LONG 3/8 REBAR SET



306. NO. RECORDED
2016 MAR 28 AM 8:48
REC'D - PLAT & SUBDIVISION

160004138

PLAT OF SUBDIVISION
PARCEL ID: 259000101
561 MCILWAHORNE DRIVE
CITY OF NEWPORT NEWS, VIRGINIA

DATE: 3/8/16 SHEET 1 OF 1 SCALE: 1"=200'
DRAWN BY: CRO

WBB
Virginia Registered Professional Engineer
311 Main Street, Suite 104
Newport News, VA 23606
(757) 236-1144 Fax: (757) 236-1144

Recommended For Approval

Engineering/Transportation	<i>[Signature]</i>	3/22/16
City Design	<i>[Signature]</i>	3/22/16
Subdivision	<i>[Signature]</i>	3/22/16
Environmental Services	<i>[Signature]</i>	3/22/16
City Attorney	<i>[Signature]</i>	3/22/16
Zoning Administrator	<i>[Signature]</i>	3/22/16
Planning	<i>[Signature]</i>	3/22/16
Development	<i>[Signature]</i>	3/22/16
Red Estate Assessor	<i>[Signature]</i>	3/22/16

APPROVED FOR THE CITY OF NEWPORT NEWS, VIRGINIA

EVERETT P. SHIPPER, P.E., BCEE, DIRECTOR OF ENGINEERING
DATE: 3/8/16

JAMES M. BOURNEY, CITY MANAGER
DATE: 3/8/16

