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CITY ADMINISTRATOR'S OFFICE MEMO

cityadmin@hiawatha-iowa.com
319-393-1515 ext.523

To: Mayor and City Council
From: City Administrator, Kim Downs and Park & Rec Director Kelly Willadsen
Date: July 2, 2018
RE: Joint Project with Linn County Dog Park Lease Agreement Amendment

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In May city council approved a lease agreement with Linn County for certain land described in Exhibit "A" for a term of 15 years with two (2) five year (5) renewals for the use of a dog park contingent to Linn County's final approval.

In our continued discussions with Linn County Conservation Director and his team they would like to add "Exhibit A" .72 acres described as ABND R/W IN CITY OF HIAWATHA-CR COMM SCH SEC 28, 32, & 33 & PT NW SW NW AS DESC V1922 P312 SEC 33 TWP 84 R 7 south of Dave Wright's parcel as described below in total of land to be used for the use of a dog park and walking trail. By adding the .72 acres that allows our two organizations to leave healthy clustered tree areas intact within the other sections already approved and provide for a more open space for the dogs and their owners.

Total properties:

Dave Wright= TH PT S1/2SW NW LYG NW'LY OF RR EX V1910 P195 SEC 33 TWP 84 R 7

Linn County= Approximately TH PT S1/2SW NW-LYG NW'LY OF RR DESC V1910 P195 SEC 33 TWP 84 R 7, and
Approximately ABND R/W IN CITY OF HIAWATHA-CR COMM SCH SEC 28, 32, & 33 & PT NW SW NW AS DESC V1922 P312 SEC 33 TWP 84 R 7

Park & Recreation Director Kelly Willadsen and I would ask for city council to approve the amendment to our agreement with Linn County adding .72 acres to the dog park project.

Thank you for your consideration.

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into this _____ day of July 2018 by and between the Linn County, (hereinafter the "Landlord") and the City of Hiawatha, Iowa, an Iowa Municipal Corporation (hereinafter the "Tenant"). The Landlord and Tenant may be referred to collectively as the "Parties".

WITNESSETH THAT:

1. **PREMISES AND TERMS.** The Landlord, in consideration of the rents, agreements and conditions herein contained, leases to the Tenant and Tenant leases from Landlord, according to the terms of this lease, the following described "premises", situated in Linn County, Iowa:

Commonly known as:

Dave Wright= TH PT S1/2SW NW LYG NW'LY OF RR EX V1910 P195 SEC 33 TWP 84 R 7

Linn County= Approximately TH PT S1/2SW NW-LYG NW'LY OF RR DESC V1910 P195 SEC 33 TWP 84 R 7, and

Approximately ABND R/W IN CITY OF HIAWATHA-CR COMM SCH SEC 28, 32, & 33 & PT NW SW NW AS DESC V1922 P312 SEC 33 TWP 84 R 7

with the improvements thereon, and all rights, easements and appurtenances, which, more particularly, includes the space and premises, including an ingress and egress path to the Dog Park from the Parking Lot, as may be shown on "Exhibit A", attached hereto, for a term of fifteen (15) years, commencing at midnight of the day previous to the first day of the lease term, which shall be on August 1, 2018 and ending at midnight on the last day of the lease term, which shall be on July 31, 2032, upon the condition that the Tenant pays rent therefor, and otherwise performs as provided in this lease. The tenant shall also have two (2) five (5) year options to renew this Agreement provided the Tenant gives the Landlord at least sixty (60) days written notice of its intent to exercise the option to renew.

2. **RENTAL.** During the Term of this Agreement, and any exercised options, the annual rent shall be One Dollar ($1.00). All sums shall be paid at the address of Landlord, as designated below, or at such other place in Iowa, or elsewhere, as the Landlord may, from time to time, designate in writing.

3. **POSSESSION**. Tenant shall be entitled to possession on the first day of the term of this Lease Agreement, and shall yield possession to the Landlord at the end of the lease term, except as herein otherwise expressly provided. Should Landlord be unable to give possession on said date, Tenant's only damages shall be a rebating of the pro rata rental.

4. **USE OF PREMISES.** Tenant covenants and agrees during the term of this Lease Agreement to use and to occupy the leased premises only for the operation of a public dog park.

5. **QUIET ENJOYMENT.** Landlord covenants that its estate in said premises is in fee simple and that the Tenant, if not in default, shall peaceably have, hold and enjoy the premises for the term of this lease. Landlord shall have the right to mortgage all of its right, title, and interest in said premises at any time without notice, subject to this lease.

6. **CONDITION/MAINTENANCE OF PREMISES.** Tenant takes the premises in its present condition, except for such repairs and alterations as may be expressly otherwise provided in this Lease Agreement. Tenant shall continue to have responsibility for repair and maintenance to the end that the premises will be kept in a safe and serviceable condition. Tenant will not permit nor allow the premises to be damaged or depreciated in value by any act, omission to act, or negligence of itself, its agents or employees.

7. **UTILITIES AND SERVICES.** Utilities and services shall be furnished and paid for by the parties as follows:

	PAYMENT	
	% Landlord	% Tenant
Electricity	0%	100%
Gas	0%	100%
Water and Sewer	0%	100%
Garbage/Trash	0%	100%
Janitor/Cleaning	0%	100%
Snow Removal	0%	100%
Lawn Care/Mowing	0%	100%

Tenant shall be responsible for any other utility not listed herein.

8. **TERMINATION, SURRENDER OF PREMISES AT END OF TERM -- REMOVAL OF FIXTURES.**

(a) **TERMINATION.** This Lease Agreement shall terminate upon expiration of the original term.

(b) **SURRENDER.** Tenant agrees that upon termination of this Lease Agreement it will surrender and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Tenant.

(c) **REMOVAL OF FIXTURES.** Tenant shall, at the expiration of its tenancy, remove any fixtures or equipment, including fencing and signage, or any other improvement made by the Tenant, which Tenant has installed in the premises during the term of this lease, providing Tenant repairs any and all damages caused by removal.

9. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublet the Leased Premises or any part thereof without the Landlord's written permission. Such permission shall not be unreasonably withheld. If Tenant assigns or sublets any portion of the Leased Premises without Landlord's written permission, at the option of the Landlord, the Landlord may make the rental for the balance of the lease term due and payable at once.

10. **REAL ESTATE TAXES.** NA

11. **INSURANCE.**

(a) **PROPERTY INSURANCE.** Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the Insurance Services Official Broad Form Causes of Loss (formerly fire and extended coverage). To the extent permitted by their policies the Landlord and Tenant waive all rights of recovery against each other. The Parties acknowledge the Landlord is self-insured.

(b) **LIABILITY INSURANCE.** Tenant shall obtain and maintain commercial general liability insurance and property damage insurance in the amounts of $1,000,000.00 each occurrence and $2,000,000.00 annual aggregate per location. Such policy shall include liability arising from premises operations, independent contractors, personal injury, products and completed operations, liability assumed under an insured contract, damage or destruction of property (including loss of use) for any one occurrence as a tenant of the building, parking area, sidewalks and other appurtenant areas. This policy shall be endorsed to include the Landlord as an additional insured.

(c) **CERTIFICATES OF INSURANCE.** Prior to the time the lease takes effect, the Tenant will provide the Landlord with a certificate of insurance with these property and liability insurance requirements, such certificate shall include thirty (30) days advance notice of cancellation to the Landlord. A renewal certificate shall be provided prior to expiration of the current policies.

(d) **ACTS BY TENANT.** Tenant will not do or omit doing of any act which would invalidate any insurance, or increase the insurance rates in force on the premises.

(e) Landlord and Tenant shall each provide a copy of this Lease Agreement to their respective insurers.

12. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees), except to the extent the loss is insured and subrogation is waived under the owner's policy.

13. **INDEMNITY.** Except for the negligence of Landlord, Tenant will protect, defend and indemnify Landlord from and against all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

14. **CONDEMNATION.**

(a) **DISPOSITION OF AWARDS.** Should the whole or any part of the Leased Premises be condemned or taken for any public or quasi-public purpose, each party shall be entitled to retain, as its own property, any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

(b) **DATE OF LEASE TERMINATION.** If the whole of the demised premises shall be condemned or taken, the Landlord shall not be liable to the Tenant except and as its rights are preserved in paragraph 14 (a) above.

15. **DEFAULT, NOTICE OF DEFAULT AND REMEDIES.**

EVENTS OF DEFAULT

A. Each of the following shall constitute an event of default by Tenant:

1. Failure to pay the annual lease payments when due under the Lease Agreement.

2. Failure to observe or perform any duties, obligations, agreements or conditions imposed on Tenant pursuant to terms of the Lease Agreement.

3. Abandonment of the premises, "Abandonment" means the Tenant has failed to engage in its usual and customary business activities on the premises for more than fifteen (15) consecutive business days.

4. Institution of voluntary bankruptcy proceedings in which the Court orders relief against the Tenant as a debtor; assignment for the benefit of creditors of the interest of Tenant under this Lease Agreement; appointment of a receiver for the property or affairs of

Tenant, where the receivership is not vacated within ten (10) days after the appointment of the receiver.

NOTICE OF DEFAULT

B. Landlord shall give Tenant a written notice specifying the default and giving the Tenant ten (10) days in which to correct the default. If there is a default (other than for non-payment of a monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant shall propose an additional period of time in which to remedy the default. Consent to additional time shall not be unreasonably withheld by the Landlord. Landlord shall not be required to give Tenant any more than three (3) notices for the same default within any 365-day period.

REMEDIES

C. In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including, but not limited to, the following:

1. Termination. Landlord may declare this Lease Agreement to be terminated and shall give Tenant a written notice of such termination. In the event of termination of this Lease Agreement, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses incurred by Landlord in regaining possession of the premises and the reletting thereof, including attorneys' fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting.

2. Forfeiture. If a default is not remedied in a timely manner, Landlord may then declare this Lease Agreement to be forfeited and shall give the Tenant a written notice of such forfeiture, and may, at the time, give Tenant the Notice to Quit provided for in Chapter 648 of the Iowa Code.

16. **RIGHT OF EITHER PARTY TO MAKE GOOD ANY DEFAULT OF THE OTHER.** If default shall be made by either party in the performance of, or compliance with, any of the terms or conditions of this Lease Agreement, and such default shall have continued for thirty (30) days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 9% per annum, from date of advance.

17. **MECHANIC'S LIENS.** Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind

or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

18. **ENVIRONMENTAL.**

A. Landlord. To the best of Landlord's knowledge to date:

1. Neither Landlord nor Landlord's former or present tenants are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

2. Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state and local codes, rules and regulations.

3. No leak, spill release, discharge, emission or disposal of toxic or hazardous substances has occurred on the premises.

4. The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances.

5. Landlord shall assume liability and shall indemnify and hold Tenant harmless against all liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which condition is not a result of actions of the Tenant or which condition arises after date of execution but which is not a result of actions of the Tenant.

B. Tenant. Tenant expressly represents and agrees:

1. During the lease term, Tenant's use of the property will not include the use of any hazardous substance without Tenant first obtaining the written consent of Landlord. Tenant understands and agrees that Landlord's consent is at Landlord's sole option and complete discretion and that such consent may be withheld or may be granted with any conditions or requirements that Landlord deems appropriate.

2. During the lease term, Tenant shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the property by Tenant, and Tenant shall give immediate notice to Landlord of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

3. Tenant, at its sole cost and expense, agrees to remediate, correct or remove from the premises any contamination of the property caused by any hazardous substances which have been used or permitted by Tenant on the premises during any term of this lease. Remediation, correction or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Tenant reserves all rights allowed by law to seek indemnity or contribution from any person, other than Landlord, who is or may be liable for any such cost and expense.

4. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by Tenant on or after the date of this lease and during any term of this lease, including, but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any leased premises which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Lease Agreement.

19. **RIGHTS CUMULATIVE.** The various rights, powers, options, elections and remedies of either party, provided in this Lease Agreement, shall be construed as cumulative and not one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

20. **NOTICES AND DEMANDS.** Notices as provided for in this Lease Agreement shall be given to the respective parties hereto at the respective addresses designated on page one of this Lease Agreement, unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this Lease Agreement when sent, addressed as above designated, postage prepaid, by certified mail deposited in a United States mail box.

Landlord: Linn County, Iowa

_____

_____

Tenant: City of Hiawatha, Iowa
101 Emmons Street
Hiawatha, Iowa 52233

21. **PROVISIONS TO BIND AND BENEFIT SUCCESSORS, ASSIGNS, ETC.** Each and every covenant, provision, term and condition contained in this Lease Agreement shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties; except that if any part of this Lease Agreement is held in joint tenancy, the successor in interest shall be the surviving joint tenant.

22. **CHANGES TO BE IN WRITING.** None of the covenants, provisions, terms or conditions of this Lease Agreement shall be modified, waived or abandoned, except by a written instrument duly signed by the parties. This Lease Agreement contains the whole agreement of the parties.

23. **CHOICE OF LAW.** Any claim related to this Lease Agreement will be governed by Iowa procedural and substantive law and will be adjudicated in a state or federal court located in Linn County, Iowa.

24. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

25. **ATTORNEY FEES.** The prevailing party in any legal action brought by either the Landlord or the Tenant to enforce any provision or requirement of this Agreement shall be entitled to reasonable attorney fees and costs.

26. **OTHER.**

A. Dog Park Hours of Operation. The Tenant shall be solely responsible for establishing the hours of Hiawatha's Dog Park. The City Dog Park shall be open year-round between sunrise and sunset each day.

B. Fencing. The Landlord agrees to allow Tenant to install a chain link fence at least five (5) feet high around the perimeter of the leased Property as shown in Exhibit "A". The chain link fence shall have either black, green or brown vinyl coating.

C. Trees and Other Vegetation Removal. The Landlord grants the Tenant permission to remove all deed trees, scrub trees and vegetation located on the

Property at the Tenant's sole expense. The Tenant shall not remove any living mature trees from the Property. Landlord and Tenant agree that their party representatives shall set a date and time mutually agreeable, but within thirty (30) days from the date of this Agreement, to walk the Property to determine which trees are to be removed and which trees shall remain.

D. Severability. If any portion of this Agreement or the application thereof to any person or circumstances is held invalid, prohibited or unenforceable for any reason, the remaining provisions shall continue to be given full force and effect so far as possible. Where necessary to carry out the intent of this Agreement, the parties shall substitute suitable and equitable terms in lieu of such invalid or unenforceable portion.

E. Construction. Each party acknowledges that all Parties participated equally in drafting this Agreement; and, accordingly, stipulate that no court construing this Agreement shall construe it more stringently against one party or the other.

F. Recitals. The above Recitals are substantive portions of this document and are incorporated herein by this reference.

G. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first below written by their duly authorized agents or officers as of the date set forth below.

Dated this _____day of _____, 2018.

LINN COUNTY, IOWA– LANDLORD

By:_____

_____, its _____

By:_____

_____, its _____

Dated this _____ day of _____, 2018.

CITY OF HIAWATHA, IOWA, an Iowa Municipal Corporation – TENANT

_____
William Bennett, its Mayor

ATTEST

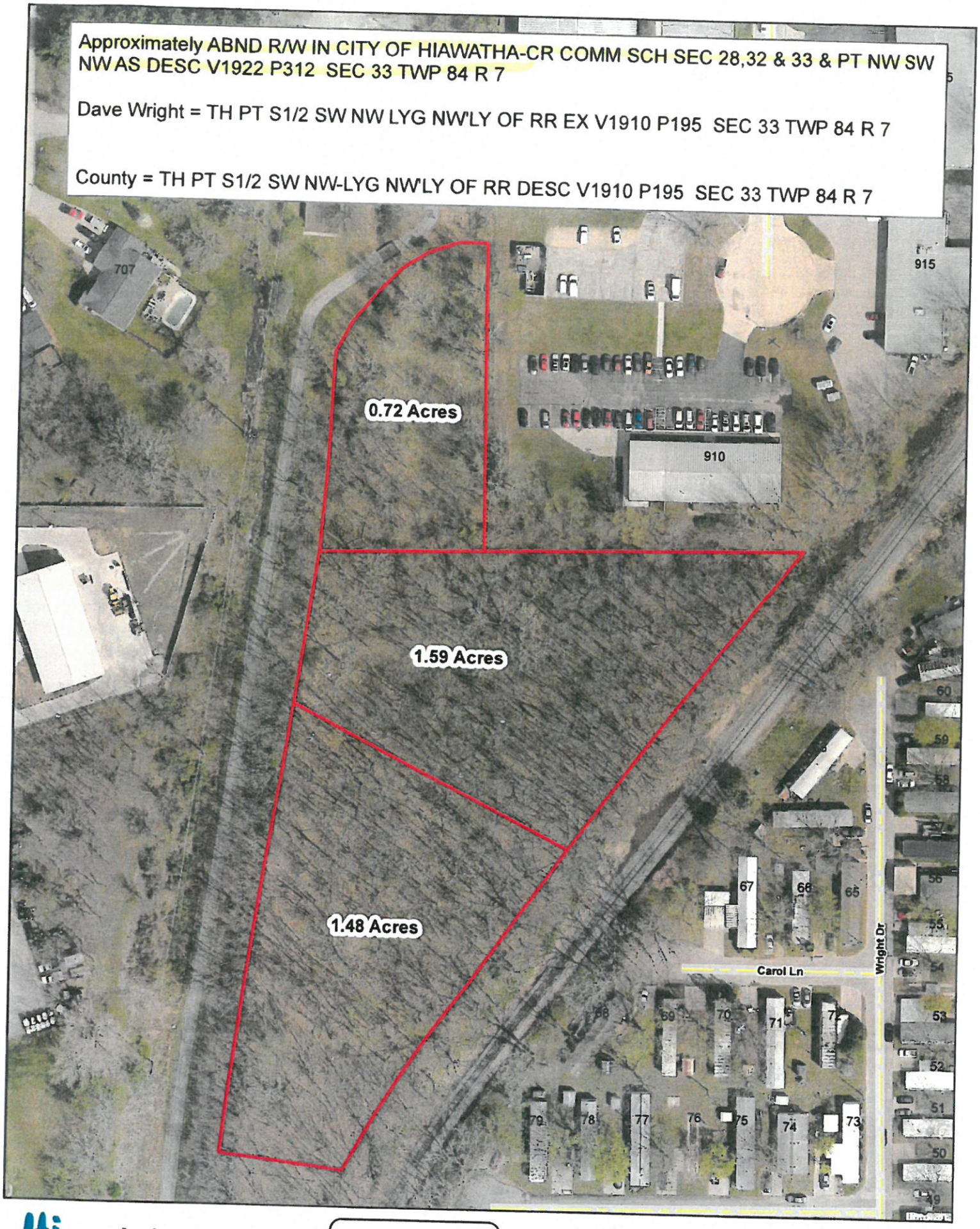
By:_____
Kelly Kornegor, City Clerk

DRAFT

Approximately ABND R/W IN CITY OF HIAWATHA-CR COMM SCH SEC 28,32 & 33 & PT NW SW NW AS DESC V1922 P312 SEC 33 TWP 84 R 7

Dave Wright = TH PT S1/2 SW NW LYG NW'LY OF RR EX V1910 P195 SEC 33 TWP 84 R 7

County = TH PT S1/2 SW NW-LYG NW'LY OF RR DESC V1910 P195 SEC 33 TWP 84 R 7



Hiawatha!

1 inch = 100 feet

EXHIBIT "A"

A

DRAFT

RESOLUTION NO. 18-
City Council

RESOLUTION APPROVING AN AMENDMENT TO THE LEASE AGREEMENT WITH LINN COUNTY FOR THE USE OF A DOG PARK CONTINGENT TO LINN COUNTY'S FINAL APPROVAL

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, approving an amendment to the lease agreement with Linn County originally approved by Resolution #18-090, by adding 0.72 acres to the dog park project for certain land described as follows and shown in Exhibit "A":

Approximately ABND R/W IN CITY OF HIAWATHA-CR COMM SCH SEC 28,32 & 33 & PT NW SW NW AS DESC V1922 P312 SEC 33 TWP 84 R 7

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 18th day of July, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk