

**COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2013-43
SPONSORED BY COMMISSIONER DOUGHERTY
REQUESTED DATE: SEPTEMBER 4, 2013
ORDINANCE 2013 - NO.**

**APPROVING A SECOND AMENDMENT TO THE LEASE WITH
THE LEHIGH VALLEY ZOOLOGICAL SOCIETY**

WHEREAS, by Ordinance No. 2004-184 the Board of Commissioners approved a lease agreement with the Lehigh Valley Zoological Society (Society) under which the Society agreed to lease a portion of the Trexler-Lehigh County Nature Preserve known as the Lehigh Valley Zoo, and agreed to operate, support and maintain the leased premises; and

WHEREAS, by Ordinance No. 2006-215 the Board of Commissioners transferred ownership of the Zoo animals to the Society; and

WHEREAS, by Ordinance No. 2009-118 the Board of Commissioners provided additional funding to the Society and amended the Lease Agreement for the first time; and

WHEREAS, the Society has requested additional assistance from the County in order to continue operating the Zoo; and

WHEREAS, without the requested operational support, the Society will no longer be able to operate or provide care for the animals within the Zoo as well as the bison, elk and Palominos within the Nature Preserve; and

WHEREAS, after reviewing the financial status of the Society, the County Executive has proposed a schedule of additional funding; and

WHEREAS, for the years 2014 through 2019, the County Executive has proposed that

\$92,500.00 in annual funding be provided for the care of the bison, elk and Palominos; and

WHEREAS, for each of the years 2014, 2015 and 2016, the Society will receive \$185,000.00 in annual funding, and for each of the years 2017, 2018, and 2019, \$150,000.00 in annual funding, which amounts are subject to reduction if the Society's cash balance improves.

WHEREAS, implementation of these proposals requires an amendment to the Lease Agreement, which is attached hereto as Exhibit "A"; and

WHEREAS, ordinance approval is required to amend the Lease.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:

1. The foregoing WHEREAS clauses are incorporated herein as if set forth in their entirety.
2. The proposed Second Amendment to the Lease Agreement attached hereto as Exhibit "A", is hereby approved.
3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.
4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.
5. Any Ordinance or part of any Ordinance conflicting with the provisions of this

Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective in ten (10) days after enactment.

ADOPTED this ____ day of _____, 2013, by the

following vote:

Commissioners

AYE

NAY

Thomas Creighton, III
Percy H. Dougherty
David S. Jones, Sr.
Daniel K. McCarthy
Vic Mazziotti
Brad Osborne
Scott Ott
Lisa Scheller
Michael P. Schware

ATTEST: _____
Clerk to the Board of Commissioners

APPROVED this ____ day of _____, 2013.

Matthew T. Croslis
LEHIGH COUNTY EXECUTIVE

ENACTED this ____ day of _____, 2013.

**SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN THE
COUNTY OF LEHIGH, PENNSYLVANIA AND THE LEHIGH VALLEY
ZOOLOGICAL SOCIETY**

This Second Amendment to a Lease Agreement is made and entered into this ____ day of _____, 2013, by and between the County of Lehigh, Pennsylvania, a Home Rule County of the Third Class, with offices located at 17 S. 7th Street, Allentown, PA 18101-2400 (hereinafter Lessor) and The Lehigh Valley Zoological Society, a Pennsylvania non-profit corporation (hereinafter Lessee).

WHEREAS, Lessor and Lessee entered into a Lease Agreement dated August 30, 2004, which commenced November 1, 2004, for the premises known as the Lehigh Valley Zoo (Premises, Facility, Zoo); and

WHEREAS, the parties entered into an Amendment of the Lease dated on or about February 17, 2009 which addressed matters to improve Lessee's ability to continue operation of the Facility; and

WHEREAS, the parties are desirous of amending the Lease for a second time to address matters which will improve Lessee's ability to continue operation of the Facility.

NOW, THEREFORE, intending to be legally bound hereby, and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows.

1. The Lease dated August 30, 2004 is hereby amended as set forth below (additions are in bold and underlined):



XI. MISCELLANEOUS

L. The above subsidy shall only be for the Five years set forth above. Lessor agrees to provide Lessee the following additional subsidies:

2009 \$525,000.00 – distributed as \$445,000.00 and quarterly payments of \$20,000.00, payable the 1st of January, April, July and October

2010 \$325,000.00 – distributed as \$245,000.00 and quarterly payments of \$20,000.00, payable the 1st of January, April, July and October

2011 \$325,000.00 - distributed as \$245,000.00 and quarterly payments of \$20,000.00, payable the 1st of January, April, July and October

2012 \$325,000.00 - distributed as \$245,000.00 and quarterly payments of \$20,000.00, payable the 1st of January, April, July and October

2013 \$325,000.00 - distributed as \$245,000.00 and quarterly payments of \$20,000.00, payable the 1st of January, April, July and October

2014 \$277,500.00 - distributed as a \$185,000.00 annual subsidy and quarterly animal maintenance payments of \$23,125.00, payable the 1st of January, April, July and October

2015 \$277,500.00 - distributed as a \$185,000.00 annual subsidy and quarterly animal maintenance payments of \$23,125.00, payable the 1st of January, April, July and October

2016 \$277,500.00 - distributed as a \$185,000.00 annual subsidy and quarterly animal maintenance payments of \$23,125.00, payable the 1st of January, April, July and October

2017 \$242,500.00 - distributed as a \$150,000.00 annual subsidy and quarterly animal maintenance payments

of \$23,125.00, payable the 1st of January, April, July and October

2018 \$242,500.00 - distributed as a \$150,000.00 annual subsidy and quarterly animal maintenance payments of \$23,125.00, payable the 1st of January, April, July and October

2019 \$242,500.00 - distributed as a \$150,000.00 annual subsidy and quarterly animal maintenance payments of \$23,125.00, payable the 1st of January, April, July and October

Except as noted above, the funding for each year shall be payable on the first of January. The quarterly animal maintenance payments are specifically designated for the care of the bison, elk and palominos. It is anticipated that Lessee may apply to the County for future subsidies. Lessor is only obligated for appropriations listed above. Lessor is not obligated to make any capital improvements to the Facility. The subsidy set forth in this paragraph is conditioned upon the following:

- (1) These funds shall not be diverted or used for any other operations or purposes of the Lessee corporation. To do so will constitute a breach of this Lease; and
- (2) The Lessor shall have the right to review the Lessee's employees' and officers' salaries each year to determine that they are reasonable to the operation of the Leased Property.
- (3) Lessee shall submit monthly detailed cash-flow reports to Lessor's Director of Administration.

(4) The annual subsidy funding for years 2014 through 2019 shall be subject to reduction if Lessee's audited statements show improvement in the Lessee's cash balance at year end. The reduction will be made to the subsequent year's annual subsidy based on the following criteria:

a. If the cash balance year over year increases by more than \$25,000.00 but less than \$50,000.00, then a reduction of \$15,000.00 will be made to the following year's annual subsidy.

b. If the cash balance year over year increases by more than \$50,000.00 but less than \$75,000.00, then a reduction of \$25,000.00 will be made to the following year's annual subsidy.

c. If the cash balance year over year increases by more than \$75,000.00, then a reduction of \$35,000.00 will be made to the following year's annual subsidy.

2. In all other respects the parties ratify and confirm the terms and conditions of the original Lease intending to be bound thereby.

IN WITNESS WHEREOF, and intending to be legally bound hereby,
the undersigned Lessor and Lessee hereto execute this Second Amendment
as of the day and year first above written.

ATTEST:

LESSOR:
County of Lehigh

(Corporate Seal)

BY: _____
Name: _____
Title: _____

LESSEE:
The Lehigh Valley Zoological Society

Melania A. Hahn
Secretary
(Corporate Seal)

BY: [Signature]
Name: Richard S. Molchansky
Title: President & CEO