

## **AGREEMENT ON DISPOSITION OF ANIMALS**

This Agreement on Disposition of Animals (the “Agreement”), entered into this 27th day of May, 2015 (the “Effective Date”), by and between the State of Wisconsin (the “State”), the City of Waukesha, Wisconsin (the “City”), the Humane Animal Welfare Society of Waukesha County, Inc. (“HAWS”), and Garrett and Tricia Rees (collectively the “Putative Defendants”), is as follows.

### **RECITALS**

0.1 WHEREAS, on or about March 29, 2015, police and fire officials of the City were called to perform a well-being check at 2208 Melody Lane, Waukesha, Wisconsin 53186, the home of the Putative Defendants.

0.2 WHEREAS, City officials found the residence leased by the Putative Defendants to be unlivable due to, among other things, excessive ammonia levels.

0.3 WHEREAS, in the process of conducting its well-being check on the residence, City officials discovered approximately 331 chinchillas, both alive and dead, which are used as companion animals (the “Chinchillas”).

0.4 WHEREAS, the City and State claim that the City had reasonable grounds to believe that one or more of the Chinchillas were being mistreated in violation of Chapter 951 of the Wisconsin Statutes (“Crimes Against Animals”) and the Putative Defendants disagree with this assertion.

0.5 WHEREAS, the assent of the Putative Defendants to the terms of this Agreement shall in no way be deemed a waiver of any and all claims or defenses that

the Putative Defendants may have in relation to any criminal prosecution pursued by the State.

0.6 WHEREAS, pursuant to its authority under Wis. Stat. § 173.13(1)(a)8, the City seized the Chinchillas on March 29, 2015 and had them placed in custodial care with HAWS pursuant to a contract between the City and HAWS entered into pursuant to Wis. Stat. § 173.15(1).

0.7 WHEREAS, on May 15, 2015 the State filed criminal charges against the Putative Defendants, accusing them of child neglect and violating Wis. Stat. §§ 951.02 (“Mistreating Animals”) and 951.14 (“Providing Proper Shelter”).

0.8 WHEREAS, HAWS is incurring costs in caring for the Chinchillas at the rate of approximately \$2652/day and as of May 23, 2015 has incurred \$140,709.78 in out-of-pocket expenses providing custodial care of the Chinchillas owned by the Putative Defendants.

0.9 WHEREAS, absent resolution on how to dispose of the Chinchillas, the animals shall be maintained at HAWS pursuant to Wis. Stat. § 173.21(1)(a) and (c) pending resolution of any and all criminal charges against the Putative Defendants pursuant to a contract between the City and HAWS.

0.10 WHEREAS, pursuant to Wis. Stat. § 173.23(3)(a), the City maintains the right to file a petition asking the Waukesha County Circuit Court to order the Putative Defendants to provide for the payment or other security to cover the costs being incurred by HAWS for the custody, care, and treatment of the Chinchillas owned by the Putative Defendants.

## AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals (which are acknowledged to be true and correct and are incorporated into this Agreement) and the promises and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party to this Agreement), it is agreed as follows:

### **1.0 DISPOSITION PLAN.**

1.1 Chinchilla Inventory. The Putative Defendants acknowledge and agree that they have been provided access to written records maintained by HAWS that constitute a written inventory of the Chinchillas maintained by HAWS pursuant to the March 29, 2015 seizure. They further acknowledge that certain of the Chinchillas seized have since died and yet others have given birth. HAWS and the Putative Defendants agree that as of the Effective Date HAWS maintains approximately 320 Chinchillas in its possession, custody, and control (the "Inventory").

#### 1.2 Disposition of the Inventory.

1.2.1 Ownership Transfer to HAWS. Other than the forty-nine (49) Chinchillas (the "Remaining Chinchillas") identified on **Exhibit A** to this Agreement, the Putative Defendants hereby transfer ownership, possession, custody, and control of all Chinchillas in the Inventory to HAWS, without recourse or remedy thereafter. This Section 1.2.1 formalizes the May 19, 2015 email from the Putative Defendants, which authorized the immediate transfer of ownership to HAWS.

1.2.2 The Remaining Chinchillas. The Putative Defendants shall maintain ownership of the Remaining Chinchillas pending resolution of the criminal charges for animal abuse and neglect. Notwithstanding this fact, HAWS shall maintain possession, custody, and control of the Remaining Chinchillas until the criminal case is fully and finally resolved. The custodial care obligations for the Remaining Chinchillas of HAWS and the Putative Defendants are set forth in Section 3.2 below.

**2.0 WAIVER OF COSTS; CHAPTER 173 PROCEEDING.**

2.1 Chapter 173 Proceeding. The City waives its right to file an action under Chapter 173 of the Wisconsin Statutes to pursue an order for costs, security, or other relief against the Putative Defendants in relation to the Chinchillas.

2.2 HAWS Waiver of Costs. HAWS waives any and all rights to seek reimbursement of the custodial care costs incurred before and after the Effective Date in relation to its custodial care of the Chinchillas. This waiver does not apply to the rental payment set forth in Section 3.2, which the Putative Defendants agree shall be paid on a monthly basis starting on June 1, 2015.

**3.0 CUSTODIAL CARE AFTER THE EFFECTIVE DATE.**

3.1 Transfer to HAWS. All Chinchillas transferred to HAWS pursuant to this Agreement shall be deemed the property of HAWS as of May 19, 2015. As of the Effective Date, HAWS is free to treat those animals as unclaimed and dispose of them in accordance with the provisions of Wis. Stat. § 173.23(1m).

3.2 The Remaining Chinchillas. Pending adjudication of the animal abuse and neglect charges against the Putative Defendants, the Remaining Chinchillas shall be

housed at HAWS in conditions appropriate for their care and otherwise consistent with its standards for animal care. The Putative Defendants agree to pay HAWS \$450/month commencing on June 1, 2015 in exchange for the right to house the Remaining Chinchillas at HAWS. If the Putative Defendants fail to make a rental payment within 10 days of its due date, the Remaining Chinchillas shall immediately become the property of HAWS and HAWS shall be entitled to dispose of them as it alone deems appropriate. In addition, the Putative Defendants agree to assist HAWS in the cleaning of the cages of the Remaining Chinchillas. In this regard, the Putative Defendants shall visit HAWS every Tuesday and Friday at 11 a.m. (Central Time) to attend to the cages and care of the Remaining Chinchillas. The Putative Defendants are not to be construed as employees or independent contractors of HAWS, but rather invitees on the premises. In the event either or both of the Putative Defendants are injured while on site attending to the Remaining Chinchillas, they hereby agree to hold HAWS harmless for any and all damages that result. The Putative Defendants knowingly waive any claim they could assert against HAWS in this regard.

3.3 Disposition of the Remaining Chinchillas. The Remaining Chinchillas shall remain in the custody of HAWS pursuant to this Agreement until the criminal charges of animal abuse and neglect against the Putative Defendants are resolved by judgment or plea. In the event (i) the State and Putative Defendants resolve the criminal charges by plea bargain and agree as part of that plea to the return of the Remaining Chinchillas to the Putative Defendants; or (ii) if the Putative Defendants are acquitted of the animal abuse and neglect crimes, then HAWS shall immediately transfer possession, custody,

and control of the Remaining Chinchillas to the Putative Defendants. The Putative Defendants in either scenario shall make immediate arrangements to pick up the Remaining Chinchillas and house them elsewhere. If the Putative Defendants fail to pick up the Remaining Chinchillas within seven (7) days of acquittal or a plea agreement given them the right to reclaim the animals, then HAWS shall become the owner of the Remaining Chinchillas and shall have the right to dispose of them as it deems appropriate in its sole discretion. In the event either or both of the Putative Defendants are found guilty of one or more of the animal abuse and neglect crimes alleged, then the disposition of the Remaining Chinchillas shall be determined by the circuit court having jurisdiction over the criminal case against the Putative Defendants and in accordance with Chapter 173 of the Wisconsin Statutes.

3.4 No Breeding. Until and unless the Remaining Chinchillas are returned to the Putative Defendants pursuant to this Agreement, the Putative Defendants agree to forego any attempts to breed the Remaining Chinchillas. They further agree during the pendency the criminal case against them to avoid assuming ownership of any other chinchillas.

3.5 City of Waukesha Limitation. On or after the Effective Date, the Putative Defendants shall not keep any chinchillas, including the Remaining Chinchillas, within the City of Waukesha.

4.0 **EVIDENTIARY ACKNOWLEDGEMENT.**

4.1 Chinchillas as Evidence. The parties agree that the Chinchillas seized on March 29, 2015 could be considered evidence of a crime such that its destruction or disposition in advance of any trial might be considered spoliation.

4.2 Waiver. In the interest of the Chinchillas and the parties hereto, the Putative Defendants and State acknowledge and agree that they have collected whatever evidence is necessary from the animals themselves for purposes of analysis, prosecution, defense, and disposition of the criminal charges that may be asserted against the Putative Defendants in relation to the March 29, 2015 seizure. Neither the State nor the Putative Defendants shall make any claim against HAWS for spoliation of evidence based on HAWS' implementation of the terms of this Agreement after the Effective Date.

5.0 **MISCELLANEOUS.**

5.1 Integrated Agreement. This Agreement, together with any and all instruments, exhibits, schedules or addenda attached hereto or referenced herein, sets forth the complete understanding of the parties relating to the matters which are the subject hereof, and supersedes any and all prior or contemporaneous written or oral agreements, understandings and representations relating thereto. The parties expressly agree that the exhibits to this Agreement are material.

5.2 Modifications. This Agreement may be modified only in writing signed by the parties or any officers of such party against whom enforcement of the modification is sought. No oral statements, representations, or courses of conduct inconsistent with

the provisions of this Agreement shall be effective or binding on any party regardless of any reliance thereon by the other.

5.3 Applicable Law: Construction.

5.3.1 Wisconsin Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin except that (notwithstanding any rules of construction to the contrary) no provision or ambiguity shall be strictly construed against any party by virtue of that party having proposed, drafted or prepared the same.

5.3.2 Captions. Captions of any section or paragraph of this Agreement are for the convenience of reference only and shall not define or limit the scope of any provisions contained therein.

5.3.3 Validity. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. However, if any provision is prohibited by or found to be invalid or unenforceable under applicable law or for any other reason or under particular circumstances: (i) the same shall not affect the validity or enforceability of such provision under any other circumstances or of the remaining provisions of this Agreement; (ii) such provision shall be deemed automatically amended with the least changes necessary so as to be valid and enforceable and consistent with the intent of such provision as originally stated.

5.3.4 Gender. Use of the singular number shall include the plural and one gender shall include all others.



5.4 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, agents, personal representatives, successors, assigns, licensors, and licensees.

5.5 Execution: Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

5.6 Representation of Comprehension of Document. In entering into this Agreement, the parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their choice, concerning the legal consequences of this Agreement; that the terms of this Agreement have been completely read and explained to them by their attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by the parties.

**GARRETT REES**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**TRICIA REES**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**CITY OF WAUKESHA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**STATE OF WISCONSIN**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**HUMANE ANIMAL WELFARE SOCIETY OF WAUKESHA COUNTY, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

# **EXHIBIT A**

#1 - 2 #92573, #92569  
#7 - 2 - #92599, #92600 (not taking large w/white tail F)  
#7a - 1 #92601  
#7b - 1 #92603  
#9 - 2 #92607, #92609  
#9a - 1 #92608  
#12 - 2 #92625, #92627  
#13b - 1 #92632  
#14b - 1 #92634  
#14c - 1 #92636  
#15 - 1 #92641  
#17 - F Silver #92647  
#17a - 1 #92643  
#17b - 1 #92645  
#17c - 1 #92646  
#17d - 1 #92648  
#18c - 1 #92652  
#22 - Lg F silver/violet #92677  
#22a - 1 #92678  
#23c - 1 #92684  
#25b - 1 #92693  
#25c - 1 #92697  
#26 - 3 #92700, #92701, #92704  
#26a - 1 #92698  
#26b - 1 #92699  
#26c - 1 #92702  
#26d - 1 #92703  
#29 - 1 #92728  
#32 - 1 #92741  
#35 - 1 #92744  
#37 - 1 #92746  
#40 - 1 #92755  
#44 - 2 #92766, #92767

#45 – 1 white diamond #92769

#49 – 1 #92781

#52b – 1 #92788

#53 – 1 #92791

#59b – 1 #92810

#67b - 1 #92853

#69 – 1 Silver (blue diamond w/ear tag) #92869

#70 – 1 #92870

#71a – 1 #92872

**49 Chinchillas total, 22 females, 27 males**