



ORDINANCE NO. 2248-23

AN ORDINANCE AUTHORIZING THE VILLAGE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE VILLAGE OF WAUCONDA FOR THE PLACEMENT OF A FLOCK CAMERA

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Village and the same are hereby authorized and directed, to enter into an intergovernmental agreement with the Village of Wauconda for mutual benefits and purposes, as attached hereto as Exhibit "A", and, by this reference made a part hereof.

The foregoing Ordinance was adopted by the Board of Trustees of the Village of Hawthorn Woods, Illinois on March 27, 2023.

AYES: Kaiser, McCarty, Rechele, Bayer, Hurst

NAYS: 0

ABSENT AND NOT VOTING: David

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: March 27, 2023

APPROVED: March 27, 2023

INTERGOVERNMENTAL AGREEMENT FOR FLOCK CAMERA PLACEMENT

BY AND BETWEEN THE VILLAGE OF WAUCONDA AND THE VILLAGE OF HAWTHORN WOODS

THIS AGREEMENT is made and entered into on the later of the dates set forth under the signature section below, hereinafter referred to as the “Effective Date”, by and between the Village of Wauconda, an Illinois municipal corporation (hereinafter “WAUCONDA”) and the Village of HAWTHORN WOODS, an Illinois municipal corporation (hereinafter “HAWTHORN WOODS”). WAUCONDA AND HAWTHORN WOODS are hereinafter referred to individually as a “Party” or collectively as the “Parties”.

WHEREAS, HAWTHORN WOODS has territorial jurisdiction over a section of Illinois State Route 12, north of the intersection of N. Old McHenry Road, at 10 S. Rand Road (hereinafter “TERRITORY”); and

WHEREAS, WAUCONDA desires to place a Flock Camera System along the east side of the TERRITORY to monitor northbound traffic headed into the Village of Wauconda; and

WHEREAS, the Parties hereby agree that the installation of such camera system will aid the police departments of each in investigating and pursuing criminal activity within the region, thereby increasing safety for all surrounding communities; and

WHEREAS, HAWTHORN WOODS agrees to allow WAUCONDA to place a Flock Camera System in the TERRITORY pursuant to the terms and conditions contained herein; and

WHEREAS, WAUCONDA agrees to provide monitoring, maintenance and requested repairs of said video surveillance system; and

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize and encourage the cooperation between units of local government; and

WHEREAS, WAUCONDA and HAWTHORN WOODS are authorized by the terms and provisions of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, to enter into intergovernmental agreements, ventures, and undertakings to perform jointly a governmental purpose or undertaking either of them could do singularly; and

WHEREAS, the Parties have determined that WAUCONDA’S installation of a Flock video surveillance system in the TERRITORY is in the best interest of the public safety and welfare of the residents of each community and for the safety of the region as a whole.

NOW THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** That the above recitals are incorporated herein as though fully set forth below.

2. **Authorization and License.** That HAWTHORN WOODS hereby grants to WAUCONDA the right and license to place, erect, install, maintain, and otherwise operate a Flock Camera System in the TERRITORY described above. This license shall continue until such time as this Agreement is terminated by a Party pursuant to the provisions set forth below, or until such time as the cameras are no longer functional or fit for the intended purpose.

3. **Purpose.** It is the intent of WAUCONDA that the Flock Camera System be installed and operated in a manner so as to allow the monitoring of vehicle license plates where such vehicles are travelling northbound on Illinois Route 12. The monitoring is intended to provide notification to the Wauconda Police Department upon the detection of vehicles which have been reported stolen, utilized in a crime, implicated in an AMBER Alert, or such other lawful law enforcement purpose.

4. **Construction.** WAUCONDA, or their approved contractors, shall, at their sole cost and expense, construct and maintain the Flock Camera System within the TERRITORY not more than ONE HUNDRED TWENTY (120) days from the full execution of this Agreement. Prior to any work contemplated herein, WAUCONDA shall secure a right-of-way permit from HAWTHORN WOODS. At the time of applying for such right-of-way permit, WAUCONDA shall provide evidence that they have received any and all permitting approvals from the Illinois Department of Transportation and/or the State of Illinois for the operation of such system.

5. **Indemnification.** WAUCONDA, its agents, employees, officers and assigns, hereby indemnify and hold harmless HAWTHORN WOODS, its employees, agents, officers and assigns from any and all damages, penalties, claims, injuries, suits, or casualties that may occur as the result of the installation, operation, maintenance, implementation, or decommissioning of the Flock Camera System, provided that HAWTHORN WOODS conduct is not willfully or grossly negligent or unlawful. This indemnification shall include, but not be limited to, the operation of the system, WAUCONDA'S storage of the data, and WAUCONDA'S release of data to any third party, including HAWTHORN WOODS if WAUCONDA'S actions violate the terms and conditions by which WAUCONDA is bound. HAWTHORN WOODS hereby indemnifies and holds harmless WAUCONDA for any damages, penalties, claims, injuries, suits, or casualties that may result from willful or grossly negligent acts, omissions, or unlawful conduct of HAWTHORN WOODS, its agents, employees, officers, and assigns.

These indemnification provisions shall survive the termination of this Agreement.

6. **Notice.** Any notice required to be given herein shall be in writing and delivered to the other Party in a manner where proof of service is demonstrable. This includes email, if an email address is provided below, and where such email is sent with a return receipt.

If to WAUCONDA:

If to HAWTHORN WOODS:

Pamela O. Newton
Chief Operating Officer
2 Lagoon Drive
Hawthorn Woods, IL 60047

7. **Insurance.** Each Party hereby agrees to maintain general liability and casualty insurance in an amount of not less than \$2,000,000 per occurrence throughout the effective term of this Agreement.

8. **Amendment.** Either party may propose additional terms or modifications to this Agreement, however, such amendments shall only be effective if in writing and only once the other Party has approved and signed such written amendment. Nothing herein shall require that a non-requesting party agree to any proposed amendments, however, the Parties shall cooperate with one another to effectuate the terms of this Agreement and not unreasonably deny modifications which further the purposes of this Agreement, provided that such amendments do not increase costs, liability, or legal exposure for the non-requesting party.

9. **Audit.** Both Parties shall have the right to request a semi-annual audit of the usage and data of the Flock Camera System. During such audit, the requesting party shall be entitled to review all records where information or data is secured or otherwise obtained from the Flock Camera System, the reports to which such data applied, and the logs of the officer(s) who accessed such information. Such records shall also include any third-party requests for such data and the disposition of the data that was requested.

10. **Access to Information.** The Parties hereby agree that there shall be strict parameters established for data access pursuant to a written department policy. Any information or data accessed by either Party shall only be in relation to an active case or a crime in progress. The identity of the party accessing such information shall be maintained in a log or journal which shall be kept by the Party for not less than seven (7) years, along with a record of all such data that was accessed.

HAWTHORN WOODS hereby agrees that it will not release any information or data provided by WAUCONDA unless such request is being made by another law enforcement agency or pursuant to a duly certified subpoena. WAUCONDA may further restrict HAWTHORN WOODS dissemination of data if same is required pursuant to the terms of the Flock Camera System Contract to which WAUCONDA is bound. It is the intent of the Parties that any and all information obtained will be limited to criminal investigations, arrests, and prosecutions and that data is not intended to be used in any civil proceedings non emanating directly from a criminal case, and even then, only released for *in camera* inspection by a judge or magistrate after having issued a subpoena.

WAUCONDA agrees that no information will be provided to non-law enforcement third parties and that any attempts by non-law enforcement entities or individuals to obtain any information, data, or records collected from the usage of the Flock Camera System will be denied and defended in a court of law to the fullest extent possible. Neither party shall provide information obtained from the Flock Camera System under the Freedom of Information Act without there having been a written order of the Illinois Attorney General, Illinois State Courts, or a Federal Court having proper jurisdiction over the matter.

11. **Termination.** Either party may terminate this Agreement by providing the other Party with written notice of same. Such termination shall take effect not less than 90 days after such notice is given. If WAUCONDA'S contract for the Flock Camera System contains penalties for early termination, HAWTHORN WOODS agrees that if HAWTHORN WOODS is the terminating party, HAWTHORN WOODS may choose to either cover the penalties of early termination or opt to have such termination effective immediately upon the expiration of the governing contract for the Flock Camera System, provided that the Flock Camera System contract term is not greater than one year. If more than one year remains under the contract, and HAWTHORN WOODS terminates this

Agreement, the Parties shall equally share any assessed penalties for early termination, unless the Agreement is terminated due to WAUCONDA'S breach and failure to cure, as delineated in Paragraph 16 below. In such case where WAUCONDA'S breach results in termination, WAUCONDA shall be liable for any and all early termination penalties they may be subjected to.

Upon the termination of this Agreement for any cause, WAUCONDA shall, within ten (10) days, cause such cameras to be removed and the site shall be returned to pre-construction condition. Any utilities brought to the site shall be fully removed or remediated pursuant to the Codes of the Village of HAWTHORN WOODS, any applicable regulations of the Illinois Department of Transportation, or the codes and statutes of the State of Illinois.

13. **Information Sharing.** WAUCONDA expressly agrees that, to the extent allowed under applicable law and pursuant to the terms of their contract to operate the Flock Camera System, WAUCONDA will share with HAWTHORN WOODS all data and information as may be requested by the Hawthorn Woods Chief of Police. Such request shall be in writing and may be made as a one-time request or may be made as a standing request creating a continuing duty of WAUCONDA to share such requested information. If there are costs associated with such data sharing, HAWTHORN WOODS agrees to reimburse WAUCONDA for any and all information requested, provided WAUCONDA informs HAWTHORN WOODS of such costs prior to tendering the data.

Further, WAUCONDA shall provide HAWTHORN WOODS with data and information from the Flock Camera System that WAUCONDA currently operates monitoring northbound traffic on Illinois Route 12 in a manner sufficient to allow the HAWTHORN WOODS Police Department to mobilize and attempt to apprehend or detain any such identified vehicles while they are in HAWTHORN WOODS jurisdiction.

14. **Data Protection and Storage.** WAUCONDA hereby agrees that it will comply with all Federal and State laws regarding the storage of all information obtained from the operation of the Flock Camera System. The above indemnities shall be construed as broadly as legally possible to protect HAWTHORN WOODS from any violations, suits, penalties, fines, or charges which may arise out of the failure of WAUCONDA to properly comply with all applicable laws pertaining to the operation of the Flock Camera System, the collection and storage of data, and the use and distribution of same.

15. **Limitation of Camera System Capability.** Unless or until the Parties hereto amend this Agreement in writing, the Flock Camera System shall not be used for any other purpose other than acting as an automated license plate reader. At no time shall the Flock Camera System be utilized for data collection (other than license plate reading), speed detection, redlight detection, or any other use for which such system has the current capability of performing or such capabilities as may be added or created in the future.

16. **Breach of this Agreement.** If either party breaches this Agreement, the non-breaching Party shall notify the breaching party in writing of such breach and the breaching party shall have fourteen (14) days from the delivery of such written notice to cure said breach. Should the breaching party fail to cure such breach within fourteen (14) days, the non-breaching party shall be entitled to terminate this Agreement.

17. **Jurisdiction and Venue.** This Agreement shall be enforceable in the 19th Circuit Court of Lake County, Illinois. If a Part seeks to enforce their respective rights herein and brings suit to enforce

18. **Authority.** The Parties each represent that the below signatory has been authorized by the Board of Trustees to execute this Agreement and make same binding upon each municipality.

19. **Ownership and Control.** Nothing herein shall be construed to grant HAWTHORN WOODS the right of ownership or control of the facilities or equipment to be placed in the TERRITORY. Any loss to such equipment shall be the responsibility of WAUCONDA, unless such loss or damage is the direct result of negligence by HAWTHORN WOODS. It shall be the sole duty of WAUCONDA to cover all costs related to maintenance and operation of the Flock Camera System at all times.

20. **Severability.** The provisions of this Agreement are severable. If any term, paragraph, section, subdivision, sentence, clause, or phrase of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, other than such term, paragraph, section, subdivision, sentence, clause, or phrase, shall not be affected and shall remain in full force and effect, to the fullest extent permitted by law.

Accepted and approved on the dates set forth below.

HAWTHORN WOODS

WAUCONDA

Dated this 29th day of March, 2023

Dated this 30th day of March, 2023

By: Pamela O. Newton
Pamela O. Newton, Chief Operating Officer

By: Jeff A. Sode
Village President

ATTEST:

ATTEST:

Dana Ruscito

Shirley A. Newton
Deputy Village Clerk

