

AGREEMENT

This agreement is made and entered into by and between the Board of Parks Commissioners of the City of Evansville, Indiana (hereinafter "Board") and Evansville Dog Owners' Group, Inc. sometimes referred to as "EDOG"), a not for profit corporation.

ARTICLE 1. GENERAL PURPOSE

This agreement is made for the purpose of establishing a "members only" dog park in a portion of Klymeyer Park in Evansville, Indiana. The parties acknowledge and agree that this dog park is to be funded solely with contributions of third parties, fundraisers by Operator, and membership fees of the Operator. The parties further acknowledge and agree that the budget of the Parks Department does not provide for funding this project or its operation, such operation therefore having been undertaken by the Operator.

ARTICLE 2. SCOPE OF SERVICES

Operator shall at its expense:

(A) Build and operate a 2 acre park by June 1, 2011 and increase the dog park to a 4 acre park when membership reaches the level where warranted, and that the park may expand thereafter to encompass up to a total of 7.67 acres upon the agreement of the parties; provided, however, that at all times the Operator shall have the option of closing to the public a portion of the total acres composing the park, for the purpose of re-seeding and/or establishing vegetation on the closed portion. Operator shall be permitted to perform fill and excavation work on acreage to be used for the immediately subsequent expansion phase even if that phase is not yet authorized to be opened.

(B) Provide labor and materials for:

- (1) Survey work as needed;
- (2) Grading, seeding and/or applying wood chips for the park ;
- (3) Construction, installation, and maintenance of a 6 foot tall chain link fence and any attachments to fence for entrance and exit around the perimeter of the subject property;
- (4) Construction, installation and maintenance of entrance/exit mechanisms at the park gates, signage including a bulletin board by 2010 and improvements including benches;
- (5) Clean up, doggie plastic bag replacement and doggie feces disposal containers;
- and (6) General maintenance of the park, including watering and mowing (if water is available).

(C) Provide to the Board a plan of operations for approval to include hours of operation, the name of the Operator's contact person, park rules to the extent they vary from those contained in Article 6 hereof, forms, vaccination records, fees, and the names of individuals cleaning the park on a daily basis, to be presented with any other additional information requested by the Board. Operator shall provide an updated plan and all materials described above, to the extent they change annually thereafter, and shall provide further updates as information changes;

(D) Provide a fundraising plan to Parks Board for review to show reasonable efforts to fund the obligations under this agreement;

(E) Provide insurance and name the City of Evansville, its officials, agents and employees as additional insured in amounts and terms hereinafter provided;

(F) Maintain non-profit organization status.

(G) Provide a Treasurer and/or Secretary to collect revenue and deposit, to keep and maintain accurate records of membership and monies;

(J) Provide to the Board on an annual basis a revenue/expense accounting of the park;

(K) Provide all clean up and maintenance of the premises at the sole cost of Operator;

(L) Not open the facility for use by any person if the insurance required herein is not in place or if the premises are not safely maintained by Operator;

(N) Provide all necessary signage required under this agreement;

(O) Maintain the premises in an attractive and healthful condition free from the accumulation of feces and trash and debris;

(P) Pay all costs of operation of the dog park including, but not limited to, any utilities established for the operation of the dog park, with the exception of dusk to dawn lighting, which will be installed in and/or around the dog park at the City's cost and direction, and for which the City will provide electricity at its own cost.

ARTICLE 3 BOARD'S OBLIGATIONS

Board shall:

- (A) Research the feasibility of providing water and electric to the site.
- (B) Process request for Board action.
- (C) Provide water and electric to the site if feasible.

ARTICLE 4 DURATION

(A) This agreement shall commence on the 1st day of March 2010 and shall continue until March 2011, unless sooner terminated by one of the parties. Prior to December 31, 2010, the Board shall decide, at its sole option, if it wants to extend the agreement between the parties (with the Operator's concurrence), take over operation of the dog park, or terminate the operation of a dog park. Such decision by the Board shall be based upon, safety, budget and usage of the dog park. If the Board decides to take over the park, Operator shall turn over the membership list, all marketing and organizational/membership management materials, and balances in the financial accounts including fundraising balances, provided, however, that the funds turned over shall only be used by the Board for the operation, maintenance and improvement of the dog park. The Board reserves the right to have a financial audit at the Board's expense. All structures and apparatus that have become affixed to the premises shall be the property of the Board without compensation to Operator.

(B) Either party may terminate this agreement upon notice to the other party of a material breach of the agreement. Any party wishing to terminate due to material breach shall give the breaching party ten days' notice of the intent to terminate, and the agreement shall terminate upon failure to correct said breach within 15 days after notice thereof. A material breach shall include but not be limited to:

- (1) Failure to maintain insurance coverage

(2) Discrimination against any person because of race, color, religion, sex, age, national origin or physical handicap in its membership or use of the dog park, but this provision shall not preclude rules regarding use of the premises by children;

(3) Violation of the rules hereunder resulting in physical harm to any person

(4) Failure to maintain the premises in a healthful or safe manner for use by persons and dogs;

(5) Failure to pay any utilities of the dog park; or

(6) Failure to maintain the status of a tax-exempt entity.

ARTICLE 5 PREMISES

The "premises"(also referred to as the "dog park") hereunder shall refer to portions of Kleymeyer Park in the City of Evansville as shown on Exhibit "A" attached hereto and incorporated herein. Initially, the premises shall consist of approximately two (2) acres but will be increased to four (4) acres upon the demonstration of the Operator having sufficient membership and financial resources to operate the premises as provided in this agreement, and thereafter may be increased to encompass up to a total of 7.67 acres upon the agreement of the parties.

ARTICLE 6 RULES AND REGULATIONS

(A) The Operator shall post in visible location to all persons who may enter the premises, rules and regulations that provide for the safe and healthful use by all persons and dogs who use the park. Those rules and regulations shall at a minimum provide:

(1) Users of the park do so at their own risk and agree that neither the Board nor the City nor the Operator shall be liable for any injury to person or animal caused by any person or dog.

(2) All dogs must be licensed by the City if the owner is a resident of the City and must have a current rabies vaccination tag on a collar to be worn by the dog when on the premises.

(3) Aggressive dogs are prohibited from the park at all times.

(4) No dog less than four months of age shall be permitted in the park.

(5) No toddlers or small children 6 years or under are allowed in the Dog Park. Children under 16 are not allowed in the Dog Park without adult supervision.

(6) No alcoholic beverages or food other than dog treats manufactured for canine consumption only, and used only for training purposes, shall be allowed in the dog park.

(7) No more than three dogs or children or combination thereof shall be allowed in the dog park per adult providing supervision.

(8) Dog owners and/or handlers must be in the dog park and within view and voice contact of their dogs at all times.

(9) Dogs will be secured by a leash when entering and leaving the park and the owner must have the leash in their possession at all times in the dog park.

(10) Dog owners and/or handlers must immediately fill any holes that their dogs dig.

(11) Dog owners and/or handlers shall scoop, remove and properly dispose of feces when deposited by their dog.

(12) Dogs in heat shall not be permitted in the dog park.

(B) The parties agree that the Rules and Regulations of the Parks Department shall apply to the premises in addition to the rules listed above except the dogs within the dog park do not have to be on leashes.

(C) The dog park shall not be open for use after dusk and before dawn except upon adequate lighting being provided by Operator and approval of the Board.

ARTICLE 7 INSURANCE AND INDEMNIFICATION

(A) **INSURANCE.** Operator's insurance shall be primary to cover all losses. Operator shall obtain liability insurance insuring Operator and the City of Evansville and its official's agents and employees as additional named insured's in the following coverage's and in the following amounts:

(1) **Commercial General Liability Insurance:** The Operator shall furnish and maintain, at the Operator's expense during the life of the agreement, such Commercial General Liability Insurance as shall protect Operator, the Owner, as an additional insured, from claims for damage or personal injury, occupational sickness or disease, including accidental death, as well as the claims for property damage, which may arise from operations under this agreement, whether such operations be by Operator or by any Subcontractor(s), or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be as required by law. The Operator shall have the right to reject the insurance carrier selected by the Contractor. No Work shall commence prior to the Owner receiving a certificate of insurance verifying the coverages to be provided as defined herein. In the absence of regulations, the amounts of coverage shall be as follows:

| | |
|--|---------------------------|
| General Aggregate:..... | Not Less Than \$2,000,000 |
| Products & Completed Operations Aggregated:..... | Not Less Than \$2,000,000 |
| Personal & Advertising Injury:..... | Not Less Than \$1,000,000 |
| Each Occurrence:..... | Not Less Than \$1,000,000 |
| Medical Expense (Any one person):..... | Not Less Than \$5,000 |

(2) **Worker's Compensation Insurance:** The Operator shall furnish certificates from the Worker's Compensation Board of Indiana, or its successor that it is fully covered by Worker's Compensation and Occupational Diseases insurance, for all Employees of Operator, if any, at the dog park. The Operator shall maintain said coverage for the life or the agreement. The same requirements pertain to any Subcontractor(s). The Operator shall be responsible for verifying that all Subcontractor(s) have Workmen's Compensation and Occupational

Insurance Coverage. No Work shall commence prior to the Board receiving a certificate of insurance verifying the coverage provided herein.

(3) **Automobile Liability:** If Operator intends to use automobiles (cars, trucks or any motor vehicle designed for the primary purpose of transportation and that would be insurable under an automobile

liability policy) at the dog park, Operator shall furnish and maintain, at its expense during the life of the agreement, automobile liability insurance, covering claims for damages because of bodily injury, death or property damage arising from the use of all motor vehicles engaged in operating within the terms of this agreement. The amounts of such combined single limit coverage shall be not less than (\$1,000,000) for anyone occurrence, including hired and non-owned vehicles. All Subcontractor(s) of the Operator shall have similar automobile liability insurance. The Operator shall be responsible for verifying that all Subcontractor(s) have said automobile liability insurance. Coverage I shall apply. No Work shall commence prior to the Owner receiving a certificate of insurance verifying the coverage provided herein.

(4) Subcontractor(s) Insurance: The Operator shall require all Subcontractor(s) to secure and maintain in force during the term of this agreement, all such insurance coverages defined above. The Operator shall verify the existence of all said insurance policies and coverages. No Work by a Subcontractor(s) shall commence prior to the Owner receiving a certificate of insurance verifying the coverage required herein.

(5) Other Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City of Evansville, its officers, officials, employees and volunteers by the Operator and Subcontractor(s). The Operator's and Subcontractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability. The insurer shall agree to waive all rights of subrogation against the City of Evansville, its officers, officials, employees and volunteers for losses arising from Work performed by the Contract for the City of Evansville. The Operator shall be responsible for notifying all insurance carriers of this contract provision and shall be liable to the City of Evansville for any failure to so notify and advise any insurance carrier of this provision.

(B) PROOF OF INSURANCE The Operator shall furnish the Board with satisfactory proof of coverage of the insurance required, in a reliable company or companies to be approved by the Board, licensed to do business in the State of Indiana, before commencing any Work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the Board. The certificates of insurance shall show the name and address of the Company, expiration date or dates, and the policy number or numbers. The Board reserves the right to require complete, certified copies of all required insurance policies at any time. Proof of insurance shall be maintained up to date, and failure to maintain adequate coverage and proof shall be deemed sufficient reason for cancellation of the agreement. All insurance shall provide that the policy shall not be canceled, terminated or modified unless thirty (30) days prior to such cancellation, termination or modification written notice is given to the Board. No policy may be modified, terminated or canceled by the Operator without the prior written approval of the Board.

(C) INDEMNIFICATION. The Operator agrees that, in the prosecution of said work, the highest degree of skill and care will be exercised; that the Operator will properly and fully guard and protect all excavations of dangerous places and will use all due proper precautions to prevent injury to persons or property. The Operator shall be responsible for installing and maintaining all necessary barricades and warning devices during the progress of any construction work. The City of Evansville, the BOARD and their officials and employees shall be indemnified, held harmless and a legal defense provided, from any and all liability whatsoever growing out of any injury or death to any person or damage to property because of any negligence or fault of the Operator in performing the obligations of this agreement. The indemnification shall not apply to acts of negligence or omission of the Board, City or any of its officials or employees. The Operator's and all SUBCONTRACTOR'S duty and obligation to provide a legal defense, indemnify and hold harmless the City of Evansville, the BOARD, and their officials and employees exists independent of the duty and obligation to provide liability insurance herein and without regard to any denial of coverage by the insurance carrier. Any failure to provide a legal defense, indemnify and hold harmless the City of Evansville, the BOARD and their officials and employees within ten (10) days after written tender to the CONTRACTOR and/or any SUBCONTRACTOR shall constitute a default and shall entitle the City of Evansville, the BOARD and their officials and employees to recover all damages, costs, and attorney's fees related thereto. IT IS ACKNOWLEDGED AND AGREED THAT OPERATIONS OF THE DOG PARK ARE THE SOLERESPONSIBILITY OF OPERATOR.

**ARTICLE 8
NON-DISCRIMINATION**

Operator shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin or physical handicap in its membership or use of the dog park. This provision shall not prevent rules and regulations regarding children and their use of the dog park.

**ARTICLE 9
SURVIVAL OF OBLIGATIONS**

Obligations that by their nature would continue beyond termination, cancellation or expiration of this Agreement, including by way of illustration and not limitation, those in Article 7, will survive termination or expiration of this Agreement.

**ARTICLE 10
NOTICES AND FULL AGREEMENT**

Any notice permitted or required under the provisions of this Agreement shall be in writing and signed by the party giving or serving the same and either served in person or delivered by certified mail, addressed to the party as follows:

IF TO BOARD:
DIRECTOR PARKS DEPARTMENT
100 E. WALNUT STREET
LOWER LEVEL
Evansville, IN 47713

IF TO OPERATOR:
EVANSVILLE DOG OWNERS GROUP
AUDREY FOX - 2010 PRESIDENT
PO BOX 4092
Evansville, IN 47724

The parties acknowledge and agree that this instrument represents the full agreement of the parties, and there are no promises, terms, conditions or agreements except as state in this agreement.

**ARTICLE 11
USE OF FUNDS RECEIVED**

The parties agree that all monies received by the Operator shall go for ordinary and customary operating expenses with the balance expended on the dog park.

THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE APPROVED BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES ON THE DATE(S) SHOWN BELOW.
CITY OF EVANSVILLE, IN.

BY ITS BOARD OF PARKS
COMMISSIONERS

BY: _____
Steven Bohleber, President

Date Approved

ATTEST: _____

OPERATOR:

EVANSVILLE DOG OWNERS GROUP, INC.

BY: _____
Audrey Fox, President 2010
Print Name and Title

Date Approved

ATTEST _____

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