

LEASE BETWEEN THE CITY OF CORPUS CHRISTI AND RILEY P. DOG PARK, INC.

This lease ("Lease") is entered into by and between the City of Corpus Christi ("City"), a Texas home rule municipal corporation, acting through its duly authorized City Manager, or the City Manager's designee, and Riley P. Dog Park, Inc. ("Lessee"), a Texas nonprofit corporation, Corpus Christi, Texas, acting through its duly authorized President.

Section 1. Definitions. For the purposes of this Lease:

Improvements means buildings and other structures located on the Premises constructed or installed by or for Lessee.

Premises or Leased Premises means approximately 2.5 acre tract or parcel of land as shown on the attached drawing, Exhibit "A", together with all Improvements.

Section 2. Purpose. The purpose of this Lease is to lease the Premises to Lessee for Lessee's operations of a dog park at no charge to the public. Lessee may not operate the Leased Premises for any other purpose without the prior written approval of the Executive Director of Water Utilities and Director of Parks and Recreation ("Directors").

Section 3. Leased Premises. The **Leased Premises** are designated on the drawing attached as Exhibit "A", together with all Improvements. The City will obtain a final metes and bounds survey exhibit to identify the entire Leased Premises, to be attached as new Exhibit A. The Lessee shall reimburse the City for the cost of the survey, within 30 days of invoice from the City.

Section 4. Term. The City leases the Premises, AS IS, subject to all terms and conditions of this Lease, to the Lessee for a period of five (5) years. This Lease begins on the first day after final Council approval. However, the City reserves the right to cancel this Lease at any time on ninety (90) days' advance written notice in the event that the City Manager determines that such cancellation is necessary for the operation of the adjacent wastewater treatment plant operations. Lessee may terminate this Lease at any time upon providing advance at least 30 days written notice to the City.

Section 5. Acceptance of Premises Disclaimer:

A. LESSEE ACKNOWLEDGES THAT IT IS LEASING THE PREMISES "AS IS" WITH ALL FAULTS AS MAY EXIST IN, ON, OR UNDER THE PREMISES, AND THAT NEITHER CITY, NOR ANY EMPLOYEE OR AGENT OF CITY, HAS MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH PREMISES OR AS TO THEIR SUITABILITY FOR PARTICULAR PURPOSE.

B. LESSEE ACKNOWLEDGES AND AGREES THAT LESSEE HAS BEEN PROVIDED, TO ITS SATISFACTION, THE OPPORTUNITY TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO

WHICH LESSEE INTENDS TO USE THE PREMISES, AND IS RELYING ON ITS OWN INSPECTION.

Section 6. Surrender. Lessee shall surrender the Premises, upon the expiration, termination, or cancellation of this Lease, in as good a condition as received, reasonable use and wear, acts of God, fire and flood damage or destruction where Lessee is without fault, excepted. Lessee shall remove all improvements and property from the Premises within 30 days of termination of the Lease or reimburse City's costs of such removal.

Section 7. Lease Consideration; Maintenance. For and in consideration of the rights and privileges granted in this lease, and in lieu of lease payments to the City, Lessee must operate the dog park at the Premises at no cost to the public, and Lessee must maintain the Premises by mowing, collecting litter, etc. as directed in writing by the Director, including but not limited to the following:

(A) Lessee shall pick up and properly dispose of litter including animal waste on a daily basis whenever the Premises are being used.

(B) Lessee shall keep fully operational and in good repair the Premises and any Improvements. The City has no responsibility for maintenance or repair of the Premises and Improvements.

(C) Lessee shall immediately report any vandalism to the Director, or designee, and the Corpus Christi Police Department; however, the City has no responsibility to repair or replace any damages to the Premises and Improvements caused by vandalism or caused by any other reason.

(D) All motor vehicles must be restricted to the designated parking lot area to be constructed by Lessee on the Leased Premises.

(E) Lessee shall provide normal, scheduled mowing of the Premises. Lessee will be responsible for maintaining the grass at height not to exceed six inches.

(F) Lessee is responsible for proper installation, use and repair of all equipment and Improvements at the Premises.

Section 8. Terms of Operation.

Attached as **Exhibit C** is a copy of Lessee's schedule of operations. Lessee may not make any change to this Exhibit without prior written consent of the Directors.

Section 9. Construction at the Premises.

Prior to operation or use of the Premises, Lessee must consult with Development Services department for Lessee's planned improvements to the Premise, including but not limited to parking, access, fencing, and waterline.

Prior to making any alterations, additions, or improvements to, in, on, or about the Premises, Lessee must submit the plans and specifications for the alterations, additions, or improvements to the Directors for review and written consent.

The Lessee, at its sole cost, shall obtain all required permits for the construction; and the construction is subject to inspection by the Executive Director of Water Utilities, City's Building Official, and their designated representatives. In addition, the Lessee shall consult with the City's Risk Manager to obtain the required insurance prior to any construction at the Premises.

Lessee has been advised that there is no water service to or at the Leased Premises. Lessee acknowledges that Lessee is solely responsible for costs to install water taps and install water service to the Leased Premises.

Section 10. Taxes, Assessments, Licenses, and Fees.

Lessee must pay, in full prior to each respective due date, all taxes, assessments, licenses, and fees required by the Lessee's use of the Premises.

Section 11. No Debts. Lessee may not incur any debts or obligations on the credit of the City during the term of this Lease.

Section 12. No Liens Lessee agrees not to permit any mechanic's lien, materialman's lien, tax lien, or any other lien to become attached to the Premises, or any part or parcel of the Premises, or the Improvements on the Premises, because of any work or labor performed by any mechanic, materials furnished by any materialman, or any other reason.

Section 13. Assignment and Subleasing.

Lessee may not assign, sublease, or encumber this lease, without the prior written consent of the City Manager. Any assignment or sublease must be approved in advance in writing signed by the City Manager.

Section 14. Signs; Contact information.

Lessee must post and maintain signage at the Premises with signage to indicate name and contact number for the Lessee regarding operations.

Lessee has been advised that rattlesnakes and coyotes have been observed at or very near the Premises. Lessee agrees to post and maintain signage at the Premises to notify all visitors to the Premises of rattlesnakes and coyotes observed at or near the Premises.

Lessee may not exhibit, inscribe, paint, erect, or affix any sign at, on, or about the Premises, or any part of this Lease, without the prior written approval of the Directors.

Section 15. Laws Affecting Operation of Premises and Performance. Lessee shall comply with all Federal, State, and local laws, ordinances, rules, and regulations applicable to Lessee's construction, operation of the Premises and Lessee's performance under this Lease, including but not limited to compliance with applicable ADA regulations and parking regulations. This Lease is also subject to applicable provisions of the City Charter.

Section 16. Nondiscrimination. Lessee covenants and agrees that Lessee will not discriminate nor permit discrimination against any person or group of persons, with regard to use of the Premises, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

Section 17. Maintenance. Lessee shall maintain the Premises and all Improvements in good and safe condition during the Lease term. City has no obligation nor responsibility for any maintenance or repair at the Premises or to the Improvements.

Section 18. Utilities. Lessee must pay for all utilities used by it on the Premises or used by any other activities sponsored by the Lessee on the Premises, including but not limited to solid waste removal, water, wastewater, and electricity.

Section 19. City's Right of inspection. Any officer or authorized employee of the City may enter upon the Premises, at all reasonable times and without notice, to determine whether Lessee is operating and providing maintenance in accordance with this Lease

Section 20. Directors' Right to Access Premises in Emergency.

Lessee shall provide Executive Director of Water Utilities and Director of Parks and Recreation with keys to the Premises, and a current list of names and phone numbers, for use by each Director, in the event of an emergency. Each Director has the right to enter the Premises during the regular hours of operation or at anytime in an emergency.

Section 21. City Use and Access to the Premises.

A. The City retains the right to use or cross the Premises with utility lines and easements. City may exercise these rights without compensation to Lessee for damages to the Premises from installing, maintaining, repairing, or removing the utility lines and easements. City must use reasonable judgment in locating the utility lines and easements to minimize damage to the Premises.

B. The City retains the right to enter upon and access the Premises when deemed necessary for City utility or other official City purposes.

C. The City retains the right to enter upon and close the Premises to the public on a temporary basis when deemed necessary by the City Manager or designee for protection of public health and safety.

D. In addition, the City retains the right to close access to the Premises in order to permit fireworks event to be launched from or near the Premises for 4th of July festivities via third-party City permittee. Lessee agrees to cooperate with City's permittee regarding use of the Premises for such purposes.

Section 22. Indemnity.

In consideration of allowing Lessee to use the Premises, Lessee ("Indemnitor") covenants to fully indemnify, *save and hold harmless the City, its officers, agents, representatives, and employees (collectively, "Indemnitees") from and against any and all liability, loss, damages, claims, demands, suits, and causes of action of any nature whatsoever asserted against or recovered from City on account of injury or damage to person including, without limitation on the foregoing, premises defects, workers' compensation and death claims, or property loss or damage of any other kind whatsoever, to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part: (1) Lessee's performance under this Lease; (2) Lessee's use or Lessee's invitees use of the Premises and any and all activities associated with the Lessee's use of the Premises under this Lease; (3) the violation by Lessee, its officers, employees, invitees, agents, or representatives or by indemnitees, or any of them, of any law, rule, regulation, ordinance, or government order of any kind pertaining, directly or indirectly, to this Lease; (4) the exercise of rights under this Lease; or (5) an act or omission on the part of Lessee, its officers, employees, invitees, agents, or representatives or of indemnitees, or any of them, pertaining to this Lease, regardless of whether the injury, damage, loss, violation, exercise of rights, act, or omission is caused or is claimed to be caused by the contributing or concurrent negligence of indemnitees, or any of them, but not if caused by the sole negligence of indemnitees, or any of them, unmixed with the fault of any other person or entity, and including all expenses of litigation, court costs, and attorneys' fees, which arise, or are claimed to arise, out of or in connection with the asserted or recovered incident. Lessee covenants and agrees that, if City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee, relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend City in all actions relating to this Lease with legal counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from the liability, injury, damage, loss, demand, claim, or action.*

Section 23. Insurance.

Lessee shall secure and maintain at Lessee's expense, during the term of this Lease, insurance of the type and with the amount of coverage shown on the attached **Exhibit B**, which is incorporated in this Lease by reference. Lessee shall, prior to any addition or

alteration to, in, on, or about the Premises, obtain prior clearance, in writing, from the Risk Manager that the proposed addition or alteration will not necessitate a change or modification in the existing insurance coverage maintained by Lessee.

Section 24. Default The following events constitute an event of default under this Lease:

Failure to pay utilities before the due date; failure to perform scheduled maintenance; failure to maintain any Insurance coverages required in this lease; failure to post and maintain required signage; and failure to keep, perform, and observe any other promises, covenants and conditions contained in this Lease.

Section 25. City's Remedies on Lessee's Default. Upon the occurrence of any event of default, the City may, at its option, in addition to any other remedy or right given under this Lease or by law:

Give notice to Lessee of the default and provide Lessee opportunity to cure. If default continues beyond thirty (30) days after provision of notice of default, then City may provide written notice of termination of the Lease.

Immediately or at any time after termination of the Lease, the City may enter into and upon the Premises and retake possession of the Premises.

Section 26. Enforcement Costs. If the City files any legal action or proceeding to repossess the Premises, collect any payments due under this Lease, collect for any damages to the Premises, or to enforce in any other way the provisions of this Lease, Lessee agrees to pay all court costs and expenses and the sum that a court of competent Jurisdiction adjudges as reasonable attorneys' fees in the action or proceeding, or in an appeal, if a judgment is rendered in favor of the City.

Section 27. Modifications. No provision of this Lease may be changed, modified, or waived, unless the change, modification, or waiver is made in writing and signed by persons authorized to sign agreements on behalf of each party.

Section 28. Contact Person/Lease Administrator. For this Lease, the City's contact person and lease administrator is the City Director of Parks and Recreation.

Section 29. Notice.

All notices, demands, requests, or replies provided for or permitted under this Lease by either party must be in writing and must be delivered by one of the following methods: (i) by personal delivery; (ii) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; (iii) by prepaid telegram; (iv) by deposit with an overnight express delivery service, for which service has been prepaid; or (v) by fax transmission.

Notice deposited with the United States Postal Service in the manner described above

will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier, Notice by fax transmission will be deemed effective upon transmission with proof of delivery.

All the communications must only be made to the following:

IF TO CITY:

City of Corpus Christi
Attn: Director of Parks and Recreation
P. O. Box 9277
Corpus Christi, TX 78469-9277

IF TO LESSEE:

Riley P. Dog Park, Inc.
Attn: Executive Director
13817 Gunwale Drive
Corpus Christi, Texas 78418

Either party may change the address to which notice is sent by using a method set out in subsection a of this section. Lessee shall notify the City of an address change within ten (10) days after the address is changed.

Section 30. Force Majeure. No party to this Lease shall be liable for delays or failures in performance due to any cause beyond the party's control including, without limitation, any delays or failures in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. The delays or failures to perform extend the period of performance until these exigencies have been removed. The Lessee shall inform the City in writing of proof of the force majeure within three (3) business days or otherwise waive this right as a defense.

Section 31. Relationship of Parties. This Lease establishes a landlord/lessee relationship, and no other relationship. This Lease must be construed conclusively in favor of that relationship. In performing this Lease, the City and Lessee will each act in an individual capacity and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

Section 32. Publication Costs. Lessee shall pay for the cost of publishing the Lease description and related ordinance, if required by the City's Charter, in the legal section of the local newspaper.

Section 33. Interpretation. This Lease shall be interpreted according to the Texas laws which govern the interpretation of contracts. Venue lies in Nueces County, Texas, where this Lease was entered into and will be performed.

Section 34. Survival of Terms. Termination or expiration of this Lease for any reason does not release either party from any liabilities or obligations under this Lease that (a) the parties have expressly agreed survive any the termination or expiration; (b) remain to

be performed; or (c) by their nature would be intended to be applicable following the termination or expiration of this Lease.

Section 35. Limitation of Leasehold. City does not warrant its title to the Leased Premises. This Lease and the rights and privileges granted Lessee in and to the Leased Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease may be construed to imply the conveyance to Lessee of rights in the Leased Premises that exceed those owned by City.

Section 36. Captions. The captions utilized in this Lease are for convenience only and do not in any way limit or amplify the terms or provisions of this Lease.

Section 37. Severability. It is the definite intent of the parties to this Lease that every section, paragraph, subdivision, clause, provision, phrase, or word of this Lease be given full force and effect for its purpose. Therefore, if, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Lease or the application of this Lease to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment.

Section 38. Disclosure of Interests. Lessee agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this contract. Lessee agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this contract. For more information, please review the information on the Texas Ethics Commission website at <https://www.ethics.state.tx.us>. Lessee agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>.

Section 40. Entirety Clause. This Lease and the attachments and exhibits incorporated into this Lease constitute the entire agreement between the City and Lessee for the purpose granted. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter of this Lease, unless contained in this Lease are expressly revoked, as the parties intend to provide for a complete understanding within the provisions of this Lease and its exhibits of the terms, conditions, promises, and covenants relating to Lessee's operations and the Premises to be used in the operations.

EXECUTED IN DUPLICATE, each of which shall be considered an original, on the 18 day
of Oct, 2018.

LESSEE:

By:

Name

Date

Jamette Park
Champion Riley P Dog Park
Title

ATTEST:

Rebecca Huerta
City Secretary

CITY OF CORPUS CHRISTI:

Samuel Keith Selman
Interim City Manager

Approved as to form:

Lisa Aguilar, Assistant City Attorney

Date

Exhibit A - Leased Premises



EXHIBIT B**INSURANCE REQUIREMENTS****I. CONTRACTOR'S LIABILITY INSURANCE**

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of the subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's

performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements
Legal Dept.
Dog Park Lease Agreement – Whitecap
10/23/2018 sw Risk Management

Exhibit C

Riley P. Dog Park Operations

The following are the operational plans for Riley P. Dog Park to be located on 2.6 acres of land owned by the City of Corpus Christi on land adjacent to the Whitecap Wastewater Treatment Plant on Padre Island.

- The park will be built and maintained by member of a 501 (C) (3) currently in place with a board of directors.
- Its initial construction will be financed by \$26,000 already raised and additional funds which have been committed but not collected pending the final approval of the park.
- The park will be open only during daylight hours. The gate will be locked at sundown.
- Dogs will be required to have all applicable vaccinations and licenses, enforced by the volunteer operators of the park.
- The park will consist of two separate fenced areas for small dogs and large dogs
- It will include water and shade structures
- It will be open to the public
- The maintenance of the park ie: grass and garbage disposal will be the responsibility of Riley P Dog Park volunteers
- No fees will be charged for entry or use