

## **DOG PARK IMPROVEMENT AGREEMENT**

DATED: \_\_\_\_\_, 2019 hereinafter referred to as "Effective Date"

BETWEEN: City of Vancouver, Washington hereinafter referred to as "City"

AND: Columbia Grove LLC, a Washington Limited Liability Company  
hereinafter referred to as "Killian"

### **SECTION 1 BACKGROUND**

City owns that certain real property located at 4205 E. 5<sup>th</sup> Street, Vancouver, Washington (the "Property"), as more fully described and depicted on Exhibit A. The Property is currently part of the City's Water Station #4 complex and while the site currently contains no facilities or other improvements, it is slated for future domestic water infrastructure. Killian desires to construct and install certain improvements (the "Improvements") on and within the Property to enhance the current interim use of the property as an off leash dog park, as more fully described and depicted on Exhibit A, attached hereto, plus installation of a perimeter fence around the Property (or a portion thereof) or upgrade of the existing perimeter fence located at the Property as may be agreed upon by City and Killian (the "Project"). City desires to allow Killian to construct the Project.

The purpose of this Dog Park Improvement Agreement (this "Agreement") is to memorialize the agreements between the City and Killian with respect to the Project.

### **SECTION 2 INTENTIONALLY DELETED**

### **SECTION 3 TERM OF AGREEMENT**

This Agreement is effective on the Effective Date and, subject to Section 6, will terminate on the earlier of: (a) ten (10) years from the Effective Date; or (b) termination as provided in Section 6 below. The term of this Agreement (the "Term") commences on the Effective Date and ends on the Termination Date.

### **SECTION 4 INTENTIONALLY DELETED**

### **SECTION 5 KILLIAN'S RIGHTS TO INSTALL THE IMPROVEMENTS DURING THE TERM**

Immediately following the mutual execution of this Agreement, Killian shall have the right, but not the obligation to install the Improvements, at its sole cost and expense, using

contractors selected by Killian. Killian shall have no right to remove any existing structures absent written consent of the City's authorized representative. Killian shall have no obligation to restore the Property to its condition prior to the installation of the Improvements except for removal of the Improvements and repair of damage caused thereby.

## **SECTION 6 GENERAL PROVISIONS**

### **6.1 Termination**

Either party may terminate with or without cause this Agreement (the "Terminating Party") by providing sixty (60) days written notice to the other party. During this 60-day cure period, the parties shall work cooperatively to determine if the issues can be resolved. Unless terminated earlier in accordance with this Agreement, or extended by mutual agreement by the parties, this Agreement shall automatically terminate, without any further action by either party, on the Termination Date as defined above in Section 3. Each party will be solely responsible for their own expenses incurred during the Term.

### **6.2 Confidentiality**

Except as otherwise provided herein, neither party will directly or indirectly disclose Confidential Information to any third party without the prior written consent of the other party. Such consent is not required to the extent that such disclosure is required by law, including the Oregon Public Records Law or Washington Public Records Act. This Section 6.2 shall survive expiration or termination of this Agreement.

### **6.3 Recreational Use Requirement**

Nothing in this Agreement shall be construed as granting Killian the right or ability to exclude any member of the public from using the property for recreational purposes as that term is defined in RCW 4.24.200-.210. Nor shall anything in this Agreement be construed as granting Killian the right or ability to charge any member of the public a fee of any kind for such recreational use of the Property.

### **6.4 Liability and Hold Harmless**

Killian agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments (collectively "Claims"), including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature to the extent arising out of, or in connection with, or incident to, Killian's negligence or willful misconduct (or that of Killian's employees, agents, or contractors) associated with the installation or construction of any Improvement pursuant to this Agreement. Notwithstanding the foregoing, Killian shall not

be obligated to indemnify City from Claims to the extent arising from City's negligence or willful misconduct. This indemnity and hold harmless shall include any claim made against the City by an employee of Killian or subcontractor or agent even if Killian is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the concurrent negligence of both the City and Killian, such cost, fees and expenses shall be shared between the City and Killian in proportion to their relative degrees of negligence. Killian is an independent contractor and responsible for the safety of its employees.

IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

[Remainder of page left intentionally blank;  
Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CITY:**

**CITY OF VANCOUVER, WASHINGTON**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**KILLIAN:**

**Columbia Grove LLC, a Washington  
Limited Liability Company**

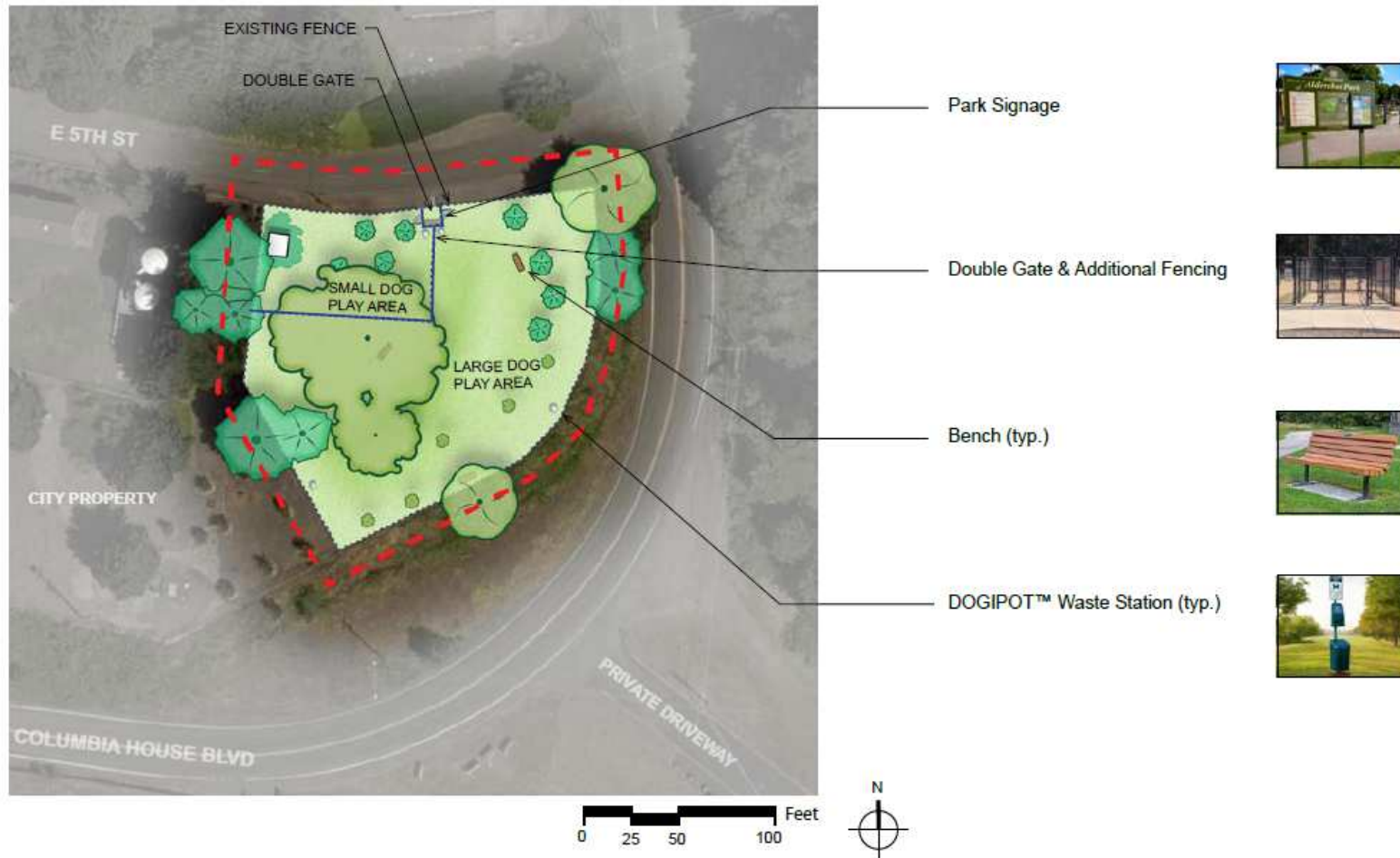
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### THE PROJECT



### PROPOSED IMPROVEMENTS

## CONVENE DOG PARK

GREENWORKS

## EXHIBIT A

### THE PROJECT

Examples of mesh netting to be attached to inside of perimeter fencing



Design to be used on mesh netting (1 large dog head every 10ft on netting)



## **EXHIBIT A**

### **THE PROJECT**

Killian shall install a sign at the Project in a location mutually agreed upon by Killian and City that includes the following information:

- All dogs must be licensed, current with all shots, healthy and wearing a collar and identification at all times.
- All dogs must be leashed upon entering/exiting leashes must be in owners' possession at all times.
- Owners must keep their dogs in view and maintain voice control at all times. Leaving dogs unattended is prohibited.
- Owners must locate and remove all dog waste; an appropriate waste receptacle is provided.
- Aggressive dogs are not permitted - owners must immediately remove their dogs upon the first sign of aggression.
- Dogs must be discouraged from digging - owners shall fill any holes.
- Food/beverages/smoking/alcohol/picnicking and camping are prohibited, and owners shall comply with all other Mountlake Terrace park rules and regulations.
- Dogs that are ill, injured or in heat, or that have been declared dangerous or potentially dangerous, are prohibited.
- Owners are legally responsible for their dogs' behavior and actions and are liable for any injuries caused by them.
- Puppies under four months old are prohibited.
- Limit is 3 dogs per person.
- Children age 14 and under must be supervised.
- Be cautious with dog toys; some dogs don't like to share. Bringing toys/food/treats into Off-Leash Dog Park is done at owners' risk.