

**NEW YORK STATE
OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION
COOPERATIVE AGREEMENT**

DEVEAUX WOODS STATE PARK, NIAGARA FALLS, NEW YORK

This Cooperative Agreement is dated _____, and is between the STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation (“**State Parks**”) and the CITY OF NIAGARA FALLS (“**City**”).

RECITALS:

Whereas, under Section 3.09(2) of the New York State Parks, Recreation and Historic Preservation Law, State Parks is authorized to maintain parks, historic sites, and recreational facilities by contract, lease, or license; and

Whereas, under Section 3.09(16) of the New York State Parks, Recreation and Historic Preservation Law, State Parks is authorized to enter contracts or other agreements with not-for-profit corporations or foundations to provide, either in whole or in part, for the operation, maintenance, or other services for any park, recreational facility, historic site, or program; and

Whereas, Deveaux Woods State Park in Niagara Falls, New York (the “**Park**”) is owned by the People of the State of New York and under the jurisdiction of State Parks; and

Whereas, the City wishes to develop, operate, and maintain a dog park at Deveaux Woods State Park in Niagara Falls, New York.

Now, therefore, the parties agree to the following:

Section 1. Contract Documents.

(a) This agreement is comprised of the following documents, all of which are hereby incorporated by reference:

- (i) Cooperative Agreement
- (ii) Attachment A – “Description of the Licensed Premises”
- (iii) Attachment C – “Requirements for Capital Construction Projects”
- (iv) Appendix A – “Standard Clauses for New York State Contracts”

(b) In the event of any inconsistency in or conflict among the document elements of this agreement, such inconsistency or conflict will be resolved by giving precedence to the document elements in the order set forth below:

- (i) Appendix A
- (ii) Cooperative Agreement, including all attachments and amendments

Section 2. Term

The term of this agreement commences on September 1, 2018 and continues until June 30, 2021, and may be renewed for additional consecutive three-year terms by written agreement of the parties.

Section 3. Grant of License

(a) State Parks hereby grants to the City the right to use and occupy approximately one acre of land at the Park as identified in Attachment A (the "Licensed Premises") for the development, operation, and maintenance of the dog park, subject to the terms and condition of this agreement. The City acknowledges that the Licensed Premises constitutes public, non-residential space within a State park and that for all purposes hereunder State Parks grants only a right to use the Licensed Premises "as is/where is" and without warranty.

Section 4. Operation, Use, and Development

(a) The City shall, with the approval of State Parks as to the site plan and installation schedule, install the fences and amenities necessary for the Licensed Premises to be operated as a fully-enclosed, off-leash dog park. To the extent necessary to accomplish such installations, the license granted to the City in this agreement extends to the City's contractors and inspectors.

(b) The City shall be responsible for the following operation and maintenance activities:

- (i) Removal of animal waste on a daily basis;
- (ii) Removal of trash, recycling, and other litter to Park trash and recycling receptacles

With respect to its operation and maintenance obligations, the City shall maintain the Licensed Premises and any equipment, fixtures, or ancillary facilities included under this agreement in a reasonably safe, attractive, operable, and sanitary condition at all times. The City may fulfill its operation and maintenance obligations through the use of volunteers who are registered with the City and for whom the City is responsible.

(c) State Parks will remain responsible for the following regular park maintenance activities within the Licensed Premises:

- (i) Mowing of grass within the fenced-in area
- (ii) Minor repair of latches or gates
- (iii) Winterization of water lines
- (iv) Routine plumbing issues
- (v) Production, installation and replacement of signage

State Parks shall provide the Licensed Premises with water service at no charge to the City. The City acknowledges that no other utilities are available at the Licensed Premises. State Parks is not required to install any water supply, sewer, or drain pipes or fixtures or electric, fuel oil, or gas lines or fixtures beyond those already in place on the date of this agreement.

(d) Licensee shall not make any improvement or physical alteration to the Licensed Premises or install any fixtures, equipment, or signage without the prior written approval of State Parks. All approved

additions, fixtures, or improvements installed or made by Licensee or the City will become the property of the State of New York upon completion unless the consent of State Parks therefor expressly provides otherwise.

(e) The City shall not impose any user fees or charges for use of the Licensed Premises.

(f) The City acknowledges that the Licensed Premises is subject to all applicable statewide and regional park regulations and Park-specific rules. State Parks shall post signage at the entrance(s) to the dog park listing the Park's dog park rules. The City acknowledges that it has no authority to waive any regulation or rule imposed by State Parks.

Section 5. Indemnification

(a) The City covenants and agrees to defend, indemnify, and hold harmless the State of New York and State Parks, and their officers, employees, and agents, from and against any claims, damages, losses, and expenses that arise from this agreement of from its own use of the Licensed Premises.

Section 6. Insurance

(a) Liability Insurance

(i) The City states that it is self-insured and does not carry general liability insurance. The City shall provide State Parks with a statement of such self-insurance prior to commencing any activity on the Licensed Premises.

(ii) The City shall require any of its contractors performing work under this agreement to obtain general liability insurance from a company licensed to conduct business in the State of New York. Such insurance policy shall name the State of New York, State Parks, and their officers, employees and agents as an additional insured. Such insurance policy shall have a liability limit of at least \$1,000,000 each occurrence and \$2,000,000 general aggregate. Such insurance policy shall be endorsed to provide written notice to State Parks at least thirty days prior to cancellation, non-renewal or material alteration. The City shall deliver to State Parks proof of such insurance in the form of an ACORD 25 Certificate of Insurance prior to the commencement of work by the subject contractor.

(b) Workers' Compensation and Disability Benefits Insurance

(i) Prior to the start of this License, the City shall provide State Parks with proof of workers' compensation insurance in compliance with the Workers' Compensation Law.

(ii) The City shall require any of its contractor performing work under this agreement to provide proof of workers' compensation and disability benefits insurance in compliance with the Workers' Compensation Law, and shall deliver to State Parks copies of such proof.

(iii) The following forms are the only acceptable means of proof: for workers' compensation a CE-200, C-105.2, U-26.3, or SI-12; for disability benefits a CE-200, DB-120.1, or DB-155.

Section 7. General Conditions

- (a) The City shall comply with all federal and state laws, codes, and regulations applicable to the conduct of the activities authorized by this agreement.
- (b) The waiver by State Parks of any term or condition of this agreement is not a waiver of any other term or condition, nor is it a waiver of the subsequent breach thereof.
- (c) The City shall not assign or transfer this agreement without the prior written approval of State Parks.
- (d) Except for the descriptive use of the facility name in its advertising, the City shall not use any State Parks or State of New York logo, trademark, or other intellectual property.

Section 8. Revocation

If at any time during the term of this agreement, State Parks shall need the Licensed Premises for any use necessary or convenient to the performance of its public purposes, State Parks may terminate this agreement by giving the City thirty days' notice in writing of intention to do so, and upon the giving of such notice, this agreement and its terms shall terminate, expire, and come to an end on the date fixed in such notice, as if the date were the date originally fixed in this agreement for termination or expiration. In such event, the City may recover any fences and dog park amenities installed by it on the Licensed Premises provided that the City does so within fifteen days after the end of this agreement and repairs all damage caused by such removal.

Section 9. Termination

- (a) The City may withdraw from this agreement by giving State Parks thirty days' notice in writing.
- (b) If the City violates any applicable statute, law, rule or regulation or does not comply with the terms and conditions of this agreement, State Parks may terminate this agreement by giving the City ten days' notice in writing of its intention to do so if the violation is not cured.

Section 10. Surrender

Upon the cessation of this agreement, whether by expiration, revocation, or termination the City shall (a) remove its personal property, and repair all damage caused by such removal, unless State Parks has consented in writing to any such personal property being safely abandoned in place; and (b) yield and deliver peaceably to State Parks possession of the Licensed Premises promptly and as good condition as when received, reasonable wear and tear and loss from casualty excepted. State Parks may take immediate physical possession of the Licensed Premises without notice to the City and without making application to the courts to dispossess or otherwise remove the City therefrom.

Signature Page Follows

In witness whereof, the parties are signing this Amendment on the date stated in the introductory clause.

City of Niagara Falls

By: _____

Name:

Title:

Federal EIN:

State of New York, Office of Parks, Recreation and Historic Preservation

Recommendation of Regional Director: _____

Mark Mistretta, Niagara Region

By: _____

Robert W. Hiltbrand, Executive Deputy Commissioner

Attachments Follow