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DOG PARK BUILDOUT AGREEMENT

THIS DOG PARK BUILDOUT AGREEMENT (the "Agreement") is entered in this _____ day of May, 2018, by and between the City of Hiawatha, Iowa, an Iowa Municipal Corporation ("Hiawatha") and Dave Wright, individually ("Wright"). Hiawatha and Wright may hereinafter be referred to collectively as the "Parties".

RECITALS

WHEREAS, Hiawatha seeks to develop and establish a public Dog Park in Hiawatha to be utilized by citizens of Linn County, Iowa;

WHEREAS, Hiawatha holds title to real estate located near the Cedar Valley Nature Trail located just south of Boyson Road and east of the Cedar Valley Nature Trail ("Real Property");

WHEREAS, Hiawatha also has a long-term lease agreement with Linn County, Iowa to lease real property adjacent to its Real Property. A map showing the location of the proposed Dog Park is attached hereto and marked as Exhibit "A";

WHEREAS, Wright is a supporter of Hiawatha's proposed Dog Park;

WHEREAS, Wright desires to provide financial assistance to purchase equipment necessary for the development and establishment of the Dog Park; and

WHEREAS, Hiawatha and Wright desire to enter into an agreement wherein Wright shall provide financial assistance to purchase equipment for the Dog Park under the terms and conditions as stated below.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and agreements hereinafter contained and set forth, and for other good and valuable consideration, the Parties hereto do covenant and agree as follows:

1. **Equipment.** In order to establish the Dog Park, Hiawatha will need to purchase or procure various pieces of equipment and fencing (collectively "Equipment") to enclose the Dog Park area as shown in Exhibit "A". A list of the necessary Equipment, along with the estimated costs, is attached hereto and marked as Exhibit "B". The estimated total cost for the Equipment is $100,260.00.

2. **Payment.** Wright agrees that it shall issue a check made out to the City of Hiawatha's Park Department in the amount of $100,260.00 at the completion of the project's construction or as otherwise agreed to by the Parties. All payments for any Equipment shall be paid by Hiawatha. Hiawatha or Wright may procure donations from other persons, organizations or entities to cover the costs of the Equipment. Any monies donated by Wright that are not used for the Equipment shall be returned to Wright.

3. **Organization.** The Parties agree and understand that this Agreement does not create a new organization between the Parties.

4. **Naming Rights.** The Parties agree that Wright shall have the naming rights to the Dog Park. All proposed names for the Dog Park must be approved by Hiawatha in advance and such approval shall not be unreasonably withheld.

5. **Dog Park Operation/Maintenance/Equipment Maintenance.** The Parties agree and understand that Wright shall have no oversight, maintenance or any other responsibility associated with the Dog Park, including but not limited to, maintenance or replacement of the Equipment referenced in this Agreement. All oversight, maintenance and responsibility associated with the Dog Park and the Equipment shall be the sole responsibility of Hiawatha.

6. **Indemnification and Hold Harmless.** Hiawatha agrees to indemnify and hold harmless Wright from and against any and all claims and denials (except those as a result from which negligence of Wright) for, or in connection with, any accident, death or damage whatsoever caused to any person or property arising, directly or indirectly, out of the activities conducted by Hiawatha for its Dog Park occurring in, on or about the property covered by this Agreement, or any part thereof, or arising directly or indirectly, from an act or omission of Hiawatha, its agents or employees, and from and against any and all costs, expenses and liabilities incurred in connection with any such claim or proceedings brought thereon.

7. **Insurance.** Hiawatha shall procure and maintain all insurance coverages as stated below and shall include Wright as additional insureds under the policy of insurance. Hiawatha will provide Wright with a certificate of insurance upon request.

Liability insurance shall be written by an insurance company qualified to do business in Iowa. The minimum coverage provided under such insurance policy shall be as follows:

Bodily Injury:	$1,000,000 per person; $2,000,000 aggregate
Property Damage:	$100,000 per accident; $500,000 aggregate

8. **Miscellaneous.**

A. Severability. If any portion of this Agreement or the application thereof to any person or circumstances is held invalid, prohibited or unenforceable for any reason, the remaining provisions shall continue to be given full force and effect so far as possible. Where necessary to carry out the intent of this Agreement, the parties shall substitute suitable and equitable terms in lieu of such invalid or unenforceable portion.

B. Entire Agreement. This Agreement represents the entire agreement of the Parties and is intended as a complete and exclusive statement of the terms thereof. Any oral or written inducements, representations, warranties, agreements or other communication made prior to the execution of this Agreement shall be void and ineffective for all purpose.

C. Parties in Interest and Assignability. Unless otherwise provided herein, this Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their heirs, personal representatives and permitted successors and assigns.

D. Governing Law. This Agreement shall be construed and enforced in accordance with the procedural and substantive laws of the State of Iowa.

E. Interpretation. Unless the context of this Agreement indicates a contrary intent, words in the singular shall include the plural and vice-versa, and words in the masculine, feminine or neuter gender shall include each of the other genders as appropriate. Article headings are for convenience only and shall not in any way affect the interpretation of any provisions of this Agreement.

F. Waiver. The failure of either of the Parties to exercise any of its rights under any provision of this Agreement or on the breach of any representation, warranty, covenant or agreement, shall not be deemed a waiver of such rights as to any subsequent breach or as to any rights hereunder.

G. Venue. It is hereby stipulated and agreed that should litigation between the Parties ensue, venue shall be had in any court of competent jurisdiction in Linn County, Iowa.

H. Construction. Each party acknowledges that all Parties participated equally in drafting this Agreement; and, accordingly, stipulate that no court construing this Agreement shall construe it more stringently against one party or the other.

I. Recitals. The above Recitals are substantive portions of this document and are incorporated herein by this reference.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written by their duly authorized agents or officers as of the date set forth above.

DAVE WRIGHT, Individually

_____

CITY OF HIAWATHA, IOWA

By:_____
William Bennett, its Mayor

ATTEST

By:_____
Kelly Kornegor, City Clerk

DRAFT

DRAFT

RESOLUTION NO. 18-
City Council

RESOLUTION APPROVING A DOG PARK BUILDOUT AGREEMENT BETWEEN THE CITY OF HIAWATHA AND DAVE WRIGHT IN AN AMOUNT OF $100,260.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, approving a Dog Park Buildout Agreement between the City of Hiawatha and Dave Wright in an amount of $100,260.00.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 16th day of May, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk