

RESOLUTION OF THE CITY COUNCIL

No. 470

Approved October 23, 2014

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to enter into an agreement with THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS acting by and through the RHODE ISLAND DEPARTMENT OF TRANSPORTATION (the "DOT") where by DOT grants a License to the City of Providence (the "City") permitting the City to use approximately one hundred twelve thousand three hundred and twenty seven (112,327) square feet of land owned and controlled by the DOT, known as the Henderson Street Bridge East Side vacant parcel located at the westerly Providence end of the Henderson Street Bridge between Waterman Street and South Angell Street in the City of Providence ("Licensed Premises"). Said License Agreement is attached to this Resolution as Exhibit A. The Licensed Premises will be used by the City as a Municipal Dog Park for a Maximum of 364 Days per Year from the date of the passage of this Resolution until the 31st day of July 2019.

IN CITY COUNCIL

OCT 16 2014

READ AND PASSED

Mr. Spina
PRES.
Low L. Duggan
CLERK
ACTING

I HEREBY APPROVE.

Angel T. Rivera
Mayor
Date: 10/23/14



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION**

LICENSE

This instrument constitutes a License from the **STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS** acting by and through the **RHODE ISLAND DEPARTMENT OF TRANSPORTATION** ("Licensor") to the **City of Providence, Department of Parks and Recreation**, having its principal office at 1000 Elmwood Avenue, Providence, Rhode Island 02905, ("Licensee") permitting the Licensee to use approximately 112,327 square feet of land owned and controlled by the Licensor, known as the **Henderson Street Bridge East Side vacant parcel**, located at the westerly Providence end of the Henderson Street Bridge between Waterman Street and South Angell Street, in the City of Providence, Rhode Island ("Licensed Premises"), as shown on **EXHIBIT A**, (light green area) appended hereto, for the following uses and purposes:

USE: As a Municipal Dog Park for a Maximum 364 Days per Year.

- The License includes a temporary closing provision such as that the Licensor must give 48 hours notice that the Licensed Premises will be closed for a period of 1 day, not to exceed 3 days, at the conclusion of which the use as a Dog Park can be resumed.
- The Licensee understands that the Licensed Premises is owned by the Licensor and is to be used for a transportation use in the future. This temporary use is not deemed to provide Section 4(f) protection to the Licensed Premises. The Licensee agrees not to impede the ability or initiate litigation against the Licensor to use the Licensed Premises for a transportation use in the future and will abide by the termination provisions.
- The Licensed Premises shall not be recorded as parkland on any map or official document.
- This License is subject to the prior written approval of the Licensee's City Council and documentation of same to the satisfaction of the Licensor.

This License is revocable-at-will and the Licensee hereby waives notice and any opportunity to be heard concerning revocation.

The parties agree that this is a **Gratis License**, which is fair and reasonable consideration for the issuance of this License.

Unless revoked earlier by the Licensor this License shall be in full force and effect upon approval by the **State Properties Committee (SPC)** from the **1st day of August, 2014 until the 31st day of July, 2019**. If revoked by the Licensor prior to the termination date, the Licensee shall be entitled to a *pro rata* rebate of any fee paid in advance for any unexpired portion of the dates stated above. If revoked by the Licensee prior to the termination date, the Licensee shall not be entitled to a *pro rata* rebate of any fee paid in advance for any unexpired portion of the dates stated above.

The Licensee hereby, for itself, its heirs, assigns and successors in interests forever quitclaims unto the Licensor any claim for damage, including death, and/or property damage which may arise in connection with any activities on the Licensed Premises. The Licensee shall not cause, or suffer to be caused, waste or estrepement to the Licensed Premises during the term of this License, and shall indemnify, hold harmless and defend the Licensor from any and all manner of bodily injury, including death, and property damage connected with the Licensee's use of the Licensed Premises.

The Licensor acknowledges that the Licensee is a self-insurer with respect to matters generally covered by insurance against loss by fire and other casualty and general liability. The Licensee hereby agrees and covenants, to defend, indemnify and hold forever harmless the Licensor from and against all claims, causes of action, suits, losses, damages, liability and expenses including, but no way limited to, the costs of suits and attorney's fees, arising out of or in any way related to the Licensee's activities and operations in, on, under above or upon the Licensed Premises and/or the Licensee's failure to perform any or all of the covenants of this License required of it to be performed under all circumstances except when caused exclusively by the negligence of the Licensor or its employees or agents, and the Licensee's warrant of indemnification shall include, without limitation thereto, damage to the Licensed Premises, personal injuries and injuries to persons resulting in death. The Licensee hereby waives any right of recovery or offset against the Licensor of the cost or payment of any claims, causes of action, suits, losses, damages, liabilities and expenses including, but in no way limited, to the cost of suits and attorney's fees, arising out of or in any way related to the Licensee's activities and operations in, on, under, above or upon the Licensed Premises and/or the Licensee's failure to perform any or all of the covenants of this License required of it to be performed except as hereinabove provided.

The Licensee shall give the Licensor prompt and timely notice of any claim made or suit instituted against the Licensee and/or the Licensor which in any way could result in indemnification hereunder. The Licensor and Licensee shall have the right to compromise or participate in the defense of same to the extent of their own interest hereunder.

NONDISCRIMINATION CLAUSE: In connection with the performance of work under this Agreement, the Licensee covenants and agrees that:

- (1) no person shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person shall, on the grounds of race, color, sex, national origin, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination; and
- (3) the Licensee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (the Regulations), and as the Regulations may be amended.

In the event of breach of any of the provisions of the above Nondiscrimination Clause, the Licensor shall have the right to terminate the License and to reenter and repossess said Licensed Premises and the facilities thereon, and hold the same as if said License had never been made or issued.

This License is also subject to the ***RULES AND REGULATIONS GOVERNING THE USE OF HIGHWAYS, ETC.***, a copy of which is incorporated by reference herein and appended hereto as **EXHIBIT B.**

◆◆◆◆◆

DATED _____

**LICENSOR: Rhode Island Department of
Transportation**

By: _____
Michael P. Lewis
Its: Director

Acknowledged this _____ day of _____, A.D. 2014.

By: _____

◆◆◆◆◆

DATED _____

LICENSEE: City of Providence

By: _____
Angel Taveras
Its: Mayor

Acknowledged this _____ day of _____, A.D. 2014.

By: _____



APPROVED this _____ day of _____, A.D. 2014 by the State Properties Committee:

**APPROVED AS TO TERMS
AND CONDITIONS:**

By: _____
Chairman, State Properties Committee

APPROVED AS TO FORM:

By: _____
Designee for the Department of
Attorney General

APPROVED AS TO SUBSTANCE:

By: _____
Designee for the Director, Department of
Administration

APPROVED:

By: _____
Public Member

APPROVED:

By: _____
Public Member

EXHIBIT B



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Office of the Secretary of State
Edward S. Jannan, III, Secretary of State

Rules and Regulations Filing Form

1. Name and Address of Agency

Department of Transportation Office of Legal Counsel
2 Capitol Hill Providence

2. Title of These Rules and Regulations

REGULATIONS REGARDING THE USE OF HIGHWAYS, ROADS, FREEWAYS, BRIDGES AND STRUCTURES

Optional Subtitle. Delete this text if no subtitle

3. Statutory Source of Authority to Issue These Rules

R.I.G.L. Chapter 42-35

4. Purpose of New Rules and Regulations or Amendments

Enter description here

5. Type of Filing

- ☐ A. Emergency
☐ B1. Amendment 42-35-3
☐ B2. Adoption 42-35-3
☐ B3. Repeal 42-35-3
☐ C. Technical Revision
☒ D. Refile 42-35-4.1

Date of Public Notice: 00/00/0000

Date of Public Hearing: 00/00/0000

*If yes to B1 or C in section 5, identify the amended sections or revision(s) and the original date of filing:

7. Agency Code

6. Documents Filed

(all filings must include entire regulation)

- ☐ A. New Rule and Regulation
☐ B. Amended Rules and Regulations
☐ C. Technical Revision
☒ D. Refiling Existing Regulations
☐ E. Emergency
☐ F. Repealed

8. Certification

I hereby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42-35) and that they are true copies of this Department, attest.

Name:

Paul R. D'Agostini

Title:

Legal Staff Asst.

Vanessa E. Cawm #38896

Notary Public My Commission expires 10/26/02

Subscribed and sworn before me this

2

day of

Jan

2002

RECEIVED

JAN 02 2002

ERLID# 1307

RI SECRETARY OF STATE
ADMINISTRATIVE RECORDS

M. Kachanoff

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



William D. Ankner, Ph.D.
Director

Department of Transportation
OFFICE OF THE DIRECTOR
Two Capitol Hill
Providence, R.I. 02903-1124

OFFICE (401) 222-2481
FAX (401) 222-2086
TDD (401) 222-4971

December 18, 2001

Honorable Edward J. Inman, III
Secretary of State Office of the Secretary of State
337 Westminster Street
Providence, Rhode Island 02903

Re: Rules and Regulations Regarding the Use of Highways, Roads, Freeways,
Bridges & Structures (37-5-2)

Dear Secretary of State Inman:

Pursuant to Chapter 42-35 of the Rhode Island General Laws, enclosed please find two (2) sets of Regulations referenced above, which have been reformatted for refiling. You will also find attached the Affidavit of Publication from the Providence Journal Bulletin.

In accordance with R.I.G.L. 42-35-4, these Rules and Regulations will take effect twenty (20) days after filing with your office.

Thank you for your assistance in this matter. If you have any further questions, please do not hesitate to contact this office.

Very truly yours,

William D. Ankner, Ph.D.
DIRECTOR

RECEIVED

JAN 02 2002

RI SECRETARY OF STATE
ADMINISTRATIVE RECORDS

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF TRANSPORTATION

REGULATIONS REGARDING THE USE OF HIGHWAYS, ROADS,
FREEWAYS, BRIDGES AND STRUCTURES

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1.0 PURPOSE, SCOPE AND AUTHORITY

1.1 Purpose:

The purpose of these regulations is to carry out the statutory requirements contained in Chapter 5 of Title 37 of the Rhode Island General Laws.

1.2 Scope:

These regulations govern the use of highways, roads, freeways, bridges, and structures.

1.3 Authority:

The rules and regulations herein contained are promulgated pursuant to Chapter 5 of Title 37 of the Rhode Island General Laws.

2.0 POLICY

- 2.1 It is hereby declared to be the official policy of the Licensor that all licenses entered into by the Licensor allowing the use of state property under the jurisdiction of the Licensor shall be governed by these Regulations and that they shall be included in such licenses by reference.

3.0 DEFINITIONS

3.1 Licenses means the person, firm, corporation, partnership, proprietorship or entity to whom the license is issued.

3.2 Licensor means the Rhode Island Department of Transportation.

3.3 Premises includes all property owned by or under the jurisdiction of the Licensor.

4.0 REGULATIONS REGARDING THE USE OF RIDOT PROPERTY

4.1 Use of Premises:

In reference to the uses specified in the license document, the following shall also apply:

Except as hereinabove set forth, no rights or privileges are granted to the Licensee by the Licensor, and the language of this license is not to be read so as to infer or assume any additional rights or privileges on the Licensee's part.

Any use of the Premises by the Licensee deemed by the Licensor incompatible with the provisions herein contained shall constitute a material breach of this license and the Licensor shall thereupon immediately revoke this license.

4.2 Repairs and Maintenance

- A. The Licensee has inspected and accepts the Premises in their present condition and agrees that no representation or warranties with regard to condition, fitness for use or zoning of the Premises have been made that are not specifically expressed herein; and further agrees upon the expiration or other termination of this license, to peaceably quit and deliver possession of the Premises to the Licensor in like good order, repair and safe condition, reasonable wear and tear expected.

During the hours of the Licensee's activities and operation upon the Premises, the Licensee agrees to put and keep said Premises in good order, repair and safe condition including, but not limited to, sidewalks, driveways, and any structures erected by the Licensee thereupon. This obligation of the Licensee shall likewise apply to any damage or disrepair to the Premises, including repairs thereto, which may occur or persist after the hours of the Licensee's activities or operations but which shall have occurred as a direct result of said activities and operations.

- B. The Licensee agrees to maintain the Premises at its sole cost and expense, including any subsequent alteration, addition, structures or improvements erected upon or made by the Licensee thereto; including, but in no way to, the removal of sand, trash, rubbish, snow, ice, broken glass, debris, litter and other unlawful obstructions which may accumulate thereupon.
- C. The Licensee agrees to secure the premises and safeguard the physical integrity of the Premises and the Licensor's property thereupon, and to

safeguard said premises from unlawful entry, trespass and other acts which may actually or potentially cause the disruption of the enjoyment of the Premises by the public.

- D. The Licensee shall obtain all licenses and permits required by reason of any maintenance, repairs, construction or use of the Premises as herein provided.

4.3 Insurance and Indemnity

- A. The Licensee shall at all times carry in force public general liability insurance with responsible insurance underwriters, licensed in the State of Rhode Island, insuring the Licensee and the Licensor against all legal liability for injuries to persons (including wrongful death), personal and bodily injury and damages to property, caused by the Licensee's use and occupancy of the Premises, or otherwise caused by the Licensee's activities and operations and maintenance activities, on said Premises, with liability limits of not less than two million dollars (\$2,000,000.00) for any one person, and not less than two million dollars (\$2,000,000.00) for any accident involving injury (including wrongful death) to more than one person, and not less than two million dollars (\$2,000,000.00) for property damage and personal injury and bodily injury resulting from any one accident. Likewise the Licensee shall at all times carry in force Workmen's Compensation and Employer's Liability Insurance as required by law and covering its operations hereunder. Furthermore, the Licensee shall arrange for the Licensor to be named as a co-insured under the foregoing policy or policies.

Evidence of these policies of insurance must be submitted by the Licensee to the Licensor prior to the date of actual occupancy of the Premises by the Licensee. The Licensee shall, if requested by the Licensor, and within ten (10) days of such request, submit the actual policies of insurance to the Licensor. The Licensee shall also submit to the Licensor renewal certificates on any expiring insurance policy required hereunder by the date of expiration thereof. Additionally, each such policy shall contain a valid provision or endorsement that the policy may not be canceled, revoked, changed or modified without the Licensee giving at least ten (10) days' written advance notice thereof to the Licensor.

- B. In addition, to the extent that the Licensor is not held harmless by the provision of policies of public liability insurance carried by the Licensee as hereinabove provided, the Licensee hereby agrees and covenants to defend, indemnify, and hold forever harmless the Licensor from and

against all claims, causes of action, suits, losses, damages, liabilities and expenses including, but in no way limited to, the cost of suit and attorney's fees arising out of or in any way related to the Licensee's use, occupancy, and maintenance of the Premises and its operations at the Premises and/or the Licensee's failure to perform any or all of the covenants of this license under circumstances except when caused by the Licensor's sole negligence or by the joint negligence of the Licensor and any person other than the Licensee, and the coverage of this Section 4.3 shall include with out limitation thereto, damage to property, personal injuries, and bodily injuries to persons, including those resulting in death. The Licensee shall give the Licensor prompt and timely notice of any claims made or suit instituted against the Licensee which in any way would result in indemnification hereunder. The Licensor shall have the right to compromise or participate in the defense of the same to the extent of its own interests hereunder.

4.4 Utilities

The Licensee, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity, sewage, storm drainage, and other utility services required for its use. In the event it is impossible or impracticable to secure any of such services other than through facilities owned by the Licensor, the Licensee shall install at its expense necessary connections, supply lines, and (where permitted by law) meters to measure the Licensee consumption of such services and shall pay to the Licensor upon demand, as additional rent, any costs incurred by the Licensor for any such installation and, further, shall pay for such services, upon demand, as additional rent, at reasonable rates as determined by the Licensor. The Licensor shall not be liable for any temporary suspension of any such services.

4.5 Personal Property

The Licensee shall not bring any fixtures, furnishing, machinery, or equipment upon the Premises without first obtaining the written consent of the Licensor, which consent will not be unreasonably withheld. The Licensee shall have the right to remove such personal property from the Premises any time prior to the said termination of this license. If the Licensee fails to remove the same prior to the said termination, such personal property that remains upon the Premises shall become the property of the Licensor free and clear of all claims of the Licensee, its assigns, or creditors.

4.6 Hazardous Use:

The Licensee agrees that the Premises shall not be used for storage of flammable, explosive or hazardous material or waste.

4.7 Hazardous Waste Indemnification:

The Licensee will indemnify, save harmless and defend the Licenser from any claim or claims arising from the discovery, uncovering, finding, transportation, storage and disposal of any oil, hazardous material, hazardous waste or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including without limitation, the Rhode Island Hazardous Waste Management Act, R.I.G.L. 23-19.1-1 et seq., the Rhode Island Hazardous Substances Act, R.I.G.L. 23-24-1 et seq., the Rhode Island Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., on, beneath, above and under the Premises attributable to Licensee subsequent to the date of this agreement arising under Rhode Island General Laws, Section 23-19-1 through 23-19-27, inclusive, as amended or otherwise.

4.8 Advertising:

No advertising shall be placed upon the Premises except to advertise the Licensee's own business. All such advertising must have the prior written consent of the Licenser.

4.9 Liens and Charges:

The Licensee, within sixty (60) days after completion of any construction, alteration, repair or improvement in or upon the Premises, shall furnish to the Licenser a certified statement that all charges for labor and materials furnished have been paid, together with releases of liens.

The creation or imposition of any lien or charge upon the Premises through acts or omissions of the Licensee, its agents, contractors or subcontractors shall be deemed a default under the provisions of this agreement.

In the event any such lien or charge shall not be paid or bonded by the Licensee within fifteen (15) days after the lien or charge accrues, the Licenser shall have the right to pay such lien or charge if it so wishes and the Licensee shall repay the cost to the Licenser as additional rent hereunder, with interest at twelve (12) percent per annum from the date of payment by the Licenser, promptly upon rendition of bill therefore. Nothing in this paragraph or in any other paragraph of this agreement shall be construed as authority to the Licensee to create any lien on the Licenser's interest in the Premises.

- 4.10 Notices given under the terms of this agreement shall be deemed sufficiently served if such notice is mailed by certified mail, return receipt requested, or is so delivered personally. If in the case of the Licensee, such notice is mailed or delivered to the Licensee at the Licensee's address set forth on the first page hereof. If, in the case of the Licensor, such notice is mailed or delivered to the Licensor at the Licensor's office at:

Department of Transportation
Property & ROW
Room 317 State Office Building
Two Capitol Hill
Providence, Rhode Island 02903

or at such other place as the Licensor may from time to time designate in writing to the Licensee.

4.11 Responsibility of the Licensee to its Employees:

The Licensee, in the performance of any and all work by the Licensee under the terms of this agreement or otherwise, upon or adjacent to the Premises, will furnish all labor and supervisory forces of every kind and the Licensee shall employ, pay from the Licensee's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of the Licensee and subject to the Licensee's exclusive supervision, direction and control.

4.12 Fee

The parties agree that given the benefits and the burdens assumed hereunder a license fee in the amount specified in the license to which these rules and regulations are attached is considered by them appropriate and reasonable.

All payments to the Licensor by the Licensee made in accordance with this license shall be in the form of personal check, money order or cashier's check or certified corporate check made payable to the "General Treasurer, State of Rhode Island" and delivered or mailed to the office of the Assistant Director for Property & Right-of-Way, Rhode Island Department of Transportation, Room 317, Two Capitol Hill, Providence, Rhode Island 02903, or such other address as the Licensor may specify by written notice to the Licensee. In the event that checks drawn on accounts of the Licensee are returned to the Licensor unpaid by the bank for insufficient funds or are otherwise dishonored for any reason, the Licensor may by notice to the Licensee require that all future payments made by

the Licensee be certified or be made by money order or cashier's check. In no event shall any sum be tendered in cash by the Licensee.

4.13 Nondiscrimination Clause

In connection with the performance of work under this license and the use and occupation of the Premises, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin or sex. The Licensee further agrees to covenant, in a form to be specified by the Licensor, that it will comply with the nondiscrimination requirements of the Code of Federal Regulations Title 39, Part 21, Appendix C (b) (3), effectuation of Title VI of the Civil Rights Act of 1964.

4.14 Access to Premises by Licensor

The Licensee hereby agrees and covenants that the Licensor, and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the Premises for any of, but not limited to, the following reasons or purposes:

- A. To inspect the Premises at reasonable intervals during hours of the Licensee's use and occupation thereof (or at any time in case of emergency) to determine whether the Licensee has complied and is complying with the terms and conditions of this license; or
- B. To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Premises, and to construct, maintain, repair or relocate such facilities in the future, provided, however, that said work shall in no event unduly interfere with the operations of the Licensee.
- C. In the event of an emergency, which determination shall be at the sole determination of the Licensor, to take such action on the Premises as may be required for the protection of persons and/or property utilizing or upon the Premises or otherwise to execute the terms and conditions of this license.

4.15 Rules & Regulations

The Licensee agrees to observe and obey all rules and regulations promulgated from time-to-time by the Licensor for order and safeguard of the Premises.

4.16 Revocation.

This license is revocable at will by either the Licensor or Licensee or both.

4.17 Assigning, Underletting:

The Licensee shall not assign or transfer this agreement in whole or in part, or sublet the Premises or any part thereof, without the prior written consent of the Licensor; and the Licensee shall not mortgage or otherwise encumber or permit to be encumbered the term or any continued term hereof, or any part thereof, or any structures now and hereafter placed on the Premises, without the prior written consent of the Licensor.

5.0 Severability

If any provision of these Rules and Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.


6.0 Effective Date

These Rules and Regulations shall become effective twenty (20) days after filing with the Office of the Secretary of State.

CERTIFICATION

I hereby certify that the within Rules & Regulations, relative to Rhode Island General Laws Chapter 37-5 have been adopted by the Department of Transportation and that this is a true copy of said Rules and Regulations.

DATE: _____



William D. Arkner, Ph.D.
DIRECTOR

Rev 12/01/01