

**FACILITIES MAINTENANCE AGREEMENT
BETWEEN CITY OF BURLESON
AND FORT WORTH MOUNTAIN BIKERS ASSOCIATION**

This AGREEMENT made this _____ day of _____, 20____ (the "Effective Date"), between the CITY OF BURLESON (hereinafter called "City") and the FORT WORTH MOUNTAIN BIKERS ASSOCIATION (hereinafter called "FWMBA").

WHEREAS, City is the owner of certain lands known as Chisenhall Fields ("Park") and certain improvements in the Park consisting of all areas within the unpaved, soft-surface hike and bike trails ("Trails"); and

WHEREAS, FWMBA has the resources and expertise necessary to maintain unpaved trails, soft-surface trails at the Park;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) paid from City to FWMBA and the mutual covenants herein contained, the parties agree as follows:

**Article I
Appointment and Exclusivity**

- 1.01 FWMBA agrees to maintain the Trails in accordance with the provisions of this Agreement for the term of this Agreement.
- 1.02 City agrees to cooperate with FWMBA in the maintenance of the Trails and the Park in accordance with the terms of this Agreement for the term of this Agreement.
- 1.03 City and FWMBA agree that City remains the owner of all real property and improvements in the Park, including the Trails. This Agreement does not convey any right, title, or interest in the real estate where the Park is located to FWMBA.

**Article II
Rights and Duties of FWMBA**

- 2.01 FWMBA shall safely maintain trails at its own expense to include all materials, supplies, machinery, equipment, tools, superintendence, labor, personnel, insurance (if required), and other accessories and services necessary to provide unless otherwise stated elsewhere in this Agreement.
- 2.02 FWMBA shall take such steps as are appropriate to ensure that the work involved is properly coordinated with any related work performed by the City.
- 2.03 FWMBA shall obtain the advance written approval of the Parks and Recreation Director or their designee prior to beginning any new construction work beyond routine maintenance as otherwise outlined in this agreement. All new construction work on the Trails will require a Floodplain Development Permit review and review by the City Council or their designee. Any work by FWMBA prior to approval by the Director may be ordered

stopped at the discretion of the Director and subject to removal and replacement by FWMBA. FWMBA will submit proposed construction concepts and plans to the Parks and Recreation Director or their designee for review. FWMBA shall provide any additional documents as requested from the Parks and Recreation Director or their designee.

2.04 FWMBA will construct the Trails:

- i. In accordance with specifications submitted and approved by Parks and Recreation Director or designee;
- ii. In accordance with Floodplain Development Permit requirements;
- iii. In accordance with all applicable laws, ordinances, rules, regulations, and specifications of all federal, state, county, city and other governmental agencies now or hereafter in effect; and
- iv. In accordance with industry standards of care, skill, best practices, and diligence. FWMBA shall be solely responsible for initiating, maintaining, and supervising all safety precautions pertaining to construction or repair of the Trail and FWMBA's use thereof.

2.05 Trail maintenance shall include, but not limited to, repairing, replacing, and rebuilding trails or sections of trails that are eroding or in disrepair; pruning of trees; removal of brush; and litter control.

2.06 FWMBA shall keep the City informed of any modification planned for the Trail and shall not conduct any modifications, including, but not limited to, trimming and pruning, until written approval is obtained from the Parks and Recreation Director or designee.

2.07 FWMBA shall provide the City with any and all maintenance schedules.

2.08 FWMBA shall not permit motorized vehicles, excluding mowing equipment, on turf areas within the Park or Trail without advance written permission by the Parks and Recreation Director or designee. All vehicles shall remain on paved surfaces.

2.09 FWMBA shall have the right to install signs in compliance with all federal, state, and local statutes, ordinances, rules, regulations, and specifications, displaying the Trails and the sponsorship of the activities by the FWMBA, subject to the prior approval of the Parks and Recreation Director or designee.

2.10 FWMBA shall post and maintain safety guidelines for the Trail.

2.11 FWMBA shall be responsible for the maintenance and replacement of all signage installed on the Trail pertinent to Trail activities.

2.12 FWMBA shall obtain and maintain insurance coverage as required in Article IV of this Agreement.

- 2.13 FWMBA may mow and trim the area on a more frequent basis at its sole cost and expense. Trim guards shall be used on line trimmers when working around trees. Turf shall be cut in a manner so as not to scalp turf or leave areas of uncut grass.
- 2.14 FWMBA shall remove all trash and litter from the entire area prior to initiating any mowing of the turf area.
- 2.15 FWMBA shall report any and all maintenance concerns to the City including, but not limited to, damages classified as "Acts of God", erosion issues, lighting issues, and structural issues immediately as encountered.
- 2.16 FWMBA may prune trees and clear brush on the Trail with prior written approval of Parks and Recreation Director or designee. All pruning cuts (including roots) to oak trees shall be painted within 30 minutes with an approved pruning paint to mitigate the spread of oak wilt. All debris resulting from pruning and clearing shall be removed by FWMBA.
- 2.17 FWMBA shall not remove any tree without prior written permission from the Parks and Recreation Director or designee.
- 2.18 FWMBA must provide a detailed map illustrating all mountain bike features to include but not limited to bike jumps.
- 2.19 FWMBA shall inspect all mountain bike features on a quarterly basis.
- 2.20 FWMBA shall install maintain, and repair mountain bike features with approved materials such as, dirt, existing stone, wood, steel framing, etc., with the prior approval of the Parks and Recreation Director or designee and certified structural engineer.
- 2.21 FWMBA shall make necessary repairs to any installed mountain bike features within 72 hours.
- 2.22 FWMBA shall submit plans and drawings of all future mountain bike features for review and approval prior to installation.
- 2.23 FWMBA shall keep the trail clear and free of briars and poison ivy.
- 2.24 FWMBA shall request permission for use herbicides in treatment of poison ivy in accordance with federal, state, and local laws. FWMBA shall use trained applicators in the approved use of herbicides and maintain all application logs in accordance with Texas Department of Agriculture laws and regulations.
- 2.25 FWMBA shall notify the Parks and Recreation Director or their designee requesting any specialized maintenance assistance required.
- 2.26 Upon completion of all approved future mountain bike installations, features are to be inspected by designated City staff prior to being used by riders.

- 2.27 All features shall become property of the City upon installation and are subject to removal by the City should the City believe, in its uncontrolled discretion, that the feature is unsafe.
- 2.28 Newly constructed trails should be built with a substrate of no more than 3 feet in height unless prior consent is given.
- 2.29 FWMBA shall submit a special events permit request for all non-maintenance events of more than 50 estimated attendees.
- 2.30 FWMBA shall create one volunteer account for logging all volunteer hours using the designated City of Burleson volunteer app.
- 2.31 FWMBA shall dispose of all litter and debris removed during FWMBA maintenance activities unless otherwise noted in section 3.05.

**Article III
Rights and Duties of City**

- 3.01 City shall at all times remain the owner of the Park and the Trails. Nothing in this agreement shall be construed as transferring or conveying an interest in the Park or the Trails.
- 3.02 Except as otherwise provided in this Agreement, City shall not authorize any person or entity other than FWMBA to maintain the Trails during the term of this Agreement without notifying FWMBA.
- 3.03 City shall have the right to enter the Park and the Trail for any reason as long as it does not unreasonably interfere with FWMBA's rights under this Agreement, including at any time necessary to inspect the conditions of the Trails.
- 3.04 City may perform a routine inspections of FWMBA's work, volunteer and activity logs.
- 3.05 City shall remain responsible for the maintenance and repair of the following: (i) Large area brush mowing of adjacent and right-of-way areas, (ii) Agreement compliance, floodplain compliance, and maintenance inspections, (iii) Maintaining control of access points into Trails, and (iv) Provide brush disposal for up to two (2) volunteer clean-up days per year.
- 3.06 City shall provide at least 100 square feet of secured, uncovered area for storage of FWMBA maintenance equipment.
- 3.07 City shall assist FWMBA in the construction and feature approval process.

**Article IV
Insurance**

- 4.01 FWMBA agrees to obtain and maintain insurance in the following amounts at all times during the term of this Agreement: (i) Commercial General Liability \$1,000,000; (ii) Damage to Premises \$100,000; (iii) Medical \$1,000; (iv) Personal Injury \$1,000,000, (v) General Aggregate \$3,000,000; (vi) Excess Accident \$100,000 with a maximum \$50.00 deductible. FWMBA is not required to obtain Automobile Liability insurance.
- 4.02 FWMBA shall provide certificates of insurance to City evidencing that FWMBA has obtained all required insurance thirty (30) days prior to the start of each year of the agreement.
- 4.03 Insurers for all policies must be authorized to do business in the state of Texas or be otherwise approved by City; and, such insurers shall be acceptable to City in terms of their financial strength and solvency.
- 4.04 All policies shall be endorsed to name City as an additional insured.
- 4.05 The insurance policies required by this Agreement shall cover all public risks related to FWMBA's use of the Park or the Trails.
- 4.06 The Commercial General Liability insurance policy shall have no exclusions by endorsements unless City approves such exclusions. All policies required above shall be written on an occurrence basis. All policies shall be endorsed with a waiver of subrogation in favor of City.
- 4.07 A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to City. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto FWMBA's insurance policies. Notice shall be sent to City of Burleson, Attn: City Manager, 141 West Renfro, Burleson, Texas 76028-4261.
- 4.08 City shall be entitled, upon its request and without incurring expense, to review FWMBA's insurance policies including endorsements thereto and at City's discretion. FWMBA may be required to provide proof of insurance premium payments.
- 4.09 City shall not be responsible for the direct payment of any insurance premiums required by this Agreement. Any failure on part of City to request required insurance documentation shall not constitute a waiver of the insurance requirements.

Article V Indemnification

FWMBA SHALL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, EMPLOYEES AND VOLUNTEERS HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING PERSONAL OR BODILY INJURY (INCLUDING DEATH), PROPERTY

DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE CAUSED SOLELY BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF FWMBBA OR ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, AFFILIATE VOLUNTEER OR SUBCONTRACTOR OF FWMBBA, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS OR REPRESENTATIVES, WHILE OPERATING OR MANAGING THE FWMBBA ACTIVITIES AT THE PARK. THE INDEMNITY PROVIDED UNDER THIS SECTION DOES NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS. IF FWMBBA AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS ARTICLE V IS SOLELY FOR THE BENEFIT OF CITY AND FWMBBA AND DOES NOT CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FWMBBA AND CITY SHALL PROMPTLY ADVISE EACH OTHER IN WRITING OF ANY KNOWN CLAIM OR DEMAND AGAINST FWMBBA OR CITY RELATED TO OR ARISING OUT OF FWMBBA'S ACTIVITIES ON THE PROPERTY.

Article VI
Term of Agreement; Default

- 6.01 The term of this Agreement shall be for a five (5) year period, beginning on the Effective Date of this Agreement.
- 6.02 This Agreement shall automatically renew and extend under the same terms and conditions contained in this Agreement for five (5) successive one (1) year terms after the initial five (5) year term, unless FWMBBA or City provide notice of their intention that this Agreement not renew in writing at least sixty (60) days prior to expiration of the then current term. In no case shall the term of this Agreement extend beyond 10 years from the Effective Date of this Agreement.
- 6.03 Should either party be found to be in default of their obligations under this agreement, the defaulting party shall be given written notification of the event of default and 30 calendar days to cure the default. If the defaulting party fails to cure the default within the 30 day cure period, this Agreement shall be terminated and all parties shall be released from their obligations under this agreement, except the following obligations that shall survive the termination: (i) an obligation to pay monies due on the date of termination, or (ii) an obligation to indemnify under Article V due to an occurrence prior to the date of termination.
- 6.04 Notwithstanding the above, the City may unilaterally terminate this Agreement at any time and for any reason by providing FWMBBA with 30 days written notice of termination. Upon termination, all parties shall be released from their obligations under this agreement, except the following obligations that shall survive the termination: (i) an obligation to pay monies

due on the date of termination, or (ii) an obligation to indemnify under Article V due to an occurrence prior to the date of termination.

Article VII Miscellaneous Provisions

- 7.01 Independent Contractor/Third Party Beneficiaries. City agrees to contract with FWMBA for the maintenance of the Trails as an independent contractor, and not as an officer, servant or employee of City. FWMBA shall have the exclusive right to control the details of the work or activities performed pursuant to this Agreement and all persons performing same, and FWMBA shall be solely responsible for the acts and omissions of its officers, agents, employees, subcontractors, and volunteers. Nothing herein shall be construed as creating a partnership or joint venture between City and FWMBA, its officers, agents, employees, subcontractors, and volunteers; and the doctrine of respondeat superior has no application as between the City and FWMBA. This Agreement shall inure only to the benefit of the parties to this Agreement and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its own contracts or commitments.
- 7.02 Force Majeure. Either party may be excused from performance under this Agreement when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, or court order, provided that the non-performing party prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. If a party suffers an event of Force Majeure, it shall provide notice of the event to the other party immediately. Subject to this provision, such nonperformance shall not be deemed an event of default.
- 7.03 Notice. All notices required or permitted by this Agreement will be delivered either (i) by certified mail, postage prepaid, effective five days after mailing, or (ii) by hand delivery, effective upon delivery, in either case addressed as follows (or to such other address as a party may specify to the other party by notice delivered in accordance with the terms hereof):
- To FWMBA: FWMBA, Attn: President, PO Box 1221, Fort Worth, Texas 76101
- To City: City of Burleson, Attn: City Manager, 141 W. Renfro, Burleson, Texas 76028
- 7.04 Meeting. This Agreement was approved by the City Council at a duly authorized and lawfully called meeting.
- 7.05 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. This Agreement will remain in effect and will be read as if the invalid, illegal or unenforceable provision was never included in the Agreement. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and

remedies pertaining to such order, including without limitation all available appeals, have been exhausted.

- 7.06 **Governing Law; Venue.** This Agreement will be construed under the laws of the State of Texas, and the venue of any lawsuit arising based on a provision of this Agreement shall lie in the state courts of Johnson County, Texas, or the United States District Court for the Northern District of Texas - Fort Worth Division.
- 7.07 **Attorney's Fees.** In an action to enforce or defend any of the rights or remedies hereunder, the prevailing party shall be entitled to an award of its reasonable attorney's fees, costs, and expenses incurred in connection with such action.
- 7.08 **No Prior Agreements.** This Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter hereof.
- 7.09 **Construction.** All Parties to this Agreement are represented by legal counsel, and have had the opportunity to discuss the terms of this Agreement with their legal counsel and to negotiate regarding the terms of this Agreement. It is the intent of the Parties that the terms and provisions of this Agreement shall be construed neutrally, and not against or in favor of a party hereto regardless of whether such party is the drafter of this Agreement.
- 7.10 **Amendment.** No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same shall be in writing, dated subsequent to the date of this Agreement and duly executed by the Parties.
- 7.11 **Remedies.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.
- 7.12 **Waiver.** The failure of either party to this Agreement to complain of any action, non- action, or default of the other party shall not constitute a waiver of any of such party's rights under this Agreement. Waiver by a party of any right for any default shall not be treated as waiver of any subsequent default or breach of the same or any other obligation.
- 7.13 **No Waiver of Governmental Immunity.** Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided in this Agreement. This section shall survive any termination of this Agreement.
- 7.14 **Assignment.** FWMBBA shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the FWMBBA under which the assignee agrees to be bound by the duties and obligations of

FWMBA under this Agreement. The FWMBA and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the FWMBA referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the FWMBA under this Agreement as such duties and obligations may apply. The FWMBA shall provide the City with a fully executed copy of any such subcontract.

- 7.15 Counterparts; Electronic Signatures. This Agreement may be executed by the parties in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory. For these purposes, “electronic transmission” means electronically scanned or signed and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign or DocuSign.

The remainder of this page is left intentionally blank

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:

**FORT WORTH MOUNTAIN BIKERS
ASSOCIATION**

By: _____

By: Michele Kahne

Name: _____

Name: Michele Kahne

Title: _____

Title: President

Date: _____

Date: 08/24/23