

TRAIL USE AND SETTLEMENT AGREEMENT

between

City of Dripping Springs

and

Dripping Springs Mountain Bike Club

Contract No. DSM2024XXXX

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TRAIL USE AND SETTLEMENT AGREEMENT

THIS TRAIL USE AND SETTLEMENT AGREEMENT IS ENTERED BY AND BETWEEN THE CITY OF DRIPPING SPRINGS AND THE DRIPPING SPRINGS MOUNTAIN BIKE CLUB.

WHEREAS, the City owns, manages and operates park lands and facilities for the recreational use of the public; and

WHEREAS, the City owns real property in the City, including Dripping Springs Ranch Park, trails and active use areas that are capable of being used by the Club for mountain biking purposes; and

WHEREAS, the City and the Club entered into the 2016 Agreement governing the Club's use of Trails;

WHEREAS, during the term of the 2016 Agreement, the City incurred estimated arborist expenses of \$5,425 due to the 2024 Incident;

WHEREAS, the City and the Club wish to settle matters related to the 2024 Incident amicably without resorting to further action;

WHEREAS, the Parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations, and in so doing to clarify, refine and replace the 2016 Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE CITY AND THE CLUB AGREE AS FOLLOWS:

ARTICLE 1. GENERAL

1.1 Recitals

The foregoing recitals are incorporated into this Agreement by reference as if expressly set forth herein.

1.2 Effective Date

This Agreement shall be effective on the date upon which the binding signatures of all Parties to this Agreement are affixed.

ARTICLE 2. DEFINITIONS

In this Agreement:

- (a) **"2016 Agreement"** means the into an agreement entered into between the City and the Club on June 10, 2016 governing the Club's use of the Trails;

- (b) “**2024 Incident**” means the unauthorized destruction of trees and trails at DSRP by the Club’s members on City property, as described in the City’s letter to the Club dated April 26, 2024;
- (c) “**Agreement**” means this Trail Use and Settlement Agreement;
- (d) “**City Administrator**” means the chief administrative officer of the City, or designee.
- (e) “**City**” means the City of Dripping Springs, a General Law, Type-A municipality located in Hays County, Texas.
- (f) “**Club**” means the Dripping Springs Mountain Bike Club, a nonprofit corporation formed in the State of Texas.
- (g) “**DSRP Manager**” means the individual designated by the City Administrator as having management responsibility for DSRP, or designee.
- (h) “**DSRP**” or “**Dripping Springs Ranch Park**” means the public area located at 1042 Event Center Drive, Dripping Springs, Texas.
- (i) “**Effective Date**” has the meaning described in section 1.2 above.
- (j) “**License Tag**” means an identification tag or card provided by the City and issued by the Club to a Registered Member.
- (k) “**Orientation Meeting**” means the annual pre-season orientation meeting hosted by the City as described in section 6.1 below.
- (l) “**Parks Rules**” means Article 16.02, Division 2 of the Code of Ordinances of the City of Dripping Springs, as amended.
- (m) “**Participant Hour Tracking Sheet**” means the record of volunteer hours worked prepared and submitted in accordance with section 9.4(a) below.
- (n) “**Participation Release**” means a Participant Waiver and Release of Liability Agreement substantially in the form set out in Attachment “A”.
- (o) “**Registered Family**” means a group of Registered Members living in the same household, related by blood, marriage, or legal guardianship.
- (p) “**Registered Member**” means an individual who is officially listed by the Club as being authorized to exercise the privileges of trail use granted by this Agreement and on whose behalf an annual use fee is payable by the Club to the City.
- (q) “**Roster**” means the roster of Registered Members and Registered Families prepared and maintained by the Club in accordance with section 4.2 below.

- (r) “**Season**” means the period between October and May of the following calendar year.
- (s) “**Trail**” means a multi-use trail in DSRP designated by the DSRP Manager or City Administrator for use by mountain bike users.

ARTICLE 3. TERM

3.1 Duration

This Agreement shall be in effect for an initial term ending June 30, 2025, after which it may be renewed by mutual agreement of the Club and City Administrator for one successive one-year period. For greater certainty, this Agreement shall expire no later than June 30, 2026 unless

- (a) the Club and City Council mutually agree to extend or replace the Agreement, or
- (b) terminated as provided in section 3.2 below.

3.2 Termination

This Agreement may, written notice given in the manner hereafter provided, be terminated by:

- (a) either party with 90 days written notice;
- (b) mutual written consent of the Parties; or
- (c) either party with 10 days written notice if a default or breach shall be made by the other party with respect to the due and timely performance of any of its covenants and agreements contained herein.

ARTICLE 4. TRAIL USE

4.1 Grant of License

The City agrees to allow the Club and its Registered Members to use the Trails on a non-exclusive basis in accordance with this Agreement for the purposes of practicing for mountain bike competitions, provided that, while using the Trails, each Registered Member:

- (a) is listed on the Roster;
- (b) is carrying a License Tag issued by the Club to the Registered Member;
- (c) has attended an Orientation Meeting held in respect of the current Season; and
- (d) has provided the Club with a completed and signed Participation Release.

4.2 Club to Maintain Roster

The Club will prepare and maintain a Roster of Registered Members and Registered Families authorized to exercise the privileges of trail use granted under this Agreement, which contains:

- (a) the full name, address, and birth date of each Registered Member;
- (b) the License Tag identification number assigned to each Registered Member; and
- (c) the dates on which the Registered Member:
 - (i) was issued a License Tag;
 - (ii) attended an Orientation Meeting held in respect of the current Season; and
 - (iii) provided the Club with a completed and signed Participation Release.

4.3 License Tags

- (a) The City will provide the Club with an inventory of License Tags for each Season based on the expected number of Registered Members as determined by the City in consultation with the Club.
- (b) The Club may only issue a License Tag to a Register Member who meets the criteria in paragraphs 4.1(a), 4.1(c) and 4.1(d) above.

4.4 Annual Practice Schedule

The Club will provide the DSRP Manager with a practice schedule setting out the dates and times during which the Club's Registered Members are expected to use the Trails by the following dates:

- (a) upon execution of this Agreement in respect of the 2024/25 Season;
- (b) by August 15 in respect of each subsequent Season.

ARTICLE 5. TRAIL USE FEES

5.1.1 Trail Use Fee

The Club will pay to the City a non-pro-rated trail use fee as follows:

- (a) \$100.00 per Season, or portion thereof, during which a Registered Member who is not part of a Registered Family is listed on the Roster;
- (b) \$150.00 per Season, or portion thereof, during which a Registered Family is listed on the Roster;

5.1.2 Fee Payment

The Club shall collect the annual trail use fees from its Registered Members and remit these fees accompanied by a current roster of Registered Members and Registered Families to the City in two installments each Season:

- (a) one by December 15 representing 50% of the trail use fees payable on account of all Registered Members listed on the Roster by December 1 of the most recently commenced Season;
- (b) one by May 15 representing the remainder of trail use fees payable on account of all Registered Members listed on the Roster during the most recently commenced Season, including, subject to section 5.1.3 below, trail use fees payable on account of Registered Members and Registered Families added to the Roster after December 1 of the most recently commenced Season.

5.1.3 Changes in Family Membership

- (a) If a Registered Family is listed on the Roster by December 1 of the most recently commenced Season and only one Registered Member from the Registered Family remains listed by May 15 of the same Season, the Club shall still pay an additional \$75.00 for the Registered Family, resulting in a total fee of \$150.00 for that Season.
- (b) If a Registered Member who is not part of a Registered Family before December 1 becomes part of a Registered Family after December 1, the Club shall pay an additional \$100.00 fee for the Registered Family, resulting in a total fee of \$150.00 for the Registered Family for that Season.
- (c) If two or more Registered Members who are not part of a Registered Family before December 1 qualify for Registered Family status after December 1, the Club shall adjust the total fee to \$150.00 for that Registered Family. Any overpayment made for individual members in the first installment shall be credited towards the second installment.

ARTICLE 6. PRE-SEASON ORIENTATION MEETING

6.1 City to Provide Annual Pre-Season Orientation

At least once before each Season begins, the City will host an Orientation Meeting at DSRP to provide orientation on the following:

- (c) trail safety rules;
- (d) horse and hiker safety;
- (e) the requirement and process to report deficiencies, hazards, maintenance needs, and non-compliance with the City's Parks Rules by park patrons on the Trails; and

- (f) the definition of sanctioned Trails.

6.2 Club Representative Attendance at Orientation Meeting

The Club will cause a sufficient number of representatives to attend an Orientation Meeting before each Season as is necessary to ensure that at least one such representative who has attended the Orientation Meeting is present in a supervisory capacity while the Club's Registered Members are using the Trails.

6.3 Catch-Up Orientation Meeting

- (a) If an individual wishes to become a Registered Member after the Orientation Meeting is held for the current Season, or if an individual is unable to attend an Orientation Meeting held in respect of the current Season, the individual may watch a video recording of the Orientation Meeting and provide the Club with a signed and dated statement confirming that the individual understood the orientation information and agrees to comply with all requirements imposed by this Agreement and applicable laws.
- (b) For the purposes of paragraph 4.1(c) and subparagraph 4.2(c)(ii), an individual who completes the requirements of paragraph (a) above is deemed to have attended an Orientation Session held on the date on which the individual signs the statement described in paragraph (a).

ARTICLE 7. TRAIL MAINTENANCE

7.1 City Maintenance

The City has exclusive responsibility to maintain the Trails.

7.2 Club to Report Hazards

- (a) Each Registered Member must report to the Club any unsafe conditions and hazards observed on the Trails as soon as possible.
- (b) The Club must report to the City all unsafe conditions and hazards on the Trails reported to the Club as soon as possible.

7.3 Trail Modification Requests

- (a) The Club may submit a written request to the City to modify a Trail.
- (b) Neither the Club nor any Registered Member may modify the Trails in any way without express written consent from the DSRP Manager.

ARTICLE 8. CONCESSION STAND

8.1 City takeover of concession stand

The City will take over the use of the outdoor concession stand at DSRP.

8.2 Agreement to vacate

The Club agrees to vacate and remove any stored items from the outdoor concession stand by October 1, 2024, ensuring the space is left clean and in good condition.

ARTICLE 9. SETTLEMENT

9.1 Waiver of Costs

The City agrees not to take any action to collect the estimated \$5,425 in arborist expenses or any other costs related to the remediation of the damage caused by the Incident, provided that the Club fulfills the volunteer service requirements outlined in this Article.

9.2 Volunteer Service Commitment

- (a) The Club agrees to provide a total of 275 hours of volunteer service over the next two years, under the direction of City staff.
- (b) Volunteer activities shall be scheduled and coordinated with the City through the DSRP Manager to ensure that the work is beneficial to the City's parks and recreation areas.
- (c) All volunteer work must be completed within two years from the execution of this Agreement.
- (d) Only volunteer hours spent on work directed by the City will be counted towards this commitment.

9.3 Supervision

- (a) The Club agrees to provide at least one adult chaperone for every eight minors participating in volunteer activities.
- (b) The presence and participation of adult chaperones will count towards the required volunteer service hours.

9.4 Reporting and Verification

- (a) The Club shall keep accurate records of volunteer hours worked substantially in the form set out in Attachment “B” to this Agreement and submit these records to the City on a quarterly basis no later than April 1 for the quarter ending March 31, July 1 for the quarter ending June 30, October 1 for the quarter ending September 30, and January 2 for the quarter ending December 31.
- (b) The City reserves the right to verify the hours and nature of the volunteer work performed.

9.5 Tolling

9.5.1 Tolling of Statute of Limitations

City and Club agree that the statute of limitations for any claims City may have against the Club related to the Incident described in the April 26, 2024, letter (the “Claims”) shall be tolled during the period beginning on the date this Agreement is executed and ending on the date that the Club fulfills its volunteer service commitment as specified in section 9.2 of this Agreement.

9.5.2 Resumption of Statute of Limitations

If the Club fails to fulfill its volunteer service commitment by the deadline specified in section 9.2(c) of this Agreement, the statute of limitations for any Claims shall resume running on the date of such failure, being two years from the date of execution of this Agreement.

9.5.3 Effect of Tolling

The tolling period shall not be counted towards the time limit within which City must bring any Claims against the Club. This provision is intended to preserve City's right to bring any Claims that may exist as of the date of this Agreement, notwithstanding any statute of limitations that would otherwise apply.

9.6 Default

In the event that Club fails to fulfill the volunteer service commitment as specified in this Agreement, City reserves the right to seek reimbursement for the full amount of \$5,425 in arborist expenses, in addition to any other costs incurred due to the Incident.

ARTICLE 10. FINANCIAL RESPONSIBILITY

10.1 Insurance

The Club must maintain commercial general liability insurance coverage of at least \$5,000,000 per occurrence, listing the City as an additional insured. The Club shall provide proof of such insurance to the City and ensure that the policy includes a provision requiring thirty (30) days' notice to the City prior to any cancellation or change in terms of the policy.

10.2 Indemnification

THE CLUB AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES ARISING OUT OF OR RESULTING FROM THE USE OF THE TRAILS BY OR ON BEHALF OF THE CLUB OR ITS REGISTERED MEMBERS.

10.3 Consequential Damages

Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.

10.4 Waivers of Liability

The Club agrees to obtain a completed Participant Release, in the form attached hereto as Attachment "A", from each participant prior to their involvement in any activities under this Agreement including use of the Trails and volunteer service under Article 9 above. For minor participants, the waiver must be signed by a parent or legal guardian. The Club shall retain all signed waivers for a period of no less than five years and provide copies to the City upon request.

10.5 Payment Terms

Unless a due date for payment is otherwise specified within this Agreement, all amounts owed by the Club to the City are due within 30 days of receiving an invoice in accordance with this Agreement.

ARTICLE 11. GOVERNANCE

11.1 Annual Review

This Agreement will be reviewed annually by representatives of the City and the Club to determine the best procedures for accomplishing the objectives of this Agreement, clarify their roles, and react to changes in circumstances. Any changes to the Agreement shall require mutual written consent in accordance with section 12.5 below.

11.2 Notice of Changes in Club Governance

The Club will notify the City forthwith of any change in any of the following:

- (a) the Club's board of directors;
- (b) the Club's constitution or bylaws;
- (c) the Club's corporate status;
- (d) the Club's registered office address;

- (e) the Club's insurance coverage;
- (f) the Club's legal counsel.

11.3 Accuracy of Records

The Club represents and warrants that each submission of records under this Agreement, including without limitation the Roster and Participant Hour Tracking Sheets, is accurate, truthful, and verifiable. The Club acknowledges that any falsification of records may result in termination of this Agreement and potential legal action.

ARTICLE 12. MISCELLANEOUS

12.1 Assignment

Club's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

12.2 Notice

- (a) All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

Attention: City Administrator
City of Dripping Springs City
P.O. Box 384
Dripping Springs, TX 78620
512-858-4725

For the Club:

Attention: Jon Ballard, President
Dripping Springs Mountain Bike Club
1677 Grassy Field Road
Austin, TX 78737
jon.ballard@gmail.com

- (b) Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

12.3 Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, whether written or oral.

12.4 Repeal

The 2016 Agreement is terminated as of the Effective Date.

12.5 Amendment

This Agreement may only be amended in writing signed by both parties.

12.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

12.7 Venue

The venue for any and all legal disputes arising under this Agreement shall be a court of competent jurisdiction located in Hays County, Texas.

12.8 Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect.

12.9 Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to the other Party. A signed copy of this Agreement delivered by facsimile, e mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

12.10 Waiver

No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom enforcement is sought. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT.

THE CITY:
City of Dripping Springs

THE CLUB:
Dripping Springs Mountain Bike Club

Michelle Fischer
City Administrator

Jon Ballard
President

Date

Date

**ATTACHMENT “A”:
Participant Waiver and Release of Liability Agreement**

_____ Participant’s Name	_____ Address
_____ Date of Birth	_____ City, State, ZIP
_____ Email Address	_____ Phone Number

Acknowledgment and Assumption of Risk

I, the undersigned participant, understand that participation in the Dripping Springs Mountain Bike Club, including but not limited to training, practice sessions, competitions, and related volunteer work (the “Activities”) involves inherent risks of injury, including but not limited to personal injury, property damage, and death. I acknowledge that participation in the Activities is voluntary and that I assume all risks associated with the Activities.

Waiver and Release

In consideration of being allowed to participate in the Activities, I AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DRIPPING SPRINGS, ITS OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (THE “CITY”) AGAINST AND FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, ACTIONS, OR CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO CLAIMS OF NEGLIGENCE, INCLUDING REASONABLE ATTORNEY’S FEES AND COSTS, WHICH MAY ARISE FROM MY PARTICIPATION IN THE ACTIVITIES.

Parental Consent (for Participants Under 18)

I, the undersigned parent or legal guardian of the minor participant named above, hereby consent to his/her participation in the Activities. I have read and understand the terms of this waiver and release, and I agree to be bound by its terms, having read and understood the Acknowledgement and Assumption of Risk section of this document. I FURTHER AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST AND FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, ACTIONS, OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY’S FEES AND COSTS, ARISING OUT OF OR RELATED TO MY CHILD’S PARTICIPATION IN THE ACTIVITIES.

Parent/Guardian Signature (if Participant is a minor)

Parent/Guardian Name

Participant’s Signature

Date

Witness to Parent/Guardian’s Signature

Witness Name

**ATTACHMENT "B":
Participant Hour Tracking Sheet**

Date	Participant Name	Start Time	End Time	Total Hours (less breaks)	Participant Signature	Club Representative Signature

TOTAL HOURS ON THIS PAGE: _____ **Accepted on behalf of the City:** _____

By signing above, each participant and club representative represents and warrants to the City of Dripping Springs that the corresponding line entry is accurate and that the hours claimed are truthful and verifiable.