

USER AGREEMENT

THIS USER AGREEMENT (“User Agreement”) is made by and between the **CITY OF WILLOW PARK**, a municipality situated in Parker County in the State of Texas (hereinafter referred to as “City”) acting by and through its duly authorized **City Council** or appointees, and **WEATHERFORD MOUNTAIN BIKE CLUB**, a Texas non-profit organization (hereinafter referred to as “WMBC”), acting by and through its duly authorized President.

SECTION 1 DESCRIPTION OF PROPERTY

1.01 The **City** hereby engages the **WMBC**, and the **WMBC** hereby agrees to construct and maintain mountain bike trails (“Trails”) in the **City of Willow Park** hereafter called (“City Property”) in this Agreement, as further described in Exhibit A, attached into this Agreement.

SECTION 2 DUTIES AND RESPONSIBILITIES

2.01 **WMBC** shall, at its sole cost and expense, construct and maintain the **Trails** in accordance with this Agreement. Any construction and maintenance of the **Trails** shall be subject to the following:

1. **WMBC** shall take such steps as are appropriate to ensure that the work involved is properly coordinated with any related work performed by the **City**.

- a. Prior to beginning construction of any new **Trails** within the **City**, the **WMBC** must first obtain the advance written approval of the **City Manager** or that person’s designee.
- b. **City** and **WMBC** agree that **WMBC** will construct the **Trails**:
 - i. In accordance with a set of plans and specifications pre-approved by the **City Manager** prior to beginning any construction;
 - ii. In accordance with all applicable laws, ordinance, rules, regulations, and specifications of all federal, state, county, city, and other governmental agencies applicable to the **City** now or hereafter in effect;
 - iii. In a good and workman-like manner;
 - iv. In accordance with the industry standards of care, skill, and diligence.
- c. **WMBC** shall be solely responsible for initiating, maintaining, and supervising all safety precautions in connection with construction or material alteration of the **City Property** and **WMBC’s** use thereof.

- d. Any work by **WMBC** prior to approval by the **City Manager** may be ordered stopped at the discretion of the **City Manager** and subject to removal and replacement by **WMBC** at **WMBC's** own expense.
- e. **Trail** maintenance shall include, but not be limited to: repairing and/or replacing that which is considered eroded or in disrepair; pruning of trees; removal of brush; and litter control.
- f. **WMBC** may mow and trim the **City Property** on a more frequent basis than current mowing schedules set by the **City Manager**, at its sole cost and expense. Mowing will be conducted in a manner to comply with set guidelines used for general mowing on any city property with the written permission of the **City Manager**. **WMBC** may prune trees and clear brush and all debris resulting from said work shall be removed by **WMBC**, at its sole cost and expense.
- g. **WMBC** shall keep the **City** informed of any modification planned for the **City Property** and shall not conduct any modifications including, but not limited to any trimming and/or pruning or tree removal, until written approval is obtained from the **City Manager**.
- h. **WMBC** shall provide the **City** with any maintenance schedules deemed necessary.
- i. **WMBC** shall not permit motorized vehicles, excluding mowing equipment, onto improved areas within the **City Property** without advance written permission by the **City Manager**.
- j. **WMBC** shall have the right to erect signs in compliance with all federal, state, and local statues, ordinance, rules, regulations and specifications, displaying the **Trails** and the sponsorship of the activities by the **WMBC**, subject to the prior approval of the **City Manager**. **WMBC** shall post safety guidelines for the **Trails** in all areas of construction.

2.02 The **City** will perform the following:

- a. Make inspections to determine compliance with this Agreement.
- b. City will mow or cause to be mowed the **City Property** in accordance with the City's most current mowing practices.

2.03 Damage to any city-owned property shall be investigated by proper authorities and determined cause will be submitted in a timely manner.

In the event that any city-owned property should be damaged or destroyed by the **WMBC** during the performance of the **Trail** services hereunder, including, but not limited to, construction and maintenance of the **Trails**, the **WMBC** shall be solely responsible for all repairs or replacements. The **City** shall determine whether any damage has been done, the amount of the damage, the reasonable costs of repairing the damage, and whether **WMBC** is responsible. The City shall be the sole judge of the damage to the **City Property** in which judgment shall be exercised reasonably. Any damage by **WMBC** shall be repaired or replaced by **WMBC** to the reasonable satisfaction of the **City** within

thirty (30) calendar days of receipt of written notification from the **City**, unless agreed to otherwise by the parties in writing.

SECTION 3 TERMS OF AGREEMENT

- 3.01** Unless terminated earlier pursuant to the terms hereof, this **User Agreement** shall be for a term of **three (3) years beginning DECEMBER 1, 2023 and ending on DECEMBER 1, 2026**. This **Term** may be renewed every **three (3) years** under the same conditions and terms only by mutual, written agreement of the parties. **WMBC** must advise the **City** in writing of its intent to renew this **User Agreement** at least 30 days prior, but no earlier than 90 days prior, to the termination date of the **Term**.

SECTION 4 ALTERNATIONS AND ADDITIONS

- 4.01** **WMBC** shall not make or cause to be made any alterations, additions, or improvements to the **City Property** without the prior written consent of the **City Manager** as set forth above in SECTION 2. The **City Manager** reserves the right to either approve or disapprove of any plans, either in whole or in part, as may be necessary in its sole and absolute discretion.
- 4.02** All alterations, additions, and improvements, including, but not limited to, the **Trails**, located on the described **City Property** mentioned in SECTION 1, made with the written consent of the **City Manager** shall, upon completion and acceptance by the **City**, become the property of the **City**.

SECTION 5 RIGHT OF ACCESS

- 5.01** The **City** does not relinquish the right to control the management of the **City Property**, **Trails** or any designated area mentioned in SECTION 1, or the right to enforce all necessary and proper rules for the management and operation of the same. The **City** through its City Manager, Director, Utility personnel, Police personnel, and Fire personnel, and any other designated representative, has the right at any time to enter any portion of the **City Property** without causing or constituting a termination of the use or any interference of the use of the **City Property** by **WMBC** for the purpose of inspecting and maintaining the same and doing any and all activities necessary for the proper conduct and operation of public property; provided this shall not authorize or empower **City** to direct the activities of **WMBC** or assume liability for **WMBC's** activities.

- 5.02** The **City** reserves the right to modify or remove any improvements made by **WMBC**, including but not limited to, the **Trails**, at the **City Property** as deemed necessary by the **City Manager**, in its sole discretion, for situations that include, without limitation, the following:
- a. **WMBC** ceases to maintain the **City Property** according to this Agreement.
 - b. The **City Property** becomes a hazard to the general public.
 - c. The **City** determines, in its sole discretion that another beneficial use for the **City Property** exists, to include, without limitations, street relocation; street alignment; and the installation of public utilities or improvements.

SECTION 6 INDEMNIFICATION, LIABILITY, AND WAIVERS

- 6.01** **WMBC** agrees to and does hereby defend, indemnify, and hold the **City**, its officers, agents, representative, and employees harmless against any and all claims, lawsuits, actions, costs, and expenses of any kind, including, but not limited to, those for property damage or loss (including alleged damage or loss to owner's business and any resulting lost profits) and/or personal injury, including death, that may be related to, arise out of or be occasioned by: (i) **WMBC's** breach of any of the terms or provisions of this agreement or (ii) any act or omission or intentional misconduct of **WMBC**, its officers, agents, associates, employees, contractors, (other than the **City**), volunteers, or subcontractors, related to installation and maintenance of improvements in or to the medians, rights-of-ways, designated areas, waterways or creek beds located within the **City Property**, or the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or willful acts of the **City** or its officers, agents, employees, or separate contractors, and in the event of joint and concurrent negligence or willful acts of both **WMBC** and **City** or its officers, agents, employees, or separate contractors, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas.
- 6.02** **WMBC** covenants and agrees that the **City** shall in no way nor under any circumstances be responsible for any property belonging to **WMBC**, its members, employees, agents, contractors, subcontractors, invitees, licensees, volunteers or trespassers, which may be stolen, destroyed, or in any way damaged, and **WMBC hereby indemnifies and hold harmless the City from and against any and all such claims**. The **City** does not guarantee police protection and will not be liable for any loss of damage sustained by **WMBC**, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers on any of the **City Property**.
- 6.03** **WMBC** agrees to forever release and waive all claims against the **City**, its departments, officers, agents, employees, and representative for any and all claims, lawsuits, damages,

and liabilities, including, but not limited to, personal injury (including death) and property damage or loss, from any act or omission of **WMBC**, its employees, officers, agents, representative, and volunteers in connection with this Agreement. **WMBC** shall ensure that each and every community participant or volunteer that assists the **WMBC** in the fulfillment of this Agreement executes the **City's** release, waiver, and indemnification agreement before providing or performing any service at the **City Property**, a copy of which is attached as Exhibit B. **WMBC** shall retain a copy of said agreement during the term of this Agreement and for three years thereafter and shall provide the **City** with all originals upon request. **WMBC** acknowledges and understands that the waiver, release, and indemnification agreements attached as Exhibit B is only effective for one year from the date of signature of each individual community participants; therefore, **WMBC** shall ensure that each community participant has a currently executed the **City's Release, Waiver, & Indemnification Agreement** as provided in Exhibit B, prior to allowing that person to provide or perform any services at the **City Property**.

- 6.04** It is further agreed that the acceptance of this release shall not constitute a waiver by the **City of Willow Park** of any defense of governmental immunity, where applicable, or any other defense recognized by the Statutes and Court decisions of the State of Texas.

SECTION 7 INSURANCE

- 7.01** **The City of Willow Park** will not require insurance under this Agreement unless the fulfillment of any obligations hereunder requires the use of a contractor or riding equipment, which may include, without limitation a riding lawnmower or bulldozer. If the fulfillment of any obligations requires the use of a contractor, then the contractor must have, at a minimum, insurance coverage as detailed below. Likewise, if the **WMBC** desires to use riding equipment to fulfill any obligation under this Agreement, then the **WMBC** must have at a minimum, insurance coverage as detailed below. Prior to commencing any work, the **WMBC** and/or its contractor (as applicable) shall deliver to **City** certificates documenting a \$1,000,000-dollar minimum liability insurance coverage listing the City of Willow Park as a certificate holder and/or additional insured as City of Willow Park, 120 El Chico Trail, Ste A, Willow Park TX 76087, as its interest may appear. The **City** may elect to have the **WMBC** or its contractor submit its entire policy for inspection. All insurance must be maintained through the term that such activities shall take place on the **City Property**. The **City** requires **WMBC** to provide additional automobile insurance certificates for any use of contractual equipment to include, but not limited to riding lawnmower or bulldozer which will be used on **City Property**.

- a. Insurance coverage and limits:
 - i. Commercial General Liability Insurance \$1,000,000 each occurrence
 - ii. \$2,000,000 aggregate

- b. Automobile Liability Insurance:
 - i. Coverage on vehicles involved in the work performed under this contract: \$1,000,000 per accident on a combined single limit basis or: \$500,000 bodily injury each person: \$1,000,000 bodily injury each accident: and \$250,000 property damage.
 - ii. The named insured and employees of **WMBC** or its contractor shall be covered under this policy.
 - iii. The **City of Willow Park** shall be named as a certificate holder and/or additional insured as City of Willow Park, Parker County, as its interests may appear.
 - iv. Liability for damages occurring while loading, unloading and transporting materials collected under the Agreement shall be included under this policy.
- c. Worker's Compensation:
 - i. Coverage A: Statutory limits
 - ii. Coverage B: \$100,000 each accident
 - iii. \$500,000 disease-policy limit
 - iv. \$100,000 disease-each employee
- d. Miscellaneous
 - i. Applicable policies shall be endorsed to name the City of Willow Park as a certificate holder and/or additional insured as City of Willow Park, 120 El Chico Trail, Ste A, Willow Park TX 76087, as its interests may appear. The term **City** shall include its employees, officers, officials, agents, and volunteers as respect to services.
 - ii. Certificate(s) of Insurance shall document that insurance coverage specified herein are provided under applicable policies documented thereon.
 - iii. Any failure on part of the **City** to request required insurance documentation shall not constitute a waiver of the insurance requirements.
 - iv. Any failure on the part of the **WMBC** to maintain the required insurance as so stated will result in immediate termination of this **User Agreement**.
 - v. **WMBC** will be required to submit a Special Event Application to the Parks, Recreation & Special Event Department, City of Willow Park, for any organized event on **City Property** no later than (30) days prior to the special event including any additional insurance or other requirements as necessary.
 - vi. **WMBC** will provide a minimum of a thirty (30) day notice of cancellation or material change in coverage to the **City**. A ten (10) day notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto **WMBC's** or its contractor's insurance policies. Notice shall be sent to City Manager, City of Willow Park, 120 El Chico Trail, Ste A, Willow Park TX 76087.

- vii. Insurers for all policies must be authorized to do business in the State of Texas or be otherwise approved by the **City**; and such insurers shall be acceptable to the **City** in terms of their financial strength and solvency.
- viii. Deductible limits, or self-insured retentions, affecting insurance required herein shall be acceptable to the **City** in its sole discretion; and, in lieu of traditional insurance, any alternative coverage maintained through insurance pools or risk retention groups also must be approved. Dedicated financial resources or Letter of Credit may also be acceptable to the **City**.
- ix. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the **City** as respects to the **User Agreement**.
- x. The **City** shall be entitled, upon its request and without incurring expense, to review the **WMBC's** or its contractor's insurance policies including endorsements thereto and at the **City's** discretion, the **WMBC** or its contractor may be required to provide proof of insurance premium payments.
- xi. The Commercial General Liability insurance policy shall have no exclusions by endorsements unless the **City** approves such exclusions.
- xii. The **City** shall not be responsible for the direct payment of any insurance premiums required by the contract. It is understood that insurance cost is an allowable component of contractor's overhead.
- xiii. All insurance required above shall be written on an occurrence basis in order to be approved by the **City**.
- xiv. If **WMBC** does not have employees or automobiles, **WMBC** will not be required to obtain Auto Liability or Worker's Compensation insurance.

7.02 In the case of hosting a Special Event on said **City Property**, **WMBC** will abide by Special Event insurance requirements when submitting a request to the **City** on a special event application along with any other requirements needed during the Special Event timeframe.

SECTION 8 CHARITABLE ORGANIZATION

8.01 **WMBC** agrees that if it is a charitable organization, corporation, entity or individual enterprise have, claiming or entitled to any immunity, exemption (statutory or otherwise) or limitation from and against liability for damage or injury to property or person under the provisions of the Charitable Immunity and Liability Act of 1987, C.P.R.C., et seq., or other applicable law, that **WMBC** hereby expressly waives its right to assert or plead defensively any such immunity or limitation of liability as against the **City**. If applicable, **WMBC** annually shall submit proof of a 501 (c) (3) certificate of eligibility to the **City**.

**SECTION 9
INDEPENDENT CONTRACTOR**

9.01 WMBC shall perform all work and services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the **City**. WMBC shall have exclusive control of, and the exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees and subconsultants (or subcontractors). Nothing herein shall be construed as creating a partnership or joint venture between the **City** and WMBC, its officer, agents, employees and subconsultants (or subcontractors), and doctrine of respondent superior has no application as between the **City** and WMBC.

**SECTION 10
COMPLIANCE WITH LAWS; LICENSES AND PERMITS**

10.01 This **User Agreement** will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to all provisions of the **City's** Charter and ordinances, as amended.

10.02 WMBC shall obtain and keep in effect at its own cost and expense all licenses and permits, and pay all taxes incurred or required in connection with this **User Agreement** and its operations hereunder.

**SECTION 11
LIENS**

11.01 WMBC agrees not to take any action that would result in the creation of any lien on **City Property**. In the event that a lien is filed, as a result of any action of WMBC, WMBC will take all necessary steps to bond around or remove the lien within 10 days of filing.

**SECTION 12
TERMINATION AND DEFAULT**

12.01 Either party may terminate this **User Agreement** without cause by the giving of a thirty (30) day notice in writing to the other party.

12.02 WMBC shall be in default under this **User Agreement** if WMBC breaches any term or conditions of this **User Agreement** and such breach remain uncured after thirty (30) calendar days following receipt of written notice from the **City** referencing this **User Agreement** (or, if WMBC has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days

to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith). After notice and opportunity to cure as provided in the **User Agreement**, the **City** shall have the right, and without further notice, to declare this **User Agreement** immediately terminated and to enter into and take full possession of the **City Property** save and except such personal property and equipment as may be owned by **WMBC**.

SECTION 13 NON-DISCRIMINATION/DISABILITIES

13.01 **WMBC**, in its construction, maintenance, occupancy, or use of said **City Property** shall not discriminate against any person or persons because of race, age, gender, religion, color national origin, sexual orientation, disability or any other legally protected class of individuals.

SECTION 14 NOTICES

14.01 All notices required or permitted under this **User Agreement** shall be conclusively determined to have been delivered when:

- a. Hand-delivered to the other party, its agent, employee, servant, or representative or
- b. Received by the other party by reliable overnight courier or United States Mail, postage prepaid, return receipt requested, at the address stated below or to such other address as one party may from time to time notify the other in writing.

CITY:
City of Willow Park
120 El Chico Trail, Ste A
Willow Park, TX 76087

WMBC:
Weatherford Mountain Bike Club
President - Lawrence Colvin
200 South Oakridge Drive 101
Hudson Oaks, Texas 76087-2501

SECTION 15 VENUE AND JURISDICTION

15.01 This **User Agreement** shall be governed by the laws of the State of Texas. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this **User Agreement** shall be in Parker County 43rd District Court, 117 Fort Worth Highway, Weatherford, Texas 76086.

SECTION 16
SUBLETTING, ASSIGNING, MORTGAGING

- 16.01** WMBC agrees that it will not subcontract or assign all or any part of its rights, privileges or duties hereunder without the prior written consent of the **City Manager**, and any attempted subcontract or assignment of same without such prior consent of the **City Manager**, shall be void. Consent shall not be unreasonably withheld.
- 16.02** Subject to the limitations contained herein, the covenants, conditions, and agreements made and entered into by the parties hereunder are declared to be for the benefit of and binding on their respective successors, representatives, and permitted assigns, if any.

SECTION 17
WAIVER, SECTION HEADINGS, SEVERABILITY, AND AMENDMENTS

- 17.01** It is agreed that in the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition, or provision herein contained, provided however, that the invalidity of any such covenant, condition, or provision does not materially prejudice either **WMBC** or the **City** in connection with the rights and obligations contained in the valid covenants, conditions, or provisions of this **User Agreement**.
- 17.02** The waiver by the **City** of any default or breach of a term, covenant, or condition of this **User Agreement** shall not be deemed to be a waiver of any other breach of that term, covenant or condition or any other term, covenant, or condition of this **User Agreement**, regardless of when the breach occurred.
- 17.03** The headings in this **User Agreement** are inserted for reference only, and shall not define or limit the provisions hereof.
- 17.04** Except as otherwise provided in this **User Agreement**, the terms and provisions of this **User Agreement** may not be modified or amended except upon the written consent of both the **City** and **WMBC**.

SECTION 18
FORCE MAJEURE

- 18.01** If either Party is unable, either in whole or part, to fulfill its obligations under this **User Agreement** due to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; wars; blockades; insurrections; riots; epidemics; public health crises;

earthquakes; fires; floods; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any state; declaration of a state of disaster or of emergency by the federal, state, county or City government in accordance with applicable law; issuance of an Imminent Threat Alert or Elevated Threat Alert by the United States Department of Homeland Security or any equivalent alert system that may be instituted by any agency of the United States; any arrests and restraints; civil disturbances; or explosions; or some other reason beyond the Party's reasonable control (collective, "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended only during the continuance of such event. If a Force Majeure Event occurs, the **City** may in its sole discretion, close or postpone the opening of its community centers, parks, or other City-owned and operated properties and facilities in the interest of public safety and operate them as the **City** sees fit. **WMBC** hereby waives any and all claims it may have against the **City** for damages resulting from any such Force Majeure Events.

SECTION 19 CONDITION OF THE CITY PROPERTY

- 19.01** **WMBC** accepts the **City Property** in its present condition, finds it suitable for the purposes intended, and further acknowledges that it is thoroughly familiar with such condition by reason of a personal inspection and does not rely on any representations by **City** as to the condition of the **City Property** or its suitability for the purposes intended.
- 19.02** **WMBC** accepts the **City Property** herein described subject to all previous recorded easements, if any, that may have been granted on, along, over, under or across said **City Property**, and releases **City** from any and all damages, claims for damages, loss or liabilities that may be caused to all invitees, licensees, or trespassers by reason of the exercise of such rights or privileges granted in said easements.

SECTION 20 GOVERNMENTAL POWERS AND AUTHORIZATION

- 20.01** It is understood that by execution of this **User Agreement**, the **City** does not waive or surrender any of its governmental powers.
- 20.01** By executing this **User Agreement**, **WMBC's** agent affirms that he or she is authorized by **WMBC** to execute this **User Agreement** and that all representations made herein with regard to **WMBC's** identity, address and legal status (corporation, partnership, individual, etc.) are true and correct.

SECTION 21 COUNTERPARTS AND ELECTRONIC SIGNATURES

21.01 This **User Agreement** may be executed in several counter parts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

**SECTION 22
AUDIT**

22.01 **WMBC** agrees that **City** and its internal auditor will have the right to audit, which shall include, but not be limited to, the right to complete access to and the right to examine, the financial and business records of **WMBC** that relate to this **User Agreement**, including, but not limited to, all necessary books, papers, documents, records, and personnel, (collectively “Records”) in order to determine compliance with this **User Agreement**. **WMBC** shall make all **Records** available to **City** at a location in City of Willow Park offices acceptable to both parties within thirty (30) days after written notice by **City** and shall otherwise cooperate fully with **City** during any audit. Notwithstanding anything to the contrary herein, this section shall survive expiration or earlier termination of this **User Agreement** for a period of three (3) years.

**SECTION 23
ENTIRE UNDERSTANDING, BINDING COVENANTS, AND CONSTRUCTION**

23.01 This **User Agreement** including all exhibits attached hereto constitutes the final, entire, and complete agreement between **WMBC** and the **City** and supersedes any prior and contemporaneous negotiations, understandings, representation, and/or agreement between the parties. Any prior of contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void.

EXECUTED on this date to be effective on date set forth in Section 3.

CITY OF WILLOW PARK

Recommended for approval by: _____ Date: _____
Toni Fisher, Planning & Development Director; Parks

WEATHERFORD MOUNTAIN BIKE CLUB

Represented by: (Print Name) _____ (Title) _____

Signature: _____ Date: _____

APPROVED AS TO FORM AND LEGALITY: _____
Pat Chesser, City Attorney Date

APPROVED: _____
Doyle Moss, Mayor Date

ATTEST: _____
Crystal Dozier, City Secretary Date