

**MEMORANDUM OF AGREEMENT BETWEEN**

**THE CITY OF RAPID CITY**

**and**

**BLACK HILLS MOUNTAIN BIKE ASSOCIATION**

This agreement is by and between the City of Rapid City, South Dakota, a municipal corporation (hereinafter referred to as City), and the Black Hills Mountain Bike Association (hereinafter referred to as BH MBA), a non-profit organization in Rapid City, South Dakota.

**PREAMBLE**

The subject of this agreement is a portion of a larger park area of approximately 59.01 acres known as Founders Park. The park was purchased in 1973 after the flood of 1972 for the purpose of creating open space for flood protection. The larger park area encompasses the area north of Omaha Street and Rapid Creek at the terminus of Mountain View Road on the North. It is within the Rapid Creek drainage area.

The City's Parks and Recreation Advisory Board has approved the use of this area as a public Bike Skills Park at the request of BH MBA. Among other responsibilities, the BH MBA will raise money to underwrite costs of development, promotion, and agreed-upon maintenance within this Bike Skills Park. See Exhibit A.

The Rapid City's Bike Skills Park construction was completed in June of 2008. Since completion, the park has undergone many changes to enhance the experience for park users. This facility is a popular destination for riders of all ages and abilities, and is a great attraction for families. The Bike Skills Park is designed for active outdoor recreation with an emphasis on youth biking skills and participation in healthy recreational pursuits.

**AGREEMENT**

The City and BH MBA are involved in the management of a public Bike Skills Park located in a larger park area known as Founders Park or the TRACT 17 LESS LOT H1 (ALSO IN 2N-7E SEC34) RAPID CITY GREENWAY TRACT. The public Bike Skills Park covers approximately two acres on the Northwest section of the larger park.

Both the City and BH MBA agree to the following regarding the Bike Skills Park:

1. Bike Skills Park Elements.

BH MBA shall have authority to substantially construct trails, jumps, and obstacles within the boundaries of the skills park identified in Exhibit A, in accordance with City approvals. All improvements shall be intended to provide a youth oriented public Bike Skills Park.

2. Use of Bike Skills Park. The Bike Skills Park shall be open to the public at times prescribed or scheduled by the Rapid City Department of Parks and Recreation.

3. Bike Skills Park Improvements. BH MBA agrees to provide the money, materials, and resources for improvements to the Bike Skills Park. BH MBA agrees to seek approval from the Parks and Recreation Director to substantially improve, modify, or alter the Bike Skills Park. All costs expected and unexpected will be paid by BH MBA unless other arrangements are made with the City. Labor may be voluntary.

4. Specifications for Improvements. All improvements will be in accordance with any and all City, State, and Federal rules and regulations. Construction of improvements shall follow the City of Rapid City Standard Specifications for Public Works Construction (2007 Edition), as currently revised. BH MBA will be responsible for seeking and obtaining any and all permits required for improvements. Any portion of the project paid for with tax revenue shall comply with applicable bid laws.

5. BH MBA Maintenance Responsibilities.

The BH MBA accepts financial responsibility for routine maintenance of the Bike Skills Park elements, including but not limited to, park entrances, structures, trails, and signage constructed by the BH MBA. BH MBA will control weeds, litter, and/or other items foreign to the Park. BH MBA will be responsible for seeding and watering all areas disturbed during park improvements, modifications, or routine maintenance of the Bike Skills Park. BH MBA shall store and secure all equipment in a responsible manner to minimize visibility and access by the public. Should materials from the Bike Skills Park blow or otherwise get moved into the creek, surrounding areas, bike path, street, or adjacent private property, the BH MBA will be responsible for their clean up.

BH MBA will be responsible for maintenance at all times. Assessment of routine maintenance needs will be a joint responsibility of the parties on an on-going basis. Maintenance will be done in a timely fashion. The parties agree to cooperate to address emergency situations resulting from vandalism or acts of nature that may require immediate attention and intervention.

6. City's Maintenance Responsibilities.

The City will be responsible for, and pay for, maintaining areas around the Bike Skills Park, as necessary, including trees within the bike park area. The City will be responsible for access from public parking areas and upkeep of the bike path. The City also will be responsible for upkeep of areas outside the Bike Skills Park, and all police and fire protection within the park.

7. Ownership. All improvements which are constructed as part of this Agreement will be owned by the City of Rapid City. The City will have full authority over the type of use allowed in the Bike Skills Park and its opening and/or closing as part of Founders Park. Any events held within the Bike Skills Park shall be permitted through the Parks Office.

8. Communication. BH MBA shall keep the City informed of any and all construction and or maintenance within the Bike Skills Park. If BH MBA retains a contractor/landscaper to supervise construction of any improvements, the contractor/landscaper shall keep the City informed of progress and completion of construction. BH MBA shall submit to the Parks Director a contact list of members responsible for the Bike Skills Park improvements and maintenance which will be read into City Council Minutes. Upon changes in personnel, this list should be updated and re-read into City Council Minutes.

9. Insurance. BH MBA will ensure that they or the Project contractor obtains liability insurance for the project construction as required within the Standard Specifications adopted by the City. Any and all liability insurance policies obtained by BH MBA or by any contractor, subcontractor, or other entity involved with the project construction shall name the City as an additional insured, and any entity securing liability insurance shall furnish to City evidence of the same by a certificate of insurance. BH MBA shall name the City an additional insured for the life of this agreement.

10. Indemnification. BH MBA agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct by BH MBA, its designees, and/or its contractors.

11. Expiration of Agreement. This Agreement will remain in effect for a period of five years from the EFFECTIVE DATE of this agreement, when it may be renewed, altered, or terminated. It will be the responsibility of BH MBA to seek renewal and/or alteration prior to expiration of this agreement. If BH MBA does not seek or complete renewal or alteration prior to expiration of the agreement, the agreement is terminated.

12. Notice to Terminate. If, at any time, the City deems the Bike Skills Park a blight and/or not up to City standards for a park area, or if it deems BHMBBA to be in default under this agreement, the City will provide BHMBBA with notice of the defect/default and give BHMBBA thirty (30) days to comply with the terms of this agreement or correct the defect. If the defect/default is not corrected within 30 days, the City may terminate this agreement, dismantle, take out, or shut down the Bike Skills Park, and/or exercise any rights it has under the law.

In the event that the City determines the Bike Skills Park is to be removed and relocated from Founders Park, then the City agrees that the Bike Skills Park shall not be relocated to any other site following its removal without a joint agreement by BHMBBA and City as to the new location.

13. Independent Contractor. Nothing contained herein shall be construed as creating a partnership or joint venture between City and BHMBBA, nor construed as making BHMBBA anything other than an independent contractor of City. BHMBBA shall have no right or power to act for City other than as contemplated in this agreement or otherwise expressly authorized by City.

14. Costs and Expenses. Each party shall pay all of its own costs and expenses incurred in connection with performance of its duties hereunder.

15. Waivers. No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

16. Consideration. The parties agree that the City's act of allowing BHMBBA to access, maintain, and construct elements within the Bike Skills Park within Founders Park constitutes sufficient good and valuable consideration for BHMBBA's promises made within this Agreement and for the execution and performance of this Agreement.

17. Miscellaneous Provisions.

a. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard for its conflict of laws provisions. The parties agree to bring any suit at law or equity only in Seventh Judicial Circuit Court in Pennington County, South Dakota.

b. **TITLES AND CAPTIONS.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

c. ENTIRE AGREEMENT. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

d. AGREEMENT BINDING. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

e. SEVERABILITY. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE: In witness where, the parties hereto have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

BHMBA

\_\_\_\_\_  
(NAME)

STATE OF SOUTH DAKOTA )

)ss.

COUNTY OF PENNINGTON )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged herself to be the President of BHMBA, and as such President, being authorized to do so, executed the foregoing document on behalf of BHMBA.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public, State of South Dakota  
My Commission Expires: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Sam Kooiker, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

State of South Dakota     )  
  SS.  
County of Pennington     )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)