

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** authorizing the County Executive to execute a Memorandum of Understanding with the Earth Riders Trails Association for the design, construction, maintenance, and operation of single-track, multi-use trails within the Blue River Parkway and Landahl Park, at no cost to the County.

**RESOLUTION #16837**, March 9, 2009

**INTRODUCED BY** Fred Arbanas, County Legislator

WHEREAS, the Earth Riders Trails Association (ERTA) has actively worked to construct and maintain mountain bike trails in the Midwest, and has had an informal working relationship with the Jackson County Parks and Recreation Department for the past ten years; and,

WHEREAS, the ERTA has constructed and maintained over twenty miles of mountain bike trails in both Landahl Park and the Blue River Parkway, and the Parks and Recreation Department would like to continue this effort; and,

WHEREAS, a Memorandum of Understanding (MOU) is the appropriate vehicle to allow the continuation of the ERTA's work within the Jackson County Parks and Recreation Department; and,

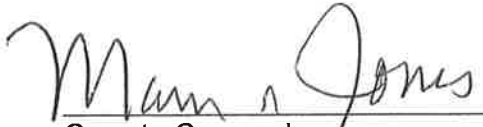
WHEREAS, the attached MOU with MARC adequately sets out the rights and obligations of the parties with regard to this arrangement, at no cost to the County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive be and hereby is authorized to execute the attached Memorandum of Understanding with the Earth Riders Trails Association.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

  
Deputy County Counselor

  
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution #16837 of March 9, 2009, was duly passed on March 16, 2009 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

3.17.09  
Date

  
Mary Jo Spino, Clerk of Legislature

MEMORANDUM OF UNDERSTANDING  
FOR DESIGN, CONSTRUCTION, MAINTENANCE and OPERATION  
OF SINGLETRACK MULTI-USE TRAILS at the BLUE RIVER PARKWAY and LANDAHL PARK  
EARTH RIDERS TRAILS ASSOCIATION  
JACKSON COUNTY PARKS AND RECREATION

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 22 day of May, 2009, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks and Recreation Department, and the EARTH RIDERS TRAILS ASSOCIATION, (ERTA), a Missouri not for profit corporation.

WHEREAS, the County has under its control various park lands belonging to the County, including the Park lands known as Blue River Parkway and Landahl Park, (premises); further described in **Attachment A**, attached hereto and incorporated herein by reference; and

WHEREAS, the County and ERTA have identified a mutually-beneficial plan for the design, construction, maintenance and operation of singletrack multi-use hiking, biking, and/or running trails at Blue River Parkway and Landahl Park (work); and

WHEREAS, the Director of Parks and Recreation is authorized and empowered by the County to execute Memorandums of Understanding, (Agreement); on behalf of the County;

NOW, THEREFORE, in consideration of the mutual covenants of the parties contained herein, the parties hereto do mutually agree as follows:

**Sec. 1. Right of Access.** ERTA shall be permitted to enter onto and perform the following activities on the Premises:

- A. ERTA, with review and approval by the Director of Parks and Recreation (Director) shall at its sole expense, design and construct high-quality multi-use single-track trails on the Premises for recreational use by the public, which design and construction shall conform to the conditions set forth in **Attachment B**, attached hereto and incorporated herein by reference.
- B. After approval of trail plans and design by the Director and/or trail construction, ERTA shall obtain the Director's approval for any trail modifications greater than 100 feet in length or which deviate more than 25 feet from the centerline of a planned or constructed trail.
- C. Following completion of the trails, ERTA shall be solely responsible for the maintenance thereof, including but not limited to the regular removal of litter and trash, clearing obstructions such as downed trees and limbs, seasonal trimming of overgrowth, and trail repairs as needed. Inspection and maintenance will be conducted at least quarterly with the County designate; seasonal repairs and maintenance will be conducted at least annually. County reserves the right to change any portion of the trail that needs immediate attention without advance notification to ERTA.
- D. ERTA shall ensure that all volunteers and/or contractors utilized to fulfill any of ERTA's obligations hereunder shall also comply with the terms of this Agreement and the conditions set forth in **Attachment B**.
- E. ERTA shall be permitted access to a mutually-agreed-upon location near the constructed trail annually for the purpose of holding a fundraising event. ERTA must apply for and receive a Special Use Permit for the occasion in advance of the event and the County acknowledges by this agreement that it will waive any fee for park use.

**Sec. 2. Title.** Title to the Premises shall at all times remain in the County. This Agreement conveys no property rights, grants no exclusive license, and in no way restricts the general public's privilege of using the Premises.

**Sec. 3. Term.** Unless terminated by either party in conformity with the termination provisions contained herein, the term of this Agreement shall be three (years), and will renew automatically thereafter on an

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MARY JO SPINO  
COUNTY CLERK

annual basis. Additional trail expansion opportunities, beyond those contemplated herein, shall be governed by this Agreement unless it has been terminated by either party.

**Sec. 4. Modification and Termination.**

- A. This Agreement may be modified or amended only with the written consent of both parties. Verbal representations and extra-contractual writings shall not be construed or relied upon as modifications, amendments or waivers of any term of this Agreement.
- B. This Agreement may be terminated with a 30-day written notice by either party. In the event ERTA terminates this Agreement prior to completion of construction of the Work, ERTA agrees to restore all areas upon which it has performed work to their original state, unless such restoration requirement is waived in writing by the County.

**Sec. 5. Notices.** All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, or facsimile to the following. All notices mailed by regular U.S. mail are effective three (3) days after mailing.

**JACKSON COUNTY PARKS AND RECREATION**

C/O: Michele Newman, Director  
22807 Woods Chapel Road  
Blue Springs, Missouri 64015  
(816) 503-4800 Fax (816) 795-1234

**EARTH RIDERS TRAILS ASSOCIATION**

C/O David Smith, President  
520 W. 103<sup>rd</sup> Street, Box 158  
Kansas City, Missouri 64114  
(913) 327-2207

**Sec. 6. Assignability or Subcontracting.** ERTA shall not subcontract, assign or transfer any part or all of ERTA's obligations under this Agreement without County's prior approval. If ERTA shall subcontract, assign, or transfer any part of ERTA's interests or obligations under this Agreement without the prior approval of County, it shall constitute a material breach of this Agreement.

**Sec. 7. Independent Contractor.** ERTA is an independent contractor with respect to all services performed under this Agreement. ERTA accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by ERTA on work performed under the terms of this Agreement. ERTA shall defend, indemnify and save harmless County from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of County, or ERTA, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. ERTA is not County's agent and ERTA has no authority to take any action or execute any documents on behalf of County.

**Sec. 8. Financial Responsibility.**

- A. ERTA shall be solely responsible for all costs associated with design, construction and maintenance of the Work during the term of this Agreement and any extensions thereof.
- B. ERTA shall hold harmless County and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by ERTA and its selected volunteers, employees, agents, or subcontractors, or caused by others for whom they or ERTA are liable, regardless of whether or not caused in part by any act or omission, including negligence, of County, its agencies, officials, officers, or employees.
- C. The County's sole financial obligation under this Agreement shall be for the procurement of County approved signage for trails.

**Sec. 10. Insurance.** ERTA shall procure and maintain in effect throughout the duration of this Agreement general liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis, for any claims, damages liability, losses, costs and expenses, court costs and reasonable attorney fees incurred by the County for enforcement of this section and for any accidents, injuries, including death, damage to property, or other claims arising as a result of or in connection with the performance by ERTA and its volunteers, employees, agents or subcontractors, under this Agreement. The County, its officers employees, and agents shall be named as additional insureds under such policy. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
  - b. Contractual Liability
  - c. Per Project Aggregate Liability Limit or, where not available, an aggregate limit of \$1,000,000.
  - d. No Contractual Liability Limitation Endorsement
  - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
- A. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to County, ten (10) days in the event of nonpayment of premium. Upon signing of this Agreement, Contractor shall provide to County a certificate of insurance showing all required endorsements and additional insureds.
- B. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- C. Regardless of any approval by County, it is the responsibility of ERTA to see the required insurance coverage is in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of ERTA's failure to assure the required insurance in effect, County may order ERTA to immediately stop work.

**Sec. 11. Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action in regard to the Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within Jackson County, Missouri, and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

**Sec. 12. Compliance with Laws.** ERTA shall comply with all federal, state and local laws, ordinances and regulations applicable to the work. ERTA shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of obligations under this Agreement. All references to "Code" shall mean County's Code of Ordinances, including any amendments thereto or recodification thereof.

**Sec. 13. Waiver.** Waiver by County of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of County, and forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of same to be performed by ERTA to which the same may apply and, until complete performance by ERTA of the term, covenant or condition, County shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

**Sec. 14. Rights and Remedies Cumulative and Not Exclusive.** All rights and remedies granted to County herein and any other rights and remedies which County may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that County may have exercised any remedy without terminating this Agreement shall not impair County's rights thereafter to terminate or to exercise any other remedy herein granted or to which County may be otherwise entitled.

**Sec. 15. Merger.** This Agreement, including any referenced Attachments, constitutes the entire agreement between County and ERTA with respect to this subject matter, and supersedes all prior agreements between County and ERTA with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement.


**Sec. 16. Severability of Provisions.** Except as specifically provided herein, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Sec. 17. Representations and Warranties.** County and ERTA each certify that it has the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.


**IN WITNESS WHEREOF**, the parties, by their authorized representatives, have caused this Agreement to be executed as of the date first written above.

EARTH RIDERS TRAILS ASSOCIATION

I certify that I am authorized to execute this Cooperative Agreement on behalf of **ERTA**.

  
\_\_\_\_\_  
Title: President  
Date: 4/15/09

JACKSON COUNTY

  
Michele Newman, Director of Parks and Recreation  
Date: 4-15-09

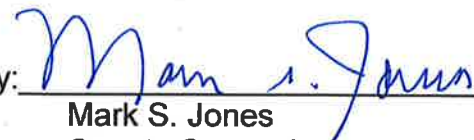
ATTEST:

\_\_\_\_\_

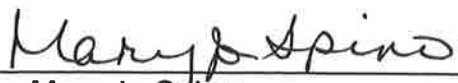
JACKSON COUNTY, MISSOURI

By:   
\_\_\_\_\_  
Michael D. Sanders  
County Executive

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Mark S. Jones  
County Counselor

ATTEST:

By:   
\_\_\_\_\_  
Mary Jo Spino  
Clerk of the County Legislature

**ATTACHMENT A**

**DESCRIPTION OF PREMISES**

**BLUE RIVER PARKWAY:** Shall mean all Park land owned by Jackson County in Sections 4, 9, 16, 20, 21, 29, 30 and 31 in Range 33, Township 47; and Sections 14, 15, 22, 27, 28 and 33 in Range 33, Township 48.

**LANDAHL PARK:** Shall mean all Park land owned by Jackson County lying between Truman Road and Argo Road in Sections 8, 9 and 10 in Range 30, Township 49; except those parcels leased to the Missouri Dept. of Conservation for use as shooting ranges.



## ATTACHMENT B

### SCOPE OF DUTIES AND SERVICES TO BE PROVIDED BY ERTA

1. Design. Provide a design to County (Director of Parks & Recreation) for a multi-use singletrack trail on the Premises, for the Director's approval. The design shall:
  - a. Comply with International Mountain Bike Association (IMBA) design standards.
  - b. Minimize impact on designated areas to the extent feasible.
  - c. Utilize full-bench-cut construction for hillsides.
  - d. Keep trail-tread grades below ½ of the prevailing side-hill grade.
  - e. Incorporate grade reversals for drainage and trail variation.
  - f. Incorporate interesting points along the route.
  - g. Utilize best management practices to control water flow and prevent erosion, including but not limited to grade dips and other diversion structures, crib walls and rolling crown switchbacks, bridges, culverts, guide structures, installation of signs, armoring and/or hardening of creek crossing approaches and other soft or sensitive areas, restoration of retired trails, turnpikes, and rock causeways.
2. Construction.
  - a. Through the use of paid and/or ERTA's volunteer labor, ERTA will clear and construct the trail and related improvements in conformity with the design as approved by the Director. Soil that is removed and brush, limbs, extra materials or other debris associated with said construction will be left on the site.
  - b. ERTA will provide all labor, tools, and materials necessary for the construction of trails and related improvements, temporary signage and safety features, except as otherwise stated in this Agreement.
  - c. ERTA will not utilize herbicides or other chemicals without prior written approval from the Director. Use and storage of explosives shall not be allowed.
  - d. ERTA will train, supervise and insure, and is solely responsible for the employees and/or volunteers utilized and their safety. ERTA will comply with all federal, state and local safety requirements in connection with the performance of the Agreement, including the provisions of the Federal Occupational Safety and Health Act of 1970 ("OSHA") and to the rules and regulations promulgated pursuant to this Act. All work conducted by and for ERTA shall be entirely at ERTA's own risk.
  - e. Construction shall include the installation of all necessary safety rails or other guard devices and appropriate signage (with signs to be recommended by ERTA and provided by County).
  - f. In the event excavation is conducted in connection with trail construction, ERTA assumes the risk associated therewith, and will take all reasonable and necessary safety precautions, including but not limited to installation of protective coverings on or fencing around open and unattended excavations. Coverings shall be sufficient to sustain the weight of any persons and/or objects placed upon them, fixed to the ground so they cannot be moved, have no opening(s) or protuberance(s) of sufficient size to cause a fall and/or injury, and be accompanied by advance warning devices as necessary. Fencing around open excavations shall be installed such that it surrounds the entire area under excavation so as to prevent entry by any persons, be a minimum of 42" in height, and be constructed in such a manner that it is adequately secured and will remain upright at all times under normal site conditions. All protective coverings and/or fences on excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary. All excavations shall be restored to the level of the adjacent surfaces as soon as practicable. No excavations may be made in, upon, under, through or adjoining any area other than the Premises identified in Attachment A.

