

**MEMORANDUM OF UNDERSTANDING
FOR DESIGN, CONSTRUCTION, MAINTENANCE and OPERATION
OF SINGLE TRACK MULTI-USE TRAILS
BETWEEN THE URBAN TRAIL CO. AND JACKSON COUNTY PARKS + REC**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 1st day of May, 2018, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and the Urban Trail Co. (UTC), a Missouri not-for-profit corporation.

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

WHEREAS, the County and the Urban Trail Co., then known as the Earth Riders Trail Association, previously entered into a Memorandum of Understanding on April 22, 2009; and

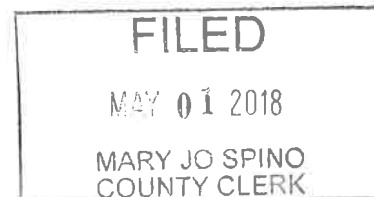
WHEREAS, the County and the Urban Trail Co. wish to terminate this previous agreement and continue to work together through this new Memorandum for mutual public benefit for the design, construction, maintenance and operation of single track multi-use trails and other amenities (Work) at the Premises described herein; and

WHEREAS, the Director of Jackson County Parks+Rec 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. Rights of Access. UTC shall be authorized to enter onto and perform the following activities on the Premises:

- A. UTC shall, at its sole expense, design and construct high-quality single track multi-use trails and skills courses on the identified 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. Prior to construction of any improvements on the Premises, UTC shall submit a written layout of single track trails and design plans of skills courses, including engineering drawings for any infrastructure such as bridges, decks, or fencing, to the Parks+Rec Director for approval. No Work may proceed until plans have been approved by the Director.
- B. After approval of plans and design by the Director, UTC shall obtain the Director's written approval for any modifications to plans or the Premises for any trail modification greater than 100 feet in length or trail paths which deviate more than 25 feet from the centerline of a planned or constructed trail course.
- C. Following completion of Work, UTC shall be solely responsible for the daily and capital maintenance thereof, including but not limited to removing trash and debris from UTC trails and improved areas, clearing obstructions such as downed trees and limbs, seasonal trimming of overgrowth, and trail and infrastructure repairs and replacement as needed to keep all facilities in a good and safe condition. Inspection shall be conducted as requested by the County, no less than annually, by representatives of both parties and maintenance will be conducted as needed.
- D. County reserves the right to access any portion of the Premises and address any issue that requires immediate attention, in the sole discretion of the County, without advance notification to UTC.
- E. UTC shall ensure that all volunteers, employees and/or contractors utilized to fulfill any of UTC's obligations hereunder shall also comply with the terms of this Memorandum, the conditions set forth in **Attachment B**, and the Jackson County Code of Ordinances Chapters 10 and 19 related to the employment and payment of prevailing wages of contractors for construction work on County property to the extent required under the law.



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THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 29th day of March, 2018, by and between JACKSON COUNTY, MISSOURI, (County), through its Parks + Rec Department, and the Urban Trail Co. (UTC), a Missouri not-for-profit corporation.

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

WHEREAS, the County and the Urban Trail Co., then known as the Earth Riders Trail Association, previously entered into a Memorandum of Understanding on April 22, 2009; and

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- A. UTC shall, at its sole expense, design and construct high-quality single track multi-use trails and skills courses on the identified 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. Prior to construction of any improvements on the Premises, UTC shall submit a written layout of single track trails and design plans of skills courses, including engineering drawings for any infrastructure such as bridges, decks, or fencing, to the Parks+Rec Director for approval. No Work may proceed until plans have been approved by the Director.
- B. After approval of plans and design by the Director, UTC shall obtain the Director's written approval for any modifications to plans or the Premises for any trail modification greater than 100 feet in length or trail paths which deviate more than 25 feet from the centerline of a planned or constructed trail course.
- C. Following completion of Work, UTC shall be solely responsible for the daily and capital maintenance thereof, including but not limited to removing trash and debris from UTC trails and improved areas, clearing obstructions such as downed trees and limbs, seasonal trimming of overgrowth, and trail and infrastructure repairs and replacement as needed to keep all facilities in a good and safe condition. Inspection shall be conducted as requested by the County, no less than annually, by representatives of both parties and maintenance will be conducted as needed.
- D. County reserves the right to access any portion of the Premises and address any issue that requires immediate attention, in the sole discretion of the County, without advance notification to UTC.
- E. UTC shall ensure that all volunteers, employees and/or contractors utilized to fulfill any of UTC's obligations hereunder shall also comply with the terms of this Memorandum, the conditions set forth in **Attachment B**, and the Jackson County Code of Ordinances Chapters 10 and 19 related to the employment and payment of prevailing wages of contractors for construction work on County property to the extent required under the law.

- F. Both the County and UTC shall have the right to cancel, postpone, or terminate any scheduled user program or activity on the Premises in the event of inclement weather or other conditions in which the scheduled activity is reasonably likely to damage the trails or improvements.
- G. UTC shall be permitted to conduct programs and special events at the Premises. During program activities, Premises shall be open to the public for general use. UTC shall apply for and receive a *Special Use Permit* from the County for any event requesting exclusive use for any portion of the Premises. UTC shall follow the guidelines set forth by the Parks+Rec Department for each special event. UTC shall be permitted to host an annual fundraising event, at a mutually agreed location on the Premises. UTC shall apply for and receive a *Special Use Permit* for the special fundraising event and the County acknowledges by this Memorandum that it will waive any special use fee for this sole event.
- H. UTC may secure sponsors for special events at Premises. Sponsors shall be permitted to display appropriate advertising at Premises during special events. All advertising shall be removed at conclusion of each special event. UTC shall not display any other advertising on the Premises.
- I. County shall notify UTC at least fourteen (14) days in advance of any events for which a permit is issued by the County to any third party for the use of the trails or improvements upon the Premises.

Sec. 2. Title. Title to the Premises shall at all times remain with 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 ten (10) years. Additional trail/amenity expansion opportunities, beyond those contemplated herein, shall be governed by this Memorandum unless it has been terminated by either party.

Sec. 4. Modification and Termination.

- A. This Agreement may be extended, modified or amended 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 90-day written notice by either party. In the event UTC terminates this Agreement, UTC agrees to remove any elevated structures, such as bridges, decks, or fencing, made upon the Premises, unless such removal requirement is waived in writing by the County.

Sec. 5. Indemnification. UTC agrees to indemnify and hold harmless County from any and all damage, loss, or liability of any kind whatsoever, occasioned by or because of any act or omission, negligence, or wrongdoing of UTC or any of its agents, representatives, assignees, or employees in the execution of this Agreement, and UTC, at its own cost and expense, will defend and protect County against any and all such claims and demands.

Sec. 6. Insurance. UTC 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 annual aggregate (both general and products-completed operations), 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 UTC 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. UTC shall also carry a \$1,000,000 umbrella policy. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Insured Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, an aggregate limit of \$2,000,000.

- d: Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

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.

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.

Regardless of any approval by County, it is the responsibility of UTC 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 UTC's failure to assure the required insurance in effect, County may order UTC to immediately stop all activities.

Sec. 7. Reports. UTC shall provide a written report to County upon request summarizing activities on Premises including maintenance activities performed, programs/events offered, public participation at programs and events, volunteer hours served, and any future anticipated programs or projects for the coming year. These reports may be submitted to the County via email to an agreed upon address.

Sec. 8. Notices. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, electronically, or facsimile to the following. All notices mailed by regular U.S. mail are effective three (3) days after mailing.

JACKSON COUNTY PARKS+REC
C/O: Director of Parks+Rec
22807 Woods Chapel Road
Blue Springs, Missouri 64015
(816) 503-4800 Fax (816) 795-1234

Urban Trail Co.
C/O Ben Reed, President
2323 Grand Boulevard, Suite 1000
Kansas City, MO 64108
(816) 265-4127

Sec. 9. Assignability or Subcontracting. UTC shall not subcontract, assign or transfer any part or all of UTC's obligations under this Agreement without County's prior written approval. If UTC shall subcontract, assign, or transfer any part of UTC's interests or obligations under this Agreement without the prior written approval of County, it shall constitute a material breach of this Agreement.

Sec. 10. Independent Contractor. UTC is an independent contractor with respect to all services performed under this Agreement. UTC 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 UTC on work performed under the terms of this Agreement. UTC 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 UTC, shall be deemed or construed to create any third-party beneficiary or principal and agent relationship with County. UTC is not County's agent and UTC has no authority to take any action or execute any documents on behalf of County.

Sec. 11. Financial Responsibility.

- A. UTC shall be solely responsible for all costs associated with design, construction, maintenance, repair, and replacement of the trails and improvements to Premises during the term of this Agreement and any extensions thereof.
- B. The County shall be responsible for the procurement of County approved signage for the trails/amenities.
- C. UTC, County, and other organizations with interest in mutual areas the Premises, if any, shall cooperatively share utility costs for designated areas.
- D. UTC, County, and other organizations with interest in mutual areas the Premises, if any, shall cooperate with respect to future infrastructure improvements to the area including planning, design, and fundraising for said additional improvements.

- E. UTC 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 UTC and its selected volunteers, employees, agents, or subcontractors, or caused by others for whom they or UTC 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.

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. UTC shall comply with all federal, state and local laws, ordinances and regulations, including Missouri Prevailing Wage laws, applicable to the Work. UTC 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 of any provisions of this Agreement or any breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, or of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights.

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 UTC with respect to this subject matter, and supersedes all prior agreements between County and UTC, including Agreements entered into when UTC was known as the Earth Riders Trail Association, 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 UTC 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.

URBAN TRAIL CO.

I certify that I am authorized to execute this Memorandum of Understanding on behalf of UTC.

Signature, President 

Ben Reed
Printed Name

Date: 3-29-2018

ATTEST:

Jackson County, Missouri



Frank White, Jr., County Executive

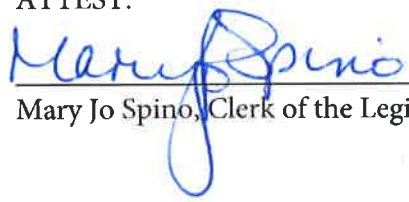
JACKSON COUNTY


Michele Newman, Director of Jackson County Parks+Rec

Date: 5-1-2018

ATTEST:

APPROVED AS TO FORM

W. Stephen Nixon

ATTEST:

Mary Jo Spino, Clerk of the Legislature

ATTACHMENT A

DESCRIPTION OF PREMISES

BLUERIVER PARKWAY: Shall mean park lands owned by Jackson County as shown on the attached map in Sections 4, 8, 9, 16, 17, 20, 21, 29, 30 and 31 in Range 33, Township 47; Sections 14, 15, 22, 27, 28 and 33 in Range 33, Township 48; and. Sections 27, 33 in Range 33, Township 49.

LANDAHL PARK: Shall mean park lands owned by Jackson County as shown on the attached map 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.

LAKE JACOMO IN FLEMING PARK: Shall mean park lands owned by Jackson County as shown on the attached map in sections 10, 11, 13, 14, 15, 16, 21, 22, 23, 26, 27, and 28 in Range 31, Township 48.

ATTACHMENT B

SCOPE OF DUTIES AND SERVICES TO BE PROVIDED BY UTC

1. Design/Work Plan. Provide a design and plan of Work to County (Director of Parks+Rec) for single track multi-use trails and skills courses on the Premises, for the Director's approval. The design and Work Plan shall:
 - a. Show all infrastructure components for construction of non-natural materials such as bridges, decking, and fencing.
 - b. Comply with the International Mountain Bike Association and U.S. Forest Service design standards for non-natural material improvements, such as bridges, decking, or fencing infrastructure, comply with applicable local construction codes.
 - c. Minimize impact on designated areas to the extent feasible.
 - d. Utilize best management practices to control storm water flow and prevent erosion, including full-bench-cut construction for hillsides. Utilize best management practices for 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.
 - e. Keep trail-tread grades below ½ of the prevailing side-hill grade.
 - f. Incorporate grade reversals for drainage and trail variation as appropriate.
 - g. Incorporate interesting points along the route.
 - h. Provide a Missouri, professional, engineer signed and sealed drawings for any elevated structural components.
 - i. For any projects proposed to utilize a combination of paid prevailing wage contractors and volunteer labor, provide a list of all volunteer workman proposed to be engaged in the construction of all improvements and the specific tasks they will perform. Any volunteer work shall be documented in accordance with the Missouri Prevailing Wage law, sections 290.210 et seq., RSMo.
 - j. For construction services to be performed by paid contractors or employees, provide a list of all workers and the specific tasks they perform. All paid contractors shall be compensated per Missouri Prevailing Wage laws and Jackson County Code Chapters 10 and 19 to the extent required under the law.
 - k. Provide an estimated anticipated schedule for all construction activities including when work will commence, when work will take place on Premises, and anticipated completion date(s).
2. Construction.
 - a. Through the use of paid contractors and/or UTC's volunteers, UTC will clear and construct the trail, skills courses, and related improvements in conformity with the design as approved by the County. Soil that is removed and brush, limbs, extra materials or other debris associated with said construction may be left on the site, spread evenly consistent with UTC's practice to maintain a natural appearance of the areas.
 - b. UTC will provide all labor, tools, and materials necessary for the construction of the trails and related improvements, temporary signage and safety features, except as otherwise stated in this Agreement.
 - c. UTC will not utilize herbicides or other chemicals without prior written approval from the Director. Use and storage of explosives shall not be allowed.
 - d. UTC will train, supervise and insure, and is solely responsible for the contractors, employees and/or volunteers utilized and their safety. UTC 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 UTC shall be entirely at UTC's own risk.

- e. In the event excavation is conducted in connection with field(s) and related improvement construction, UTC 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.
- f. UTC shall be responsible for and in charge of the site and the installation of the Work thereon from the time work on the site commences until final approval by County. If installation requires, UTC shall notify all utilities, municipal departments, adjacent property management, and others affected by their operations and shall properly coordinate and expedite their work in such a manner as to cause the least amount of conflict and interference between their operation and those of any other contractor or agency. Notification shall be made sufficiently ahead of time to provide proper rerouting of traffic and erecting of signs before the work is to begin. Any and all damages or claims resulting from the improper or insufficient notification of the affected utility agency and others shall be the responsibility of UTC.

3. Inspection of Installation and Materials.

- a. During installation of the Work, the County shall have the right to inspect the Work thereon to determine whether or not the Work is being installed in accordance with the County approved plans. If, at any time during the progress of such installation, it is determined that such improvements are not being installed in accordance with the County approved plans, upon receipt of written notice thereof from County, UTC shall make such alterations as may be required to cause such improvements to conform to the specifications.
- b. All material of whatever nature, required in the performance of the Work embraced in this Agreement, shall be furnished by UTC and shall be subject to the inspection and/or test by County or its authorized representative before being placed in the Work. All rejected or unsuitable materials shall be removed at once from the site of the Work.
- c. As soon as practical after completion, the entire work will be examined thoroughly by the County. UTC will be notified when the examination is to be made so that a representative may be present. If the inspection reveals any defective or unsatisfactory work, it shall be remedied by UTC as County may require before final acceptance. The cost of all such repairs and replacements shall be borne by UTC.

4. Maintenance.

Following completion of construction, UTC shall maintain the trails, skills courses, and other improvements, including removing litter, trash, limbs, and other obstructions from UTC trails and improved areas, trimming overgrowth, and repairing the trails and courses and repair and replacing other infrastructure as needed for the continuous and safe enjoyment of patrons.