

AGREEMENT

BETWEEN THE

City of Minnetonka, MN

AND THE

**MINNESOTA OFF-ROAD
CYCLISTS (MORC)**

INTRODUCTION AND PURPOSE

The City of Minnetonka, MN and the Minnesota Off-Road Cyclists (MORC) are interested in promoting off-road bicycling as an outdoor recreation and fitness activity and in developing and maintaining a sustainable multi-use mountain bike trail for cyclists of all ability levels.

This Agreement identifies specific services, including initial and ongoing trail construction), maintenance, habitat restoration and trail patrol activities, which MORC volunteers have agreed to provide as service to the City of Minnetonka, establishes the responsibilities and conditions under which that volunteer service will be provided, and delineates the responsibilities of the City of Minnetonka, with respect to the multi-use mountain bike trail located at Lone Lake Park.

SCOPE OF THE AGREEMENT

This Agreement applies to the multi-use mountain bike trail located at Lone Lake Park (5624 Shady Oak Rd, Minnetonka, MN 55343).

Ownership of Improvements

All improvements, constructed on City of Minnetonka park property, shall be, and remain the property of the City of Minnetonka. All materials, including records, data, and other information acquired, developed or documented under this Agreement shall be the property of the originating party, unless otherwise mutually agreed upon by both parties.

Term of Agreement and Process for Amendments

The term of this Agreement shall start May 1, 2020 and extend through December 31, 2020. Thereafter, this Agreement will be automatically extended for successive calendar years (January 1 – December 31). During the term of this Agreement, either party may request an amendment to the Agreement. The party requesting the amendment will submit the proposed amendment in writing to the other party and the parties shall reasonably confer on the amendment. Any amendment to this Agreement must be in writing and signed by both parties.

MORC Volunteers

Volunteers assigned to work under this Agreement at Lone Lake Park are volunteers of MORC and are covered under the policies and procedures of MORC in relation to volunteer organization and management. Volunteers are not employees of or individual volunteers of the City of Minnetonka.

MORC Responsibilities

During the term of this Agreement, the responsibilities of MORC are as follows:

1. MORC will provide support to the City of Minnetonka in determining the location and design of trail features for the off-road cycling trail, consistent with the planned ability level of the trail segment in accordance with the International Mountain Bike Association (IMBA) guidelines.
2. MORC will provide and supervise volunteers in the construction and maintenance of City approved features and alignment changes.
 - Utilize hand tools owned by MORC and City of Minnetonka tools that may be made available and approved by the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - The use of power tools must be approved by the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - Chainsaws may not be used by any MORC volunteers.
 - Trail features and trail alignment changes must conform to IMBA guidelines and City of Minnetonka approved designs and construction guidelines, including the US Fish & Wildlife Service document entitled "Recommendations for Mountain Bike Trail Construction within Rusty Patched Bumble Bee (RPBB) High Potential Zones" prepared for City of Minnetonka Lone Lake Park (dated November 15, 2019, revised May 15, 2020) and any subsequent revisions to that document by the US Fish & Wildlife Service.
 - Train and supervise volunteers in appropriate construction techniques in accordance with IMBA guidelines and City of Minnetonka approved construction guidelines, including the US Fish & Wildlife Service document entitled "Recommendations for Mountain Bike Trail Construction within Rusty Patched Bumble Bee (RPBB) High Potential Zones" prepared for City of Minnetonka – Lone Lake Park (dated November 15, 2019, revised May 15, 2020) and any subsequent revisions to that document by the US Fish & Wildlife Service.
 - Identify a crew leader and submit his or her name and contact information to the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - Coordinate work schedule and on-site public notification, when needed, with the designated City of Minnetonka Recreation Program Manager (Land Manager).
 - MORC volunteers may use bikes in the on-site planning and testing of trail features prior to official trail opening as coordinated with the Parks Supervisor.
3. With City staff oversight MORC will provide volunteers to assist with the preparation of the trail corridor, inspection and hand-work maintenance of the trail.
 - Seasonally submit to the City of Minnetonka for approval a schedule identifying the timetable for trail observation, inspection, and maintenance.

- Ensure that all volunteer leadership has received training developed between MORC and City of Minnetonka in trail inspection and maintenance responsibilities as well as an orientation to the City of Minnetonka.
 - MORC volunteers are authorized to sculpt and/or remove downed trees found on the trail that does not require the use of a chainsaw. This provision applies only to trees that have previously been downed and does not authorize MORC volunteers to down trees.
 - Salvage or transplant high quality native vegetation as identified by City of Minnetonka Natural Resources staff during initial trail construction.
 - Perform routine maintenance activities. In the event that MORC is unable to safely and promptly address an identified issue that may create an unsafe situation, the MORC volunteer will promptly notify the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - No site improvements, grading, or land disturbance work shall be done without the express approval of the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - No tree pruning or removal shall be done except as directed by the City of Minnetonka Forester.
 - Identify a crew leader (trail steward) and leader's contact information that will maintain timely communication with the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
 - Remove vegetation and brush along the trail corridor using MORC tools approved by the City.
 - Fix minor washout areas.
 - Develop trail work maintenance plan, with identified priorities and inspection sheets, for each calendar year by June 1 of each year.
 - Winter trail grooming will be performed only with the prior approval of the City of Minnetonka Program Manager (Land Manager) or Recreation Director.
 - Assist with monthly park and trail corridor habitat restoration.
4. MORC will work with the City of Minnetonka in developing a routine inspection log report sheet for use by volunteers for the regularly scheduled inspections that will identify desired items for inspection and implement the use of this report sheet in the regular inspection of trail.
- MORC will submit copies of reports to the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director upon the City's request.
 - City staff will be included on all communication to MORC members regarding trail inspection, observation and maintenance.
5. Prior to making any trail changes or reroutes, MORC will submit recommendations to the City of Minnetonka Recreation Director for approval.
6. MORC will recommend to the City of Minnetonka for consideration additional types, location and language for trail directional, cautionary and informational signs.
7. A designated MORC representative(s) may make recommendations to the City of Minnetonka's Recreation Program Manager (Land Manager) or Recreation Director as to when to close and re-open trail due to surface conditions or other unforeseen

circumstances observed during trail patrol or maintenance activities. The decision whether to close and reopen the trail shall be made by the City of Minnetonka Recreation Services Department.

8. MORC must provide the City of Minnetonka with a report on annual volunteer activity.
9. MORC and its volunteers shall not interfere with the enjoyment of park users and must abide by City of Minnetonka Ordinances.
10. MORC must provide the City with an updated Certificate of Insurance each year.
11. MORC must obtain a signed MORC Trailwork Liability Waiver from each MORC volunteer.
12. MORC will provide documentation to the City of any training MORC requires or provides its lead volunteers.
13. To the extent this Agreement requires MORC to perform a government function, all of the data created, collected, received, stored, used, maintained or disseminated by MORC in performing government functions is subject to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13, the "MGDPA"), and MORC must comply with the MGDPA as if MORC were a government entity, including the remedies in Minn. Stat. §13.08. MORC agrees to promptly notify City of Minnetonka of any request for data that MORC receives related to this Agreement.

CITY OF MINNETONKA RESPONSIBILITIES

During the term of this Agreement, the responsibilities of the City of Minnetonka are:

1. The City of Minnetonka will review, comment and have the right to approve design and implementation plans for all agreed-upon volunteer activities.
2. The City of Minnetonka will purchase materials, if needed, to be used in the construction of approved trail features.
3. The City of Minnetonka will provide hand-tools for construction, habitat restoration and maintenance activities, upon request and approval of by City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
4. The City of Minnetonka will provide maintenance staff support for approved work on a schedule agreed to by the City of Minnetonka Recreation Program Manager (Land Manager) or Recreation Director.
5. The City of Minnetonka natural resources staff will provide leadership and support for volunteer training and guidance on restoration work in the park and along the trail corridor.
6. The City of Minnetonka will provide a locked storage unit on site and provide MORC access to the tool storage. A tool checklist will be in the storage unit.

7. The City of Minnetonka will review, comment and have the right to approve recommended trail feature designs and trail re-alignments, construction schedules, and trail maintenance schedules.
8. The City of Minnetonka will publically recognize MORC's contributions for trail construction and volunteer maintenance support in appropriate signage at an appropriate location in a manner approved by the City of Minnetonka and to be coordinated through the Recreation Director.
9. The City of Minnetonka will display a message about the MORC organization and event opportunities in manner approved by the City of Minnetonka at a location approved by the Recreation Director.
10. The City of Minnetonka will authorize removal of hazardous trees and brush as warranted.
11. The City of Minnetonka will repair major trail washouts as warranted.
12. The City of Minnetonka will authorize MORC to have an informational display/booth at each trailhead up to two times per year for the purposes of providing information about MORC memberships and mountain biking events, as approved and coordinated with the City of Minnetonka Recreation Director. MORC informational displays may also be approved for any City of Minnetonka permitted mountain bike events. Requests for a permit for direct financial solicitation (membership sales) must be approved in advance by the City of Minnetonka Recreation Department.
13. The City of Minnetonka will notify MORC of trail closures or events which affect the use of the trail for posting on the MORC web site.
14. The City of Minnetonka is responsible for maintaining Lone Lake Park, including the parking areas and other features of Lone Lake Park. Nothing in this paragraph is intended to impose a special duty on the City of Minnetonka with respect to MORC, MORC volunteers, or any user of the trail that is different in any respect from the duty owed to any user of any city park.
15. The City of Minnetonka is responsible for providing public safety services, including police patrols, to ensure the proper use of the parks. Nothing in this paragraph is intended to impose a special duty on the City of Minnetonka with respect to MORC, MORC volunteers, or any user of the trail that is different in any respect from the duty owed to any user of any city park.
16. The City of Minnetonka will make all decisions as to when to close and re-open trail due to poor conditions or other unforeseen circumstances. The City of Minnetonka will promptly notify MORC when any trail is closed and when any trail is re-opened.
17. The City of Minnetonka will require any third party sponsoring or otherwise putting on an event using the trail multi-use mountain bike trail within the park subject to this Agreement to agree to (a) repair to the IMBA standards any damage to the trail multi-use mountain bike trail, including the surface of the trail and features, that may occur during the event, (b) provide such evidence of insurance as the City of Minnetonka deems reasonable

and (c) obtain releases (in such form as prescribed by the City of Minnetonka) from event participants releasing the City of Minnetonka from any liability or damage.

OTHER TERMS OF AGREEMENT

Hold Harmless and Indemnification Agreement

MORC agrees that it will be responsible for its own acts and those of its volunteers. MORC agrees to defend, hold harmless and indemnify the City of Minnetonka as to any of the following claims, damages, losses, or liabilities ("Claims"): (1) any Claim based upon personal injury to, or damage to personal property belonging to, a MORC volunteer that arises out of the the volunteer's performance of MORC's responsibilities under this Agreement; (2) any Claim by MORC for damage to MORC property that arises out of MORC's performance of this Agreement; (3) any Claim made by a third party for personal injury or damage to personal property, if the Claim is based upon an intentional tort committed by a MORC volunteer or is based upon an incident that occurs while MORC is performing trail construction or maintenance activities and as a direct result of those activities; EXCEPT that, MORC's obligation to indemnify the City of Minnetonka shall not apply to the extent that any of the Claims described in the preceding clauses (1), (2) or (3) are the direct result of a negligent or wrongful act by a City of Minnetonka employee. MORC agrees that, at all times while this Agreement is in force, it will maintain a policy of public liability insurance, on an occurrence basis, with at least \$1,000,000 in coverage for any number of claims arising out of a single occurrence. MORC agrees to name the City of Minnetonka as an additional insured on the policy and, upon request, to provide the City with proof of insurance.

City of Minnetonka agrees that it will be responsible for its own acts and those of its volunteers. City of Minnetonka agrees to defend, hold harmless and indemnify MORC as to any of the following claims, damages, losses, or liabilities ("Claims"): (1) any Claim, to the extent that the Claim is the direct result of a negligent or wrongful act by a City of Minnetonka employee; and (2) any Claim made by a third party for personal injury or damage to personal property, if the Claim is based upon an incident that occurs after trail construction has been completed and the City of Minnetonka has opened the trail to public use. The parties intend that City of Minnetonka will hold harmless and indemnify MORC against Claims that arise out of the use of the off-road cycling trail at times when MORC is not actively performing work on the trail, including Claims that allege negligent design or construction by MORC; the City of Minnetonka assumes all risk and responsibility associated with ordinary use of the trail by the public. City agrees to name MORC as an additional insured on City's policy of public liability insurance.

Termination of Agreement

Either party may terminate this Agreement upon 30 days' prior written notice to the other party. Notice to the City of Minnetonka must be provided to the Recreation Director.

Entire Agreement and Amendment

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. This Agreement may be supplemented, modified or amended from time to time by the mutual written agreement of the City of

Minnetonka and MORC. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the applicable parties.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to principles of conflict of laws.

Notices and Notifications

Where this Agreement requires written notice to be provided, the notice must be delivered personally, or by deposit in the United States mail, postage prepaid for first class delivery, and addressed to the applicable party at the address listed in the appropriate contact section below. Each party shall provide written notice to the other of any change in address for that party. Where this Agreement requires one party to notify another, without specifying that a written notice is required, the notification may be made by telephone call or email.

MORC Contacts

Anne Clark, President
PO Box 19520
Minneapolis, MN 55419-0520
612-840-7490
anne.c@morcmtnb.org

City of Minnetonka Contacts

Recreation Director
Kelly O'Dea
952-939-8360
kodea@minnetonkamn.gov
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Recreation Program Manager (Land Manager)
Jesse Izquierdo
952-939-8351
jizquierdo@minnetonkamn.gov

IN WITNESS WHEREOF, the parties have entered into this Agreement as of this May 1, 2020.

City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

DocuSigned by:
Kelly O'Dea
By: _____
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Title: Recreation Director

City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

DocuSigned by:
Sheryl Baime
By: _____
969A3E2EBA9E431...

Title: City Manager

City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

DocuSigned by:
Paul Wiseman
By: _____
21AA42DB33F7415...

Title: Mayor

Minnesota Off-Road Cyclists
PO Box 19520
Minneapolis, Minnesota 55419-0520

DocuSigned by:
Anne Clark
By: _____
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Title: President