

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

COUNTY OF NIAGARA, NEW YORK

AND THE

WESTERN NEW YORK MOUNTAIN BICYCLING ASSOCIATION

THIS AGREEMENT, made as of this ____ day of _____, 2009 by and between the COUNTY OF NIAGARA, NEW YORK, a municipal corporation organized and existing under the laws of the State of New York, having its principal office and place of business at the Niagara County Courthouse, Lockport, New York 14094 (hereinafter referred to as the "COUNTY") and the WESTERN NEW YORK MOUNTAIN BICYCLING ASSOCIATION, INCORPORATED a not-for-profit corporation organized and existing under the laws of the State of New York, having DOS mailing address, P.O. Box 1691, Amherst, New York, 14226 (hereinafter referred to as the "ASSOCIATION").

WITNESSETH:

WHEREAS, the County is the owner of a park and recreation area known as the "Bond Lake Park", located in Ransomville, NY and

WHEREAS, the County is agreeable to granting the Western New York Mountain Bicycling Association permission to develop new Mountain Bicycling trails at said park, and

WHEREAS, the project is as defined and set forth in the attachment hereto which reflects the whole project, and maps out section by section the proposed trails on which the work is to be performed, and who is to perform each part of the work, as described in Exhibit A,

NOW, THEREFORE, in consideration of the mutual benefits moving to each of the parties hereto, it is **AGREED** as follows:

1. Management: The County agrees to permit The Association to develop new trails ("The Trails") at Bond Lake Park, which upon completion will be open for use by bicycles. The Trails will be developed in accordance with Attachment A, which reflects the whole project, and maps out section by section The Trails that will be developed. The Association shall be solely responsible for managing and conducting all planning and construction of The Trails.

Only volunteers under the direction of The Association will perform any work on The Trails. The Association shall require all volunteers to sign a waiver holding the county harmless for any injuries, property loss or any other claims that may arise as a result of and during the course of the performance of the work on The Trails. The Association shall maintain and provide proof of liability insurance for any of the aforementioned claims that may arise out of and during the course of the development of The Trails together with a certificate of insurance naming The County as an additional insured. The Association's liability

insurance applies only to the trail building project and trail maintenance activities performed by The Association's volunteers and assigns. The Association's liability insurance does not apply to subsequent use of the trails constructed as a result of this agreement. The insurance shall be in effect before any work on The Trails begins and will be in effect at all times while trail work is being conducted. The Association further agrees to furnish the County with a copy of an insurance certificate evidencing insurance coverage provided for in this section of this section of the Agreement and containing a notation that the insurer will notify the County at least ten (10) days in advance of cancellation of the policy.

2. Assignment of Transfer: The Association shall not assign or transfer this Agreement or any interest herein without first receiving written approval from the County.

3. Changes: Changes in this Agreement shall be permitted only upon written Agreement or the County and the Association.

4. Severability: If any provision of the Agreement or the application of any provision hereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to their persons or circumstances shall not be affected unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement.

5. Entire Agreement: This Agreement supersedes all previous agreements and negotiations and constitutes the entire Agreement between the parties. Neither party shall be entitled to any benefits other than those specified herein. No oral statements prior or prior written material not specifically incorporated herein shall be of any force or effect, and no changes in or additions to the Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment to become effective on the date stipulated in such amendment. Each party specifically acknowledges that in entering into and executing this Agreement, it has relied solely upon the representations and agreements herein contained, and upon no others.

6. Binding Effect: Benefits: This Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors or assigns any rights, remedies, obligations of liabilities under of my reason of this Agreement.

7. Section Headings: The Section Headings in the Agreement are for convenience and ease of reference only, and shall not be deemed to alter or effect any provision hereof. Reference herein to numbered "Sections" or "Sub-Section", refers to sections and sub-sections of this Agreement.

8. Notice: All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery if delivered in person, or on the third business day after mailing, if mailed by certified mail, return receipt requested: (a) to the County of Niagara at : Niagara County Courthouse, 175 Hawley Street, Lockport, New York, 14094; and to the Association at PO Box 1691, Amherst, New York, 14226.

9. Duration: This Agreement shall be for a period of two (2) years from the date of signing. It shall be subject to renewal annually thereafter upon the agreement of the parties.

10. Termination: This Agreement shall be subject to termination upon thirty (30) days notice from either party.

11. Interpretation: The County and the Association each acknowledge that they have had the opportunity to participate in the drafting of this Agreement and to receive the benefit and otherwise to the effect that ambiguities contained in the Agreement shall be resolved against the drafting party shall not be invoked or relied upon in connection with the interpretation of this Agreement.

12. Cooperation: Each of the parties hereto shall use its best efforts to take or cause to be taken, and to cooperate with the other parties hereto, to the extent necessary with respect to all actions, and to do, or cause to be done, consistent with applicable law, all things necessary, proper to advisable to consummate and make effective the transactions contemplated by this agreement.

13. Authority to Execute: Each of the parties hereto shall use its best efforts to take or cause to be taken, and to cooperate with the other parties hereto, to the extent necessary, with respect to all actions, and to do, or cause to be done, consistent with applicable law, all things necessary, proper to advisable to consummate and make effective the transactions contemplated by this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written.

COUNTY OF NIAGARA, NEW YORK

WESTERN NEW YORK MOUNTAIN
BICYCLING ASSOCIATION

By: _____

By: _____

CLYDE L. BURMASTER, CHAIRMAN
NIAGARA COUNTY LEGISLATURE

KEVIN PRESTON, PRESIDENT
WNY MOUNTAIN BICYCLING ASSOC.

APPROVED:
NIAGARA COUNTY ATTORNEY

RES.# PW-