

MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** (the "Memorandum") is entered into as of December 8, 2021 by and between the City of Fort Wayne **Board of Park Commissioners** ("BPC") and **3 Rivers Velo Sport, Inc.**, an Indiana non-profit corporation ("3RVS"). In consideration of the mutual promises and covenants contained herein, BPC and 3RVS (each a "Party" and together, the "Parties") agree as follows:

Section 1 License

Subject to the terms and conditions contained herein, BPC grants to 3RVS a non-exclusive license to use that portion of the land located within the boundaries of Franke Park and commonly known as the Franke Park Trails (as shown on Exhibit A attached hereto and incorporated herein) (the "Trails") for the specific purpose of engaging in mountain biking activities in accordance with and subject to the terms and conditions of this Memorandum ("License").

Section 2 Terms

Subject to the earlier termination of this Memorandum as provided herein, the term of the License will commence on January 1, 2022 and end on December 31, 2024 (the "Term"). Provided 3RVS is not then in default hereunder, the Term may be extended for one (1) additional three (3) year period upon the written agreement of the Parties.

Section 3 Waiver of Event Fees

In consideration of the obligations to be performed by 3RVS hereunder, BPC agrees to waive the trail fees which 3RVS would otherwise be charged for the use of the Trails during the Term (the "Trail Fees").

Section 4 Maintenance, Repair and Improvement of the Trails

3RVS agrees during the Term to perform normal and customary maintenance and repair of the Trails at 3RVS cost in order that the Trails are at all times in the proper condition to permit safe and secure hiking, running and mountain biking activities. 3RVS's maintenance and repair shall be and subject to BPC's reasonable approval.

All improvements made by 3RVS to the Trails shall be at 3RVS's cost unless otherwise agreed to in writing by BPC. The design and construction of all such improvements shall be subject to BPC's prior written approval and shall comply with all federal, state and municipal statutes, codes and regulations and ordinances. Upon the expiration or earlier termination of this Memorandum, all improvements to the Trails made by 3RVS shall be the sole and exclusive property of BPC.

Section 5 Additional Obligations of 3RVS

As additional consideration for the waiver of Event Fees by the BPC as set forth in Section 3 hereof, 3RVS will perform the following obligations during the Term:

- (a) Maintain its currently recognized designation as an entity organized under Section 501(c)(7) of the Internal Revenue Code.
- (b) Maintain its non-profit corporate status under federal and Indiana law.
- (c) Keep the Trails clear of waste and not permit the deterioration or destruction of the Trails.

(d) Regularly inspect the Trails and notify BPC of any issues or hazards which 3RVS is unable to promptly remedy.

(e) Provide BPC with the following reports in form and substance acceptable to BPC:

(i) Trail Inspection and Maintenance Report which contains a summary of inspections of and corrective actions for the Trails performed by 3RVS for the prior six (6) month period. This Report shall be submitted semi-annually or more frequently if requested by BPC.

(ii) Annual Expenditures Report which documents the prior twelve (12) months of expenditures by 3RVS for the maintenance, repair and improvement of the Trails. This Report shall be submitted in December of each year during the Term.

(iii) Any additional financial reports or other reports that BPC may reasonably request. Such reports will be submitted to BPC within thirty (30) days of BPC's written request therefor to 3RVS.

(f) Not take or permit the taking of any action which would cause the real estate on which the Trails are located to be encumbered in any manner.

(g) Maintain general hazard and extended coverage insurance in the amount of \$500,000 per occurrence and \$2,000,000 cumulatively with companies approved by BPC, which policies shall name BPC and the City of Fort Wayne, Indiana as additional insureds and loss payees thereon and shall provide that BPC shall receive thirty (30) days prior written notice in the event any such policy is cancelled, expires or will not be renewed.

3RVS shall provide certificates of such insurance for all such policies to BPC during the Term. In addition, all racing events conducted or permitted by 3RVS on the Trails during the Term will be insured by the party or parties sponsoring each such event in amounts and upon terms approved by 3RVS and BPC and will name 3RVS, BPC, and the City of Fort Wayne as additional insureds and loss payees thereon.

Section 6 Obligations of BPC

BPC will perform the following obligations during the Term:

(a) Promote the Trails in brochures, schedules, press releases and similar literature created by BPC.

(b) Permit the use of the Trails by 3RVS as set forth in this Memorandum provided 3RVS is not in default hereunder.

(c) Support 3RVS, when and as deemed appropriate and reasonable by BPC, in 3RVS's use of the Trails in accordance with the terms of this Memorandum.

(d) Provide resources; IE. Arborist, materials and / or equipment within reason.

Section 7 Scheduling

Representatives of the Parties will meet as needed, and at least annually during the Term to discuss the scheduling of races and events for the Trails for the following year. The Parties agree to work together to ensure that the scheduling of all races and events is in the best interest of the Parties.

The scheduling of races and events shall be subject to the rights granted to the Fort Wayne Parks and Recreation Department (the "Department") set forth in Section 12 hereof. In the event that any race or event is not known and disclosed at any such meeting, the informing Party will notify the other Party of such race or event as soon as the same is known to the informing Party. In the event a conflict arises between the Parties regarding the holding or scheduling of a race or event, BPC's decision regarding the same shall be binding on the Parties.

Section 8 Independent Contractor

3RVS shall at all times during the Term serve as an independent contractor hereunder. In no event will 3RVS be deemed to be a partner, joint venture with or agent of BPC. All financial obligations and all other obligations and commitments incurred or made by 3RVS are the sole responsibility of 3RVS. 3RVS shall have no authority to enter into any contract or undertake any commitment or obligation for, in the name of or on behalf of BPC.

Section 9 Termination for Failure to Cure Event of Default

This Memorandum shall terminate immediately with no further action by BPC if an Event of Default occurs by 3RVS and said Event of Default is not cured by 3RVS within 10 days following written notice of the Event of Default by 3RVS, provided that if an Event of Default (as hereafter defined) by 3RVS is one that cannot be cured within 10 days following such notice (as determined solely by BPC), 3RVS will not be considered in default so long as:

- (a) 3RVS has commenced to cure such default within such 10-day period;
- (b) such default have a substantial probability of been cured within 30 days from the date of default (as determined solely by BPC); and
- (c) 3RVS diligently proceeds to cure such default and such default is cured within such 30 day period (as determined solely by BPC). An Event of Default means:
 - (i) Failure of 3RVS to perform or comply with any of the obligations of 3RVS as set forth in Sections 4 and 5 hereof; or
 - (ii) Failure of 3RVS to perform or comply with any other covenants or comply with any other terms and conditions set forth in this Memorandum.
- (d) This Memorandum maybe terminated by 3RVS upon 30 days prior written notice to Parks in the event Parks engages in activities which prevent 3RVS from using the Trails for mountain biking activities and Parks fails to cease such activities to the reasonable satisfaction of 3RVS with such 30 day period.

Section 10 Termination for Convenience

This Memorandum may be terminated by either Party at any time during the Term without cause upon thirty (30) days written notice to the non-terminating Party.

Section 11 Immediate Termination

BPC may terminate this Memorandum immediately upon notice to 3RVS if in BPC's sole opinion any one or more of the following occurs:

- (a) Misconduct or inappropriate behavior by any person or entity associated or under the supervision, management or control of 3RVS which in BPC's sole opinion is in any manner harmful or detrimental to the reputation of BPC or its Park system or which in any manner places any person or property at risk;
- (b) Indictment, charge, or conviction of any officer or member of 3RVS or any person associated with 3RVS for any offense punishable under Indiana Law as a felony;
- (c) Theft, dishonesty or misrepresentation by any officer or member of 3RVS, whether or not a criminal charge or civil action is brought with respect to such action; or any falsification of records or documents by, at the direction of or with the knowledge of 3RVS.

Section 12 No Exclusive Right - No Lease

- (a) The Parties expressly agree that this Memorandum shall not be construed as a lease of the Trails to 3RVS by BPC. During all races and events, including races and events conducted or sponsored by 3RVS, the Trails shall be closed to the general public and open only to the participants in such events. Subject to the consent of the Manager of Athletics for the Department, 3RVS may limit or prohibit public use of the Trails when 3RVS determines that weather conditions may cause Trails to be hazardous or may damage the Trails, by posting a sign regarding weather conditions at the entrance to the Trails.
- (b) Any other term or provision of this Memorandum notwithstanding:
- (i) The Department reserves the right to hold or sponsor races and events on the Trails on the dates and times disclosed in advance to 3RVS. BPC may elect to allocate a portion of the proceeds realized from such races or events to or for the benefit of 3RVS.
 - (ii) The Department reserves the right to permit the public to use the Trails on such dates and at such times the Department determines upon advance notice to 3RVS.

Section 13 Website

3RVS currently maintains a website located at www.3RVS.com which website contains a link to the Department. 3RVS shall maintain on its website information about the Trails and/or mountain biking and related activities, and will not use the website for any purpose which could be deemed inappropriate, objectionable, or harmful to the reputation of BPC and the Parks system as determined solely by BPC.

Section 14 Release and Indemnity

3RVS hereby forever waives and releases BPC, the City of Fort Wayne and their respective officers, directors, members, employees, representatives, departments and divisions (each a "Releasee" and together the "Releasees") from any and all claims, demands, charges, liabilities, obligations, judgments, costs and expenses, both known and unknown and whether now existing or hereafter arising, which are related to, connected with or in any manner arise out of the exercise of 3RVS' rights and the performance of 3RVS' obligations under this Memorandum, but excluding therefrom any claims ensuing from the negligent or intentional acts or omissions of BPC which prevent or interfere with the exercise of 3RVS's rights and the performance of 3RVS obligations hereunder.

3RVS shall indemnify and hold harmless the Releasees collectively and each Releasee individually from and against any and all claims, demands, charges, causes of action, obligations, liabilities, judgments, costs and expenses (including reasonable attorney fees and costs) which are related to, connected with or in any manner arise out of the exercise of 3RVS' rights and the performance of 3RVS' obligations under this Memorandum including, without limitation, 3RVS' licensing, use, management, operation, and control of the Trails, and the conducting or sponsoring of races or other events on the Trails by 3RVS; provided that such indemnifications shall exclude any claims arising from the negligent or intentional acts or omissions by BPC in connection with the management use, operation and control of the Trails. The covenants and obligations of 3RVS under this Section 14 shall survive the termination of this Memorandum for any reason.

Section 15 Miscellaneous

(a) This Memorandum is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. 3RVS may not assign this Memorandum without the prior written consent of BPC, which consent may be withheld in the sole discretion of BPC.

(b) Headings are for reference only, and do not affect the provisions of this Memorandum.

(c) The failure or omission of either Party to enforce any of its rights or remedies upon any breach of any of the covenants, terms or conditions of this Memorandum will not bar or abridge any of said Party's rights or remedies upon any subsequent breach or default.

(d) All notices issued hereunder shall be in writing and shall be served upon: BPC at 705 E. State Boulevard, Fort Wayne, Indiana 46805, and 3RVS at P.O. Box 11391, Fort Wayne, Indiana 46857. All such notices shall be personally delivered or mailed (by certified mail, postage prepaid, return receipt requested. However, if either Party attempts to deliver notice by certified mail and the addressee fails to claim or accept such mail, such notice may be delivered by first class mail.

(e) If any term or provision of this Memorandum is to any extent held invalid or unenforceable, the remaining terms and provisions of this Memorandum will not be affected thereby, but each term and provision of this Memorandum will be valid and be enforced to the fullest extent permitted by law.

(f) This Memorandum will be construed and enforced in accordance with the laws of the State of Indiana.

(g) The individuals executing this Memorandum on behalf of the Parties hereto each certifies and warrants that such individual has been duly authorized to so execute by the board of directors of such Party.

(h) This Memorandum contains the entire agreement of the Parties and may not be varied or amended except by a written instrument signed by the Parties.

(i) Upon written notice to 3RVS, BPC may designate its Director, Deputy Director of Park Planning and Development or Deputy Director of Recreation to conduct all matters under this Memorandum on behalf of BPC until receipt of a subsequent notice from BPC.

* * * * *

IN WITNESS WHEREOF, 3RVS and the BPC have caused the signatures and seals of their respective representatives to be hereunto affixed as of the date first hereinabove written, Board of Park Commissioners

Richard Samek, President

Pamela Kelly, M.D., Vice-President

William Zielke, Commissioner

Justin Shurley, Commissioner

Steve McDaniel, Secretary

BOARD OF PARKS COMMISSIONERS OF THE CITY FORT WAYNE

3RVS: 3 Rivers Velo Sport, INC,

By: _____
John Grabowski, President

By: _____
Randy Rozewicz, Off Road Director

