

## REVOCABLE LICENSE

THIS AGREEMENT, is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **County of Erie**, a municipal corporation, having its principal office at 95 Franklin Street, Buffalo, New York 14202 (hereinafter "COUNTY"), and **Western New York Mountain Bicycling Association** (hereinafter "WNYMBA").

**WHEREAS**, the COUNTY's Department of Parks, Recreation and Forestry currently permits mountain biking on designated trails at Sprague Brook Park and Sgt. Mark A. Rademacher Memorial Park / Hunters Creek Park; and

**WHEREAS**, the WNYMBA is willing to enter into an agreement with the COUNTY to take over the maintenance aspect of these designated trails, including, but not limited to, routine maintenance, repairs, signage, mapping and trail volunteer days; and

**WHEREAS**, the COUNTY wishes to grant the WNYMBA a revocable permit to allow for the development and maintenance of designated Mountain Biking Trails located on COUNTY parkland.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the COUNTY and WNYMBA (collectively the "Parties") agree as follows:

1. **GRANT OF PERMISSION**: In consideration of the WNYMBA's promises herein, COUNTY hereby grants permission, revocable and terminable as hereinafter provided, to WNYMBA to enter onto the land of COUNTY for the purposes of development and maintenance of shared use trails (hereinafter "Trails") located within COUNTY parks, on the terms and conditions set forth herein.
2. **PREMISES**: COUNTY hereby grants to the WNYMBA the right, license and privilege of maintaining the Trails located on COUNTY parkland, described on Exhibit "A," attached hereto and made a part hereof.
3. **ORGANIZATION'S RESPONSIBILITY**: WNYMBA further agrees:
  - A. The WNYMBA will be responsible for maintaining the Trails, including, but not limited to, routine maintenance, repairs, signage, and the creation of Trail maps. Such actions shall be subject to all State and Local rules, regulations and laws applicable to COUNTY parkland. The WNYMBA shall also be responsible for the organization of Trail volunteer days.
  - B. Appropriate traffic control and information signage with respect to use of the Trails, shall be created, installed and maintained on COUNTY parkland by the

WNYMBA consistent with industry standards. Any and all signs, pamphlets, and maps must be submitted to the COUNTY's Commissioner of Parks, Recreation and Forestry (hereinafter "Commissioner") for approval prior to installation and/or circulation.

- C. As a member of the International Mountain Bicycling Association (IMBA), the WNYMBA shall receive all proper training and follow guidelines as set forth by IMBA.
  - D. Prior to any maintenance activities (including but not limited to minor trimming of branches, clearing of brush, culvert & bridge replacement/repair, installation of signage, etc.) on COUNTY parkland, the WNYMBA will provide written notification to the Commissioner at least 48 hours in advance. Contained within the same notification, use of any vehicles and/or equipment used to conduct trail maintenance must be requested and approved by the Commissioner. Said notification must include the location, date and time of the scheduled maintenance.
  - E. If at any time the WNYMBA would like to realign existing sections of Trails, or perform maintenance work that would include removing trees with a four (4) inch at ground diameter, the WNYMBA must first provide written documentation to the Commissioner requesting same. In such event, a field visit and verbal confirmation by the County Forester will suffice as approval to commence work.
  - F. The WNYMBA shall promptly report any and all unusual incidents directly to the Commissioner. Unusual incidents include, but are not limited to, damage to COUNTY property, accidents, personal injuries and emergencies involving medical personnel. Under no circumstance is it to be presumed that the COUNTY will assume any liability merely as a result of being notified of an accident, injury or incident.
4. **CREATION OF NEW TRAILS:** The WNYMBA may neither develop extensions to existing Trails listed on Exhibit "A", nor create additional Trails, without obtaining prior written consent of the Commissioner. All requests by the WNYMBA shall be in writing and shall contain all pertinent plans and specifications. Any and all alterations, adjustments, additions and/or improvements shall, at the COUNTY's sole discretion, remain the exclusive property of the COUNTY or be removed by the WNYMBA, upon COUNTY's request. All such alterations or improvements shall be made at the sole cost and expense of the WNYMBA.
5. **INSPECTION:** The COUNTY reserves the right to enter upon said Trails at all reasonable times and hours to examine same to determine if the WNYMBA is properly maintaining the premises according to this Agreement. In the event a

defect is discovered, the COUNTY will provide the WNYMBA a reasonable opportunity to cure any such defect before taking further action.

6. **TERMINATION**: The Parties acknowledge that this License Agreement is merely a right to use, and grants no estate in the premises. The COUNTY, upon thirty (30) days' notice to the WNYMBA, may terminate this Agreement in whole or in part when the COUNTY deems it to be in its best interest. Upon receipt of notice that the COUNTY is terminating this Agreement, the WNYMBA shall stop work immediately. It is expressly understood by the Parties that the WNYMBA is receiving from COUNTY a revocable license which may be terminated at any time by COUNTY for any or no cause whatsoever.
7. **INSURANCE**: The WNYMBA shall maintain liability insurance for its own protection against any injuries, accidents or causes of action, of every nature and kind whatsoever that may arise from activities under this Agreement. The WNYMBA agrees to procure and maintain the following insurance coverage naming the COUNTY as additional insured: Commercial General Liability – with a minimum combined single limit of bodily injury and property damage of \$1,000,000 per occurrence and general aggregate of \$2,000,000. The Organization shall provide a Certificate of Insurance as evidence of such coverage(s) on the County of Erie Standard Insurance Certificate or its equivalent.

In the event that the WNYMBA utilizes vehicles, whether owned, leased, hired/borrowed or non-owned, in the performance of the services provided pursuant to this Agreement, the WNYMBA agrees to procure and maintain insurance coverage.
8. **INDEMNIFICATION**: The WNYMBA shall indemnify, defend and hold harmless the COUNTY, its agents, employees, representatives and successors against any and all claims, losses, damages and injuries including death, property damage, lawsuits or other disputes, which result from the negligent acts or omissions by the WNYMBA pursuant to this Agreement.
9. **INDEPENDENT CONTRACTOR**: It is mutually understood and agreed by the Parties that an independent contractor relationship be hereby established under the terms of this Agreement and that the WNYMBA and any employees of the WNYMBA are not, nor shall they be deemed to be, employees of the COUNTY.
10. **NOTICES**: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the COUNTY:

Commissioner of Parks, Recreation & Forestry  
County of Erie  
95 Franklin Street, Rm. 1254  
Buffalo, New York 14202

with a copy to:

Erie County Attorney  
95 Franklin Street, Rm. 1634  
Buffalo, New York 14202

To WNYMBA:

Western New York Mountain Bicycling Association  
PO Box 743  
Orchard Park, NY 14127

Or at any such other address or such other person as Parties may designate.

11. **SEVERABILITY:** If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected by such finding, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
12. **GOVERNING LAW:** This Agreement shall be governed by and constructed in accordance with the law of the State of New York. In addition, the Parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.
13. **ENTIRE AGREEMENT:** This Agreement and the Exhibits attached hereto constitute the sole and complete agreement and understanding of the Parties with respect to the rights granted herein and supersede all prior written or oral agreements and understandings with respect to the rights granted herein.
14. **AMENDMENT:** This Agreement shall not be changed, amended or altered in any way except in writing and executed by both Parties.
15. **ASSIGNMENT:** The WNYMBA shall not assign this Agreement without prior written consent of the COUNTY.
16. **WAIVER:** Failure on the part of the COUNTY to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall



not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect.

17. **APPROVAL:** This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF,** the Parties have executed and delivered this Agreement as of the Effective Date.

**COUNTY OF ERIE**

**WESTERN NEW YORK  
MOUNTAIN BICYCLING  
ASSOCIATION**

By: Richard M. Tobe 11/2/13  
Name: Richard M. Tobe  
Title: Deputy County Executive

By: Ben Claus  
Name: Ben Claus  
Title: President  
Date:

APPROVED AS TO CONTENT

By: Troy P. Schinzel  
Name: Troy P. Schinzel  
Title: Commissioner of Parks, Recreation & Forestry

APPROVED AS TO FORM

By: Kristen M. Walder  
Name: Kristen M. Walder  
Title: Assistant County Attorney  
Document No.: 13-780-PR  
Date: 10/31/13

STATE OF NEW YORK    )  
  ):SS.  
COUNTY OF ERIE        )

On the 10<sup>th</sup> day of October in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Benjamin D. Clauss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Debra M. Held  
\_\_\_\_\_  
(Notary Public)  
DEBRA M. HELD 018  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Aug. 31, 2017

DEBRA M. HELD (018) - 00556  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Aug. 31, 2017