

**USE AND MAINTENANCE AGREEMENT (PERMIT)  
BETWEEN  
CITY AND BOROUGH OF SITKA, ALASKA  
AND  
SITKA CYCLING CLUB  
FOR  
SINGLE TRACK BIKE TRAILS ALONG THE SITKA CROSS TRAIL**

This Permit is made and entered into effective April 1, 2020, by and between the City and Borough of Sitka, Alaska (hereinafter "Permitter"), and Sitka Cycling Club, an association of volunteers (hereinafter "Permittee").

**Section 1. Definitions.**

The following definitions shall apply herein:

- A. "Permittee" means Sitka Cycling Club (hereinafter "SCC");
- B. "Permitter" means the City and Borough of Sitka, Alaska (hereinafter "CBS");
- C. "User" or "Users" refers to the Permittee or SCC or single track bikers;
- D. "Administrator" means the Municipal Administrator of the City and Borough of Sitka, Alaska, or designee;
- E. "Permit" means this instrument;
- F. "Maintain" means to keep in an existing state, preserve from failure as described in Section 3 below; and
- G. "Premises" as identified in Section 2 below.

**Section 2. Premises.**

A. Permitter hereby grants to the Permittee a permit to use and maintain the Premises for single track bikers. The Premises is located in Sitka, Alaska, along the Sitka Cross Trail, on locations as drawn on the attached drawing(s). Permittee may not exclude the general public from accessing and utilizing the Premises unless a permitted race or competition is taking place.

B. This document is intended to be a use and maintenance agreement for Permittee for the Premises in accordance with the terms set forth herein. Permittee shall acquire no interest in the Premises or any other real or personal property of Permitter by virtue of this Permit, nor shall Permitter acquire any interest in the personal property, equipment or materials of Permittee that have not been permanently affixed to the Premises.

Section 3. Term.

A. The term of this Permit shall not exceed five (5) years. Said term shall commence April 1, 2020, and end on March 31, 2025, unless earlier terminated pursuant to the terms of this Permit.

B. Prior to initial occupancy and/or commencement of use, Permittee shall participate in an inspection of the Premises with the Permitter for the purpose of identifying the condition of the Premises and permitted areas of use.

Section 4. Maintenance.

A. SCC will maintain the Premises, such as is reasonable and necessary for use of the Premises by Users. SCC will establish and follow a very general maintenance program, focusing primarily on the seasonal cleanup, and in line with the established priorities.

B. Priority will always be given to obvious hazards, or conditions that could potentially pose risk to the safety of Users. Such conditions cannot be simply enumerated or defined but must be evaluated in the field on a case-by-case basis.

C. Regular maintenance will consist of clearing (deadfall and encroaching vegetation), basic tread smoothing and repairs, bridge and other structure inspection and repair, drainage feature installation and maintenance/repair, and trail reroutes.

D. Deferred maintenance will consist of all work that is not necessary for immediate trail function, but that should be completed in order to assure long-term trail or structure viability.

Section 4. Nonexclusivity.

Permittee agrees and understands that this Permit is nonexclusive. Permitter may grant rights to one or more other user groups, or others generally, to utilize the Premises and facilities on Permitter's property. In addition, Permittee agrees to cooperate with Permitter and other permittees in the avoidance or mitigation of interference of maintenance among permittees of the Premises.

Section 5. Revocation/Termination/Expiration.

This Permit may be revoked:

A. By mutual consent of the parties.

B. For the convenience of either party, provided that the revoking party notifies the other in writing of its intent to revoke under this paragraph at least ten (10) days prior to the effective date of the revocation.

C. For cause, by either party where the other party fails in any material way to perform its obligations under this Permit, provided however, that as a condition of the exercise of its right of revocation under this paragraph, the revoking party shall notify the other party of its

intent to revoke this Permit and with reasonable specificity the grounds therefore, and the defaulting party shall have within ten (10) days of receiving notice either to cure the default complained of, or to commence and proceed with diligence to cure the default.

Section 6. Duties Upon Revocation/Expiration/Termination.

A. Upon the effective date of revocation, termination or expiration of this Agreement, Permittee shall immediately cease use and maintenance of the Premises and remove all equipment and personal property from the Premises, and if applicable, turn over all project, design, and construction documents to Permittor. If after a separately agreed upon and reasonable period, provisions for the removal of such equipment and personal assets are not made, such shall become the property of Permittor which may have such property removed at Permittee's expense.

B. Structures, improvements, and personal property of Permittor which are altered or damaged by Permittee, its members, employees, and guests, normal wear and tear excepted, shall be replaced, restored, or repaired by Permittee to the satisfaction of Permittor, with such work as may be required to be commenced within thirty (30) days with written notice to the Permittee by Permittor.

C. Upon expiration or termination of this Permit, Permittee shall participate in an inspection of the Premises with the Permittor for the purpose of a walkthrough of the Premises. Permittee's personal assets and inventory shall have been removed from the Premises, unless arrangements are made with the Permittor to allow some storage on the Premises. The Permittee shall leave the Premises in a neat, clean, and undamaged condition.

Section 7. Reporting of Accidents.

Permittee shall notify the Administrator of any injury or damage incurred by persons or property on the Premises as soon as possible, but in no case shall it be later than the first working day following Permittee learning of such injury or damage.

Section 8. Risk of Loss.

During the term of this Permit, Permittee shall bear the risk of loss for any improvements and fixtures installed or constructed on the Premises, and for any personal property the Permittee brings to the Premises in the event that such improvements, fixtures, or personal property are damaged or destroyed in whole or in part, by whatever cause.

Section 9. Right of Entry.

Permittor reserves the right to enter the Premises at all reasonable times and to exercise all the rights and privileges of a landowner, including the right to permit other parties to maintain the Premises, and Permittee shall allow Permittor to do so.

Section 10. No Property Interest.

This Permit is intended to be a permit for Permittee to use and maintain the Premises in accordance with the terms set forth herein. Permittee shall acquire no interest in the Premises or any other real or personal property of Permittor by virtue of this Permit.

Section 11. Capital Improvements / Ownership of Improvements to the Premises.

A. Any capital improvements to the Premises constructed or installed by Permittee during the term of this Permit, shall become the property of Permittor upon the completion of construction.

B. Permittee may alter or improve the Premises by the addition of temporary alterations. However, before any alterations or improvements are made, they must be approved and designated as temporary alterations in writing by Administrator. Upon revocation or expiration of this Permit, Permittor may retain for its own benefit any such decorations, alterations, or improvements upon mutual consent of the parties.

C. Permittee shall remove those temporary improvements to the Premises to which Permittee may be entitled under subparagraph A of this section within ten (10) days after termination or expiration of this Permit. In the event that Permittee fails to comply with the terms of this section, Permittor shall be entitled to retain the improvements or remove them at Permittee's expense.

Section 12. Permit Requirements.

Permittee shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this Permit. Permittee agrees to comply with all applicable laws, ordinances, rules and regulations, together with any policies, procedures and conditions of permit issuance, and any violation by Permittee shall be sufficient grounds for immediate revocation of this Permit. Permittee shall pay all taxes, if any, pertaining to its performance under this Permit.

Section 13. Notices.

Any notice required pertaining to the subject matter of this Permit shall be personally delivered, sent via facsimile, e-mail, or mailed by prepaid first class, registered or certified mail, return receipt requested to the following addresses:

PERMITTOR:  
Municipal Administrator  
100 Lincoln Street  
Sitka, Alaska 99835  
Telephone: (907) 747-1808  
Facsimile: (907) 747-7403

PERMITTEE:

Doug Osborne  
Sitka Cycling Club  
404 Hollywood Way  
Sitka, Alaska 99835  
Telephone: (907) 738-8734

\*Notices are effective upon the earlier of proof of receipt, proof of good transmission (facsimiles and emails) or three days after mailing.

Section 14. Liens.

Permittee shall not suffer any liens or encumbrances to be levied upon the Premises, or any other land owned or controlled by Permittor. Permittee shall hold Permittor harmless from any such actions and be responsible for payment of any related costs that Permittor may incur.

Section 15. Environmental.

A. Permittee agrees and covenants not to use, store or abandon any toxic wastes, hazardous chemicals, or any other regulated substances, which in any way may create liability for contaminated soils or waters, without the prior written consent of Permittor. Permittee shall not apply chemicals/pesticides on or around the Premises. Should Permittee breach this clause, the hold harmless provisions hereof shall apply and Permittor may independently demand and require Permittee to promptly cure any soil or water contamination or other damage at Permittee's expense. Permittor may also take remedial steps or seek administrative or judicial relief and seek from Permittee recovery of costs, including attorney fees and court costs, associated with any remedial, administrative or judicial action.

B. Permittee may not store or apply any other chemicals or pesticides on the Premises. Unauthorized application of chemicals or pesticides in any form, other than approved by Permittor, may immediately void this Permit. Unauthorized application shall be referred to the State of Alaska Department of Environmental Conservation office.

C. It is the Permittee's responsibility to comply with OSHA requirements, as applicable, within the snack shacks/buildings and connexes.

Section 16. Security of Premises/Safety.

Permittee shall have sole responsibility for safety, including safe conduct and safe maintenance of Premises, during times of scheduled maintenance, including those times Permittee schedules the Premises for maintenance by others. Permittee agrees to correct any safety concerns in a prompt manner. Permittee shall secure all materials and/or equipment that might create an attractive nuisance when not in maintenance.

Section 17. Signs.

Permittee shall not place or erect signs, poles, lights or advertising devices on the Premises, without prior written approval by Permittor.

Section 18. Quiet Possession.

Permittee, upon observing the conditions and terms of this Permit, shall and may have at all times during the term hereby granted peaceful and quiet enjoyment and possession of the Premises, except as otherwise set forth in this Permit.

Section 19. Personnel.

A. Permittee shall notify Permittor in writing, within 10 days of appointment to or resignation from, the key positions and officers of the organization.

B. The staff and personnel involved in this agreement will at all times represent all parties to this agreement in a professional manner and reflect the commitment of all parties to quality services and customer satisfaction.

E. When Permittee is considering holding a special event at the Premises, the Permittee will need to apply for a special event permit through the Parks and Recreation Department. Special event fees may apply to the Permittee. Other permits required by the City and Borough of Sitka may also be required. Separate fees for permits related to special events may be applicable. Permittee is aware that application should be made at least 30 days prior to the date they would like to have a special event, and that Permittor does not guarantee that a special event permit will be issued to Permittee.

Section 20. Political Activity.

There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office as part of or in connection with this Permit, nor shall any of the user fees be used for such purposes.

Section 21. Conflict of Interest

Permittee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Permittee further represents and warrants that in the performance of this agreement, no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City and Borough of Sitka, nor any person whose salary is payable, in whole or in part shall take place in any decision relating to this agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested;

nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

**PART II**  
**GENERAL PROVISIONS**

Section 1. Nonwaiver.

The failure of either party at any time to enforce a provision of this Permit shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Permit or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 2. Amendment.

A. This Permit shall only be amended, modified or changed in writing, and executed by the authorized representatives of the parties.

For the purposes of amendment of this Permit, the only authorized representatives of the parties are:

Permittee: President of SCC or authorized designee.

Permitter: Municipal Administrator, or authorized designee.

B. Any attempt to amend, modify, or change this Permit by either an unauthorized representative or unauthorized means shall be void.

Section 3. Jurisdiction; Choice of Law.

Any civil action rising from this Permit shall be brought in the Superior Court for the First Judicial District of the State of Alaska at Sitka. The laws of the State of Alaska shall govern the rights and obligations of the parties under this Maintenance Agreement.

Section 4. Severability.

Any provision of this Permit decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Permit.

Section 5. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Permit shall supersede all previous communications, representations or agreements, either oral or written between the parties hereto.

Section 6. Liability.

Permitter and Permittee shall each indemnify, defend, save and hold the other harmless from any and all claims, lawsuits, or liability, including attorney's fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property

due solely to a wrongful or negligent act, error, or omission of the Permitter, its agents, employees, or invitees or Permittee, its agents, employees or invitees, respectively, occurring during the course of Permittee's maintenance of the Premises pursuant to this Permit.

Responsibility for all claims, lawsuits, or liability, including attorney's fees and costs, resulting from loss, damage or injury to persons or property allegedly arising from the wrongful or negligent acts, errors or omissions of both Permitter, its agents, employees or invitees and Permittee, its agents, employees or invitees, shall be apportioned on the basis of fault in accordance with AS 09.17.080.

Section 7. Relationship of Parties.

Permittee shall perform its obligations hereunder as an independent contractor. Permitter may administer this Permit and monitor Permittee's compliance with its obligations hereunder. Permitter shall not supervise or direct Permittee other than as provided in this section.

Section 8. Nondiscrimination.

A. Permittee shall not discriminate against any person wishing to join Permittee's organization because of race, color, religion, national origin, ancestry, age, sex, marital status or mental or physical handicap.

B. Permittee shall not discriminate against any person wishing to maintain the Premises because of race, color, religion, national origin, ancestry, age, sex, marital status or mental or physical handicap.

C. Permittee shall comply with all applicable Federal, State and Municipal laws concerning the prohibition of discrimination.

Section 9. Permits, Laws, Taxes.

Permittee shall acquire and maintain in good standing, all permits, licenses, and other entitlements necessary to its performance under this Permit. All actions taken by Permittee under this Permit shall comply with all applicable constitutions, ordinances, rules, and regulations. Permittee shall pay all taxes pertaining to its performance under this Permit.

Section 10. Condition and Status of Premises.

Permittee acknowledges that Permittee has examined the Premises and accepts same in its present condition without any representation or warranty expressed or implied in fact or by law, by Permitter as the title, nature, condition or usability of the Premises for the purposes set forth in this Permit, all of said warranties being hereby expressly disclaimed by Permitter.



Section 11. Surrender of Premises.

At the expiration of the Permit term, upon revocation of the Permit, upon re-entry by Permittor or otherwise, Permittee shall peacefully and quietly surrender the Premises within ten (10) days, in as good a condition as it was at the beginning of the initial term, reasonable maintenance and wear and damages by the elements excepted.

Section 12. Assignments.

Any assignment by Permittee of its interest in any part of this Permit or any delegation of duties under this Permit shall be void, and any attempt by Permittee to assign any part of its interest or delegate duties under this Permit shall give Permittor the right to immediately revoke this Permit without any liability for work performed, or without any other action required on Permittor's part.

IN WITNESS WHEREOF the parties have executed this Permit on the date and at the place listed below.

**CITY AND BOROUGH OF SITKA, ALASKA**

**SITKA CYCLING CLUB**

\_\_\_\_\_  
By: Hugh Bevan  
Its: Interim Municipal Administrator

\_\_\_\_\_  
By: Doug Osborne  
Its: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**[ACKNOWLEDGEMENTS ON NEXT PAGE]**

