

POSSIBLE MOTION

I MOVE TO approve a Memorandum of Understanding between the City and Borough of Sitka and the Sitka Cycling Club for a bicycle pump track near the skate park below the intersection of Halibut Point Road and Katlian Street and authorize the Municipal Administrator to execute the document.



CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

MEMORANDUM

To: Mayor Eisenbeisz and Assembly Members

From: John Leach, Municipal Administrator

Date: June 8, 2022

Subject: Memorandum of Understanding with the Sitka Cycling Club

Background

The Sitka Cycling Club (SCC), an association of Sitka volunteers, has approached the City and Borough of Sitka (CBS) about constructing and maintaining a bicycle pump track near the skate park in the airplane turnaround complex.

A pump track is a perpetual loop that can be ridden without peddling, consisting of rollers and berms. It can provide a playground for kids and adults alike, from beginners to professionals and provides a community with a sustainable and fun activity.

Analysis

The Public Works Department has reviewed the proposed track concept and are comfortable with the proposal and the selected location.

The bicycle pump track constructed as part of the project is intended to be safe, accessible, low difficulty, low maintenance and designed to excite and engage all levels of bike riders.

Fiscal Note

All costs of construction and maintenance will be borne by Sitka Cycling Club.

Although there will be a few hours of coordination in the field with the Public Works Department, this will not be a significant budget impact to the CBS.

Recommendation

Approve the Memorandum of Understanding between the City and Borough of Sitka and the Sitka Cycling Club.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY AND BOROUGH OF SITKA AND SITKA CYCLING CLUB
FOR A BICYCLE PUMP TRACK**

Re: The construction and maintenance of a bicycle pump track by the Sitka Cycling Club on land owned by the City and Borough of Sitka at a location near the skate park below the intersection of Halibut Point Road and Katlian Street.

This Memorandum of Understanding (“MOU”) is entered into by and between the City and Borough of Sitka (“CBS”) and the Sitka Cycling Club (“SCC”), hereinafter collectively referred to as the “Parties.” The bicycle pump track referenced above is hereinafter referred to as the “Project.”

Article I – Purpose and Intent

The purpose of this MOU is to establish and define the rights, responsibilities, and obligations between the Parties with respect to the Project.

The bicycle pump track, constructed as part of the Project, is a perpetual loop that can be ridden without peddling, which consists of rolling surfaces and strategically placed berms. It is a playground from children and adults alike, from beginners to professionals. It provides the community with a sustainable and fun activity. The bicycle pump track constructed as part of the Project is intended to be safe, accessible, low difficulty, low maintenance and designed to excite and engage all levels of bike riders.

Article II – Roles and Responsibilities

The Parties understand and agree as follows:

A. CBS shall:

1. Identify staff (by name, address, email, phone numbers, and responsibility) to SCC for direct communication regarding the Project;
2. Communicate directly with the Project Manager, and other SCC volunteers identified by SCC, regarding all Project activities and operations and review the same for approval, change, or disapproval as appropriate, as determined in CBS’ sole discretion, after consultation and cooperation with SCC;
3. Make site visits as deemed necessary;
4. Provide a release instrument to SCC, and its volunteers, which acts as a release of liability and an assumption of risk by SCC, and its volunteers; and
5. Maintain comprehensive general liability insurance for the land upon which the Project is being constructed, with coverage as determined in CBS’ sole discretion.

B. SCC shall:

1. Provide the funds, resources and deliverables necessary to complete the Project;
2. Comply with all federal, state and municipal laws and regulations, including environmental, applicable to the Project, and obtain permits required by those laws and regulations as necessary;

3. Develop and implement design and construction policies consistent with risk management best practices and industry standards, if available, which include, but not be limited to, developing and instituting rules, eliminating unreasonable hazards, and developing and installing an effective signage system to indicate the rules, unexpected hazards, and encourage responsible riding;
 4. Design and construct the Project such that it does not impede or conflict with the use of the skate park;
 5. Manage the Project activities and operations, including the personnel (including volunteers) and the work performed by those personnel, and seek review by CBS of the same for approval, change, or disapproval as appropriate, as determined in CBS's sole discretion, after consultation and cooperation with SCC;
 6. Identify a Project Manager (by name, address, email, and phone numbers) responsible for managing the activities and operations of the Project, including, but not limited to, communicating and meeting with CBS, scheduling and coordinating critical activities and operations, seeking prior CBS approval for those activities and operations, and cooperating and coordinating with CBS on all aspects of the Project;
 7. Identify volunteers (by name, address, email, phone numbers, and responsibility) responsible for direct communication to CBS regarding the Project;
 8. Communicate directly with CBS, to staff identified by CBS, regarding the Project;
 9. Permit site visits, as deemed necessary by CBS;
 10. Participate in meetings, as scheduled by CBS;
 11. Indemnify, defend, save, and hold CBS harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any intentional misconduct or negligent act, error, or omission, occurring during the course of or as a result of SCC's, or it's volunteers', performance under this MOU, except those arising from the intentional misconduct or negligent acts, errors or omissions of CBS;
 12. Sign and deliver to CBS the release instrument provided by CBS which acts as a release of liability and assumption of risk by SCC, and obtain the same from its volunteers;
 13. Take all necessary and reasonable precautions to ensure the safety and security of the Project personnel (including volunteers) and other persons during Project activities and operations, and secure the Project site during all times to ensure the safety of the Project and the public;
 14. Upon completion of the Project, be responsible for maintaining the bicycle pump track pursuant to the attached maintenance agreement hereby incorporated by reference;
 15. Upon completion of the Project, identify a contact person or persons (by name, address, email, phone numbers, and responsibility) responsible for direct communication to and from CBS regarding maintenance and management of the trail(s); and
 16. Only if desired, obtain and maintain insurance for the Project, SCC, and its personnel (including volunteers), with the understanding that CBS has no obligation to provide such insurance coverage.
- C. CBS is the owner of the land on which the Project sits. Any structures, improvements, materials, equipment or personal property constructed on or placed upon CBS land as a result of this Project becomes the property of CBS, with SCC neither retaining nor receiving any interest in the same, unless otherwise mutually agreed in writing by the Parties.
- D. This MOU may only be modified or amended by written mutual agreement of the Parties.

- E. This MOU shall be effective for four and a half (4 ½) months, starting June 15, 2022, and ending October 31, 2022, unless terminated earlier as provided herein. The Parties may mutually agree in writing to extend this MOU. This MOU may be terminated by CBS, without cause, by giving ten (10) days written notice, at which time SCC shall cease all construction activities, if any. This MOU may be terminated by either party for material breach by the other party or by written mutual agreement of the Parties. The obligation of SCC to maintain the Project shall survive any termination of this MOU.
- F. This MOU was approved by the CBS Assembly on June 14, 2022.

Article III – Authorizing Signatures

CITY AND BOROUGH OF SITKA

Date

By: John Leach
Its: Municipal Administrator

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My commission expires: _____

[ADDITIONAL SIGNATURE AND ACKNOWLEDGEMENT ON NEXT PAGE]

SITKA CYCLING CLUB

Date

By: Doug Osborn
Its: President

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Doug Osborn, President of Sitka Cycling Club, an association of volunteers, on behalf of the association.

Notary Public in and for the State of Alaska
My commission expires: _____

**USE AND MAINTENANCE AGREEMENT (PERMIT)
BETWEEN
CITY AND BOROUGH OF SITKA
AND
SITKA CYCLING CLUB
FOR
BICYCLE PUMP TRACK BY THE SKATE PARK**

This Permit is made and entered into effective June 15, 2022, by and between the City and Borough of Sitka (hereinafter "Permittor"), 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. "Permittor" means the City and Borough of Sitka (hereinafter "CBS");
- C. "User" or "Users" refers to the Permittee or SCC or pump track bikers;
- D. "Administrator" means the Municipal Administrator of the CBS, 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. Permittor hereby grants to the Permittee a permit to use and maintain the Premises for pump track bikers. The Premises is located in Sitka, near the skate park below the intersection of Halibut Point Road and Katlian Street as drawn on the attached drawing. 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 Permittor by virtue of this Permit, nor shall Permittor 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 June 15, 2022, and end on June 14, 2027, 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 loop smoothing and repairs, berm inspection and repair, and drainage feature installation and maintenance/repair.

D. Deferred maintenance will consist of all work that is not necessary for immediate track function, but that should be completed in order to assure long-term track 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 Permitter. 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 Permitter which may have such property removed at Permittee's expense.

B. Structures, improvements, and personal property of Permitter 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 Permitter, with such work as may be required to be commenced within thirty (30) days with written notice to the Permittee by Permitter.

C. Upon expiration or termination of this Permit, Permittee shall participate in an inspection of the Premises with the Permitter 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 Permitter 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.

Permitter 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 Permitter 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
Email: administrator@cityofsitka.org

PERMITTEE:

Katherine Prussian
Sitka Cycling Club
302 Wachusetts Street
Sitka, Alaska 99835
Telephone: (907) 738-5379
Email: kkprussian@yahoo.com

*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 Permitter. Permittee shall hold Permitter harmless from any such actions and be responsible for payment of any related costs that Permitter 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 Permitter. Permittee shall not apply chemicals/pesticides on or around the Premises. Should Permittee breach this clause, the hold harmless provisions hereof shall apply and Permitter may independently demand and require Permittee to promptly cure any soil or water contamination or other damage at Permittee's expense. Permitter 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 Permitter, 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 snack shacks/buildings and connexes, if any.

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 Permitter.

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 Permitter 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 Permitter the right to immediately revoke this Permit without any liability for work performed, or without any other action required on Permitter'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

SITKA CYCLING CLUB

By: John Leach
Its: Municipal Administrator

By: Katherine Prussian
Its: Pump Track Coordinator

Date: _____

Date: _____

[ACKNOWLEDGEMENTS ON NEXT PAGE]

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

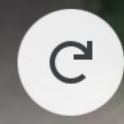
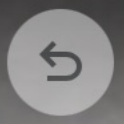
The foregoing instrument was acknowledged before me this _____ day of _____ 2022, by John Leach, Municipal Administrator of the CITY AND BOROUGH OF SITKA, an Alaska home rule municipality, on behalf of the municipality.

Notary Public in and for the State of Alaska
My commission expires: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2022, by Katherine Prussian, Pump Track Coordinator of Sitka Cycling Club, an association of volunteers, on behalf of the association.

Notary Public in and for the State of Alaska
My commission expires: _____



Perimeter

187 ft



Area

2,027 ft²

