

PHYSICAL ADDRESS:

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McKINLEYVILLE, CA 95519



MAIN OFFICE:

PHONE: (707) 839-3251
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PARKS & RECREATION OFFICE:

PHONE: (707) 839-9003
FAX: (707) 839-5964

TO: MEMBERS, PARK AND RECREATION COMMITTEE
FROM: LESLEY FRISBEE, RECREATION DIRECTOR
SUBJECT: STAFF NOTES DECEMBER 17, 2020 MEETING
CC: MCSD BOARD MEMBERS
PAT KASPARI
JAMES HENRY
KIRSTEN MESSMER
JENS ANDERSEN
BRAD HAYMAN
JACK DURHAM, MAD RIVER UNION

Attached, is a copy of the agenda and meeting information for the upcoming Park and Recreation Committee meeting to be held:

Thursday, December 17, 2020
ZOOM Video Conference
Meeting ID: [967 1515 4697](#)

Members:

Chair- John Calkins
Scott Binder-Vice Chair
David Couch-MCSD Board Director (non-voting member)
John Kulstad
Charlie Caldwell
Jeff Dunk
Chad Sefcik
Laura Bridy
Beth Frink
Ben Winker

Please contact the Parks & Recreation office at 839-9003 if you have any questions and/or if you are unable to attend.

Thank you.

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Park And Recreation Committee (PARC)

MEETING DATE

Thursday, December 17, 2020
6:30 p.m.

Location

ZOOM Video Conference
Meeting ID: **967 1515 4697**

MEETING Agenda

- I. Introductions, Call to Order & Flag Salute
- II. Communications
- III. Public Comment
- IV. Recreation Director Report
- V. BMX Track Project, Right of Entry Agreement & DRAFT Operating Agreement
- VI. Community Garden
- VII. Community Forest
- VIII. Report on Actions of MCSD Board
- IX. Ad Hoc Committee Reports
- X. Discuss agenda topics for next meeting
- XI. Adjournment (Estimated 8:00 pm)

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TO: MEMBERS, RECREATION ADVISORY COMMITTEE

FROM: LESLEY FRISBEE, RECREATION DIRECTOR

SUBJECT: STAFF NOTES FOR DECEMBER 17, 2020 MEETING

AGENDA ITEM I- Introductions, Call to Order & Flag Salute

AGENDA ITEM II - Communications

Staff or members may communicate any pertinent information not already scheduled to be discussed on the agenda.

AGENDA ITEM III - Public Comment

Any person may address the Committee at this time upon any subject not identified on this Agenda but within the jurisdiction of the McKinleyville Community Services District.

AGENDA ITEM IV – Recreation Director Report

Recreation staff had to work from home for a week and a half this last month due to COVID-19 exposure. Thankfully, none of us tested positive and did not develop any symptoms.

The Recreation Afternoon Program continues to support 16 children in providing daily afternoon recreation at the Activity Center.

Maintenance staff have been doing a lot of tree work in parks and landscape areas this month in addition to routine facility and park maintenance. A new dedication bench was installed at the Hiller Dog Park and holiday banners were hung along Central Ave.

Staff has begun working on an additional Statewide Park Development and Community Revitalization grant application for the development of a BMX track and park at the School Rd. and Washington Ave. property.

Action: Information

AGENDA ITEM V – BMX Track Project, Right of Entry Agreement and Draft Operating Agreement

Staff has drafted a Right of Entry Agreement (**Attachment 1**) and DRAFT Operating Agreement (**Attachment 2**) for the BMX track project.

Staff will bring the Right of Entry Agreement to the MCSD Board in January for approval. The Draft Operating agreement will be presented to the board as information as it was requested by the Board of Directors that a Draft Operating Agreement be in process before a Right of Entry Agreement would be approved.

Action: Vote on Recommendation to the Board of Directors

AGENDA ITEM VI – Community Garden

Currently 20 out of 23 plots are rented. Ben Winker to report on recent conversations with community members and garden users

Action: Discussion

AGENDA ITEM VII – Community Forest

The Trust for Public Lands received notification from the California Natural Resource Agency that the grant for the purchase of the community forest property has been awarded. Staff will be meeting with TPL and Green Diamond Resource Co. staff regularly over the coming months.

We are still awaiting notice from the North Coast Resource Partnership regarding the technical assistance grant request.

Action: Discussion

AGENDA ITEM VIII – Report on Actions of MCSD Board

E.7 Consider Approval of Ordinance 2021-02 Amending Regulation 40 – Parks and Recreation Committee – First Reading

Recreation Director Frisbee reviewed the item. There were no Board or public comments.

Motion: *Approve the first reading of Ordinance 2021-02, Amending Regulation 40-Parks and Recreation Committee of the MCSD Rules and Regulations, by title only.*

Motion by: *Director Corbett; Second: Director Mayo*

Roll Call: *Ayes: Barsanti, Corbett, Couch, Mayo and Burke Nays: None Absent: None*

Motion Summary: *Motion Passed*

Action: Information

AGENDA ITEM IX – Ad Hoc Committee Reports

Hewitt Ranch (John Kulstad)

Skate Park (Charlie Caldwell)

Property at School Road and Washington Ave (Chad Sefcik)

Riverfront property (Jeff Dunk)

Fischer Ranch Estuary Project (Johnny Calkins)

BMX Bike Track (Charlie Caldwell)

Action: Information

AGENDA ITEM X – Discuss Agenda Topics for Next Meeting

Action: Discussion

AGENDA ITEM XI – Adjournment

RIGHT OF ENTRY AND DESIGN AGREEMENT

THIS RIGHT OF ENTRY AND DESIGN AGREEMENT (this "Agreement") is entered into on January 6, 2021, by and between the McKinleyville BMX Track project ("BMX track") part of the HUMBOLDT SKATEPARK COLLECTIVE (hereinafter referred to as " COMMITTEE", and McKinleyville Community Service District (MCSD) (hereinafter referred to as " DISTRICT ") for construction and operation of a BMX track located on MCSD property of School Road and Washington Ave.

RECITALS

- A. The DISTRICT owns real property located at School Road and Washington Ave. and has consented to enter into this Agreement for the sole purpose of allowing COMMITTEE to develop a proposal for the design and potential construction of a BMX Track on the property located on the North side of School Road, and west of Washington Ave. as more specifically described in attached **Exhibit A** (the "DISTRICT Park Property").
- B. The COMMITTEE, as a public service to the citizens of McKinleyville, wishes to assist in the potential project including assistance with the development, financing, design, construction, and establishment of maintenance and operation of the planned BMX track.

AGREEMENT

THEREFORE, IT IS AGREED:

1. For a period of thirty-six (36) months from the date hereof, with an option to extend the agreement an additional six (6) months if needed and if said need is communicated and requested within six (6) months of the of the original thirty-six (36) month period, DISTRICT hereby grants to COMMITTEE the right to enter upon the DISTRICT Property for the limited purposes and on the terms and conditions stated in this Agreement. Further agreements for construction and conveyance that meet state contract and prevailing wage laws will be required before any project is authorized or any construction can commence. The District is not obligated to proceed with any project and makes no commitment to do so by method of this Agreement.
2. COMMITTEE shall work to develop the BMX track engineering design and submit said design to the DISTRICT'S Board of Directors for approval of the final design, in the Board's sole and absolute discretion. COMMITTEE shall further seek financing for construction based on grants, charitable donations and other sources for submission to the DISTRICT'S Board when considering the final design and whether to sponsor and approve, in the Board's sole and absolute discretion, construction of a BMX track as shown in the Preliminary Concept Design on **Exhibit A** on DISTRICT Property for use by the public and the community.
3. During the thirty-six (36) month term of this Agreement the COMMITTEE shall:
 - 3.1 Seek and demonstrate to the Board sufficient financing and committed supplies and services from local businesses to cover the entire costs of the engineering design, development, inspection, construction, maintenance and administration of the project, except as noted below. No work of construction shall be commenced unless and until the DISTRICT'S Board, in its sole and absolute discretion, approves the final design, agrees to sponsor a project, and the COMMITTEE demonstrates sufficient and secure financing for all aspects of design, permitting and construction of the BMX track.

- 3.2 Cause the preparation of plans and specifications suitable for the construction of the BMX Track at its sole cost and expense.
- 3.3 If approved by the DISTRICT, cause to be obtained all necessary permits and approvals for the construction of the bike track as required by law, expressly including, without limitation, review and analysis under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.). The parties acknowledge that before the DISTRICT approves the construction of the BMX Track the District will need to complete CEQA assessment, including without limitation a determination as to whether the project is exempt from CEQA; if not exempt, a preliminary analysis to determine whether an environmental impact report or negative declaration is required; and preparation of an environmental impact report or negative declaration.
- 4. COMMITTEE shall submit a progress report to the DISTRICT's Recreation Director quarterly. Said progress report shall include the following information:
 - A. Summary of current fundraising efforts;
 - B. Summary of current funds raised to date; and
 - C. Summary of grant application status.
 - D. Summary of design and permitting status
- 5. COMMITTEE shall consult with DISTRICT representatives during the design phase, and the plans and specifications for the construction shall be subject to DISTRICT's written approval, in the DISTRICT's sole and absolute discretion, before the plans and specifications are submitted to the DISTRICT's Board of Directors for consideration.
- 6. COMMITTEE shall hold harmless, indemnify and defend DISTRICT, its officers, agents, employees, and directors from and against any and all claims, liabilities, demands, costs and contracts of any nature arising out of, resulting from or in any way related to the activities under this Agreement. This obligation shall survive the delivery of the PROJECT to the DISTRICT.

_____ Date _____

McKinleyville Community Service District
Dennis Mayo, President - Board of Directors

_____ Date _____

Charlie Caldwell, President – Humboldt Skatepark Collective

_____ Date _____

Wendy Orlandi, BMX Project Lead

**McKINLEYVILLE COMMUNITY SERVICES DISTRICT
BMX Track
Agreement for Operations & Maintenance**

This AGREEMENT made and entered into this _____ day of _____, 2020 by and between the McKinleyville Community Services District, a California Community Services District, and the Humboldt Skatepark Collective, a non-profit organization, with reference to the following facts, which are acknowledged as true and correct by each of the parties:

(a) As used in this AGREEMENT, the following terms shall have the following definitions:

1. "AGREEMENT" shall mean the Agreement for Operations and Maintenance
2. "DISTRICT" shall mean the McKinleyville Community Services District.
3. "COLLECTIVE" shall mean the Humboldt Skate Park Collective.
4. "BMX Track & Park" shall mean the DISTRICT owned facility located at Washington Ave. and School Rd. _____
5. "District Facilities" shall mean any facility owned and operated by the District available for public use.
6. "General Manager" shall mean the employee of the DISTRICT serving in said capacity.
7. "BOARD OF DIRECTORS" shall mean the five elected members of the McKinleyville Community Services District Board of Directors.
8. "Article IV of the McKinleyville Community Services District Rules and Regulations" shall mean the then current portion of the document containing the Rules and Regulations of the DISTRICT as adopted by the Board of Directors.

Commented [1]: Need an address for property

(b) DISTRICT is the owner of the 3 acre parcel at Washington Ave. and School Rd. on which the BMX Track is located

Commented [2]: Insert Address when acquired

(c) The COLLECTIVE desires to operate and use the BMX Track located at as its primary base of operations and is willing to provide certain services to DISTRICT in consideration of said use and occupancy; and

(d) COLLECTIVE and DISTRICT each desires to secure and enter into an AGREEMENT in accordance with the foregoing; and

(e) The documents which are part of the AGREEMENT, and each of which are incorporated herein by this reference as though set forth in full, are the following:

1. Exhibit A: Article IV of the McKinleyville Community Services District Rules and Regulations
2. Exhibit B: Schedule of Track Use

Commented [LF3]: Exhibit B: Schedule of Use TBD at this time

NOW, THEREFORE, in consideration of their mutual covenants and promises set forth herein, the parties hereto agree to as follows:

Section 1. Grant of Facility Use

- 1.01 DISTRICT grants COLLECTIVE use of BMX Track as specifically described in Exhibit B. Facility use is subject to modification as a result of the provisions described in Section 20 of this AGREEMENT.
- 1.02 COLLECTIVE shall adhere to the most current Park Rules & Regulations as adopted by DISTRICT and attached as Exhibit A. DISTRICT Board of Directors shall have the right to modify the Rules & Regulations, from time to time, in its sole discretion and any modifications shall become binding on COLLECTIVE immediately after adoption.

Section 2. Maintenance

- 2.02 DISTRICT shall provide monthly general landscape and playground maintenance for the park areas adjacent to the BMX track on the property.
- 2.03 COLLECTIVE shall provide all necessary track maintenance to ensure the safety and integrity of the BMX track.

Section 4. Utilities

- 4.01 DISTRICT shall pay all utility charges incurred to provide electricity and gas to the BMX Track and landscaping adjacent to and around the track on the property.

Commented [4]: A storage container would be easier and safer until a few small sheds/structures can be built. And I imagine that would be a while until funds would be raised for those.

Section 5. Equipment and Supplies Storage

- 5.01 Storage of COLLECTIVE's equipment at the BMX track shall be at COLLECTIVE's sole risk and DISTRICT shall not warrant security of stored materials.
- 5.02 Storage of COLLECTIVE's equipment must not interfere or compromise access to facility amenities available to other facility users.

Commented [5]: What are BMX supply storage needs?

Commented [6R5]: A metal storage container is best. We could take items off the property until we find a storage container.

Section 6. Facility Use and Access

- 6.01 COLLECTIVE agrees to comply with DISTRICT's established use guidelines, as defined in Article IV of the McKinleyville Community Services District Rules and Regulations, and attached as Exhibit A and incorporated by reference herein.

6.02 HSC will sign for facility access keys; maintain custody of all keys during the term of this AGREEMENT; and return all keys upon completion of the term of this AGREEMENT. COLLECTIVE shall not duplicate any keys or provide security codes to any other party. COLLECTIVE will follow the procedures established by DISTRICT in locking and unlocking storage facilities on the property. COLLECTIVE will be responsible to pay any charges levied resulting from any need to call on DISTRICT staff for assistance in locking or unlocking storage facilities.

Commented [7]: If keys are required

Commented [8R7]: If the track is fenced there will be locks for the gates

6.03 Should this AGREEMENT be terminated, COLLECTIVE will surrender to DISTRICT, any and all keys held by COLLECTIVE on or before the last day the AGREEMENT is still valid.

Section 7. Use of Equipment

7.01 COLLECTIVE agrees not to use equipment owned by those other than COLLECTIVE and stored at BMX track property without first obtaining written approval from the owner of said equipment. A copy of written approval must be provided to the DISTRICT.

Commented [9]: Even basic hand tools?

Commented [10R9]: This just means the district isn't going to supply tools/equipment to the site. If it turns out the district does store equipment there and the collective would like to use it, it would be easy to get written approval.

Section 8. Entry by DISTRICT

8.01 COLLECTIVE shall permit DISTRICT, and DISTRICT's agents and assigns, at all reasonable times, to enter the BMX track (and those portions occupied by COLLECTIVE), for the purposes of inspection, compliance with the terms of this AGREEMENT, exercise of all rights under this AGREEMENT, posting notices, and all other lawful purposes.

Section 9. Use Compatibility

9.01 COLLECTIVE agrees that all use of the BMX track by COLLECTIVE shall be conducted in a manner within the intended use of BMX track and compatible with respect to the surrounding neighborhood and community.

Section 10. Site Improvements

10.01 COLLECTIVE will have sole discretion over making site improvements to the BMX track proper for the sole purpose of making the BMX track safe and engaging for users.

Commented [11]: Meaning just the track on which bikes race/practice etc.

10.02 Should COLLECTIVE desire to have specific site improvements installed at the BMX track and park property beyond improvements to BMX track proper as outlined in 10.01, MSC must first obtain written approval from the DISTRICT for such improvements and pay for all costs related to any pre-approved improvements.

Commented [12]: Assuming this would apply to fencing and semi-permanent installations. Would this also include BMX track specific items such as the starting gate?

10.03 It is understood and agreed between the parties that all installations, additions, and improvements constructed or installed at any time at the BMX and park

Commented [13R12]: as it is written here I would say yes, but I think changing the language to state "permanent" installations and adding language to establish expectations for how the site needs to be left should semi-permanent installations or items need to be removed at some point.

property during the term of this AGREEMENT shall immediately become the property of and belong to the DISTRICT upon such construction or installation.

Section 11. Prohibited Actions

11.01 COLLECTIVE shall not:

- 11.01.a Use BMX track and park for any purpose other than as authorized in this AGREEMENT and described in Exhibit B and authorized by DISTRICT; and
- 11.01.b Perform or permit to be done anything which may interfere with the effectiveness and accessibility of BMX track and park; nor perform or permit to be done anything which may interfere with free access and passage at BMX track and park or the public areas adjacent thereto; or hinder police, fire fighting, or other emergency personnel in the discharge of their duties; and
- 11.01.c Rent, sell, lease, or offer any space for any articles whatsoever within or on BMX track and park property without the prior written consent of the DISTRICT; and
- 11.01.d Place any additional lock of any kind upon any door, cabinet, or storage space, unless a key therefore is provided to the DISTRICT, and, upon expiration or termination of this AGREEMENT, to surrender to DISTRICT any and all keys, and in the event of loss of any keys furnished by DISTRICT, COLLECTIVE shall pay DISTRICT the cost for replacement thereof; and
- 11.01.e Use or allow BMX track to be used for any improper purposes or for purposes in violation of Article IV of the McKinleyville Community Services District Rules and Regulations, as the same may be modified from time to time by DISTRICT.

Section 12. Equal Opportunity and Non-Discrimination Clause

- 12.01 DISTRICT has zero tolerance for harassment or any other form of discriminatory behavior, as set forth in this Policy Against Discrimination. The DISTRICT does not tolerate discrimination or harassment based on gender, pregnancy, childbirth (or related medical conditions), race, color, religion, national origin, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family care or medical leave status, military or veteran status, or any other status protected by federal, state, or local law. DISTRICT requires that all contractors and /or vendors adhere to DISTRICT policy. DISTRICT will respond to any discriminatory behavior in an appropriate manner, including, but not limited to, termination of contract or vendor agreement, reporting to appropriate legal authorities or other appropriate responses. All incidences of discriminatory behavior are to be reported to the DISTRICT General Manager immediately.

DISTRICT will not tolerate harassment by its employees of Contractors and Vendors with whom District employees have a business, service or professional relationship. Additionally, the DISTRICT will not tolerate harassment by Contractors and Vendors directed at employees or the participants of programs or recipients of services provided by Contractors or Vendors.

For all communications, both written and electronic, DISTRICT does not tolerate any correspondence that degenerates into improper use. DISTRICT's technology resources are governed by DISTRICT policies. Under no circumstances may anyone use DISTRICT's technology resources to transmit, receive, or store any information that is discriminatory, harassing, or defamatory in any way, such as sexually explicit or racially disparaging messages, jokes, or cartoons.

Section 13. Americans with Disabilities Act Compliance

- 13.01 DISTRICT shall indemnify, defend, and hold harmless COLLECTIVE from any fines or penalties which may be imposed on COLLECTIVE its pursuant to the Americans with Disabilities Act as a result of DISTRICT's failure to make any required improvements to the premises as required by the Americans with Disabilities Act.
- 13.02 COLLECTIVE shall be responsible for compliance with any and all requirements of the Americans with Disabilities Act with respect to the operation of COLLECTIVE programs and use of BMX track for which COLLECTIVE is responsible. COLLECTIVE shall indemnify, defend, and hold harmless DISTRICT from any fines or penalties which may be imposed upon it pursuant to the Americans with Disabilities Act as a result of COLLECTIVE's failure to comply with any requirement of the Americans with Disabilities Act with respect to the operation of COLLECTIVE programs and use of BMX track and park for which COLLECTIVE is responsible.

Section 14. Compliance with Law

- 14.01 COLLECTIVE shall comply with and conform to all laws and regulations, state, and federal and any and all requirements and orders of any state, or federal board or authority, present or future, in any way relating to the condition or use of BMX Track throughout the entire term of this AGREEMENT.

Section 15. Coordination, COLLECTIVE Board and Staffing Requirements

- 15.01 DISTRICT Coordination and Staffing
 - 15.01.a DISTRICT shall designate a Parks & Recreation employee who shall be the primary contact person with the COLLECTIVE.
- 15.02 MSC Meeting and Coordination Requirements

- 15.02.a During the term of this Agreement the COLLECTIVE shall maintain an active Board of Directors which shall meet at least quarterly or as needed during each year this AGREEMENT is in effect.
- 15.02.b DISTRICT Staff Liaison shall be invited to each Regular meeting of the COLLECTIVE Board of Directors, and an item shall be included on each COLLECTIVE Board meeting agenda to address the BMX track and park and any issues pertinent to this AGREEMENT. DISTRICT will appoint a Staff Liaison to facilitate communications and cooperation between the two entities.

Section 16. Compensation

16.01 COLLECTIVE shall pay to DISTRICT an amount, agreed upon by both parties, of XX% of quarterly gross revenue, to contribute to the cost of landscape maintenance as outlined in Section 3.

16.02 Payment Procedure

- 16.02.a COLLECTIVE shall provide DISTRICT with quarterly reports of COLLECTIVE'S gross revenue for each quarter of the fiscal year.
- 16.02.b DISTRICT shall invoice COLLECTIVE within 15 days of receipt of quarterly revenue report from COLLECTIVE for the amount as outlined in 16.01.
- 16.02.c COLLECTIVE shall pay DISTRICT all sums required under this Agreement within thirty (30) days after receipt by COLLECTIVE of Quarterly invoices for each quarter for which payments are due.

16.03 Delinquent Payment

16.03.a In the event COLLECTIVE shall be delinquent by more than fifteen (15) days in the payment of any sums due under the terms of this Section, such delinquencies shall be considered to be a breach of this AGREEMENT.

Section 17. Insurance

17.01 Minimum Scope

17.01.a At COLLECTIVE's cost, COLLECTIVE shall obtain and maintain throughout the term of this AGREEMENT, comprehensive general public liability insurance, issued by an admitted carrier with a Best Company Rating of no less than "A" and acceptable to DISTRICT. Such insurance shall provide coverage for COLLECTIVE's actions in performing this AGREEMENT and use of BMX Track and Park and insuring DISTRICT against loss or liability caused by or

Commented [14]: A % of revenue ensures that both organizations have an opportunity to cover cost and/or contribute to improvements over time.

Commented [15R14]: Agree. Wondering if % of revenue is money made by racing fees. What if someone donates \$1,000 to resurface the track or buy a new compressor for the gate. Are donations considered a part of that revenue?

Commented [16R14]: What about grants?

Commented [17R14]: I think we can specify "racing" revenues or have the language call out specifically what revenues would be obligated to contribute to MCSD's cost for the park. Grants are generally project specific and therefore considered "restricted" so I don't think we'd consider grants as revenue eligible to contribute to compensating MCSD.

Commented [18R14]: I always plan my budgets on worst case scenario and I have been told by other track operators that the first year is barely breaking even. I hope that we can work out a low percentage, and/or have some forgiveness. As we build success we can contribute more. I am sure we will get there, but we are building a business from the dirt up :)

connected with COLLECTIVE's occupation and use of BMX Track and Park under this AGREEMENT. Insured amounts shall be not less than \$1,000,000.00 per occurrence and DISTRICT, its officers, agents, assigns, and employees shall be designated as additional insured pursuant to said policy.

Commented [19]: Insurance for when we hold events? Like weekly scheduled practice/races, but what about on a normal day when community members want to ride the track? USABMX will cover the insurance during our scheduled races, practices.

Commented [20R19]: yes. The insurance would be for things sanctioned by the Collective...so racing events or scheduled practices. General unsanctioned use would likely fall under MCSD's general liability insurance.

17.02 Proof of Insurance

17.02.a Prior to the commencement of this AGREEMENT and the inception of the term, COLLECTIVE shall provide DISTRICT written notification from the insurance carrier, of the existence of such policies and shall also provide a certificate of insurance and separate endorsement in the amounts listed in 17.01. Coverage provided by the policy shall not be canceled or amended until the DISTRICT is first provided with at least thirty (30) days written notice concerning such cancellation or notice.

Section 18. Indemnity

18.01 Hold Harmless

18.01.a Except for the active negligence or willful misconduct of DISTRICT, COLLECTIVE undertakes and agrees to defend, indemnify, and hold harmless DISTRICT and all its officers, agents, assigns, and employees from and against any and all suits, actions, and causes of action, claims, liens, demands, obligations, proceedings, loss or liability of every kind and nature in connection with or arising directly or indirectly out of this AGREEMENT whatsoever, for death or injury to any person including DISTRICT's officers, agents, assigns, and employees, or damage or destruction of any property of either party hereto or of third parties, arising out of or in any manner by reason of, or incident to, the performance of this AGREEMENT, on part of COLLECTIVE, its officers, agents, assigns, and employees of any tier.

Section 19. Unavoidable Delays

19.01 The provisions of this Section shall be applicable if there shall occur, during the term of this AGREEMENT, any (a) inability to obtain labor or materials, or reasonable substitutes (other than lack of funds); or (b) acts of God, governmental restriction, regulations or controls, enemy or hostile government, civil commotion, fire, or other casualty; or (c) other conditions similar to those enumerated in this Section beyond reasonable control of the party obligated to perform (other than lack of funds). If DISTRICT or COLLECTIVE shall, as the result of any of the above-described events, fail to provide or perform any obligation on its part under this AGREEMENT, then upon written notification to the other within ten (10) days of such event, such failure shall be excused and not be a breach of this AGREEMENT by the party claiming unavoidable delay, but only to the extent

occasioned by such event. Notwithstanding anything contained herein to the contrary, this Section shall not be applicable to the obligation of the DISTRICT or COLLECTIVE to pay any sums, monies, costs, charges, or expenses required paid pursuant to the terms of this AGREEMENT.

Section 20. Amendments and Assignments

- 20.01 This AGREEMENT contains the complete and final AGREEMENT between DISTRICT and COLLECTIVE. No AGREEMENT or other understanding in any way purporting to modify, add to, or supersede the terms and conditions hereof, shall be binding upon either party unless made in writing and duly executed by authorized representatives. This provision shall not limit or restrict DISTRICT's right to modify the Rules and Regulations, during the term of this Agreement.
- 20.02 This AGREEMENT may not be assigned or transferred, in whole or in part, by COLLECTIVE without first obtaining the written consent of DISTRICT. Consent may be withheld, for any reason, in the DISTRICT's sole discretion.
- 20.03 This AGREEMENT may not be assigned or transferred, in whole or in part, by DISTRICT without first obtaining written consent of COLLECTIVE and approval by COLLECTIVE's Executive Board of Directors. Consent may be withheld, for any reason, in the MSC's sole discretion.
- 20.04 Furthermore, the DISTRICT agrees that proposals for amendments and assignments to this AGREEMENT shall not be submitted in any DISTRICT Board or Committee meeting packet, given to any Board or Committee member, or otherwise posted unless such amendments and assignments have been presented in writing to COLLECTIVE's Executive Board of Directors.

Section 21. Taxes

- 21.01 COLLECTIVE shall be solely responsible for the payment, when due, for any possessory interest or other unsecured tax levied by any governmental authority with respect to the use and occupancy of BMX Track and Park by COLLECTIVE.

Section 22. Resolution of Disputes

- 22.01 Process for Resolution
- 22.01.a Any dispute arising under the terms of this AGREEMENT, which is not resolved within a reasonable period of time by authorized representatives of the DISTRICT and the COLLECTIVE shall be brought to the attention of DISTRICT General Manager (or designated representative of the DISTRICT) and the Chair of the COLLECTIVE Board of Directors (or designated representative) of the MSC for joint resolution of the dispute. If these means are pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this

Commented [21]: property tax?

Commented [22R21]: I know what possessory tax is from a rental property on the school's property where I work. Would we be exempt being a non-profit? If not, how much is this?

Commented [23R21]: non-profits are not exempt. I'm not sure how much it would be, it is generally based on hours of use and fees paid. it may not even apply to this kind of property use. I'll have to look into it.

AGREEMENT. Despite an unresolved dispute, the DISTRICT and COLLECTIVE hereto shall continue without delay to perform its obligations under this AGREEMENT.

22.02 Attorney's Fee's

22.02.a In the event of any litigation arising between the parties regarding the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to other relief provided by law.

Section 23. Law Governing

23.01 The AGREEMENT shall be governed exclusively by the provisions hereof and by the laws of the State of California.

Section 24. Notices

24.01 Any notice, demand, communication under or in connection with this AGREEMENT, may be served upon DISTRICT by personal service, or by mailing the same by certified mail in the United States Post Office, postage prepaid, and directed to the DISTRICT as follows:

General Manager
McKinleyville Community Services District
1656 Sutter Road / P.O. Box 2037
McKinleyville CA 95519

24.02 And may likewise be served on HSC by personal service or by so mailing the same addressed to HSC as follows:

Board Chair
Humboldt Skatepark Collective
XXXX some Road
Some City, CA 955xxx

Commented [24]: Insert correct address for HSC

24.03 Either DISTRICT or COLLECTIVE may change such address by notifying the other party in writing as to such new address as DISTRICT or COLLECTIVE may desire used and which address shall continue as the address until further written notice.

Section 25. Term and Extensions

25.01 Term and Extensions

25.01.a Subject to the provisions of this AGREEMENT, the term of this AGREEMENT shall be for three (3) years, commencing on the date

herein and shall continue through and including the 30th day of January 2024.

25.01.b Opportunities shall be made for DISTRICT and COLLECTIVE to review this AGREEMENT on a yearly basis to enact amendments and assignments to this AGREEMENT as provided in Section 20 of this AGREEMENT.

25.02 Termination by DISTRICT

25.02.a Notwithstanding the foregoing, DISTRICT, in the case of COLLECTIVE's breaches, may terminate this AGREEMENT by giving COLLECTIVE written notice, to the address herein set forth, which notice shall identify COLLECTIVE's deficiencies in performance of this AGREEMENT. If, within thirty (30) days of the date of said notice, COLLECTIVE has not cured the deficiency in performance, DISTRICT may, by further written notice, terminate this AGREEMENT to be effective sixty (60) days following the date of said second written notice.

25.02.b In the event this AGREEMENT is so terminated, it shall be lawful for DISTRICT immediately hereafter to remove all persons and property from the premises.

25.03 Termination by HSC

25.03.a Notwithstanding the foregoing, COLLECTIVE, in the case of DISTRICT's breaches, may terminate this AGREEMENT by giving DISTRICT written notice to the address herein set forth which notice shall identify DISTRICT's deficiencies in performance of this AGREEMENT. If, within thirty (30) days of the date of said notice, DISTRICT has not cured the deficiency in performance, COLLECTIVE may, by further written notice, terminate this AGREEMENT to be effective sixty (60) days following the date of said second written notice.

25.04 Obligations Upon Expiration or Termination

25.04.a Upon the expiration or termination of this AGREEMENT, for any reason whatsoever, COLLECTIVE shall promptly deliver the following to the DISTRICT's appointed agent:

25.04.b All access keys and codes to storage facilities at BMX Track and Park property.

25.05 Disposition of Certain Property

25.05.a COLLECTIVE hereby acknowledges and agrees that any and all

equipment not directly owned by COLLECTIVE and all DISTRICT-owned equipment and materials used in connection with BMX Track and Park property shall remain the property of the DISTRICT, and COLLECTIVE acknowledges that it shall not be entitled to remove such property from BMX Track and Park property upon the expiration or termination of this AGREEMENT, regardless of reason.

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

McKinleyville Community Services District

Humboldt Skatepark Collective

By: _____
Dennis Mayo, President
MCSD Board of Directors

By: _____
Chairman, Humboldt Skatepark
Collective Board of Directors

Date: _____

Date: _____

Attest:

By: _____

April Sousa, Secretary to the Board of Directors