

MPRPD – BSMF CROSS-COUNTRY COURSE AGREEMENT

This Agreement (the “Agreement”) is made as of _____, 2021, by **MONTEREY PENINSULA REGIONAL PARK DISTRICT**, a California regional park district formed pursuant to California Public Resources Code sections 5500, et seq. (“MPRPD”) and **BIG SUR MARATHON FOUNDATION**, a California nonprofit corporation (“BSMF”) collectively referred to in this Agreement as the “Parties.”

RECITALS

- A. Big Sur International Marathon Foundation has requested permission from MPRPD to construct a trail at MPRPD’s Palo Corona Regional Park (“PCR”) that can be used for cross-country race events by local schools (“Course”). BSMF proposes to be solely responsible for the cost of the improvements necessary to design and construct the Course and its appurtenances, if any.
- B. MPRPD finds that a course suitable for cross-country racing events would be compatible with other uses of Palo Corona Regional Park.
- C. MPRPD and BSMF intend to set forth herein the terms and conditions for the creation of the Course. In addition, the Parties intend address herein future use of the Course for racing events to the extent practical, while understanding that Special Use Permits will still need to be issued by MPRPD for specific events and that all of the terms and conditions of such permits cannot be determined at this time.

THE PARTIES AGREE AS FOLLOWS:

1. **Course Construction Plans**. BSMF shall create detailed plans for design and construction of the Course, including without limitation identifying location, materials, surfaces, grading, fill, landscaping. The planning documents shall also address future anticipated maintenance needs for the Course under the proposed construction plan and identify an estimated timetable for completion. Construction activities shall not commence until MPRPD’s General Manager (or designee) has approved the plans in writing. Any deviation from the written plans must also be approved in writing, prior to their implementation, by MPRPD’s General Manager.
2. **Construction of the Course**. BSMF shall be solely responsible for construction of the Course. Any and all contractors and subcontractors working on the Course must be approved by MPRPD and shall have insurance in types and amounts acceptable to MPRPD naming MPRPD as an additional insured, and shall agree to hold harmless, defend and indemnify MPRPD.

Permission to enter and carryout construction of the Course shall be granted by MPRPD and may specify the dates, times and other conditions under which the

ATTACHMENT 1

construction activities may occur. MPRPD retains the right to inspect the

construction work at any time and, in the event work does not conform to the plans agreed to by MPRPD, MPRPD may order the work to be halted.

3. **Maintenance and Repair of the Course.** MPRPD may conduct general repair and maintenances of the Course and its immediate surroundings as MPRPD determines necessary to ensure its safety to the general public for recreational use. As a condition of seeking Special Use Permits for racing events as described below, BSMF shall at its own expense conduct such repair and maintenance activities of the Course and its immediate surroundings as BSMF and MPRPD determine necessary to ensure its safety and suitability for competitive cross-country racing prior to cross-country racing events approved in a Special Use Permit (SUP).
4. **Special Use Permits.** MPRPD shall grant a minimum of five (5) SUP applications per year for the exclusive use of the Course for school cross-country racing events, and for practice and related events, for students. The terms and conditions of the SUPs shall be consistent with MPRPD's policy and practices governing the issuance of SUPs. In no event shall any fee be charged that exceeds the actual cost to MPRPD associated with the event.
5. **Term.** The term of this Agreement shall be for ten (10) years. However, in the event construction of the Course has not been completed within two years, this Agreement shall expire at that time.
6. **Storage Space Between Events.** During the cross-country racing season, organizers of cross-country events for which SUPs have been granted may store at PCRCP, at its own risk, equipment used for the event, in a location and manner designated by MPRPD.
7. **Accommodation of Other Uses.** BSMF understands that there are and will be other users of PCRCP, including event concessionaire(s), members of the public, and other special events, and therefore use of the Course, including dates, times and intensity, will have to accommodate such other uses. Additionally, PCRCP may be used as a staging area or base for responses to emergencies, including without limitation, wildfires or flooding, and that such use in emergencies may wholly preclude and/or cancel racing events. MPRPD will cooperate with the SUP holders for which events are impacted in such emergencies to mitigate impacts and to seek any compensation from third parties, but in no event shall MPRPD have any liability or responsibility for any losses or damages arising from such use of PCRCP.

When the Course is not being used for specific events for which SUPs have been granted, MPRPD may in its discretion keep the Course open for use by the public as it sees fit, including use by students for practice in cross-country running.

8. **Signage Acknowledging Donors.** BSMF may at its own cost create and install signage recognizing sponsors and funders of the creation of the Course. Any

such signage must be approved by MPRPD in all respects, including without limitation location, size, style and content.

9. **Insurance.** BSMF will secure and maintain general liability insurance sufficient to cover any liability for its construction of the Course in an amount determined reasonable by MPRPD. MPRPD shall be named as additional insured under such policy. For individual cross-country racing events, insurance requirements shall be as set forth in the SUP.
10. **Indemnity.** BSMF shall save, defend, indemnify, and hold harmless MPRPD and its agents, employees, officials, contractors, invitees, licensees, concessionaires, successors, and assigns, from and against all claims, actions, causes of action, liabilities, damages, judgments, losses, costs, fees, fines, penalties, or other expenses, whether foreseeable or unforeseeable, including but not limited to attorneys' costs and fees, costs of defense, physical or economic loss or damage to MPRPD, from any act or omission of BSMF or its agents, employees, contractors, invitees, licensees, successors or assigns, arising out of or resulting from BSMF's obligations related to section 2 of this Agreement. Additionally, BSMF understands that for individual cross-country racing events, further indemnification requirements may be set forth in the SUP.
11. **Dispute Resolution.** If any dispute arises between the Parties under this Agreement, the Parties shall attempt to resolve the dispute as follows:

Meet and Confer. The Parties shall first meet and confer in good faith and attempt to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Parties all the information in its possession that is relevant to the dispute, so that all Parties have the information needed to reach agreement. If these negotiations fail to produce agreement after thirty (30) days from the initial demand, any disputing Party may proceed to mediation or judicial resolution pursuant to subsections below.

Mediation. If meeting and conferring do not resolve the dispute, then the matter shall be submitted for formal mediation to the Mediation Center of Monterey County, the American Arbitration Association, the Judicial Arbitration and Mediation Services, or such other mediation service as the Parties may mutually agree upon. The expenses of such mediation shall be shared equally between the Parties. Ninety (90) days after an initial request for mediation following meet and confer, either party may choose to end the mediation process regardless of whether mediation has been completed.

Judicial Resolution. Only disputes regarding indemnity and/or insurance obligations may be enforced and/or resolved by a court action. For all other disputes the Parties agree that they shall not have any recourse in a court of law or equity against each other, or each other's officers,

employees or agents.

12. **Notices.** Any notice or instrument required to be given or delivered by mail under this Agreement shall be deposited with the United States Postal Service, registered or certified mail, postage prepaid, or by an overnight service, and addressed to the Parties' then current designated primary mailing address for receipt of mail.
13. **Assignment of Rights and Benefits.** No Party to this Agreement may assign or convey any rights, benefits, obligations or liabilities arising from or connected herewith to any other party without the written consent of the other Party.
14. **Agreement Modification.** This Agreement constitutes the entire agreement between MPRPD and BSMF and supersedes all prior and contemporaneous agreements, representations, and understandings between the parties. Modifications within the scope of the instrument shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by all Parties, prior to any changes being performed.
15. **Counterparts.** This document may be executed in one or more counterparts, each of which, so executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this document to form one document. This document may also be executed and delivered via facsimile, scan, or PDF and a facsimile scan, or PDF signature shall have the same force and effect as an original signature.
16. **Compliance With Applicable Laws.** At no expense to MPRPD, BSMF shall comply with all laws, regulations, and decisions applicable to the activities authorized by this Agreement.
17. **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties to this Agreement, and no third party shall be deemed to be a beneficiary or to have any rights hereunder against the Parties.
18. **Waiver.** Any waiver of any terms of this Agreement shall be in writing signed by each applicable Party thereto. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall lie only in Monterey County.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below:

**BIG SUR INTERNATIONAL MARATHON
FOUNDATION**, a California Nonprofit
Corporation

By: _____

Date: _____, 2021

**MONTEREY PENINSULA
REGIONAL PARK DISTRICT**, a
California regional park district formed
pursuant to California Public
Resources Code sections 5500, et
seq.

By: _____
Rafael Payan, General Manager

Date: _____, 2021