



REQUEST FOR BOARD ACTION

ITEM NO. 9.

DATE OF MEETING: February 4, 2013

REQUESTED BY: Benjamin Andrea, Senior Planner, Planning & Community Development

SHORT TITLE: Resolution Supporting Revised Tri-Party Memorandum of Agreement for Cape Fear SORBA to Construct and Maintain Off-Road Cycling and Running Trails at Heide Trask High School.

BACKGROUND: On January 7, 2013, the Pender County Board of Commissioners unanimously passed a resolution supporting a proposal from the Cape Fear Southern Off-Road Bicycling Association (CF-SORBA) to build and maintain trails adjacent to Heide Trask High School for use by the public and schools for off-road cycling, running, walking. The resolution also supported entering into a tri-party Memorandum of Agreement (MOA) between Pender County, Pender County Schools, and CF-SORBA. The following week, on January 14, 2013, the same proposal and MOA was presented to the Pender County Board of Education for their consideration. However, at their meeting, the Board opted to table the item so the MOA could be revised to include language reiterating applicable Policies and Procedures of the Pender County Schools, and also language stating that CF-SORBA acknowledges receipt and review of the specific policies outlined in the additional section of the MOA. Due to the addition of the language, the revised MOA is being presented to the Board of Commissioners for their consideration. The added language is shown in red on the MOA. Planning Staff has been in contact with Greg Brinson, President of Cape Fear Southern Off-Road Bicycling Association (CF SORBA), since May 2012 to scope the feasibility of creating trails on the land adjacent to Heidi Trask High School on the county-owned property proposed for the future Rocky Point Regional Park. Mr. Brinson was very receptive to the idea and we continued discussing the concept with David Smith, Director of Auxiliary Services for Pender County Schools, who was also receptive to the concept.

SPECIFIC ACTION REQUESTED: To consider a resolution supporting the revised tri-party Memorandum of Agreement between Pender County, Pender County Schools, and Cape Fear Southern Off-Road Bicycling Association.

MANAGER'S RECOMMENDATION

Respectfully recommends approval.


Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby supports the revised tri-party Memorandum of Agreement between Pender County, Pender County Schools, and Cape Fear Southern Off-Road Bicycling Association. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

Chairman 2/4/2013
Date

ATTEST 02/04/13
Date



MEMORANDUM OF AGREEMENT BETWEEN PENDER COUNTY (HEREIN "COUNTY")
PENDER COUNTY SCHOOLS (HEREIN "SCHOOLS")
AND CAPE FEAR SOUTHERN OFF ROAD BIKE ASSOCIATION (HEREIN "CF-SORBA")
FOR THE DEVELOPMENT AND MAINTENANCE OF OFF ROAD BIKING TRAILS
AT HEIDI TRASK HIGH SCHOOL, OPERATED BY THE PENDER COUNTY SCHOOLS.

Recitals

1. CF-SORBA is a North Carolina non-profit corporation that serves as a division of the International Mountain Bike Association and is covered under the blanket liability of the national charter. The organization wishes to develop and maintain off road bike trails on the land adjacent to Heidi Trask High School, which has been identified as an area for potential County recreational facility development in the future.
2. CF-SORBA has previously and is currently in a similar partnership with New Hanover County for construction and maintenance of off road biking trails at the Blue Clay Bike Park in Wilmington, as well as Brunswick County for the construction and maintenance of off road biking trails at Brunswick Nature Park.

In consideration of the recitals, the mutual promises and conditions stated herein, and in recognition of CF-SORBA's role as an independent contractor and not as an employee of Pender County or Pender County Schools, The County and Schools agree as follows:

I. Duties of the Contactor – CF-SORBA

- A. Work in conjunction with the Pender County Department of Planning and Community Development to prepare plans and specifications for the construction of off road bike trails adjacent to Heidi Trask High School. Trail construction standards, design specifications, layout considerations, and trail difficulty rating system guidelines may, to the extent reasonably possible, follow those promulgated by the International Mountain Bike Association (IMBA) but will in all cases follow plans which have been reviewed and approved by the Director of Planning and Community Development or designated staff.
- B. CF-SORBA agrees to inspect the trails on a monthly basis once constructed and open to the public for use, and maintain such trails in a safe condition. In the event that CF-SORBA desires to partake in additional clearing or alterations to existing trails, CF-SORBA agrees to present such plans to the County for approval.
- C. Develop and provide a signage system approved by the Director of Planning and Community Development or designated staff identifying the trails, their level of difficulty (as applicable), and unusually difficult sections of the trail. The signage plan may include trails usage rules and safety requirements, and all of these must be approved by the Director of Planning and Community Development or designated staff before implementation.
- D. CF-SORBA may hold organized mountain biking programs or events at the site, subject to the consent of the County and Schools, including coordinating, sponsoring (or co-sponsoring), organized competitive racing events on the trails. The Pender County Seal is required on all publications and advertising associated with and promoting these programs and events.
- E. CF-SORBA shall report any problems or difficulties noted relative to safety issues by users of the trails to the Director of Pender County Planning and Community Development or designated staff.
- F. CF-SORBA shall report any maintenance issues or hazard situations at the site to the Director of Pender County Planning and Community Development or designated staff. In the event that a hazard situation is found on the trail, usage of the trails must be suspended until corrective actions have taken place to the correct the problem.

- G. CF-SORBA shall report to the Director of Pender County Planning and Community Development or designated staff and the Superintendent of Pender County Schools or designated staff when an event is occurring at the facility, the number of participants for the event, and outcomes of the event.
- H. CF-SORBA shall, to the maximum extent practicable, advise facility users to ingress and egress the facility during non-peak school hours so as to not create undue vehicular traffic congestion.
- I. CF-SORBA shall install signage directing facility users to parking areas and trails.
- J. CF-SORBA shall allow the Pender County Schools priority access to its school campus including all parking lots and shall not interfere with the normal use of same by the Pender County Schools, its students, contractors, vendors and parents of students.
- K. CF-SORBA shall not use more than ten percent 10% of the available parking spaces serving the school campus of the Pender County schools at any time when school is in session for students or when there is an extracurricular activity of the school at the campus that necessitates the use of the parking spaces.

II. Duties of the County

- A. Meet with CF-SORBA periodically to review work plans, budgets, development issues, events, and other items associated with this agreement.
- B. Work with CF-SORBA to ensure proper permitting, issues that might impact construction in areas of the park, or potential new opportunities.
- C. In good faith, seek and apply for external funding opportunities associated with trail development in order to provide resources for trail development.
- D. Provide CF-SORBA with reasonable access to the park site so that they can fulfill the obligations of this agreement.
- E. Provide technical advice pertaining to site control consistent with approved park projects.
- F. Assume all responsibility of the Pender County Schools to keep the trails safe. The Pender County Schools shall have no duty to inspect, maintain or repair the trails or to ensure their safety.

III. Duties of the Schools

- A. Meet with CF-SORBA as necessary to review work plans, budgets, development issues, events, and other items associated with this agreement.
- B. Provide CF-SORBA with reasonable access to the park site so that they can fulfill the obligations of this agreement, subject to the provisions of Section I above.
- C. Provide CF-SORBA and affiliated trail users with access to the trails facility via the existing entrance to Heidi Trask High School.
- D. Allow CF-SORBA and affiliated trail users to utilize the existing gravel parking area adjacent to the tennis courts near the trail facilities, subject to the provisions of Section I above.

IV. Hold Harmless, Indemnity, and Insurance

- A. **Indemnification.** CF-SORBA shall defend, indemnify, and hold harmless the County and Schools for all loss, liability claims, or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of CF-SORBA, except to the extent same are caused by the gross negligence or willful misconduct of the County or Schools during CF-SORBA events.
- B. **CF-SORBA's Insurance.** CF-SORBA shall provide and maintain at its own expense during the term of this Agreement the program(s) of insurance covering its operations specified in Section IV. C. below. Such insurance shall be provided by the insurer(s) satisfactory to the County and Schools for review for risk management and evidence of such programs satisfactory to the County and Schools shall be delivered to the County and Schools on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain the express condition that the County and Schools are to be given written notice of at least ten (10) days in advance of any modification or termination of any program of insurance. Such insurance shall be primary to, and not contributing with any insurance maintained by the County or Schools, and shall name Pender County and Pender County Schools as additional insured.

- C. **Commercial General Liability.** Insurance endorsed for Independent Contractor, Professional Liability, Premises-Operations, Products/Completed Operations, Contractual, bodily injury, and property damage with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence.

V. **Limitations**

- A. CF-SORBA shall not sell or provide, nor cause nor allow to be sold or provided, alcoholic beverages during any of its functions. Per ordinance of the Pender County Commissioners, no alcoholic beverages are permitted for consumption on County property.
- B. CF-SORBA shall not transfer its obligations under this Agreement to other interested parties. If this Agreement is terminated before execution, the County shall be responsible for selecting a new organization to enter in to agreement negotiations.
- C. Opportunities to participate in all activities conducted by CF-SORBA (construction, maintenance, and events) must be available to all individuals without regards to race, religion, national origin, sex, or disability.
- D. CF-SORBA shall prevent any activities on the property which interfere with the normal activities of the Pender County Schools.
- E. CF-SORBA shall comply with all applicable restrictions of the Pender County Schools regarding advertising, solicitation and distribution of materials to students, parents of students or the staff of the Pender County Schools on the property used by the Pender County Schools.
- F. CF-SORBA shall not allow any illegal activities or the use or sale of alcohol or tobacco on the property of the County or the Pender County Schools.
- G. CF-SORBA shall ensure that all users of the property comply with all applicable Policies and Procedures of the Pender County Schools, including, but not limited to, 5020 (Visitors To The Schools), 5022 (Registered Sex Offenders), 5025 (Prohibition Of Alcoholic Beverages), 5026 (Smoking And Tobacco Products), 5027 (Weapons and Explosives Prohibited), 5030 (Community Use of Facilities), 5220 (Collections and Solicitations) and 5240 (Advertising in the Schools). CF-SORBA acknowledges that copies of the specific Policies referenced above have been provided to it and that it has reviewed them prior to signing this agreement. CF-SORBA agrees that during the term of this agreement and any extensions thereof, it shall be the responsibility of CF-SORBA to monitor and comply with any changes to the applicable Policies and Procedures of the Pender County Schools and any new Policies and Procedures of the Pender County Schools concerning the use of the facilities of the Pender County Schools. The Policies and Procedures of the Pender County Schools are available on the web site of the Pender County Schools, www.pendercountyschools.net.

VI. Term of Agreement/Termination

This Agreement has been entered into and becomes effective this the 1st day of January, 2013. This Agreement shall be effective for one year from the date hereof but will automatically renew unless terminated notice as described herein. This Agreement may be terminated by either party for cause in the event that any party remains in non-compliance. Either party hereto may terminate this Agreement without cause and for any reason with a minimum of ninety (90) days written notice. This Agreement contains the entire agreement between the parties and may not be altered except by a written amendment executed by all parties.

VII. Notices

If to Contractor:

Greg Brinson, President
Cape Fear SORBA
206 Scott Road
Rocky Point, NC 28457

If to County:

Kyle Breuer, Director of Planning and Community
Development
Pender County
PO Box 1519
Burgaw, NC 28425

If to Schools:

David Smith, Director of Auxiliary Services
Pender County Schools
925 Penderlea Highway
Burgaw, NC 28425

With copies to:

Trey Thurman, Attorney
Pender County
PO Box 5
Burgaw, NC 28425

Wayne Bullard, Attorney
Pender County Schools
PO Box 2178
Wilmington, NC 28402

IN WITNESS WHEREOF, THE PARTIES HAVE DULY EXECUTED THIS CONTRACT TO BE EFFECTIVE AS OF THE DATE NOTED IN SECTION VI OF THIS AGREEMENT:

Cape Fear Southern Off Road Biking Association, a North Carolina Non Profit Corporation

By: _____
Greg Brinson, President

Pender County, a North Carolina Governmental Body

By: _____
George Brown, Chair of County Commissioners

By: _____
Kyle Breuer, Director of Planning and Community Development

Pender County Schools, a North Carolina Educational Body

By: _____
Karen Rouse, Chair of Pender County Board of Education

By: _____
David Smith, Director of Auxiliary Services