

No: 17-
Date: September 6, 2017

RESOLUTION
OF THE CITY COUNCIL
CITY OF SANDPOINT

TITLE: WATERSHED TRAILS LICENSE AGREEMENT

WHEREAS: On April 15, 2015, via Resolution No. 15-26, City Council approved an agreement with Pend Oreille Pedalers (POP) for the construction, maintenance, and preservation of selected aspects of the new Watershed Crest Trail;

WHEREAS: On July 15, 2015, via Resolution No. 15-43, an addendum was approved that the trail be used for non-motorized use only;

WHEREAS: The Pend Oreille Pedalers desire to construct trails in the Little Sand Creek Watershed and will be responsible for ongoing care and maintenance of the trails; and

WHEREAS: This license agreement supersedes and fully replaces the License Agreements adopted by Resolutions No. 15-26 and 15-43.

NOW, THEREFORE, BE IT RESOLVED THAT: The Mayor is hereby authorized, on behalf of the City, to execute the Watershed Trails License Agreement, a copy of which is attached hereto and made a part hereof as if fully incorporated herein.

Shelby Rognstad, Mayor

ATTEST:

Maree Peck, City Clerk

City Council Members:

YES NO ABSTAIN ABSENT

1. Eddy
2. Aitken
3. Williamson
4. Camp
5. Ruehle
6. Snedden

WATERSHED TRAILS LICENSE AGREEMENT

THIS WATERSHED TRAILS LICENSE AGREEMENT is made and entered into this _____ day of _____, 2017, by and between the City of Sandpoint, a municipal Corporation of the State of Idaho (hereinafter, "City"), and Pend Oreille Pedalers, Inc. (hereinafter, "POP").

RECITALS

WHEREAS: City holds title to certain real property within the area commonly known as the Little Sand Creek Watershed, which property lies to the West of Sandpoint and which watershed is a drinking water source for the greater Sandpoint region;

WHEREAS: City is dedicated to the management of its lands;

WHEREAS: City is dedicated to maintaining the highest quality of water and environmental health in the Little Sand Creek Watershed;

WHEREAS: POP is a corporation formed for the specific charitable, educational, and non-profit purpose of: (1) building and maintaining recreational trails in Bonner County, and (2) promoting mountain biking in the region;

WHEREAS: POP desires to build trails in an environmentally and socially responsible manner in the Little Sand Creek Watershed;

WHEREAS: POP will be responsible for ongoing care and maintenance of the existing Watershed Crest and Lower Basin Trails, as set forth herein;

WHEREAS: The purpose of this License Agreement is to document the intended cooperation between the parties for the construction, maintenance, and preservation of selected aspects of the Trails as they lie within the Little Sand Creek Watershed;

WHEREAS: This License Agreement supersedes and fully replaces the License Agreement dated April 21, 2015 (Resolution No. 15-26) and the Addendum to the License Agreement Between City of Sandpoint and Pend Oreille Pedalers, Inc. dated the 15th day of July 2015 (Resolution No. 15-43).

NOW THEREFORE: In consideration of the above recitals and the mutual covenants hereinafter set forth, the parties agree as follows:

1. Description of Property: The real properties to which this License Agreement pertains are described as parcels numbered RP58N03W250001A, RP57N03W020001A, RP57N03W010002A, RP57N02W062400A, RP57N02W060600A, RP58N02W299001A, RP58N02W288550A, RP58N02W330003A, RP58N02W344800A, and RP57N02W040602A according to tax records of Bonner County, Idaho, (hereinafter, "Property"), which Property is collectively more commonly known as the Little Sand Creek Watershed (hereinafter, "Watershed"), and which Property is

indicated on the attached **Exhibit A**.

2. Description of Trails: The current Watershed Crest Trail is indicated on **Exhibit B**. The Watershed Crest Trail shall hereinafter be referred to as the "WC Trail". The Lower Basin trails are indicated on **Exhibit C**. The Lower Basin Trails shall hereinafter be referred to as the "LB Trails" and collectively, they shall be referred to as "Trails". The Trails are more specifically identified as those improved portions of a pathway over and across the real Property described hereinabove, including any appurtenances or improvements located thereon from time to time during the term of this License Agreement.

3. Term and Termination: The initial term of this License Agreement shall commence upon the day of execution hereof and terminate four (4) years thereafter. Upon expiration of the initial term, the parties, by mutual written agreement, shall have the option to renew this License Agreement on a yearly basis thereafter. Any such additional term shall be upon the same terms and conditions as are set forth herein. This License Agreement may be terminated at any time, without cause, by either party giving notice in writing of the intent to terminate to the other party not less than thirty (30) days prior to the intended date of termination.

4. Trail Maintenance: It is intended that the Trails be maintained in an attractive and useful condition with natural aesthetics. In order to achieve this goal, POP shall perform certain regular trail maintenance activities and in doing so, POP shall use its best skills and efforts to keep the Trails in a neat, but naturally aesthetic condition. City shall have the continual right to oversee, approve, and direct all work performed on the Trails to insure the maintenance goals are achieved. City and POP shall coordinate their respective maintenance activities for their mutual benefit, although POP shall otherwise be allowed to schedule the performance of its activities for any time it chooses, provided such maintenance does not interfere with any other scheduled trail activity. Before undertaking to perform any maintenance or improvements beyond the scope of this License Agreement, POP shall confer with City and obtain approval from the Public Works Director to perform that work.

5. Tools and equipment: POP shall be allowed to access the Trails with approved motor vehicles and to utilize power equipment and machinery to perform trail construction and maintenance. All motor vehicles, equipment, and machinery used in the Trails construction and maintenance shall be limited in operation and use to the Trails corridor only, it being understood that no such equipment shall otherwise be allowed to operate on any Property other than the Trails. Such equipment may use various petroleum products in the form of grease, fuel, and oil to operate properly. It is understood and agreed that no individual container for any such material shall exceed five gallons in capacity and no overnight storage of petroleum products shall be allowed within the watershed other than in approved containers, which shall be maintained in a non-leaking condition. No such petroleum product shall be construed as a Hazardous Material as hereinafter defined. In the event of a petroleum product spill by POP, POP shall immediately notify the Public Works Director of the event and additionally, POP shall perform its best efforts to clean up the spill (with the use of high absorbent materials, which shall be kept on-site at all times during construction for the purpose of containing petroleum spills) and remove from the Property, any and all soil and materials affected by the contamination. POP shall provide its own tools and equipment as may be needed to perform all work required by POP under this License Agreement, none of which tools or equipment will

be supplied by City unless City, in its sole discretion, is willing and offers to provide the same. In such event, although POP shall make reasonable effort to protect City tools and equipment from loss, damage, destruction, or theft, POP shall not otherwise be liable for any such loss.

6. Observance of Laws and Regulations: POP shall comply with all laws and regulations, specifically including all environmental regulations and laws involving spillage and clean-up requirements for toxic materials of the City of Sandpoint, County of Bonner, State of Idaho, Panhandle Health District, and the United States of America, as such laws and regulations may govern the conduct of activities, occupation, or use of the Trails.

7. Compensation: Unless effected under a separate agreement between City and POP, neither POP nor its officers, directors, members, employees, volunteers, or agents shall be entitled to compensation from City for work or labor performed under this License Agreement, it being understood that all such work shall be performed entirely on a volunteer basis.

8. Independent Contractor: Except as hereinabove indicated, no officer, director, member, employee, volunteer, or agent of POP shall be an employee of City for any purpose. POP shall be deemed to be an independent contractor and all officers, directors, members, employees, volunteers, or agents of POP shall correspondingly be deemed to be the volunteers of POP. POP shall supervise all such on-site personnel, in its sole discretion, as it deems necessary to complete the work required under this License Agreement. On-site personnel shall include all individuals performing work, rendering services, or conducting activities on the Trail at the specific request or approval of POP. Any and all volunteers of POP shall be required to sign and submit a Volunteer Release of Liability form to City, a copy of which is attached hereto and incorporated herein by this reference as **Exhibit D**.

9. Specific Obligations of POP: POP will make purchases and perform specific trail construction and maintenance activities including:

- a. During construction, POP shall promptly remove and dispose of any and all incidental debris such as litter (bottles, drink containers, paper, etc.), equipment residue (filters, oil, grease cartridges, oil containers, etc.), broken equipment (discarded gloves, hoses, etc.), and any other waste material brought onto the Trails construction area by POP;
- b. Having on site and using during construction only, a self-contained porta-potty;
- c. After construction is complete, POP shall monitor the condition of the Trails, picking up and removing trash and unnatural debris from the pathway as well as removing brush and trees that impede the trail or imperil trail users;
- d. Purchasing and installing signage that designates the trail heads for each of the Trails and provides adequate navigational assistance;
- e. Purchasing and installing signage reflecting POP's contribution to the Trails;
- f. Information on any sign shall be approved by City Public Works Director prior to installation;
- g. Adhering to City's Watershed Management Goals and Objectives as set forth on **Exhibit E**, a copy of which is attached hereto and incorporated herein by this reference.

10. Specific Obligations of City: In addition to performing its regular forest management activities City will:

- a. Consult and coordinate with POP for the performance of minor improvements to the

- Trails;
- b. Approve location of all trails and all work, including construction methods, on City Property.
 - c. Purchasing and installing signage that provides information regarding the proper care of the Watershed including the prohibition against Trail users venturing off-trail into the Watershed;

11. Use of Trails: No motorized vehicles will be allowed on the Trails except as otherwise allowed under this License Agreement. No equines will be allowed on the trails. The Trails are to be designed, constructed, and maintained for biking, hiking and other nonmotorized uses only.

12. No Property Interest Created: Nothing contained in this License Agreement shall be construed as creating in POP, including its officers, directors, members, employees, volunteers, or agents, any property interest in the Trails. Improvements placed on City property at the direction, or with the approval, of City become the property of City. All such improvements are subject to the regulations and administration of City. No part of this License Agreement entitles POP to any interest in the improvements other than the right to use them under the terms of this License Agreement.

13. Assignment: POP shall not assign or transfer this License Agreement, or any interest herein, without the prior written consent of City, and any such assignment shall not be deemed to be consent to any subsequent assignment. Any such assignment without such consent shall be void, and shall, at the option of City, terminate this License Agreement. Neither this License Agreement nor any interest of POP herein shall be subject to involuntary transfer or assignment by operation of law in any manner whatsoever, and any such involuntary transfer or assignment shall be void and of no effect and shall, at the option of City, likewise terminate this License Agreement.

14. Notices: All notices, requests, or demands as may be required to be given, made, or sent under this License Agreement shall be deemed to have been completed immediately if made in person, or within three (3) days after being deposited in the United States mail, postage prepaid, certified, with return receipt requested and addressed as follows:

TO CITY: City of Sandpoint
 City Clerk
 1123 Lake Street
 Sandpoint, Idaho 83864
 Phone: 208-263-3158
 cityclerk@sandpointidaho.gov

TO POP: Pend Oreille Pedalers, Inc.
 Attn.: President
 P.O. Box 2451
 Sandpoint, Idaho 83864
 Email: info@pendoreillepedalers.com

The address to which any notice, request, demand, or other writing may be given, made, or sent to either party may be changed by written notice given by such party as above provided.

15. Liens: POP shall pay and discharge as they become due, promptly and before delinquency, all debts, charges, assessments, or other obligations incurred for work or labor performed, services rendered, or materials provided by POP under this License Agreement, which debts could become a lien or charge on or against the Trails. POP shall keep the Trails and every part thereof free and clear of any and all mechanic's, materialmen's, and other liens arising out of or in connection with any such work, services, or materials provided by POP under this License Agreement.

16. Insurance: POP shall, at POP's own expense, obtain a policy or contract of insurance, or a comprehensive liability plan, which policy, contract, or plan shall provide that the insurance carrier pay on behalf of City or its employees to a limit of not less than One Million Dollars (\$1,000,000) for bodily or personal injury, death, or property damage, or loss as a result of any one (1) occurrence or accident, regardless of the number of persons injured or the number of claimants. Said insurance policy shall name City as an additional insured. A copy of a certificate of insurance shall be provided by POP to City at least five (5) days prior to POP beginning any activities on the Property. Such policy, plan, or contract of insurance shall, at all times during the term of this License Agreement, be kept in full force and effect.

17. Indemnification:

a. Generally.

POP shall not be liable for any loss, damage, injury, or death to persons or property, which at any time may be suffered or sustained by POP or its officers, directors, members, employees, volunteers, or agents or by any third person who may at any time be using, occupying, or visiting the Trails or be in, on, or about the same, whether such loss, damage, injury, or death shall be caused by or in any way result from or arise out of any act, omission, or negligence of POP or its officers, directors, members, employees, volunteers, or agents.

b. Hazardous Materials.

(i) POP shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, or used in or about the Trails by POP, its agents, employees, contractors or volunteers in a manner or for a purpose prohibited by or which could result in liability under any applicable law, regulation, rule, or ordinance. POP shall comply with all affirmative legal requirements concerning Hazardous Materials.

(ii) POP shall notify City of any release of any Hazardous Materials that POP knows or has reason to believe has contacted or otherwise contaminated the Trails. In addition, POP shall use its best efforts to remediate the contamination of the Trails by any Hazardous Materials, which contamination was caused or effected by POP including its officers, directors, members, employees, volunteers, or agents.

c. Definition of "Hazardous Materials".

The term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq. or any analogous state statute; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42U.S.C. §§ 6901 et seq.; (3) any "hazardous chemical substance or mixture" or "imminently hazardous chemical substance or mixture" within the meaning of the Toxic Substances Control Act, 15 U.S.C. §§ 2601

et seq.; (4) any “hazardous air pollutant” within the meaning of the Federal Clean Air Act, 42 U.S.C. § 7400 et seq.; (5) any “toxic pollutant” within the meaning of the Federal Water Pollution Control Act, 33 U.S.C. § 1250 et seq.; (6) any “contaminant” within the meaning of the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; (7) asbestos; or (8) any other substance, chemical, waste, toxicant, pollutant or contaminant regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment.

18. Waiver of Claims: Except for loss, damage, injury, or death arising by reason of the negligence or misconduct of City, its agents, or employees, POP waives all claims against City for injuries to persons or property in or about the Trails from any cause arising at any time.

19. Attorneys' Fees: If any action at law or in equity shall be brought on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this License Agreement, the prevailing party in such action shall be entitled to recover from the other party as a portion of the prevailing party's costs, reasonable attorneys' fee, the amount of which shall be fixed by the Court and shall be made a part of any judgment or decree rendered in the action.

20. Parties Bound: The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

21. Non-Discrimination: POP, in conducting its activities pursuant to this License Agreement, shall not discriminate against any person because of race, gender, sexual orientation, religion, age, color, ancestry, or national origin by refusing to furnish such person accommodation, facility, privilege, or opportunity offered to members of the general public.

22. Modification: This License Agreement may not be modified unless such modification is in writing and signed by both parties to this License Agreement.

23. Representative Capacity: By signature below, each signatory certifies that they are authorized by their respective party to act in a representative capacity to bind such party for all matters related to this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Watershed Trails License Agreement, intending it to become effective the day and year first above written.

CITY OF SANDPOINT

PEND OREILLE
PEDALERS, INC.

By: _____
Shelby Rognstad
Its: Mayor

By: _____
Its: Director

ATTEST:

By: _____
Maree Peck, City Clerk

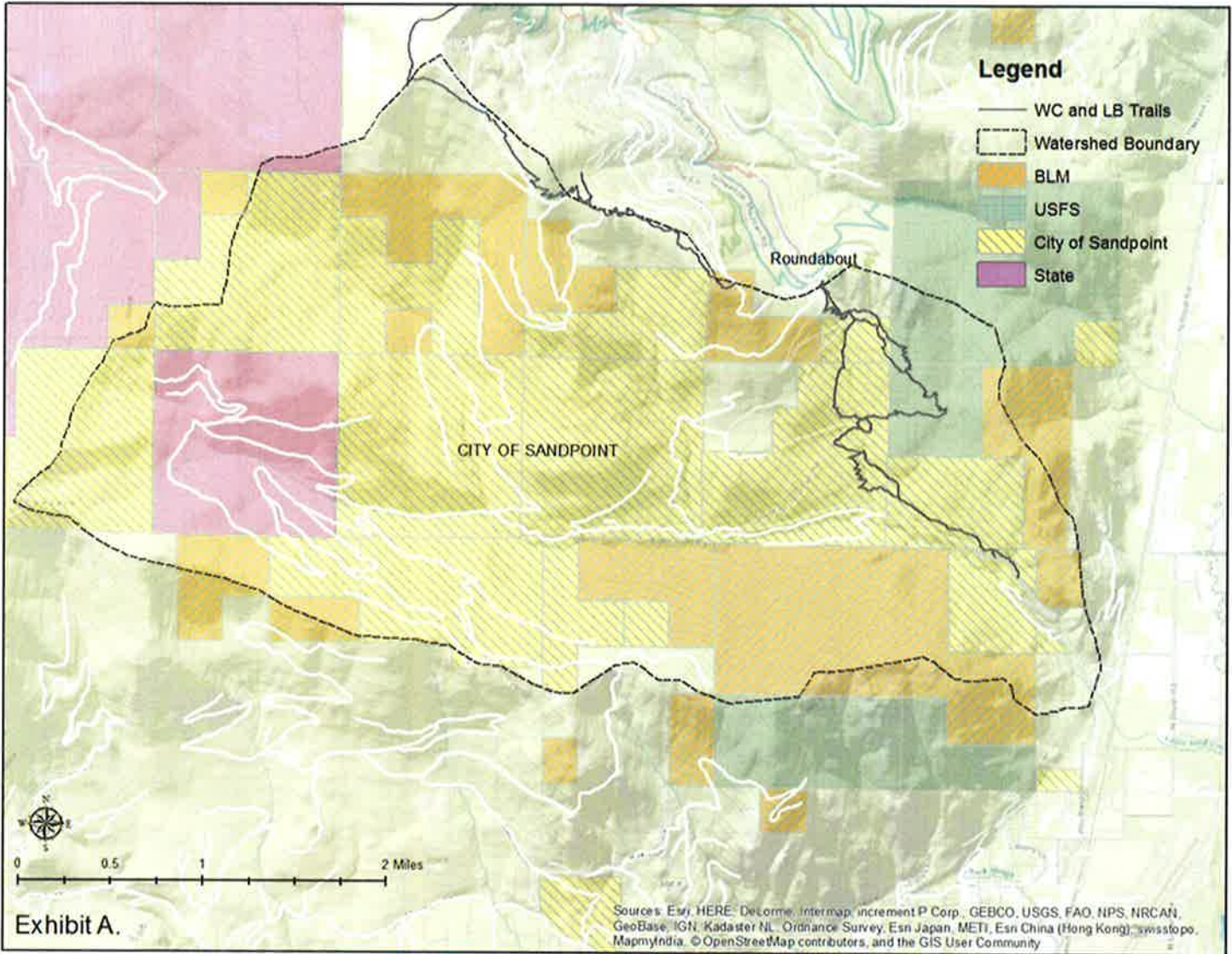


Exhibit A.

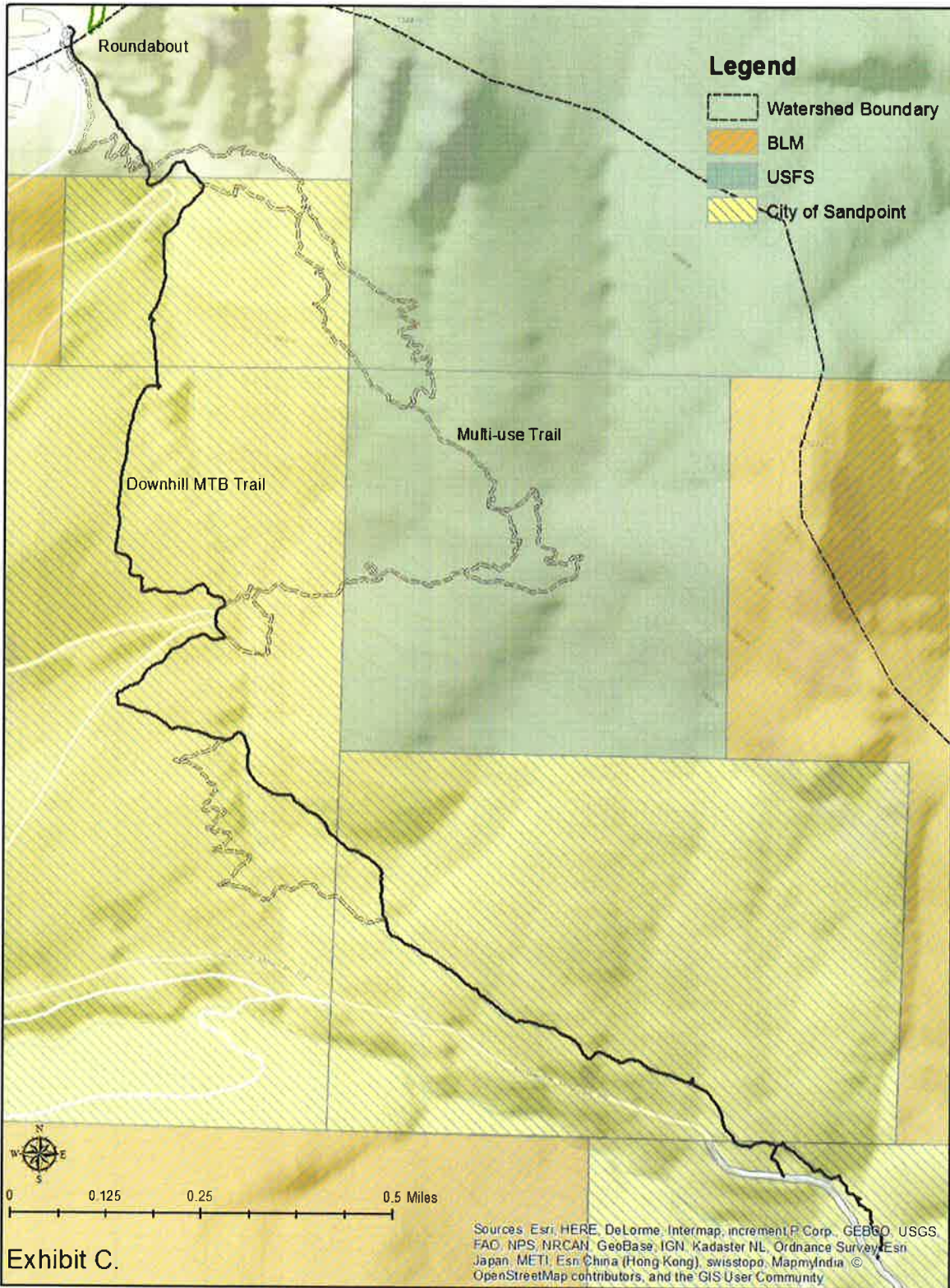


Exhibit C.

EXHIBIT D

VOLUNTEER RELEASE OF LIABILITY

Read Carefully Before Signing

I, the undersigned Volunteer, in consideration for being permitted to participate as a volunteer at the Watershed Crest and Lower Basin Trails, and except for intentional acts or gross negligence committed by the City of Sandpoint or the Pend Oreille Pedalers, Inc., hereby release and forever discharge the City of Sandpoint the Pend Oreille Pedalers, Inc., as well as their respective officers, directors, employees, agents, contractors, subcontractors, representatives, successors and assigns, and all persons conducting, directly or indirectly, the activities surrounding my involvement as a volunteer at the Watershed Crest and Lower Basin Trails including, but not limited to any claims, rights, demands, actions, causes of action, expenses and damages, which I or my heirs, personal representative, successors, assigns, or anyone else claiming by, through, or under me ever had, now have, or may have against City of Sandpoint and the Pend Oreille Pedalers, Inc., arising from any injury, act or omission relating in any way to my participation as a volunteer.

I fully understand the risks involved in my participation as a volunteer, which risks include, but are not limited to, those risks involved with working outside, in the weather, and utilizing tools and equipment, and I fully assume said risk for any injury, losses, or damages of any kind resulting from my activities.

I acknowledge that I have read, fully understand, and voluntarily agree to this Release and that no oral representatives, statements, or inducements apart from this Release have been made to me.

DATE	VOLUNTEER NAME (PRINT)	SIGNATURE (Guardian if under 18)	TIME IN	TIME OUT

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EXHIBIT E

WATERSHED MANAGEMENT GOALS AND OBJECTIVES

This management plan reflects the future plans, objectives and goals of the City of Sandpoint for its municipal watershed.

The most important function of the Little Sand Creek Watershed is to serve as the primary municipal water supply for the City of Sandpoint. Consequently, the management plan has been developed with the focus on protecting this use. All other goals, while compatible, remain secondary to this overriding objective. This objective and other plan considerations are outlined below.

Primary Objective: To protect or enhance the quality of water generated by the Little Sand Creek Watershed and to insure an adequate and continuous supply of water, in perpetuity, for the City of Sandpoint. This objective will be achieved by:

1. Acquiring additional property in the Little Sand Creek drainage whenever the opportunity arises, with the long-term goal being ownership of as much of the Little Sand Creek watershed as possible;
2. Practicing sound long-term forest management principles;
3. Reducing the hazard of catastrophic wildfires and increasing fire protection, particularly along vehicle access, ridge and escape corridors;
4. Protecting forest soils from erosion, contamination, or other damage;
5. Minimizing the impacts to the forest from insects, diseases and wildfire; and
6. Maximizing forest productivity, consistent with the water quality objective.

Secondary Objective: To realize ongoing financial benefits to the City through periodic timber harvests and subsequent improvements in forest health and productivity. This objective will be achieved by:

1. Maximizing forest productivity and financial return through timber harvest in a manner that is consistent and compatible with the primary water quality objective; and
2. Reducing forest insects, diseases, and wildfire hazards.

Tertiary Objective: To protect and enhance wildlife, fisheries, and aesthetic values wherever possible, in conjunction with the other objectives.

