

MEMORANDUM OF UNDERSTANDING
between
The Township of Leland
and
Northern Michigan Mountain Bike Association

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as a “MOU”) is hereby made and entered into by and between the **Township of Leland** a political subdivision of the State of Michigan (hereinafter referred to as the “Township”), and the **NORTHERN MICHIGAN MOUNTAIN BIKE ASSOCIATION**, a Michigan nonprofit corporation (hereinafter referred to as the “Association”).

PURPOSE: The purpose of this MOU is to initiate frameworks for a high degree of cooperation between the Association and the Township. The Township is responsible for the operation, maintenance, and improvement of the Provemont Pond Park (hereinafter referred to as the “Park), and the Association is an all-volunteer, private 501(c)(3) non-profit corporation established, in part, to build and maintain high quality bike and multi-use, non-motorized trails at the Park. This initiative comprises part of the Township’s mission to foster and encourage agricultural, industrial, commercial, educational, entertainment, tourism, technological, cultural, and recreational pursuits.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY MUTUALLY AGREED,** as follows:

- A. **STATEMENT OF MUTUAL BENEFIT AND INTERESTS:** The Township’s benefits include an active partnership with the Association to build, develop, maintain, and beautify the Park as well as an enhancement in programming for residents focused on recreational pursuits, tourism, and entertainment. This cooperative effort provides a public service to all visitors to the Park, consistent with the Township’s discharge of its governmental functions.
- B. **TOWNSHIP RESPONSIBILITIES:** The Township shall:
1. If necessary and in its sole discretion, appoint a Township Official or their designee to act as an ex officio, non-voting member of the Association.
 2. Work collaboratively with the Association to identify programming opportunities and pursue grant and sponsorship funding for the physical and programmatic development of the Park.

3. If possible and in its sole discretion, designate Township employees or volunteers to assist the Association as may be necessary from time to time to further the purpose of this MOU.
4. Provide to the public the appropriate rules and regulations pertaining to access and use of the Park, including all trails.
5. Be receptive to suggested renovations, preservation techniques, and beautification ideas proposed by the Association.
6. Promote services available at the Park, including, but not limited to cross country skiing, bike trails and snowshoeing through social media and other channels.

C. **ASSOCIATION RESPONSIBILITIES:** The Association shall use its best efforts to:

1. Work with the Township Supervisor to identify, support, plan, fund, and implement select improvements within the Park to ensure the development and maintenance of high-quality multi-use, non-motorized trails.
2. At its own cost and expense, secure all contractors, permits, licenses, services, materials, supplies, and equipment necessary to design, construct, and maintain the trails at the Park.
3. Through active citizen involvement, in conjunction with the Township, provide financial assistance to support the operation of the Park and to enhance the quality of life for Park visitors and residents of the Township and the surrounding region by building and maintaining the trails.
4. Under the written direction of the Township Supervisor or their designee, assist in the renovation, preservation, and beautification of the trails at the Park.
5. Organize volunteers to collect monetary donations and submit grant applications for the construction and maintenance of the trails at the Park.
6. Promote services available at the Park, including, but not limited to, cross country skiing, bike trails, and snowshoeing through social media and other channels
7. Prepare, maintain, and submit to the Township any reports and/or records relating to the services performed by the Association under this MOU, when and as requested by the Township, provided the Township gives the Association at least ten (10) calendar days written notification prior to the effective date of such requirement. Failure to prepare, maintain, and/or submit to the Township said records or reports, or failure to

- prepare, maintain, or submit to the Township any other reports or information specifically required by this MOU, may constitute a material breach of this MOU and grounds for immediate termination. All costs and charges incurred by the Association pursuant to this MOU shall be supported by properly receipted checks, payrolls, timecards, invoices, contracts, vouchers, orders, or other accounting documents.
8. In the event the Association is dissolved, distribute assets which were directed by a donor for purposes of improving the Park, collected during the term of this MOU to the Township for one (1) or more exempt purposes, including, but not limited to, funding the construction of new trails and various renovation, preservation, and beautification projects at the Park.
 9. In good faith, use funds raised to purchase goods and services for the benefit of the Park. Such expenditures shall be considered gifts to the Township, which are hereby accepted, and the Association agrees that it shall not charge the Township for any goods purchased or services rendered pursuant to this MOU, unless otherwise mutually agreed upon in writing by the parties.
 10. Use, develop, and maintain the Park for purposes consistent with the Township's discharge of its governmental functions and for no other purpose except as otherwise provided in this MOU. The Association shall not use the Park for proprietary purposes during the life of this MOU, unless mutually agreed upon in writing with the Township.
 11. Pay for the construction and maintenance of the trails, and shall hold the Township harmless from any liability therefor.
 12. Not commit, or cause to be committed, any waste upon or within the Park, nor maintain, commit, or permit the maintenance or commission of any nuisance at the Park.
 13. Keep the trail in the Park in good order and repair, except for reasonable wear and tear and casualty loss not arising from the Association's negligence, while constructing the trails.
 14. Improve, add to, or alter the Park to install trails thereon; provided, however, that the Association shall not remove any such improvements, additions, alterations, or fixtures without the prior written consent of the Township, and provided further that, on expiration or sooner termination of this MOU, all improvements, etc., made to the premises by the Association during the term of this MOU shall revert to and become the absolute property of the Township, free and clear of any and all claims against

them by the Association or any third persons, and the Association further agrees to hold the Township harmless from any claims that may be made against such improvements by any third persons.

D. LIABILITY:

1. The Association, through this MOU, is acting on behalf of the Township and as such the Association is entitled to assert as a defense to any claim the governmental immunity provisions set forth in MCL 691.1407 et seq. All liability to third parties, loss or damage as a result of claims, demands, costs, or judgments arising out of activities, such as direct service delivery, to be carried out by the Association in the performance of this MOU shall be the responsibility of the Association, and not the responsibility of the Township, if the liability, loss, or damage is caused by, or arises out of, the actions or failure to act on the part of the Association, any volunteer, subcontractor, or anyone directly or indirectly employed by the Association.
2. All liability to third parties, loss, or damage as a result of claims, demands, costs, or judgments arising out of activities, such as the provision of policy and procedural direction, to be carried out by the Township in the performance of this MOU shall be the responsibility of the Township and not the responsibility of the Association if the liability, loss, or damage is caused by, or arises out of, the action or failure to act on the part of any Township employee or agent, provided that nothing herein shall be construed as a waiver of any governmental immunity by the Township or its employees as provided by statute or court decisions.
3. In the event that liability to third parties, loss, or damage arises as a result of activities conducted jointly by the Township and the Association in fulfillment of their responsibilities under this MOU, such liability, loss, or damage shall be borne by the Township and the Association in relation to each party's responsibilities under these joint activities provided that nothing herein shall be construed as a waiver of any governmental immunity by the Township or the Township's employees, respectively, as provided by statute or court decisions.

E. **INSURANCE:** The Association shall at all times during the term of this Agreement be an insured under a general policy of liability insurance in such amounts as are reasonable and customary and upon request of the Township shall provide proof of such insurance to the Township.

F. **NONDISCRIMINATION:** The Association, as required by law, shall not discriminate against a person to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, gender identity, disability that is unrelated to the individual's ability to perform the duties

of a particular job or position, height, weight, or marital status. The Association shall adhere to all applicable Federal, State and local laws, ordinances, rules and regulations prohibiting discrimination, including, but not limited to, the following:

1. The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended;
2. The Person with Disabilities Civil Rights Act, 1976 PA 220, as amended;
3. Sections 504 of the Federal Rehabilitation Act of 1973, P.L. 93-112, 87 Stat 355, and regulations promulgated thereunder; and
4. The Americans with Disabilities Act of 1990, P.L. 101-336, 104 Stat 327, as amended, and regulations promulgated thereunder.

Breach of this Section shall be regarded as a material breach of this MOU. In the event the Association is found not to be in compliance with this Section, the County may terminate this MOU effective as of the date of delivery of written notification to the Association.

G. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. FREEDOM OF INFORMATION ACT (“FOIA”): Any information furnished to the Township under this instrument is subject to the Freedom of Information Act (5 U.S. C. 552).
2. MODIFICATION: All modifications to this MOU must be mutually agreed upon by the parties and incorporated into written amendments to this MOU after approval by the Township and signed and dated by their duly authorized representatives prior to any changes being performed.
3. ASSIGNMENTS OR SUBCONTRACTING: This MOU shall be binding upon and inure to the benefit of the Township and the Association hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns. The Association may not assign this Agreement without the prior written consent of the Township. The parties agree and acknowledge that the Association shall not be deemed to be the agent or employee of the Township and that the Association has not power or authority to contractually bind the Township.
4. PARTICIPATION IN SIMILAR ACTIVITIES: This MOU is made by mutual consent of the parties. .
5. PRINCIPAL CONTACTS: The principal contacts for this instrument are:

Leland Township Contact	Association Contact
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Attn:	Attn:
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Phone:	Phone:
E-mail:	E-mail:
Address:	Address:

6. NON-FUNDING OBLIGATING DOCUMENT: This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

7. COMPLIANCE WITH THE LAW: The Association shall administer the funding and provide all the services to be performed under this MOU in complete compliance with all applicable Federal, State, and local laws, ordinances, rules and regulations.

8. APPLICABLE LAW AND VENUE: This MOU shall be construed under and in accordance with the laws of the State of Michigan. In the event any disputes arise under this MOU, it is understood and agreed that any legal or equitable action resulting from such disputes shall be in Michigan Courts whose jurisdiction and venue shall be established in accordance with the statutes and Court Rules of the State of Michigan. In the event any action is brought in or is moved to a federal court, the venue for such action shall be the Federal Judicial District of Michigan, Western District, Southern Division.

9. COMMENCEMENT/EXPIRATION DATE: This MOU is executed in full force and effect as of the date of last signature and shall terminate in five (5) years from such date of commencement unless terminated earlier pursuant to paragraph 10 below. By written mutual consent, this MOU, in whole or in part, may be extended for one (1) additional three (3) year term.

10. TERMINATION: Notwithstanding any other provision in this MOU to the contrary, either party may terminate this MOU, in whole or in part, with or without cause, upon sixty (60) calendar day's prior written notice to the other party. Nevertheless, should the Association fail to provide proof of insurance to the Township as required by paragraph (E) above, the Township may terminate this Agreement within five (5) days

the Association's receipt of the request for proof of insurance. Additionally, the Township may terminate this Agreement immediately in the event that the Township determines that the Association has failed to comply with paragraph (C)(7).

11. WAIVERS: No failure or delay on the part of either of the parties to this MOU in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.
12. PURPOSE OF SECTION TITLES: The titles of the sections set forth in this MOU are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this MOU.
13. COMPLETE MOU: This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU or any part thereof shall have any validity or bind any of the parties hereto.
14. SEVERABILITY: If any part of this MOU is found by a Court or Tribunal of competent jurisdiction to be invalid, unconstitutional or beyond the authority of either party to enter into or carry out, such part shall be deemed deleted and shall not affect the validity of the remainder of this MOU which shall continue in full force and effect. If the removal of such provision would result in the illegality and/or unenforceability of this MOU, this MOU shall terminate as of the date in which the provision was found invalid, unconstitutional or beyond the authority of the parties.
15. CERTIFICATION OF AUTHORITY TO SIGN MOU: The people signing this MOU on behalf of the parties hereto certify by their signature that they are duly authorized to sign on behalf of said parties and that this MOU has been authorized by said parties.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last written date below.

TOWNSHIP OF LELAND

**NORTHERN MICHIGAN MOUNTAIN
BIKE ASSOCIATION**

By: _____

By: _____
(Signature)

Date: _____

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____