

Meeting Date: 8/25/2015

Report Type: Consent

Report ID: 2015-00748

Title: Lease Agreement for Township 9 Demonstration Pump Bike Park

Location: District 3

Recommendation: Pass a Motion: 1) approving the plans and specifications for the Township 9 Demonstration Pump Bike Park; 2) approving the Lease Agreement for the Township 9 Demonstration Pump Bike Park; and 3) authorizing the City Manager or his designee to execute the Lease Agreement.

Contact: Shannon Brown, Operations Manager, (916) 808-6076, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Operations

Dept ID: 19001311

Attachments:

1-Description/Analysis

2-Lease Agreement

City Attorney Review

Approved as to Form

Sheryl Patterson

8/18/2015 4:55:32 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 8/12/2015 5:28:35 PM

Description/Analysis

Issue Detail: Capitol Station 65, LLC owns a parcel of land within the development project site known as Township 9. Due to the phasing of the construction of the Township 9 development project, there is excess land which is not scheduled for development within the next few years. The property owner is willing to allow its land to be used by the City as a “Pump Bike Park” under the terms of a lease so that the City assumes the liability similar to any other public park. Similar dirt bike parks have been developed in the Cities of Folsom and Elk Grove and are very popular.

A Pump Bike Park has dirt trails as the “pump tracks” to ride along and dirt piles designed for bicyclists to jump. The trails or pump tracks are designed for all levels of riders. The landowner has arranged with the Folsom Auburn Trail Riders Action Coalition known as FATRAC to find volunteers to maintain the trails and jumps, which were built by volunteers from the International Mountain Bicycling Association (IMBA).

Township 9 is located next to the American River Bike Trail (the “Two Rivers Trail”), which will allow for easy access by bicyclists to the Pump Bike Park. This park will be open to the public with no park fees, so it is expected to be a popular park. This is a demonstration project and, as such, when the land is ready for development this park will close. However, the City will endeavor to find another location and work with IMBA and FATRAC to rebuild a Pump Bike Park in a different location.

The lease term is for a one year period effective September 1, 2015 and renewed annually for successive one year periods.

Policy Considerations: None

Economic Impacts: None

Environmental Considerations: The Pump Bike Park project is exempt from environmental review as a minor alteration of land for a temporary use that will have no permanent effects on the environment under CEQA Guidelines section 15304.

Sustainability: None

Commission/Committee Action: None

Rationale for Recommendation: The Township 9 Pump Bike Park is a demonstration project to determine if there is sufficient demand for such a park in the City.

Financial Considerations: The recommendations in this report does not result in any financial impact to the City, although the City will be assuming liability for public use of this park facility. No rent shall be owed and no City maintenance is anticipated other than trash removal.

Local Business Enterprise (LBE): Not applicable.

**LEASE AGREEMENT
TOWNSHIP 9 DEMONSTRATION PUMP BIKE PARK**

THIS LEASE AGREEMENT ("Lease") is executed at Sacramento, California, on _____, 2015 (the "Execution Date") between the CITY OF SACRAMENTO, a municipal corporation ("Lessee" or "City"), and CAPITOL STATION 65, LLC, a California limited liability company ("Landlord"), which are individually referred to as "Party" and collectively as "Parties."

In consideration of the mutual benefits to be derived from this Lease and the representations, warranties, covenants and conditions set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **DEMONSTRATION PUMP BIKE PARK.** Landlord owns a parcel of land within the development project site known as Township 9. Due to the phasing of the construction of the Township 9 development project, Landlord has excess land which is not scheduled for development within the next few years. Landlord desires to allow its land to be used as a "Pump Bike Park," which is the creation of dirt trails as the pump tracks and dirt piles designed for bicyclists to jump, similar to a mountain bike park but without any lifts; bicyclists must manually pump their bikes to travel through the park. The trails or pump tracks are to be designed for all levels of riders.

Township 9 is located next to the American River Bike Trail (the "Two Rivers Trail"), which will allow for easy access by bicyclists to the Pump Bike Park. Landlord has made arrangements with the International Mountain Bicycling Association to develop its land as a Pump Bike Park by setting the bike trails and building the jumps. Landlord will install trail signage. Landlord has arranged for Folsom Auburn Trail Riders Action Coalition, a California nonprofit corporation, known as "FATRAC" to undertake any maintenance required to keep the trails and jumps intact. Lessee is willing to accept this land, as improved by Landlord, as a City park open to the public.

The Parties agree that this is a demonstration project to determine if there is sufficient demand for a Pump Bike Park in the City, and that Landlord is allowing use of its property for this public park on a temporary basis. As set forth below, both Parties agree that either Party can terminate this Lease at any time without cause, especially if the Pump Bike Park operation creates any problems for the adjacent residents and businesses or Landlord's construction projects, or if it is not being used by the public or is being used improperly by the public.

2. **DESCRIPTION OF PREMISES.** Landlord leases to Lessee, and Lessee leases from Landlord, on the terms and conditions set forth herein, the "Premises" situated in the City of Sacramento, County of Sacramento, State of California, described as being an approximate 11 acre parcel of land located between Riverine Way on the north, Vine Street on the south, North 5th Street on the west and North 7th Street on the east (APN No. 0010-0020-056, 057 and a portion of 066) as shown on the diagram attached as Exhibit "A" and as described in the legal description attached as Exhibit "B." As of the Execution Date, the

Premises is a vacant parcel of land that Landlord has improved as a Pump Bike Park. Lessee has inspected the Premises and accepts the Premises in its "as is" condition.

3. **TERM.** This Lease shall be effective as of September 1, 2015, which date shall be known as the "Lease Commencement Date." The length of this Lease (the "Term") shall be for a one year period to August 31, 2016. The Term of this Lease shall annually renew for successive one year periods. This Lease may be terminated at any time by either Party for its convenience by providing at least thirty (30) days advance written notice to the other party which specifies the date of termination.

4. **RENT.** No rent shall be owed as long as Lessee allows for use of the Premises by the public at no cost.

5. **UTILITIES AND SERVICES.** Lessee shall arrange for any utility services required for operation of the Pump Bike Park and will be responsible for servicing trash containers on the Premises, if any.

6. **TAXES.** Landlord shall remain obligated to pay any increased property tax assessments, if any, that may be levied by the County of Sacramento for the improvements to the Premises undertaken by Landlord.

7. **USE.** The Premises are leased to Lessee for the purpose of operation of a Demonstration Pump Bike Park, and Lessee shall not use, or allow the use, of the Premises for any other purpose without Landlord's prior written consent. Lessee shall install signage designating this park as a demonstration project and set the hours of use.

Subject to submittal of an application and issuance of either a park use permit or special event permit in accordance with City Code Chapters 12.48 and 12.72, Landlord or others may reserve the Pump Bike Park for skills training, competitions and races, public events, and other uses related primarily to the promotion of bicycle use.

8. **ALTERATION OF PREMISES.** Landlord, at its sole cost and expense, has undertaken the alterations required to the Premises to create the Pump Bike Park prior to the commencement date of this Lease. Lessee's only cost that will be absorbed by Lessee shall be its Parks Department staff time to review improvements plans and inspect the work, and install signage. Other than installing signage, Lessee shall not make any alterations of, or improvements to, the Premises without the prior written consent of Landlord. The following provisions apply to the work performed to alter the Premises to create the Pump Bike Park:

- (a) The City has completed environmental review of the Pump Bike Park project and finds that it is exempt from environmental review as a minor alteration of land for a temporary use that will have no permanent effects on the environment under CEQA Guidelines section 15304, and has filed a Notice of Exemption.
- (b) Landlord agree that FATRAC shall have the right of entry after the Lease Commencement Date for itself and its contractors, subcontractors, agents and

volunteers to enter the Premises to maintain the Pump Bike Park trails and jumps. Prior to the entry to undertake any maintenance of the trails and jumps, the Lessee will require FATRAC to either (i) sign a right of entry permit that requires FATRAC to furnish to Lessee a certificate of Commercial General Liability insurance by FATRAC or its contractor in the amount of not less than one million dollars (\$1,000,000) per occurrence and shall include an endorsement naming Landlord and the City as an additional insureds; or (ii) if maintenance will be performed only by volunteers, FATRAC will be required to obtain waivers and releases from all volunteers performing maintenance services using the form attached as Exhibit C. If the maintenance work is not performed by volunteers and will exceed \$15,000, the state prevailing wage requirements for maintenance work apply and FATRAC shall be required to comply with such requirements under the terms of the right of entry permit.

- (c) After the Commencement Date, Lessee shall open the park for public use and assume responsibility for the Pump Bike Park operation. However, neither Landlord nor Lessee shall be required to keep the trails and jumps intact or undertake any other type of maintenance of the Premises. If the Premises are not maintained by FATRAC as anticipated by the Parties, then either Party can terminate this Lease for their convenience and close the Pump Bike Park.

9. SURRENDER OF PREMISES AT END OF TERM. At the expiration or termination of this Lease, Lessee shall surrender the Premises to Landlord in its "as is" condition. Lessee shall not be obligated to remove any of the improvements constructed by Landlord, and is only required to remove the signage installed by Lessee.

10. NUISANCE. Landlord agrees that Lessee shall not be liable to Landlord for any noise, wind-blown dirt or trash, or any nuisance or other act or thing associated with operation of the Pump Bike Park on the Premises which may disturb the quiet enjoyment of the adjacent properties owned by Landlord.

11. INDEMNITY. This Lease is made upon the express condition that Lessee shall defend, indemnify and hold harmless Landlord and its officers, employees and agents from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by the Landlord's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities arise out of or are in any way connected with Lessee's and its officers, employees, contractors, agents, and invitees (e.g., the public) use and occupancy of the Premises, whether or not such Liabilities are caused in part by Landlord or its officers, employees or agents; provided, however, that the foregoing indemnity does not apply to Liabilities arising from Landlord's breach of any provision in this Lease or the sole negligence or willful misconduct of Landlord and its officers, employees, contractors, agents or volunteers. This indemnity provision shall survive the termination or expiration of this Lease.

12. **NOTICES.** Any and all notices or demands by or from either Party shall be in writing and served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands shall be conclusively deemed made as of the time of deposit in the United States mail, postage paid, or if by certified mail, return receipt requested. Any notice or demand to Landlord or Lessee may be given to:

LANDLORD:

Steve Goodwin
Capitol Station 65, LLC
640 Bercut Drive, Suite C
Sacramento CA 95811-0131
(916) 768-7770

LESSEE:

Jim Combs, Director
Department of Parks and Recreation
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-8379

Any party may change the address for notice by giving written notice to the other party as set forth above.

13. **WAIVER.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained.

14. **BINDING ON SUCCESSORS.** The covenants and conditions in this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties.

15. **NO JOINT VENTURE.** The parties to this Lease do not constitute a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease.

16. **CAPTIONS.** The title or headings to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

17. **ENTIRE AGREEMENT; MODIFICATION.** The Parties have each carefully reviewed this Lease and have agreed to each term in this Lease. No ambiguity shall be presumed to be construed against either party. This Lease contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties. No waiver, alteration, modification, or amendment of this Lease shall be valid unless made in writing and signed by the Parties.

[signature page follows]

IN WITNESS WHEREOF, Landlord and Lessee have executed this Lease on the date herein above first written.

LESSEE:

CITY OF SACRAMENTO,
a Municipal Corporation

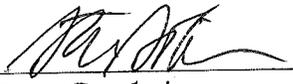
BY: _____

Jim Combs, Director
Parks and Recreation Department
For: John F. Shirey, City Manager

LANDLORD:

CAPITOL STATION 65, LLC,
a California Limited Liability Company

BY: _____


Steve Goodwin
Managing Member
President

Approved as to Form:

BY: _____

Senior Deputy City Attorney

Attest:

BY: _____

Assistant City Clerk

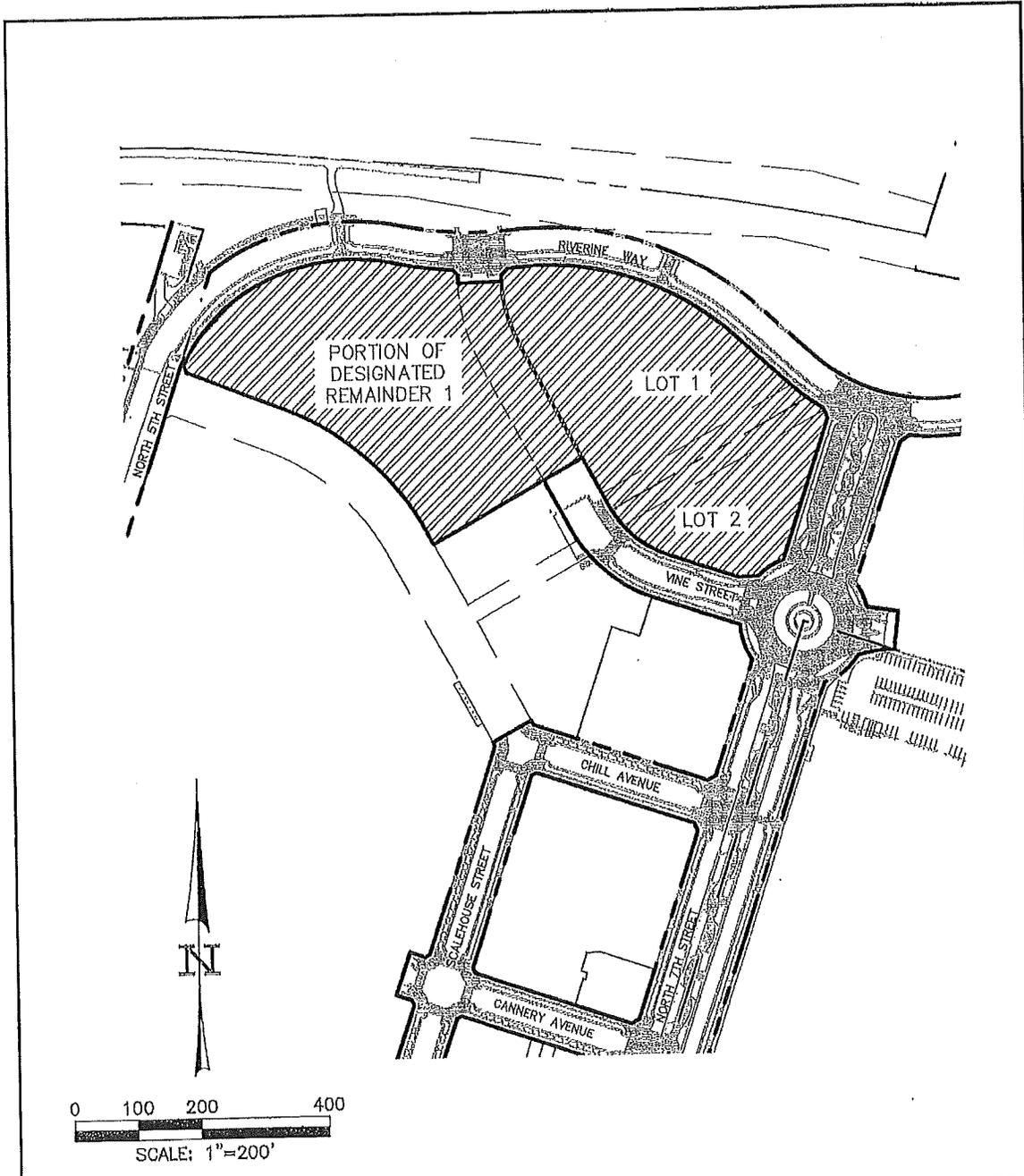
The undersigned agrees to the terms of this Lease.

FOLSOM AUBURN TRAIL RIDERS ACTION COALITION,
a California nonprofit corporation

BY: _____


Name: *FRED STRICKLAND*
Title: *PRESIDENT*

Exhibit A Premises Diagram



 <p style="font-size: small;">2525 HURMAN PARK DRIVE, SUITE 300 916.611.6100 TEL. 916.611.8222 FAX SACRAMENTO, CA 95833 WWW.NVI5.COM</p>	<p>EXHIBIT A LEASE BETWEEN CAPITOL STATION 65 AND THE CITY OF SACRAMENTO</p>	<p>SHEET NUMBER 1 OF 1 SHEETS</p>
	<p>PREPARED FOR: CAPITOL STATION 65, LLC DATE SUBMITTED: JULY 2015</p>	

Exhibit B
Legal Description

The land situated in the County of Sacramento, City of Sacramento, State of California,
described as follows:

LOTS 1, 2 AND A PORTION OF DESIGNATED REMAINDER 1 AS SHOWN
ON THE MAP ENTITLED "TOWNSHIP 9 - PHASE 1, SUBDIVISION NO. P10-
036", FILED FOR RECORD NOVEMBER 13, 2012 IN BOOK 378 OF FINAL
MAPS, PAGE 1, SACRAMENTO COUNTY RECORDS.

APN 001-0020-056-0000

APN 001-0020-057-0000

APN 001-0020-066-0000 (PARTIAL)

Exhibit C

TOWNSHIP 9 PUMP BIKE PARK VOLUNTEER RELEASE AND WAIVER

This is release of liability. Read carefully before signing.

THE CITY OF SACRAMENTO AND THE LANDOWNER CAPITOL STATION 65, LLC REQUIRE THAT AS A CONDITION TO ENTER THE PUMP BIKE PARK TO MAINTAIN THE TRAILS AND JUMPS, YOU SIGN THIS GENERAL RELEASE.

In consideration of being permitted to assist in maintaining the TOWNSHIP 9 PUMP BIKE PARK ("Park"), I hereby voluntarily release, discharge, waive, relinquish and hold harmless (collectively "Release") any and all claims or actions that I may have now or in the future against the City of Sacramento, Capitol Station 65, LLC, and their respective officers, employees, agents and volunteers (collectively, "Releasees") for damages for personal injury, death, or property damage (the "Risks") that I may suffer resulting from my presence at or participation in the maintenance of the Park, including but not limited to Risks caused by the actions or inactions of me, any other person at or participating in the Park maintenance, or by any person providing advice or instruction during the Park maintenance activities which may include the Releasees. This General Release is intended to discharge, in advance, the Releasees from any and all liability arising out of or connected in any way with the Park maintenance by volunteers, even though that liability may arise out of negligence, carelessness, or improper actions or failure to act on the part of the Releasees, but excluding intentional misconduct.

I understand that the building dirt trails and jumps is an inherently dangerous recreational activity and serious accidents, including grave personal injury or death and property damage, occur from time to time during these types of Park maintenance activities. Knowing the Risks, and in consideration of being permitted to participate in maintaining the Park, I hereby agree to assume those Risks and agree to Release and promise not to sue the Releasees, even though by their act or failure to act I may suffer injury and damages and the Releasees may otherwise be liable to me and/or my spouse, partner, children, family and heirs for my injuries and damages but for this General Release. I further understand and agree that this Release and assumption of Risks is binding on my heirs, executors, administrators and assigns.

I have read this General Release, I understand that I am giving up substantial rights by signing it, I have had the opportunity to obtain legal advice prior to signing it, and I sign it voluntarily. This General Release shall remain in effect as long as the Park remains open to the public unless it is revoked in writing by submitting a written request to the City of Sacramento, Park and Recreation Department, Attn. Park Maintenance Manager, 915 I Street, 3rd floor, Sacramento CA 95814 and I no longer participate in the Park maintenance activities.

Signature: _____ Date: _____

Printed Name: _____