

# Community Trail Management Agreement

## KPB 17.10.185

### I. PARTIES TO THE AGREEMENT

Landowner: Kenai Peninsula Borough ("KPB")

Trail Manager: Shimai Toshi Garden Trails, Inc. ("STGT")

### II. PURPOSE OF THE AGREEMENT

The purpose of this Community Trail Management Agreement ("CTMA") is to authorize the STGT to construct and perform management of certain public trail facilities on KPB land.

### III. COMMUNITY TRAIL MANAGEMENT AGREEMENT AUTHORITY

Pursuant to KPB 17.10.185 and Ordinance 2020-\_\_\_, enacted February 25, 2020, KPB hereby enters into this CTMA with STGT for the management of public trails, trail corridors, and related facilities (hereinafter collectively called "Trail Facilities") as described in this agreement through a Trail Management Plan, subject to the terms and conditions of this CTMA.

### IV. LOCATION

This CTMA is applicable only on the lands described below and owned by the KPB.

An area within the NW1/4 SE1/4, Section 30, Township 5 North, Range 10 West, Seward Meridian, Kenai Recording District, Alaska, being more particularly described as follows:

A triangular area bounded to the southeast by the trail easement granted to the City of Soldotna (BK 587 PG 154, Kenai Recording District), to the north by the 40-foot road easement granted to the

City of Soldotna (BK 161 PG 413, Kenai Recording District), and to the west by the Mooring By The River Subdivision (KN 1984-160).

Containing 6.88 acres (299,693 sf), more or less, as shown on Exhibit "A", attached to and made a part hereof.

## **V. TRAIL MANAGEMENT PLAN**

The purpose of the Trail Management Plan is to establish the scope of physical trail and garden facilities and their respective locations, along with the means and methods by which the STGT shall develop, manage, and maintain those trail and garden facilities under this CTMA.

### Trail Management Plan

A. The Trail Management Plan shall include the following, as applicable:

1. Written Descriptions of the means, methods and timetables to communicate the active scope of the development, use, and management of Trail Facilities under this CTMA.
2. Drawings of the Trail Facilities through maps, typical profile diagrams, conceptual site plans, structural drawings, and details as necessary to illustrate the position and relation of existing and proposed Trail Facilities to land boundaries, terrain features, other land uses, and to communicate the spatial and structural scope of the Trail Facilities under this CTMA.
3. Published Rules & Regulations including major signs to be used to administer the orderly use of Trail Facilities and generally the location of such postings.
4. Fees & Reservation System, including any use fees or service fees, the basis of rates, the method of collection and entry, and the current contact for system administration. If fees are collected, then reporting of fees collected is required in the annual report along with the maintenance and service costs upon which the fees are based.

- B. Amendment or Modification of the Trail Management Plan shall only be by mutual written agreement. The STGT may submit proposed amendments or modifications to the Planning Department for consideration under this CTMA. The Planning Department shall have a minimum of 60 days to review the submittal. The KPB may approve, deny, or condition the submittal. Amendments will be considered administratively when the addition is consistent in nature with the standing agreement. Major amendments will require approval by the KPB Assembly. Amendments or modifications shall become effective upon written agreement by the parties and shall be incorporated into the Trail Management Plan.

## **VI. OPEN TO THE GENERAL PUBLIC**

Trails Facilities under this CTMA shall be open to the general public.

When applicable, STGT is authorized to coordinate and schedule events among user groups and to schedule Trail Facilities work and maintenance, during which times the STGT may post notice and restrict uses to those events, Trail Facilities work or maintenance.

## **VII. RULES, REGULATIONS, AND SAFETY**

- A. STGT shall promulgate trail use rules and regulations necessary to promote safe and orderly use of Trail Facilities by the general public, subject to review and approval by the KPB under the Trail Management Plan.
- B. STGT shall periodically assess trail conditions and is authorized to restrict or close use if conditions are determined to be unsafe or that use during such conditions would potentially cause damage to Trail Facilities, whether or not explicitly stated in the Trail Management Plan.
- C. STGT shall post signs or signals necessary to guide safe use of the Trail Facilities by the general public.
- D. Pursuant to Ordinance 2020-\_\_\_\_\_ Trail Facilities under this CTMA are authorized for non-motorized use only, except allowance for authorized maintenance vehicles.

- E. STGT shall remove trash, litter, and debris on a regular basis, and keep the Trail Facilities in a neat, clean, sanitary, and in a safe condition.

### **VIII. ANNUAL REPORTING REQUIRED**

In performance of this CTMA, the STGT will provide an annual report to KPБ summarizing 1) Trail Facilities development, 2) Trail Facilities use or availability for use, 3) maintenance activities, 4) management activities, and, 5) accounting of fees, if any. The Trail Management Plan shall guide standard reporting metrics. Fees, if any, will include the total amount collected in US dollars, and the number of fee units. *For example, purposes: Reporting Period Jan 1 – Dec 31. Total Number of Public Use Cabins: 1, Total Cabin Use Fees Collected- \$3,500, Public Use Cabin Rental Days 100, Daily Fee \$35/Day, Cabin Availability 345 Days available for reservations, Cabin Maintenance 20 Days -volunteers stained exterior, restocked wood pile 10 times (10 cords), cleaned wood stove, and conducted routine maintenance. Maintenance and supply costs \$3,200, Cabin Maintenance Reserve Account Balance \$300.*

Annual reports are due by April 15<sup>th</sup> of each year.

### **IX. TERM**

This CTMA is for an initial term of 20 years commencing April 1, 2020 and may be extended at any time preceding expiration by mutual written agreement.

### **X. IN SUPPORT OF GRANT OPPORTUNITIES, DURABLE FOR SITE CONTROL**

For the purposes of grant applications made by STGT regarding improvement or maintenance of Trail Facilities under this CTMA and the Trail Management Plan, this agreement is intended to be considered durable site control to the granting agency for the duration of the grant maintenance period. In the event that a grant maintenance period extends beyond the written term of the CTMA, written acknowledgement by KPБ in support of the grant application can be considered intent to extend the CTMA through the grant maintenance period as the CTMA pertains to such grant.

## **XI. RESERVATIONS & OTHER PROPERTY INTERESTS RETAINED**

- A. Nothing contained in this CTMA creates or implies any property interests, including easements or rights-of-way beyond the terms and conditions of this CTMA.
- B. KPB reserves the right to withdraw portions of the Trail Facilities from this CTMA as necessary to serve other land uses or resolve conflicts.
- C. KPB reserves the right to require Trail Facilities to be closed, removed, or relocated by and at the expense of the STGT if such trails pose a potential conflict with other land uses.
- D. KPB reserves the right to authorize other land uses on the land.
- E. KPB reserves the right to review, approve, or deny any management actions that affect trail use, land use or development on the land.
- F. Use of the land shall be subject to all valid existing rights, including leases, permits, easements, rights-of-ways, covenants and restrictions or other interests in the real property. The KPB reserves and retains the right to grant additional easements or rights-of-ways across the property as it deems reasonable and convenient or necessary.
- G. Should circumstances warrant, this CTMA may be modified or suspended in writing by the KPB to protect resources, health, safety, or the environment.

## **XII. LIMITATIONS**

- A. This CTMA conveys no interest in the land to the STGT. This CTMA does not convey any exclusive rights, nor any preferential rights to the STGT for the use of the Trail Facilities or the land, different from the STGT's right to secure its authorized property and administer the Trail Facilities provided in the CTMA.
- B. The STGT shall not develop, manage, or maintain beyond what is specified in the Trail Management Plan, unless otherwise approved in writing by the KPB.
- C. This CTMA is not intended to, and does not, give special standing to Trail Facilities or to the STGT beyond the purposes and terms of the agreement.

- D. KPB assumes no obligation to commit funds or other resources for improvements or maintenance associated with the Trail Facilities or their continuation.

### **XIII. ASSUMPTION OF RISKS**

- A. Defense and Indemnification: The STGT shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from the STGT's performance or failure to perform in accord with the terms and conditions of this CTMA in any way whatsoever. The STGT shall be responsible under this clause for any and all claims of any character resulting from the STGT or the STGT's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this CTMA in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the STGT shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.
- B. Liability Insurance: The STGT shall purchase at its own expense and maintain in force at all times during the term of this CTMA the following insurance policy:
1. Commercial General Liability: Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the STGT in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by the KPB. The policy purchased shall name the KPB as an additional insured with respect to the STGT's activities conducted on the property.
- C. Proof of Insurance: The STGT shall deliver to the KPB a certificate of insurance. This insurance shall be primary and exclusive of any other insurance held by the KPB. Failure to provide the certificate of insurance as required by this section, or a lapse in coverage, is a material breach of this CTMA entitling the KPB to revoke the agreement.

#### **XIV. GENERAL CONDITIONS**

- A. Reference to KPB. 17.10.240. The general conditions contained in KPB 17.10.240 are incorporated by reference.
- B. Responsibility of Location. It shall be the responsibility of the STGT to properly locate its self and its improvements on the land authorized.
- C. Compliance with Laws. The STGT agrees to comply with all applicable federal, state, borough, and local laws and regulations.
- D. Inspections. Agents or representatives of the KPB shall have access to the Trail Facilities at all times.
- E. Waste. The STGT shall not commit waste or injury upon the land.

#### **XV. ENFORCEMENT OF AGREEMENT & TERMINATION**

- A. Termination. Violation of the CTMA subjects the agreement to termination 60 days after delivering notice of violation for where correction is not made to resolve the violation to KPB's reasonable satisfaction.
- B. Performance of Duties. The Trail Management Plan shall be considered a duty under the CTMA. Failure to materially perform according to the Trail Management Plan may be considered a violation and subject the CTMA to termination in whole or in part.
- C. Unauthorized Uses. Uses of the land other than those authorized under the CTMA may be considered a violation and subject the CTMA to termination in whole or in part.
- D. Breach of Conditions. A breach of any of the conditions of this CTMA will be considered a violation of the agreement.
- E. Suspension. Violation of the CTMA subjects the agreement to immediate suspension by notice of suspension for violations that create a significant risk to human safety or that are counter to the public purposes for which this CTMA is intended to serve.

- F. Notice of Violation and Suspension. Notice of violation and notice of suspension shall be in writing and shall serve to identify the violation and the standards under which a correction will be considered to resolve the violation.
- G. Cancellation. At any time that this CTMA is in good standing it may be canceled in whole or in part upon mutual written agreement by the parties.
- H. Jurisdiction. Any suits filed in connection with the terms and conditions of this CTMA, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
- I. Savings Clause. Should any provision of this CTMA fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this agreement or constitute any cause of action in favor of either party as against the other.
- J. Binding Effect. It is agreed that all covenants, terms, and conditions of this CTMA shall be binding upon the successors, heirs and assigns of the original parties hereto.
- K. Full and Final Agreement. This CTMA constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This CTMA may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. The STGT avers and warrants that no representations not contained within this CTMA have been made with the intention of inducing execution of this CTMA.
- L. Warranty of Authority. The STGT warrants that the person executing this CTMA is authorized to do so on behalf of the STGT.

## **XVI. CONDITION OF PROPERTY VACATED**

- A. Removal and Cleanliness. On or before the expiration date of this CTMA, or within 60-days of early termination, the STGT shall leave the land in a neat, clean and sanitary condition, and shall remove all trash, waste, materials, equipment, and other personal property that the STGT has placed on the land.



- B. Final Report. Any previously unstated matters between the parties must be reported in writing to the other party within 60-days of expiration or termination to be considered valid interests under this CTMA or all claims or right to claims shall cease for the purpose of this agreement.

## **XVII. NOTICES**

All notices shall be sent to both parties as follows:

KENAI PENINSULA BOROUGH  
Planning Director  
44 N. Binkley  
Soldotna, AK 99669-7599

Shimai Toshi Garden Trails, Inc.  
P.O. Box 771  
Soldotna, Alaska 99669

STGT shall maintain on file with KPB the name, title, address, email address and telephone number of an individual with who shall be the point of contact for day-to-day and emergency contact, information, and correspondence, relative to this CTMA.

### **KENAI PENINSULA BOROUGH**

\_\_\_\_\_  
Charlie Pierce, Mayor

### **SHIMAI TOSHI GARDEN TRAILS, INC.**

\_\_\_\_\_  
Sarah Pyhala, President

\_\_\_\_\_  
Matthew Pyhala, Secretary

**ATTEST:**

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Johni Blankenship,  
Borough Clerk

\_\_\_\_\_  
Sean Kelley  
Deputy Borough Attorney

**NOTARY ACKNOWLEDGMENT**

**STATE OF ALASKA            )**  
  **)        ss.**  
**THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Charlie Pierce, Mayor, Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENT**

**STATE OF ALASKA            )**  
  **)        ss.**  
**THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Sarah Pyhala, President, Shimai Toshi Garden Trails, Inc., an Alaska nonprofit corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENT**

**STATE OF ALASKA            )**  
**)**     **ss.**  
**THIRD JUDICIAL DISTRICT)**

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2020, by Matthew Pyhala, Secretary, Shimai Toshi Garden Trails, Inc., an Alaska nonprofit corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_