



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	9:30am A
COUNCIL MEETING	09/16/08
APPROVED BY	
<i>[Signature]</i>	
DEPARTMENT DIRECTOR	
CITY MANAGER <i>[Signature]</i>	

September 16, 2008

**FROM:** RANDALL L. COOPER, Director  
Parks, After-School, Recreation & Community Services Department

**BY:** JERRY HAYNES, Assistant Director *JH*  
Parks, After-School, Recreation & Community Services Department

**SUBJECT:**

- 1) AWARD SERVICE AGREEMENT TO FRESNO BICYCLE CROSS FOR MAINTENANCE AND OPERATIONAL SERVICES RELATED TO WOODWARD PARK BMX TRACK
- 2) APPROVE AFFILIATION AND SANCTIONING AGREEMENT WITH NBL AND ADDENDUM
- 3) APPROVE THE 468<sup>TH</sup> AMENDMENT TO MASTER FEE SCHEDULE RESOLUTION NO. 80-420 ESTABLISHING FEES FOR THE WOODWARD PARK BMX FACILITY

**KEY RESULT AREA** One Fresno

Presented to City Council  
 Date 9/16/08  
 Disposition all approved  
Res 2005-235  
approved

**RECOMMENDATIONS**

Staff recommends that the City Council: 1) award a Service Agreement (not to exceed \$10,000) to Fresno Bicycle Cross (FBX) for maintenance and operational services related to Woodward Park BMX Track. 2) approve Affiliation and Sanctioning Agreement with NBL and Addendum and 3) approve the 468<sup>th</sup> Amendment to Master Fee Resolution No. 80-420 establishing use fees for the BMX track at Woodward Park; and that the new fees become effective September 26, 2008.

**EXECUTIVE SUMMARY**

There are two national bicycle organizations that provide comprehensive rules, policies, and sanction tracks and competitions; the National Bicycle League (NBL), Hilliard, Ohio and the American Bicycle Associations (ABA), Gilbert, Arizona. When contemplating which organization to select for the Woodward Park Bicycle Complex, PARCS choose to affiliate with NBL because they are a non-profit, offer support services, and specifically, liability coverage. A copy of the NBL Affiliation and Sanctioning is attached as Exhibit A. The City of Fresno has not paid any money or leased any property to NBL.

There are 45 sanctioned BMX race tracks in California, and 11 of those tracks are NBL tracks run on public property. All cities have approved Service or License agreement for the operation, maintenance, fee appropriation, and insurance. Please see attached sample contracts from the City of Lemoore and City of Napa and NBL Track Listings as Exhibit B.

Fresno Bicycle Cross (FBX), Mr. Brett Riley, has been selected to as the Service Provider to assist with the operation of the Woodward Park BMX track. He is the Track Director for FBX, and brings with him a wealth of

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knowledge on bike racing and track maintenance, as he was the operator of the Madera BMX track. The Service Provider Agreement is attached as Exhibit C.

PARCS in conjunction with NBL and Fresno United Neighborhoods (FUN) have devised a BMX program that will make scholarships available for low income children who are interested in riding the BMX track. The BMX track at Woodward Park is a professional track that requires special training to ride. Through the joint efforts, 12 fully paid fee memberships will be available for inner city and low income children of interest. PARCS has agreed to pay the \$65.00 fee to cover the Track Liability insurance. In addition to the 12 donated memberships, the FUN Board has set aside \$500.00 to establish a scholarship assistant program for inner city and low income children. Woodward Park Mountain Bike Trail surrounding the BMX fenced track is free to the public. PARCS is building a Dirt Bike Jump/Free Ride Area that will be free also. One open house per month will be held for non track members.

Additionally, PARCS has developed a skill and safety BMX program. As a part of the program, transportation for qualified children of interest will be provided and scheduled from neighborhood community centers. The program qualifications will be based on the free lunch guidelines for our school system. Any student qualifying for free lunch will qualify for the scholarship assistance program.

To further assist inner city and low income families, FUN has purchased and donated 5 bikes and 8 helmets to PARCS (Please see attached Exhibit D) for the riders, and 8 additional bikes and 30 helmets will also be available for use provided by FBX. At the moment, PARCS has at least 13 bikes and 38 helmets to loan to riders, and FBX is currently seeking additional bikes. As part of the BMX program, there will be at least 2 sessions a month. The sole purpose of this joint effort is to give inner city and low income children the opportunity to ride free.

### KEY OBJECTIVE BALANCE

**Customer Satisfaction:** The BMX Complex will provide new activities that have never been offered in Fresno and will be setting the standard in the state for Bike Complexes. BMX is a growing sport across the country and the City of Fresno wants to foster the growth of the sport with participants ranging from ages 3 to 55+. There are about 200 riders that will be using this facility on a weekly basis and the rider count will grow as the program grows.

**Employee Satisfaction:** The Action Sports Section is a new program that has gained interest from skaters and bikers that have the enthusiasm and skills needed to develop a successful program. Staff is trained to maintain the bike complex, teach instructional classes, and provide good customer service to the participants.

**Financial Management:** Financial Management is enhanced as the proposed fees will allow the City and track operator to keep pace with required staffing and maintenance, while ensuring adequate resources for the continual improvement of the course and facilities for increased customer satisfaction and safety.

### BACKGROUND

In 2007, PARCS met with several community groups to identify appropriate uses for northwestern portion of Woodward Park. The bicycle complex was one of the identified projects resulting from several meetings. The plan was to develop and construct a bicycle facility that would include a Mountain Bike course for beginners, intermediate and advanced riders, a BMX Race Track and a Dirt Bike Jump/Free Ride area. All tracks have

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been completed with the exception of the soon to come Dirt Bike Jump/Free Ride area. PARCS published an advertisement for an individual to operate a BMX Bike Track at Woodward Park in July of 2007. Fresno Bicycle Cross (FBX) was selected to operate the BMX Bike Track due to their expertise in the area of bike racing as they operated of the Madera BMX Track known as Mad Town BMX.

PARCS began development of a bicycle complex at Woodward Park on an undeveloped 57 acre parcel in August 2007. The goals of the Department for the complex are to run a Free BMX skills and safety program for the general qualifying public; and host state and national events. These events will, in turn, help the local economy and bring in corporate sponsorships. The bike complex requires an ongoing staff and daily maintenance program to ensure optimal quality of the facility as well as the safety of the cyclists and other park users.

NBL will sanction all races at the BMX Track, and FBX and PARCS will jointly share the responsibility of hosting races. Races and practices will be held on the weekends through the summer. The age of riders range from 5 to 55 years old, and there are several local pros that train at the facility to compete at the national level. These races are open to the public.

The fees for the track are determined by the track operators. The operational costs to run a race have to be included in the race fee. Those costs include fees to the NBL, trophies, insurance, utilities, and maintenance staff and equipment. All riders participating in the race program are required to be members of the NBL so that they will have medical coverage in the event of an accident. The NBL charges \$45.00 for the annual membership. Local races will cost \$12.00 and \$6.00 for a practice session. As mentioned previously, 12 free memberships will be offered to qualifying applicants.

The attached Service Provider Agreement has been reviewed and approved by the City Attorney's office and Risk Management. The race program will be jointly operated by FBX, their volunteers and PARCS staff. It takes 10 to 15 volunteers to run a race depending on the number of riders. The volunteer staff needed to operate a race consists of sign-ups registering riders for the race, race announcer, track officials, score keepers, gate starter, and staging riders for the race. City staff will provide maintenance by sweeping, watering, and chalking before the race. Races will be held on weekends by FBX, and City staff will provide practice sessions on the week days to NBL members.

### FISCAL IMPACT

Once established, the Woodward BMX track is expected to operate as an enterprise activity, generating sufficient revenue to cover 100% of its staff, operating, and maintenance costs; therefore BMX track operations should eventually have no impact to the General Fund. The Department does not plan to charge for the use of the Mountain Bike Trail or Dirt Bike Jump/Free Ride area, the other two components of the Woodward Bike Complex.

Attachments:      Master Fee Schedule Resolution  
                          Exhibit A - NBL Affiliation and Sanctioning/Addendum  
                          Exhibit B - Contracts from the City of Lemoore and City of Napa/NBL Track Listings  
                          Exhibit C - Service Provider Agreement  
                          Exhibit D - Bicycle photos

## SERVICE AGREEMENT CITY OF FRESNO, CALIFORNIA

THIS AGREEMENT is made and entered into effective the 1st day of July 2008, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and FRESNO BICYCLE CROSS (FBX), NBL, A GENERAL PARTNERSHIP hereinafter referred to as "SERVICE PROVIDER").

### RECITALS

WHEREAS, CITY desires to obtain services for the operation of bicycle races at Fresno Bicycle Cross (FBX) Facility to provide cycling activities, and competitions/events, at project site, hereinafter referred to as the "Project;" and

WHEREAS, SERVICE PROVIDER is engaged in the business of furnishing technical and expert services as a BMX/Bicycle Cross Track Director and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, SERVICE PROVIDER acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for CITY by its Parks Director (hereinafter referred to as "Administrator") or his/her designee.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. SERVICE PROVIDER shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through May 31, 2013, subject to any earlier termination in accordance with this Agreement. The services of SERVICE PROVIDER as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) SERVICE PROVIDER'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of \$833.00 per month. Such fee includes all expenses incurred by SERVICE PROVIDER in performance of the services.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification

shall include an adjustment to SERVICE PROVIDER'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. SERVICE PROVIDER shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to SERVICE PROVIDER upon the earlier of : (i) SERVICE PROVIDER'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against SERVICE PROVIDER; (ii) 60 calendar days prior written notice with or without cause by CITY to SERVICE PROVIDER; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, SERVICE PROVIDER shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of SERVICE PROVIDER that are owned by CITY. CITY shall return to SERVICE PROVIDER properties and materials in CITY'S possession that are owned by SERVICE PROVIDER. Said list of SERVICE PROVIDER'S possessions are detailed in **Exhibit C**. Subject to the terms of this Agreement, SERVICE PROVIDER shall be paid compensation for services satisfactorily performed prior to the effective date of termination. SERVICE PROVIDER shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of SERVICE PROVIDER to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of SERVICE PROVIDER, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by SERVICE PROVIDER, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) SERVICE PROVIDER shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event SERVICE PROVIDER fails to comply with any terms or conditions of this Agreement.

(f) SERVICE PROVIDER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of SERVICE PROVIDER and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. SERVICE PROVIDER shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in

connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by SERVICE PROVIDER pursuant to this Agreement shall not be made available to any individual or organization by SERVICE PROVIDER without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, SERVICE PROVIDER shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by SERVICE PROVIDER pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. SERVICE PROVIDER shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as SERVICE PROVIDER represents to CITY that SERVICE PROVIDER is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of SERVICE PROVIDER to do and perform such services in a skillful manner and SERVICE PROVIDER agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of SERVICE PROVIDER from said professional standards.

7. INDEMNIFICATION AND INSURANCE

SERVICE PROVIDER shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, SERVICE PROVIDER or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of SERVICE PROVIDER or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

City shall indemnify, hold harmless and defend SERVICE PROVIDER and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by SERVICE PROVIDER, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

In the event of concurrent negligence on the part of SERVICE PROVIDER or any of its officers, officials, employees, agents or volunteers, and City or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

The preceding three paragraphs shall survive termination or expiration of this MOU.

(a) Throughout the life of this Agreement, SERVICE PROVIDER shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized, and any additional insurance as may be required, in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, SERVICE PROVIDER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to SERVICE PROVIDER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve SERVICE PROVIDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by SERVICE PROVIDER shall not be deemed to release or diminish the liability of SERVICE PROVIDER, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SERVICE PROVIDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SERVICE PROVIDER, its principals, officers, agents or employees.

(d) Upon request of CITY, SERVICE PROVIDER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If SERVICE PROVIDER should subcontract all or any portion of the services to be performed under this Agreement, SERVICE PROVIDER shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with SERVICE PROVIDER and CITY prior to the commencement of any services by the subcontractor.

#### 9. Conflict of Interest and Non-Solicitation.

(a) SERVICE PROVIDER shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political

Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, SERVICE PROVIDER shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, SERVICE PROVIDER and the respective subcontractor(s) are in full compliance with all laws and regulations. SERVICE PROVIDER shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, SERVICE PROVIDER shall immediately notify CITY of these facts in writing.

(b) In performing the work or services to be provided hereunder, SERVICE PROVIDER shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(c) SERVICE PROVIDER represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(d) SERVICE PROVIDER and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, SERVICE PROVIDER shall remain responsible for complying with Section 9(a), above.

(e) If SERVICE PROVIDER should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, SERVICE PROVIDER shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(f) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event SERVICE PROVIDER maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, SERVICE PROVIDER at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.
- (iv) Assure the FBX track and surrounding areas of track is free from debris by collecting and depositing into provided trash and recycling containers. The City will haul the debris from the track site.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of SERVICE PROVIDER'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of SERVICE PROVIDER pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 11(b) shall survive expiration or termination of this Agreement.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, SERVICE PROVIDER shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, SERVICE PROVIDER agrees as follows:

(a) SERVICE PROVIDER will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. SERVICE PROVIDER shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to SERVICE PROVIDER'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) SERVICE PROVIDER will, in all solicitations or advertisements for employees placed by or on behalf of SERVICE PROVIDER in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) SERVICE PROVIDER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of SERVICE PROVIDER'S commitment

under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, SERVICE PROVIDER is acting solely as an independent contractor. Neither SERVICE PROVIDER, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which SERVICE PROVIDER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that SERVICE PROVIDER is performing its obligations in accordance with the terms and conditions thereof.

(b) Because of its status as an independent contractor, SERVICE PROVIDER and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. SERVICE PROVIDER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, SERVICE PROVIDER shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of SERVICE PROVIDER'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, SERVICE PROVIDER may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to SERVICE PROVIDER and there shall be no assignment by SERVICE PROVIDER of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by SERVICE PROVIDER, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) SERVICE PROVIDER hereby agrees not to assign the payment of any monies due SERVICE PROVIDER from CITY under the terms of this Agreement to any other individual(s),

corporation(s) or entity(ies). CITY retains the right to pay any and all monies due SERVICE PROVIDER directly to SERVICE PROVIDER.

17. Compliance With Law. In providing the services required under this Agreement, SERVICE PROVIDER shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

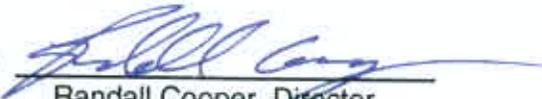
26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and SERVICE PROVIDER.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

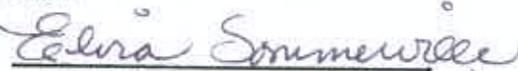
CITY OF FRESNO,  
a California municipal corporation

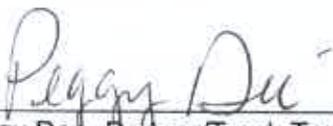
By:   
Randall Cooper, Director  
PARKS, AFTER-SCHOOL,  
RECREATION AND COMMUNITY  
SERVICES

SERVICE PROVIDER  
Fresno Bicycle Cross, FBX, NBL  
A General Partnership

By:   
Brett Riley, Partner/Track Director  
Fresno Bicycle Cross, FBX, NBL

ATTEST:  
REBECCA E. KLISCH  
City Clerk

By:   
Deputy (9/25/08)

By:   
Peggy Dee, Partner/Track Treasurer  
Fresno Bicycle Cross, FBX, NBL

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By:  9-14-08  
Katherine Bradley, Date  
Deputy Douglas T. Sloan,  
Assistant

Addresses:

CITY:  
City of Fresno  
Attention: Jerry Haynes, Assistant Director  
2326 Fresno Street, Room 101  
Fresno, CA 93721-1824  
Phone: (559) 621-2900  
FAX: (559) 498-1588

SERVICE PROVIDER:  
Fresno Bicycle Cross, FBX  
Attention: Brett Riley, Track Director  
1505 Peach Avenue  
Clovis, CA 93612  
Phone: 559 709-3530

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Personal Property

## Exhibit A

### SCOPE OF SERVICES Service Agreement between City of Fresno and FBX (Fresno Bicycle Cross)

#### Maintenance and Operation of BMX Racing at Fresno Bicycle Cross (FBX) Facility

FBX ("Service Provider") will operate and manage BMX/BICYCLE MOTOCROSS RACING EVENTS held at Woodward Park including reservations for events. Service Provider shall be responsible, at its sole cost and expense, for all telephone charges associated with the reservation telephone numbers for said events.

Service Provider's schedule of races and practice times must be approved by PARCS Director or his/her designee.

Service Provider will operate the facility at least 3 days per week during normal park hours.

Service Provider will monitor track entrance to guarantee participants are NBL cardholders, and collect all fees. All fees will be delivered to the Administrator.

Service Provider will monitor noise curfew and sound levels of the event and abide by all governing codes and statutes. Use of microphones and/or amplified music outdoors is not to exceed 60 decibels at 100 feet. The noise curfew is 10:00 PM. In addition, the use of offensive language and/or profanity is strictly prohibited. The penalty for exceeding either one of these rules is \$100.00 for each violation. Continuous violations could result in the termination of this agreement.

Service Provider and its employees, agents and representatives shall at all times be respectful and courteous to the public. Service Provider shall notify City of any service complaints and disposition of same. City will notify Service Provider of any service complaints received by City and Service Provider shall provide City with a response and disposition.

Service Provider shall not schedule events for those days or weeks as City may direct for the purpose of conducting City programs or for performing maintenance.

Service Provider shall keep track clean and presentable at all times by placing all trash and recyclables in receptacles for City's disposal.

Service Provider shall immediately paint over any graffiti that occurs to the BMX track.

Service Provider shall open and lock gates.

Service Provider shall secure storage areas and office trailer.

City agrees to provide weed control, water, power to track, and track surface maintenance.

**Exhibit B**

**INSURANCE REQUIREMENTS  
Service Agreement between City of Fresno  
and FBX (Fresno Bicycle Cross)**

Maintenance and Operation of BMX Racing at Fresno Bicycle Cross (FBX) Facility

**Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Throughout the life of this Agreement, SERVICE PROVIDER shall pay for and maintain in full force and effect a Fidelity Bond for employee dishonesty with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and authorized by CITY'S Risk Manager. The Fidelity Bond shall contain a Blanket Client Property - Off Premises Endorsement and Joint Loss Payee Endorsement in favor of the CITY, with limits of liability of not less than \$100,000."

**Minimum Limits of Insurance**

SERVICE PROVIDER shall maintain limits of liability of not less than:

1. General Liability:
  - \$1,000,000 per occurrence for bodily injury and property damage
  - \$1,000,000 per occurrence for personal and advertising injury
  - \$2,000,000 aggregate for products and completed operations
  - \$2,000,000 general aggregate
2. Automobile Liability:
  - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
  - \$1,000,000 each accident for bodily injury
  - \$1,000,000 disease each employee
  - \$1,000,000 disease policy limit

### **Umbrella or Excess Insurance**

In the event SERVICE PROVIDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

### **Deductibles and Self-Insured Retentions**

SERVICE PROVIDER shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and SERVICE PROVIDER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or (ii) SERVICE PROVIDER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **Other Insurance Provisions**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
3. SERVICE PROVIDER'S insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: SERVICE PROVIDER and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

Bonding: Throughout the life of this Agreement, SERVICE PROVIDER shall pay for and maintain in full force and effect a Fidelity Bond for employee dishonesty with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and authorized by CITY'S Risk Manager. The Fidelity Bond shall contain a Blanket Client Property - Off Premises Endorsement and Joint Loss Payee Endorsement in favor of the CITY, with limits of liability of not less than \$100,000.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SERVICE PROVIDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, SERVICE PROVIDER shall provide a new certificate, and applicable endorsements, evidencing

renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

#### **Other Requirements**

SERVICE PROVIDER'S owned or leased property or property in its care, custody and control, will be at the risk of the SERVICE PROVIDER only and the CITY will not be liable for any damage thereto or theft thereof. Further, SERVICE PROVIDER waives its right of recovery, and its insurers also waive their right of recovery, against CITY for loss of its owned or leased property or property in its care, custody and control. The phrase "owned or leased property or property in its care, custody and control" shall include, without limitation, tools, equipment, fixtures, materials and parts.

#### **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

#### **Verification of Coverage**

SERVICE PROVIDER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. The words "endeavor to" and "but the failure to do so shall impose no obligation upon the insurer, it's agents or representatives" shall be deleted or eliminated from the Cancellation wording in the lower right hand corner of the certificate.

## Exhibit C

### PERSONAL PROPERTY Service Agreement between City of Fresno and FBX (Fresno Bicycle Cross)

#### Maintenance and Operation of BMX Racing at Fresno Bicycle Cross (FBX) Facility

Upon termination of agreement, City agrees to return FBX's personal property listed below. Said personal property will be return to FBX within thirty (30) days of contract termination.

#### Office Equipment

1-Hewlet Packard Lap Top Computer -Serial Number TW00800559 900B  
1-Brother HL-5240 HP Laser Printer -Serial Number U61443A7J818574  
2-Stainless Steel Tables (12 foot)  
3-Black Folding Tables (4 foot)  
1-Black Shelf Unit  
1-Wooden Desk  
1-Wooden Cabinet  
5-Stainless Steel Bar Stools  
1-Office Chair  
7-4 Foot Shelves  
1-Floor Safe (Bunker Hill Digital Electric Safe Model 93575)  
1-Zee First Aide Wall Unit  
Misc. Office Equipment (5 Calculators, 20 Clip Boards, 2-Money Boxes,  
Extension Cords, Blow Horn)

#### Track Equipment

1-Porta Cable 4500 Watt Generator  
1-Coleman Powermate 1850 Generator (Serial Number 9500016Y)  
1-Generator  
1-Electric Camble House Air Compressor  
1-Gas Powered Camble House Air Compressor (Serial Number VT617205AJ)  
1-Starting Ram  
1-Cadience (NBL) with Cart  
1-Light System for Starting Gate  
1- Orange 8 Man Starting Gate

#### Track Maintenance Equipment

3-Brooms (marked with orange paint)  
2-Landscaper Rake (marked with orange paint)  
2-Chalk Markers (marked with orange paint)  
3-Shovels (square)(marked with orange paint)  
1-Shovel (round)(marked with orange paint)  
4-Yellow Steel Rakes (marked with orange paint)  
1-Drag (marked with orange paint)

#### Storage Containers

1-40 Foot Sea Crate Container (GRAY) Identification #AP90-0540 (Outside #)  
1-20 Foot Sea Crate Container (GRAY) Identification #TEXU283292 (Inside #)

Loaner Equipment

35-Misc. Full Face Helmets

7-Race Bikes

(MCS Spider JR.-Serial # ACM07F000186)(FMF-Serial #830402)(Redline-Serial #HL0829469)

(FMF-Serial #870619)(FMF-Serial #CJ06F092889)(GT Mini)(Redline-Serial # HL0829484)

Patron – Fan Equipment

8-Pic-Nic Tables

6-Black Barrel Garbage Cans (marked BMX)

5-Umbrellas (9ft.)

4-E-ZEE UP