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6/27/13



CITY OF FRESONO  
City Clerk's Office (Original)

## Affiliation and Sanction Agreement

1. The Local Organization, as identified herein below, will operate its BMX facility at Woodward Park ("Local Organization track"), for the purpose of offering organized Bicycle Moto-Cross (BMX) racing and practicing to be sanctioned only by the American Bicycle Association (USA BMX). In turn, USA BMX agrees to sanction the Local Organization and provide services available by USA BMX including, but not limited to, the issuance and tabulation of USA BMX points, the use of USA BMX logo and associated artwork and the benefit of USA BMX promotional programs.
2. This Agreement shall commence on the date this Agreement is signed by an authorized official of USA BMX and end on December 31, 2017. During the term of this Agreement, the Local Organization will sponsor and run only sanctioned USA BMX events at Local Organization's track. Throughout the duration of this Sanction Agreement ("Agreement") and for a period of twelve (12) months after the termination of said Agreement for any cause, the Local Organization shall not otherwise participate or assist in any fashion or manner whatsoever, including but not limited to, providing financial, technical, labor or advisory assistance or aid, in the operation of BMX Track(s) or BMX race(s) sanctioned by or affiliated with any other organization or entity nor otherwise compete against USA BMX in the State or geographic segment (as defined in paragraph 18 below) where the Local Organization's track is located. Paragraph eighteen (18) of this Agreement is hereby expressly incorporated in its entirety as a part of this paragraph two (2).
3. Throughout the term of this Agreement and so long as Local Organization is not in breach of this Agreement, the Local Organization shall have the right to use the registered trade name "American Bicycle Association" and to include USA BMX logo relative to the promotion and advertising of USA BMX sanctioned events to be held at the Local Organization's track. USA BMX retains exclusive ownership of the trade name and logo. The Local Organization will construct, operate and maintain its track and shall run USA BMX sanctioned events substantially in accordance with the Track Operator's Manual as published by USA BMX and in accordance with any and all other rules of USA BMX as may be published by USA BMX at various times, including those set forth in the Track Operator's Manual, and those set forth in other publications by USA BMX subject to federal, state and local law requirements.
4. USA BMX is the developer and exclusive owner of certain computer software programs, marketing packages, Track Operator's and other manuals, sanctioning agreements, drawings, records, specifications, equipment, designs, race schedules, agreements and contracts with vendors, lessors, other sanctioning organizations and other items and materials not generally known by non-USA BMX personnel (hereafter "Confidential Information") which the Local Organization may obtain knowledge of or access to as a result of being sanctioned by USA BMX. USA BMX considers any and all such Confidential Information to be trade secrets. The Local Organization shall not, directly or indirectly, use said Confidential Information in any manner, nor, directly or indirectly, disclose, display, provide or otherwise make available all or any part of any such Confidential Information to any person or entity not sanctioned by USA BMX at any time, unless the Local Organization has received prior written permission from USA BMX to do so, except as required by the Local Organization to perform its obligations and otherwise comply with the terms and conditions of this Agreement and with the Track Operator's Manual of USA BMX and as necessary to comply with the California Public Records act.
5. USA BMX agrees to award USA BMX points to riders that legally participate in USA BMX sanctioned events operated in accordance with all USA BMX rules and procedures and held at the Local Organization's track.
6. This Agreement entitles the Local Organization to participate in all programs offered in the State or regional segment where the Local Organization's BMX track is located, including, but not limited to, USA BMX Redline Cup program and USA BMX State Championship series.
7. Because of the need to promptly enter data into the USA BMX's computerized point standing data base, as well as the need to meet other publishing and reporting deadlines, the Local Organization agrees to provide to the USA BMX within forty-eight (48) working hours following the conclusion of each USA BMX sanctioned event all applicable paperwork and funds, including, but not limited to, all original moto sheets, membership applications,



track operator reporting forms and fees for memberships, insurance and sanctioning documents in accordance with USA BMX's then current requirements for such reporting.

8. The Local Organization agrees that it shall, at all times throughout the term of this Agreement, maintain and enforce a policy or policies of insurance written by insurance carriers selected by or approved by USA BMX wherein USA BMX is the policy holder and named additional insured, which shall insure against liability or injury to and/or death of, and/or damage to the property of, any person or persons, including participants, with aggregate policy limits not less than \$5,000,000 per person and occurrence. If offered by USA BMX, the Local Organization may fulfill this requirement through the payment of insurance fees to USA BMX in accordance with the schedule of such fees which may be adjusted from time to time, whereby USA BMX will acquire such liability insurance which meets or exceeds the amounts and coverage specified herein. In any event, whether secured by the Local Organization or by USA BMX, any and all such insurance will include as named insured USA BMX, the Local Organization, all Employees, Agents, Volunteers, Track Operators, Officials and all Board Members of said Organizations. Except to the extent of California statutory tort immunities afforded Local Organization as a governmental entity to the extent any claims, damages, costs, including attorney fees, or other sums incurred by or asserted against USA BMX as a result of any act or omission by the Local Organization is not paid by or covered by the foregoing insurance, Local Organization shall indemnify, hold harmless and reimburse USA BMX upon demand for all such amounts to the extent said loss was caused by or contributed to, in whole or in part, by the errors, omissions, intentional acts and/or negligence of the Local Organization. All non-USA BMX events, including community practices, will be covered through the local organizer's self-insurance coverage.
9. This Agreement is between USA BMX and the Local Organization and may not be transferred or assigned by the Local Organization to any other person or entity without the Local Organization first obtaining the express written consent of USA BMX, which consent USA BMX shall be under no obligation to grant and which USA BMX may refuse to grant for any reason whatsoever in the sole and unfettered discretion of USA BMX.
10. This Agreement shall not make the Local Organization or the Track Operator a subsidiary, a partner, limited partner, joint venture or in any other way associated with USA BMX other than as set forth under the terms of this Agreement. The Local Organization has no authority, express or implied, to speak for, bind, or obligate USA BMX in any manner whatsoever whether contractually or otherwise.
11. USA BMX hereby reserves the right to inspect the Local Organization's BMX track at any and all times to insure compliance with the terms and conditions of this Agreement, with the Track Operator's Manual, and all other rules and regulations of USA BMX.
12. Each of the terms and provisions contained in this Agreement are separate, independent, and severable. In the event that all or any portion of this Agreement is deemed by a court, arbitrator, tribunal, or otherwise, to be null, void, invalid, unenforceable and/or of no effect or otherwise not binding upon either of the parties, in whole or in part, said fact shall not be deemed to in any manner affect the validity of any of the remaining portions or provisions of this Agreement, all of which the parties agree shall remain in full force and effect. If a court or other tribunal finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
13. The parties agree that, in addition to any form of legal or equitable relief that may be available to USA BMX hereunder, in the event of a breach or a threatened breach of any of the terms and conditions contained in paragraphs two (2), three (3) and/or four (4), herein, the Local Organization agrees that in order for USA BMX to fully protect its rights hereunder, it may be necessary for USA BMX to obtain injunctive relief. Accordingly, the parties specifically agree that in the event of a breach or a threatened breach of any term or condition contained in said paragraphs two (2), three (3), and/or four (4), herein, USA BMX shall be entitled to seek from court a preliminary and permanent injunction upon the posting of a bond enjoining the Local Organization from committing or continuing any acts constituting such a breach, provided, in the event of a threatened breach, USA BMX has given the Local Organization prior notice in writing to its address on file with USA BMX not less than five (5) days before requesting said relief and the Local Organization has failed to remedy the breach within said period. As an additional remedy for any breach by the Local Organization of the provisions of paragraph two (2) of this Agreement, USA BMX shall be entitled to an award of liquidated damages from the Local Organization in the amount of \$18,000 for each and every separate violation thereof. The parties agree that the anticipated damages to USA BMX in the event of a breach by the Local Organization of said paragraph two (2) will be difficult to ascertain and they mutually agree and intend to liquidate the damages in advance. The liquidated damage amount stated above is agreed to be reasonable and proportionate to the presumed injury that will be suffered by USA BMX upon a breach by Local Organization.



- 14. The prevailing party in any litigation arising from this Agreement shall be entitled to recover its reasonable costs and attorney fees from the other party, in addition to any other remedies to which it is entitled. This Agreement shall be construed and governed by the laws of the State of Arizona and the exclusive venue and jurisdiction of any litigation arising from this Agreement shall be in the Superior Court of Arizona (Maricopa County).
- 15. Subject to the assignment restrictions in paragraph nine (9) above, this Agreement is binding upon all successors, assigns, affiliates-direct and indirect, representatives, heirs, and entities with ownership common to the Local Organization.
- 16. If the Local Organization is an unincorporated association, all of its Members, Officers, Directors and Trustees shall have joint and individual responsibility for the performance and obligations of Local Organization as provided in this Agreement and the party (parties) executing this Agreement on behalf of the Local Organization hereby expressly represent(s) and warrant(s) that he/she/they has/have the actual authority from all of the present members, officers, directors and trustees of the Local Organization ("Local Organization Principals") that they may execute this Agreement with the intent that all of the said Local Organization Principals shall be jointly and severally bound by the terms and provision of this Agreement.
- 17. As security for the performance by the Local Organization of its obligations under this Agreement, the Local Organization hereby agrees to assign and transfer to USA BMX, upon future request by USA BMX to do so, all of the Local Organization's rights and interests in and to any lease or contract rights which the Local Organization may now have, or at any time during the term of this Agreement may acquire, which relates to the Local Organization's operation of any and all BMX races and practices at the track named in this Agreement. USA BMX shall not request the Local Organization to make such assignment to USA BMX unless USA BMX shall become reasonably insecure in its belief that the Local Organization can/will abide by the terms of this Agreement. In this regard, any breach by the Local Organization of the terms and provisions of paragraph two (2) of this Agreement is hereby agreed by the parties to be good and just cause for USA BMX to request such assignment or transfer of the Local Organization's right and interests in any such lease or contract to USA BMX. In the event such a transfer or assignment of the Local Organization's rights in or to any lease or contract is effectuated pursuant to the terms of this Agreement, then as long as the Local Organization is not in further default of this Agreement, or has cured any such previous default of this Agreement, USA BMX will in turn grant back to the Local Organization the revocable right to operate the BMX facility pursuant to the terms and conditions of the lease and/or contract rights so assigned or transferred to USA BMX. Upon any subsequent default of this Agreement by the Local Organization, USA BMX shall have the option to terminate any rights, which it may have granted, to the Local Organization under the terms and provisions of any lease or contract, which the Local Organization has previously assigned or transferred to USA BMX. Until such rights are so terminated by USA BMX, USA BMX shall have no obligation or liability under or arising from any such lease or contract assigned or transferred to it by the Local Organization.
- 18. The "State or Geographic segment" referenced in paragraph two (2) of this Agreement is hereby defined as follows: State of California.
- 19. In its performance hereunder Local Organization shall at all times comply with all applicable laws of the United States, the State of California, and City of Fresno and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as may be enacted, issued or amended during the term of this Agreement.

Local Organization: City of Fresno

By: Bruce Arnold Bruce Arnold City Manager 8/2/13  
 (Print name) (Signature) (Title) (Date)

By: \_\_\_\_\_  
 (Print name) (Signature) (Title) (Date)

APPROVED AS TO FORM  
 CITY ATTORNEY'S OFFICE  
 BY: [Signature]



Track Name/BMX Facility: ~~Forest~~ WOODWARD PARK BMX

Track number: 1848

**DO NOT SIGN IN THE BOX**

American Bicycle Association (USA BMX)		
By: <u>[Signature]</u>	<u>CBC</u>	<u>9/10/13</u>
(Signature)	(Title)	(Date)
Please return completed form with signatures to: USA BMX, P.O. Box 718, Chandler, AZ, 85244		

**PLEASE SIGN AND RETURN ALL FOUR PAGES  
OF THIS AGREEMENT**