

## LICENSE AGREEMENT

1. **Identification of Parties.** This License Agreement is entered into on January 22, 2008 by and between the City of Atascadero, a general law city of the State of California, hereafter referred to as “City” and Atascadero BMX, a not-for-profit corporation formed pursuant to the laws of the State of California, hereafter referred to as “Licensee.”
2. **Description of Property.** City has a leasehold interest in certain real property situated in the City of Atascadero, County of San Luis Obispo, California (hereafter referred to as “the Land”), and more particularly described as follows: 6575 Sycamore Road, Atascadero, California, which is more particularly described in Exhibit A, which is attached to this Agreement and hereby incorporated by reference.
3. **Grant of License.** In consideration of the sum of ONE DOLLAR (\$1), City grants to Licensee a license (hereafter referred to as “the License”) to perform the following acts on the Land: to utilize the Land for the construction of a bicycle motor-cross sports track and related facilities and the management, supervision, and scheduling of events on same (hereinafter referred to as “Permitted Use”). Licensee may not use the Land for any other purpose or business without the obtaining City’s prior written consent.
4. **City’s Regulation of Permitted Use.** Subject to all present and future rules adopted by the City, the Land shall be used for the purpose of constructing, operating and maintaining an outdoor bicycle racing facility in accordance with plans submitted to and proved by the City. A copy of the plans are attached hereto and marked as Exhibit and incorporated by reference (hereinafter referred to as “Plans”). Any proposed changes to said Plans must be approved by City in writing. Licensee shall have non-exclusive rights of ingress and egress to and from the Land across, over, and through all public areas near or adjacent to the Land for Licensee’s employees, agents, guests and patrons.

Licensee shall submit to the Community Services Department of the City a schedule of events for the year prior to April 1 of each year commencing on January 1, 2008. Pursuant to an agreement to be drawn up with the City which designates use, maintenance and liability coverage for the general public, the Land shall be available to the general public during all non-scheduled periods. Licensee may, on race and practice days, collect fees for scheduled events to cover expenses of staging the racing event. All fees collected will be used for allowances which are in accordance with State and Federal Non-profit Organization tax laws, which may include improvements to the track and facility. An annual statement of receipts and expenditures shall be submitted to the Community Services Department of the City on or before March 1st of each year commencing on March, 2009. At the expiration of the Agreement all permanent improvements shall become property of the City.

City shall have the power and authority to impose reasonable conditions and requirements relative to the management and operation of said Land as in City's judgment may appear to be for the best interests of the public and the City of Atascadero, but which will not unreasonably interfere with Licensee's use and enjoyment of said Land. Notice of all decisions and regulations by City shall be given as hereinafter provided.

5. **Interest Acquired.** The Licensee shall acquire no proprietary ownership, possessory or other rights, except as specifically given herein. This License is personal to the Licensee and shall not be assigned without prior written approval of the Council. The Licensee shall give the Council at least ninety (90) days notice in writing of the intention to assign. If assignment is made without said notice and approval, the Council, in addition to any remedies for breach hereof, may hold the Licensee responsible for all things done, fees to be paid, and documents to be filed under the terms hereof.
6. **Term.** The License Agreement shall be for a term of three (3) years, commencing on January 22, 2008. This term may be extended for two additional one year periods upon the mutual written agreement of the parties, subject to any changes to the terms and conditions of this License Agreement.
7. **Termination of Occupancy.** Either party after the first year (or within ninety (90) days prior to the end of the first year) may terminate this Licensing Agreement by giving the other party ninety (90) days written notice. Notice of termination shall be sent by certified mail, return receipt requested, addressed as follows:

City  
Director of Community Services  
6907 El Camino Real  
Atascadero, California 93422

Licensee  
Atascadero BMX  
2875 Ferrocarril Road  
Atascadero, CA 93422

After receipt of a notice of termination from City, Licensee, on or before the effective date of termination specified in that notice shall remove all of Licensee's personal property from the Land and shall surrender possession of the Land to City in good order and repair to the satisfaction of City, normal wear and tear excepted.

8. **Conditions.** The License given herein above is subject to the following conditions, and violations of any of said conditions shall be cause for immediate termination of the License Agreement, notwithstanding any notice provisions contained elsewhere hereinabove.

The Licensee shall perform as follows:

1. Provide twenty-four (24) hour per day coverage in a liability insurance policy, which policy shall name the Atascadero Mutual Water Company, its Board, and all officers, agents, and employees, as property owner, and the City of Atascadero, its Council, and all officers, agents, and employees of either as additional named insureds. The City shall be provided with a duplicate policy and no cancellation of same shall be effective without at least thirty (30) days prior written notice to the City. Said policy limits shall be in accordance with Paragraph 9, below.
2. Provide additional liability insurance coverage in the minimum amount of ONE MILLION DOLLARS (\$ 1,000,000) in accordance with the provision of “1” above on all race dates.[ What is the reasoning behind “additional” liability insurance? The coverage will be through the sanctioning agreement with the National Bicycle League (sample policy of which has been provided to the City for review). Atascadero BMX will not be securing “additional” insurance other than that provided through the NBL.]
3. Should any policy not be filed within fifteen (15) days prior to a scheduled event or should any policy be cancelled, no event shall be held and all operations shall immediately cease. The Licensee shall have fifteen (15) days in which to cure the lack of filing or the cancellation, and if it fails to do so within said time, these conditions will have been breached.
4. Design (as approved by the City) and construct the course property, excavate and grade the site, and obtain all permits to do the same.
5. Maintain the track and accessory facilities in a lawful and safe manner.
6. Provide and install fencing around the entire perimeter of the track proper, subject to the specifications of the City.

7. Provide portable restrooms during the time of scheduled events.
8. Provide refuse pickup during and after scheduled events and practice sessions. (License is also responsible to keep the facility improvements free of graffiti and in good repair.
9. Provide an announcer's stand, if deemed desirable, subject to the specifications of the City.
10. Supervise and schedule the usage of the track and accessory facilities; however, the track may be open to any and all persons during the times the Licensee has not scheduled events or practice sessions in conjunction therewith if the City is able to arrange public use, maintenance and liability insurance for public usage, set forth in Exhibit B attached herewith.
11. Operate food and beverage concession at which the only non-consumable items that may be sold are track T-shirts, hats, related accessories in addition to fundraising sales which are arranged to benefit the Atascadero BMX facility; provided, all necessary permits and licenses shall be obtained from the City.
12. Refuse to discriminate upon the basis of race, sex, creed, national origin, religion, marital status, age, and physical condition against any person desiring admission to said facility or to membership in Licensee's organization; however, during scheduled events and practice sessions, Licensee may restrict admission to members and guests, and others having paid any admission entry fee for said scheduled event.
13. Upon termination of the Agreement, or any renewal thereof, the site is to be restored to equal original condition and all improvements shall revert to the Licensee.

14. If necessary, extend existing well water service to a location adjacent to BMX track and pay all costs associated with same.
  15. Install electrical service to BMX area and pay all costs associated with same.
  16. Licensee shall pay all charges for utility services for the Land.
9. **Indemnity**. Licensee, as a material part of the consideration to be rendered to City under this Agreement, waives all claims against Licensor for damages to all personal property in, on, or about the Property, and for injuries to persons on or about the Property, from any cause arising at any time. In addition and except for the sole negligence of the City, Licensee shall defend, indemnify and keep and hold City, including City's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of Licensee, sustained in or about the designated Premises or arising out of Licensee's use or occupancy thereof as a proximate result of the acts or omissions of Lessee, its employees and agents, or its contractors, licensees, invitees or subtenants, their successors and assigns, or arising out of the condition of the property. City shall, by appropriate written notice to Licensee, advise Licensee as soon as practicable regarding any potential liability of Licensee under this Section. Further, Licensee agrees to hold Atascadero Mutual Water Company exempt and harmless for and on account of any damage or injury to any person or personal property of any person, arising from (a) Licensee's use of the demised Premises, or (b) Licensee's failure to keep the Land and surrounding areas clean and in good condition. City and the Atascadero Mutual Water Company shall not be liable to Licensee for any damage by or from any act or negligence of any other occupant of the demised Premises or any occupant of adjoining or continuous property. Licensee agrees to pay for all damages to the demised Premises, as well as all damage to occupants of the Land and to the property of those occupants caused by Licensee's misuse or neglect of the demised Premises.
10. **Insurance**. Licensee further agrees to maintain in full force during the term of this License, at Licensee's own expense, a commercial General Liability Insurance using Insurance Service Office "Commercial General Liability" policy form CG 00 01 with an edition date prior to 2004, or the exact equivalent with limits of no less than TWO MILLION DOLLARS (\$2,000,000) per occurrence for all covered losses and FOUR MILLION DOLLARS (\$4,000,000) general aggregate. The policy shall insure City, the Atascadero Mutual Water Company and Licensee against liability for injury to persons, damage to property, and death of any person occurring in or about the demised Premises. The policy shall be approved as to form and content by City. Licensee shall provide City with a copy of the policy, including an endorsement that

states that the policy will not be cancelled except after 30-day prior written notice to City. Licensee agrees to obtain endorsements for third party general liability coverage required here to include as additional insured City and Atascadero Mutual Water Company, their officials, employees, and agents. Licensee also agrees to require this same provision of all subcontractors, joint ventures, or other parties engaged by or in behalf of Licensee in relation to this Agreement. (A policy will be issued through the National Bicycle League when Atascadero BMX is sanctioned in affiliation with the NBL. The City and the Atascadero Mutual Water Company will be named in addition to Atascadero BMX within the policy issued.)

11. **Attorneys' Fees.** If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.
12. **Entire Agreement.** This License Agreement constitutes the entire agreement between City and Licensee relating to the License. Any prior agreement, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensor and City and Licensee.

Executed on \_\_\_\_\_, 2008, at Atascadero,

Licensee:

City:

Atascadero BMX Association

City of Atascadero, California

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Wade G. McKinney, City Manager

Attest: \_\_\_\_\_  
Secretary

Attest: \_\_\_\_\_  
Marcia McClure Torgerson, C.M.C.,  
City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian Pierik  
City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Rachelle Rickard  
Administrative Services Director