

## MEMORANDUM

TO: Mayor and City Council

FROM: Richard Meyers, City Manager

SUBJECT: BMX TRACK LICENSE AGREEMENT

DATE: October 19, 2022

### Background

At the June 13, 2022 City Council meeting the Council approved a license agreement with Row River BMX for the development of a new BMX facility to replace the previous facility that was decommissioned when the BMX track ceased operations in 2014.

The City and Row River BMX have been working through challenges to get the agreement signed and the construction of the BMX facility under way. To address the challenges some proposed revisions have been prepared to the agreement approved at the June 13<sup>th</sup> City Council meeting. The revisions are incorporated in the attached agreement. The revisions do not impact the intent of the agreement, do not create costs or burdens on the City and are needed to make the project a success.

The revisions are as follows:

- As a result of some restructuring of the organization Row River BMX had to change their name. The new name of the organization is Slabtown BMX.
- The insurance provisions were difficult to obtain during development of the property because contractors do not carry sexual harassment insurance. The purpose of the sexual harassment insurance is to protect youth during the operation of the track. So the insurance requirements were divided into the insurance requirements during construction and insurance requirements during operations. The construction insurance requirements mirror the required insurance that the City requires contractors to carry for City construction projects.
- Slabtown BMX is in the process of applying for a variety of grants and is currently in discussion with a potential organization for a substantial grant. The granting organization has expressed concern over the short-term of the agreement. The proposed revised agreement term has been adjusted from one year with four renewals to a five year term with one automatic renewal for one term. The agreement could be for 10 years, with the 30 day termination option remaining in the agreement. The change in term is consistent with the old BMX agreements.
- The final change is a clarification of Section 3(g) of the agreement regarding removing debris from the area between the track and Row River (the boat ramp area). I don't believe the intent was for Slabtown BMX to be responsible for the full maintenance of

and removal of all debris from the boat ramp area. The revised agreement narrows the responsibility of Slabtown BMX to removing litter from the area after events or activities.


Since the City Council unanimously approved the agreement previously and these changes do not make any drastic changes to the original intent to develop the site for a BMX facility the approval of this proposed revised agreement has been placed on the consent agenda. If the Council wishes to discuss any of the changes the item could be pulled from the consent agenda.

Recommendation

Staff recommends approval of the revised agreement with Slabtown BMX for the development of the BMX facility.

Cost

No Cost

  
Richard Meyers, City Manager

## BICYCLE MOTOCROSS TRACK LICENSE AGREEMENT

This Agreement is made and entered into by and between the City of Cottage Grove ("the City") and Slabtown BMX.

### 1. License to Use the Bicycle Motocross Track.

Subject to the terms of this Agreement, the City grants to Slabtown BMX a revocable, and non-transferable license ("License") to use the City's property identified in the legal description attached as Exhibit A, within the area depicted by the red line on the map attached and incorporated as Exhibit B, hereinafter referred to as "BMX Track," to construct and operate a bicycle motocross track.

### 2. Term and Termination

The term of this Agreement and the License granted hereunder shall be five years from the date that it is executed by both Parties. This Agreement and License shall automatically renew for one subsequent term. This Agreement may be terminated by either Party upon 30 days' prior written notice. Upon termination of this Agreement, the License shall also terminate.

### 3. Use of the BMX Track.

- a. Slabtown BMX shall pay the City \$1 per year for a license to use the BMX Track.
- b. Slabtown BMX may use the BMX Track only for non-profit recreational purposes to benefit resident of the City of Cottage Grove and surrounding areas and not for the purpose of providing profit or personal gain to Slabtown BMX or its members.
- c. The City has or will have facilities located on or adjacent to the BMX track. It is understood that Slabtown BMX's use of the BMX Track under this Agreement shall be at the convenience of these City facilities and their operation. The City retains the right to enter the BMX Track at any time in order to operate and maintain the same facilities at no liability to the City.
- d. Slabtown BMX agrees that it will comply with all applicable laws, rules, and regulations, including City code, zoning, and land use regulations, in its use of the BMX Track.
- e. Slabtown BMX may modify the BMX Track or appurtenant facilities; however, in doing so Slabtown BMX shall:
  1. Submit plans to the City for review and approval;
  2. Make every effort to prevent the removal of trees; and
  3. Be responsible for all costs of modification.

- f. Slabtown BMX shall be solely responsible for all maintenance, landscaping, repair, and upkeep of the BMX Track.
- g. Slabtown BMX shall be responsible for removal of all brush and debris from the BMX Track in order to operate its facilities, including parking areas. Slabtown BMX shall also be responsible for removing litter after events or activities from that portion of City property located between the BMX Track and the Row River.
- h. Slabtown BMX agrees that its activities in connection with its use of the BMX Track shall be limited to the area designated in red on Exhibit B to this Agreement. Slabtown BMX and its participants may use the adjacent, graveled parking areas with the understanding that these same areas are generally available for public use.
- i. Slabtown BMX shall be solely responsible for providing sanitary facilities, including water, in connection with its use of the BMX Track.
- j. Slabtown BMX will not use the BMX Track in a manner that interferes with or impedes the use of the Track or access to any other City property by members of the general public, except that Slabtown BMX may restrict the general public's access to the BMX Track to the extent necessary for its use of the BMX Track. Slabtown BMX acknowledges that there is an existing water intake structure, compressor building, roadway access, and boat launch (collectively "facilities") on the southerly and easterly border of the BMX Track and that its activities will not interfere with the free and unrestricted use of said facilities.
- k. The City and Slabtown BMX agree to cooperate in maintaining physical barriers to prevent motor vehicle entry into the Row River Nature Park (also known as the East Regional Park) site adjacent to the BMX Track except as designed and approved for parking.
- l. The City retains priority over Slabtown BMX to use the BMX Track at all times and reserves the right to limit Slabtown BMX's use at any time.
- m. Upon termination of this Agreement and request of the City, Slabtown BMX shall remove all improvements, fixtures, and modifications and restore the BMX Track to its original condition.
- n. Upon termination of this Agreement, the City will invoice Slabtown BMX for any costs it incurs cleaning, repairing, removing modifications from, or otherwise restoring the BMX Track to its original condition if Slabtown BMX fails to perform its obligations to do so under this Agreement.



this Agreement, the City may immediately terminate this Agreement, revoke the License granted hereunder, and impose any penalties upon Slabtown BMX that are permitted by City code or rule. In addition, the City is entitled to any other equitable or legal remedies available. The City's waiver of any breach of this Agreement shall not constitute a waiver of any other subsequent breach of this Agreement.

7. Dispute Resolution.

If any disputes, disagreements, or controversies arise between the Parties pertaining to the interpretation, validity, or enforcement of this Agreement, the Parties shall, upon the request of the City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other Party a written request for arbitration. Within five (5) days of receipt of such request, the Parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the Parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lane County Circuit Court, Lane County, Oregon, upon the request of either Party submitted in accordance with ORS 36.645. If the Parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the Parties.

8. Governing Law.

This Agreement shall be interpreted and construed in accordance with Oregon law.

9. Consent to Jurisdiction.

The Parties hereby consent to the jurisdiction of the Lane County Circuit Court, Lane County, Oregon, over all legal matters pertain to this Agreement, including, but not limited to, its enforcement or interpretation.

10. Severability.

If any part, term, section, or clause of this Agreement is held by a court or arbitrator to be unenforceable, of no effect, or in conflict with any law, the validity of the remainder of this Agreement shall not be affected and the rights and obligations of the Parties shall be interpreted and in force as if the Agreement did not contain the particular part, term, section, or clause held to be unenforceable.

11. Entire Agreement; Modification.

This Agreement constitutes the entire understanding and agreement between the Parties pertaining to the matters contained within. This Agreement may only be modified or amended by a writing signed by both Parties.

12. Notice

When required by this Agreement, notice shall be sent to the Parties in the following manner:

If to the City:

City of Cottage Grove  
400 E. Main Street  
Cottage Grove, Oregon 97424

Richard Meyers, City Manager  
(541)942-5501

If to Slabtown BMX:

Slabtown BMX  
74113 London Road  
Cottage Grove, Oregon 97424

Michael Kelley, President  
(541)844-4240

The City:

Slabtown BMX:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A

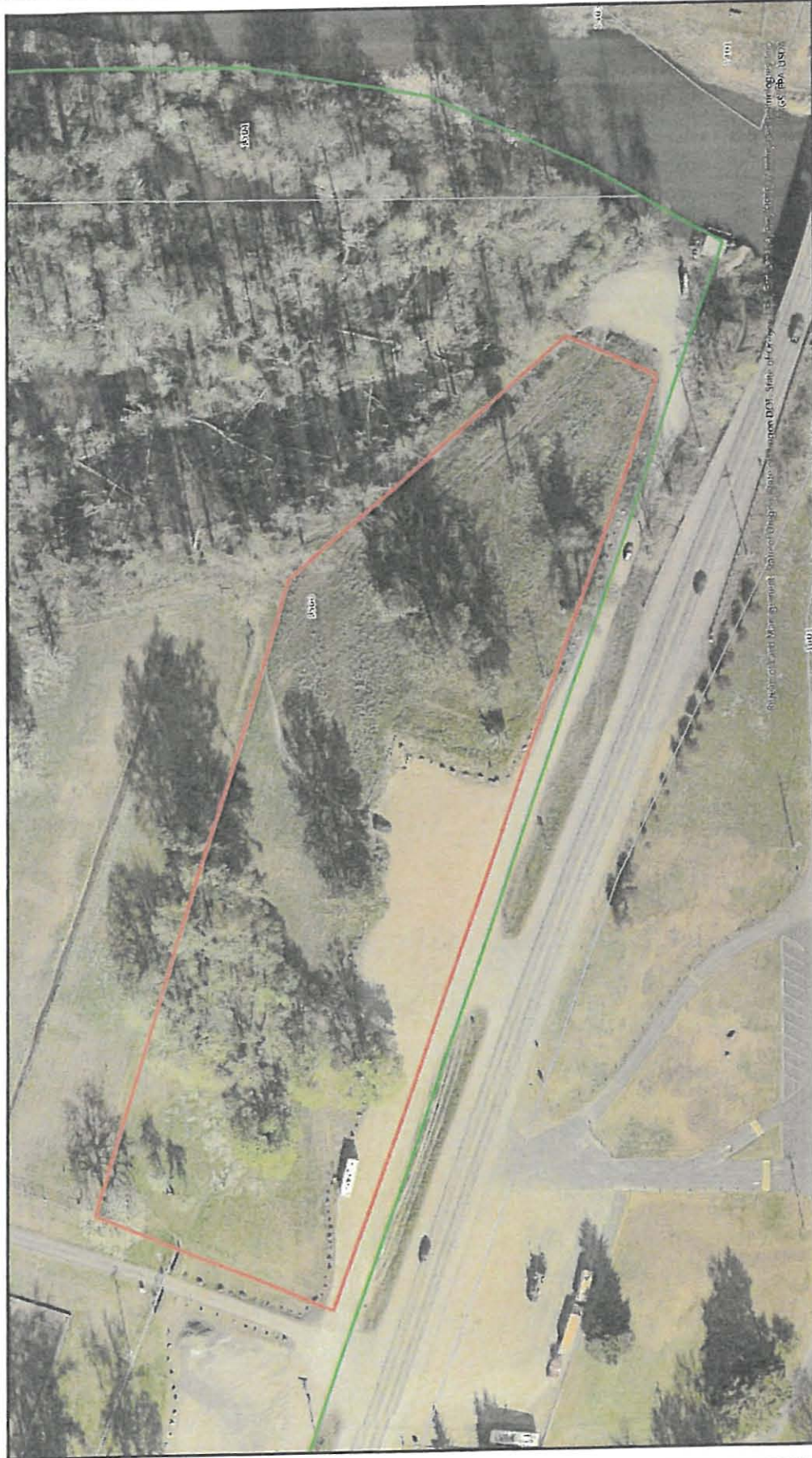
LEGAL DESCRIPTION  
OF LEASED LAND

Located in Section 35, Township 20 South, Range 3 West, of the Willamette Meridian, in Cottage Grove, Lane County, Oregon, being a portion of those lands conveyed to the City of Cottage Grove in that Warranty Deed recorded January 30, 1973 on Reel 623R, as Instrument Number 734358, being more particularly described as follows:

Commencing at the intersection of the north margin of Row River Cut-off Road with the west bank of the Row River; thence northwesterly along said north margin 120 feet; thence northeasterly at right angles to said north margin, 95 feet, to the point of beginning; thence southwesterly at right angles to said north margin, 70 feet, to a point lying 25 feet from said north margin, when measured at right angles; thence northwesterly running parallel with said north margin, 760 feet, more or less, to a point on the southerly extension of an existing chain link fence surrounding the water treatment facility, said point lying 20 feet, more or less, southeasterly of the access road to said facility; thence northeasterly along said southerly extension and continuing along said fence line, 202 feet, more or less, to the west end of an existing wire fence; thence southeasterly along said wire fence and the extension thereof, 512 feet; thence southeasterly 282 feet, more or less, returning to the point of beginning.



EXHIBIT B



The information on this map was derived from aerial photography and other sources. While the County cannot accept any responsibility for the accuracy of the information shown on this map, users are advised to verify the accuracy of the information shown on this map with the appropriate agency. There are no warranties, expressed or implied, concerning the product. Accuracy of any error will be appreciated.



Cottage Grove Web Map

