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**CONSTRUCTION AND SUBLEASE AGREEMENT WITH ORGANIZATION
REGARDING USE OF AREA OUT OF MANUEL Q. SALINAS PARK**

THE STATE OF TEXAS §

COUNTY OF NUECES §

WHEREAS, on July 6, 2010, the Corpus Christi Industrial Development Corporation ("CCIDC") entered into a 25 year term lease with the City of Corpus Christi, ("City"), to lease certain lands to the City to be used for recreational purposes, and which lease provides that the City may sublease the lands for use in a manner consistent with the usage as a recreational area;

WHEREAS, **South Texas BMX, LLC** ("Organization") desires to use certain areas Manuel Q. Salinas Park located at 1354 Airport Road, Corpus Christi, Texas, to construct BMX bike race tracks and other improvements to be located on approximately three (3) acres with concession stand and fencing, (Improvements") as described on attached Exhibit;

WHEREAS, the City desires to grant Organization permission to sublease the Premises described herein to construct the Improvements, and then sublease to Organization the property in consideration of the terms and conditions and mutual promises set out below.

NOW, THEREFORE, the City, and Organization agree as follows:

Section 1. Premises. The City subleases the property described on the attached Exhibit A to Organization, under the terms and conditions contained herein.

Section 2. Definitions. Whenever used in this Lease, the following terms shall have the meanings ascribed to them as set forth in this paragraph, to wit:

- A. Sublessee or Organization shall mean South Texas BMX, LLC, a Texas limited liability corporation.
- B. City shall mean the City of Corpus Christi, a Texas home-rule municipal corporation.
- C. City Council shall mean the City Council of the City of Corpus Christi.
- D. City Manager shall mean the City Manager of the City, or his designee.
- E. Parks Director or "Director" shall mean the City of Corpus Christi Director of Parks and Recreation or designee.

F. **City Property or Premises or Leased Premises** shall mean a tract or parcel of land approximate acreage of three (3) acres and designated as shown on the attached Exhibit A, together with all Improvements.

G. **Effective Date** shall mean the 61st date after City Council approval of this agreement.

H. **Gross Revenues** shall mean the total amount of money or the value of any other considerations received by Organization or by Organization's officers, agents, employees, invitees, or subcontractors, for any purpose related to use of Premises, any Improvements, or BMX track operations.

I. **Net Revenues** shall mean Gross Revenues after deduction of Organization's reasonable expenses to operate the BMX track at the Premises.

J. **Improvements** shall mean any construction at the Premises.

K. **Lease or Agreement** shall mean this document as executed by both parties.

L. **BMX track or BMX race track** shall mean the approximately 1,000 foot long track constructed at the Premises for use for bicycle motorcross purposes.

Section 3. Purpose. The purpose of this Agreement is for Organization to construct and operate, at its sole expense, a BMX race track facility at the Premises. Any other use by Organization is prohibited.

Section 4. Term.

This agreement shall commence on the Effective Date and continues for five years, unless earlier terminated as herein provided. This agreement may be extended for up to two additional five year terms, subject to written approval of the City Manager and authorized representative of Organization.

Section 5. Use of City's Property for Construction of Improvements

A. Organization shall construct or oversee construction of certain Improvements which are described on the attached Exhibit, with approximate value of \$125,000. Organization shall review the construction invoices and shall make payment if the work has been satisfactorily completed.

B. When constructing the Improvements, the plans and specifications shall be prepared by state-licensed architects or engineers. The plans and specifications are subject to approval of the City Manager. Construction shall not begin until the City Director of Engineering has reviewed and approved the construction plans and specifications. Organization agrees to maintain City Property in a sanitary, safe and clean condition during Organization's use of the City Property.

C. Organization shall require the contractors who are awarded contracts for construction of the Improvements to furnish the following bonds by surety companies authorized to do business in Texas:

1. **Payment Bond** - A payment bond in the amount of One Hundred Percent (100%) of the contract for construction of the Improvements shall be furnished for the protection of all persons, firms and corporations who may furnish materials or perform labor. The payment bond shall be made with City and CCIDC as an Obligee.
2. **Performance Bond** - A performance bond in the amount of One Hundred Percent (100%) of the contract for construction of the Improvements shall be furnished covering the faithful performance of the contract. The performance bond shall be made with City and CCIDC as an Obligee.

D. Organization shall include in all construction agreements with Organization's construction company ("Contractor") for the Improvements, the following provisions:

1. Contractor does hereby agree to waive all claims, release, indemnify, defend and hold harmless Corpus Christi Industrial Development Corporation, the City of Corpus Christi and all of its officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by error, omission, or negligent act of Contractor, its officers, agents, employees, subcontractors, invitees or any other person, arising out of or in connection with the performance of this agreement, and Contractor shall at his or her own cost and expense defend and protect the City of Corpus Christi and Corpus Christi Industrial Development Corporation from any and all such claims and demands.
2. Contractor does hereby agree to waive all claims, release, indemnify, defend and hold harmless the Corpus Christi Industrial Development Corporation, the City of Corpus Christi and all of its officials, officers, agents and employees from and against any and all claims, losses, damages, suits, demands or causes of action, and liability of every kind including all expenses of litigation and/or settlement, court costs and attorney fees for injury or death of any person or for loss of, damages to, or loss of use of any property, rising out of or in connection with the performance of this agreement. Such indemnity shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence of the City of Corpus Christi, its officers, officials, agents or employees. It is the express intention of the

parties hereto that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City of Corpus Christi from the consequences of the City of Corpus Christi's own negligence, where that negligence is a sole or concurring cause of the injury, death or damage.

3. In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under workman's compensation or other employee benefit acts.

E. Organization shall also require the Contractors, in all Organization construction agreements for the Improvements to furnish insurance in such amounts as specified below and include in all construction agreements for the Improvements the following language:

1. Prior to commencement of any activity on City of Corpus Christi's property, Contractor shall purchase and maintain during the term of this contract, at its own expense, hereinafter stipulated minimum insurance with companies duly authorized to do business in the State of Texas. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Agreement shall be written on an "occurrence" basis.

Workers' Compensation as required by law.

Employer's Liability Insurance of not less than \$500,000.00 for each accident, \$500,000.00 disease for each employee, \$500,000.00 disease as policy limit.

Commercial General Liability Insurance, including Independent Contractor's Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this contract, fully insuring Contractor's liability for injury to or death of employees of the City of Corpus Christi and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.

Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined single limit of \$1,000,000 per occurrence.

Builder's Risk. The Contractor shall purchase an All Risk builder's risk policy in the amount of the construction cost of the concession stand and fencing for the duration of this project.

2. It is agreed by all parties to this Agreement that the insurance required under this Agreement shall:
 - a. Be written with the Corpus Christi Industrial Development Corporation, the City of Corpus Christi and Organization as additional insured on applicable policies and that the policy phrase "other insurance" shall not apply to the City of Corpus Christi where the City of Corpus Christi is an additional insured shown on the policy.
 - b. Provide for thirty (30) days written notice of cancellation to the City of Corpus Christi, material change or any other cause.
 - c. Be written through companies duly authorized to transact that class of insurance in the State of Texas.
 - d. Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the Corpus Christi Industrial Development Corporation, or the City of Corpus Christi, it being the intention that the required insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies.
 - e. Provide a Certificate of Insurance evidencing the required coverages to:

City Manager
 City of Corpus Christi
 Post Office Box 9277
 Corpus Christi, Texas 78469-9277

Risk and Safety Manager
 City of Corpus Christi
 Post Office Box 9277
 Corpus Christi, Texas 78469-9277

F. Organization agrees that all work to be performed by it or its contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in

full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, and such work shall be subject to City inspection during the performance thereof and after it is completed. However, the City shall have no duty to inspect.

G. Organization shall discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of Organization as such obligations mature. Organization expressly agrees that it will neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the City's property or upon any Improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the City's property or Improvements thereon, and Organization shall discharge any such lien within thirty (30) days after notice of filing thereof.

H. Organization shall be solely responsible to ensure that any use of the Premises is in compliance with all applicable Federal, State, and local laws and regulations, including City building codes and zoning regulations. All plans and specifications referred to above and all construction upon the City's property shall comply with all applicable federal, state or municipal laws, ordinances, rules, regulations and requirements. During the progress of all work, City's duly authorized representative may enter upon the Premises and make such inspections as may be reasonably necessary for the purpose of satisfying City that the work or construction meets the requirements or standards.

I. Organization shall conduct its operations under this Agreement in an orderly and proper manner, considering the nature of such operation, so as not to unreasonably annoy, disturb, or endanger others.

J. Before any work on City property begins, Organization shall present the City Director of Engineering, the City Risk Manager or designee, and the City Manager with evidence of Contractor's insurance coverages, and City building and construction permits.

K. Organization shall have the right to obtain ingress and egress to and from the area designated for construction of the Improvements by means of all existing roadways or accessways, to be used in common with others having rights of passage.

L. MATERIAL AND WORKMANSHIP:

(a) Organization agrees that all equipment, material, and articles into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Organization may, at its option, use any equipment, material, article, or process that, in the judgment of the City Director of Parks and

Recreation, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Organization shall obtain City Director of Parks and Recreation ("CityDirector") approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the City Director the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the City Director, the Organization shall also obtain the City Director's approval of the material or articles which the Organization or its Contractor contemplates incorporating into the work. When requesting approval, the Organization shall provide full information concerning the material or articles. When directed to do so, the Organization shall submit samples for approval at the Organization's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The City Director may require, in writing, that the Organization remove from the work any employee the City Director deems incompetent, careless, or otherwise objectionable. A one year warranty on workmanship is required.

M. Date for construction completion. If construction for its intended use as a BMX race track is not completed within nine (9) months from the Effective Date of this Agreement, then the Organization shall be considered to be in breach of this Agreement, and the City may terminate this Agreement upon notice to Organization, without penalty to City, and City may additionally pursue all remedies under law.

N. Cost of construction of the Improvements. The complete cost of developing all necessary plans and specifications and the cost of construction of the Improvements by Organization shall be borne solely by Organization and be at no expense to City whatsoever.

O. Use of donated materials. City may make available donated materials to Organization for Organization's use at the Premises. ORGANIZATION ASSUMES ALL RISK ASSOCIATED WITH USE OF ANY MATERIALS DONATED OR PROVIDED BY THE CITY. CITY EXPRESSLY WAIVES ANY WARRANTIES REGARDING SUITABILITY OR FITNESS FOR PARTICULAR PURPOSE OF ANY MATERIALS USED AT THE PREMISES.

Section 6. Ownership of Improvements After Completion of Construction.

Upon completion of the Improvements, Organization donates the Improvements to CCIDC, which then leases them to the City, to be subleased by the City to the Organization. The Improvements are considered completed when accepted in writing for the CCIDC by the City Director of Parks and Recreation. Any warranties given to the

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Organization regarding the Improvements shall be transferred and assigned to CCIDC and City at the same time as the Improvements are transferred to the CCIDC.

Section 7. Purpose of Lease of Improvements after Completion of Construction

Upon acceptance of the Improvements by the City Director of Parks and Recreation, the City shall sublease the Premises together with Improvements to Organization ("Leased Premises") for the remainder of the Term section described above, for Organization to provide bicycle motorcross (BMX) sports programs for the citizens of Corpus Christi. Organization may not use the Leased Premises for any other purpose without the prior written approval of the Parks Director. The Organization's use of the Leased Premises is subject to the terms and conditions of this Agreement, including attached Exhibits.

Section 8. Consideration, Financial Records and Audit

As additional consideration for use of the Premises, Organization agrees to pay the City as follows:

Organization shall pay City two percent of Gross Revenues, to be used by City for improvements to be made at the Premises.

Organization shall also pay City ten percent of Net Revenues, due tenth of each month, to address directed by the City Director of Parks and Recreation.

All payments are due by the tenth of each month, to address as directed by the City Director of Parks and Recreation. Late payments accrue interest at rate of ten percent per month from the date the payment became due.

Organization must maintain all financial records and receipts for at least three (3) years from the expiration of this Agreement. City has right to inspect and audit financial records of Organization during regular business hours.

Financial records include but it not limited to, all documents related to the conduct of the operations, such as general ledgers, accounts receivables and payables, sales journals, inventory records, daily and periodic summary reports, cash register and computer terminal tapes, bank deposit slips, bank statements, tax reports to the State and Federal agencies, and discount and rebate records.

Organization must furnish City Director with monthly statements of Gross Revenues, and Net Revenues, certified by an authorized officer of Organization, in accordance with generally accepted accounting principles and procedures, and in a form approved by the City Director of Financial Services.

Section 9. Damage or Destruction

In the event of damage or destruction to the Improvements or Leased Premises, City and Corpus Christi Industrial Development Corporation shall have no obligation to repair or rebuild the Improvements or Leased Premises or any fixtures, equipment or other personal property installed by Organization. However, if said damage or destruction occurs prior to completion of the construction of the Improvements, any insurance proceeds from any casualty loss shall be applied to the repair or rebuilding of the Improvements, which will be the extent of Organization's obligation for repair. If such damage or destruction renders the Improvements unusable or unsafe as determined by the City Manager in his sole discretion, then upon City Manager's written notice to Organization, this Agreement terminates immediately without penalty to the City. Any damage caused by City will be reviewed by the City Risk Management office.

Section 10. Termination.

In addition to provisions set forth elsewhere in this Agreement, the Agreement may be terminated as follows:

- (A) If there is noncompliance with one or more of the provisions contained herein, the City Director of Parks and Recreation may give Organization written notice to cure or begin curing the default(s) within thirty (30) days of receipt of the notice. If Organization is not in compliance or in substantial compliance with each provision identified by the City Director of Parks and Recreation within thirty (30) days of receiving said notice, or if such noncompliance reasonably requires additional time if Organization is not proceeding diligently with curing the default(s), the City Manager may terminate this Agreement for cause without penalty by providing written notice of termination and listing one or more areas of continued noncompliance.
- (B) Either City or Organization may terminate this Agreement without cause by giving thirty (30) days written notice to the non-terminating party.

Section 11. Surrender.

Upon termination of this Agreement, Organization shall return the Premises to City in as good condition as received, reasonable use and wear, acts of God, fire and flood damage or destruction where Organization is without fault.

Section 12. Maintenance of Leased Premises.

While construction is ongoing, City shall mow the Premises. After completion of construction as described above, Organization must maintain the Premises and Leased Premises including the mowing and collecting litter as directed in writing by the Parks Director.

Section 13. Schedule of Activities, and Contact List.

Attached as Exhibit is Organization's Schedule of activities, Hours of Operation, Membership and User Fees. Organization agrees to annually submit its list of Officers and Board of Directors to the Parks Director, including name, title, address and phone number. Any changes to Organization's schedule of activities, hours and terms of operations, or membership and user fees require prior written approval of the City Director.

Section 14. Responsibility for activities on Premises and Leased Premises.

A. Organization is solely and exclusively responsible for all activities on the Premises and Leased Premises and has control of the Premises. The City has no responsibility for safety or any activity on the Premises. Organization is solely responsible for safety of all activities on the Premises.

B. Maintenance. Organization must maintain and repair the Premises including Improvements in good condition. If Organization fails to maintain the Premises, or fails to perform repairs in a timely manner, City may do so and bill Organization. Organization must pay City within 30 days of invoice. Maintenance includes at a minimum:

- (1) Organization shall pick up and properly dispose of litter on daily basis whenever the Premises are being used and weekly during rest of the year.
- (2) Organization shall keep the Premises (including any buildings, temporary or permanent) operational and in good repair, including but not limited to maintaining the track, and cleaning and maintaining interior and exterior of any building(s) at the Premises.
- (3) Organization must immediately report any vandalism to the Parks Director or designee and Corpus Christi Police Department. City is not responsible to repair or replace any damages to the Property or Improvements.
- (4) Organization must keep any parking areas and access road within the Premises free of debris, properly designated and ensure that parking is confined to designated areas.
- (5) Organization must maintain the Premises. Organization shall maintain the grass at safe height not to exceed six (6) inches. Organization will water the Premises, in compliance with any City designated drought plan.

C. Registration. Organization will promote its programs so that the public is aware of the Organization's activities. Organization will conduct all registrations, take all fees, schedule all practices, races and events and provide trophies.

D. Utilities. Organization must install and pay for its own utility connections and meters and Organization must have all utility service providers bill Organization for all utilities, including but not limited to telephone, electricity, water, wastewater, gas, and solid waste. City is not responsible for payment of any utilities.

E. Track Condition. The City reserves the right to cancel play at the Leased Premises when field conditions, as determined by Parks Director or designee, may cause injury or damages to Leased Premises.

F. Sanctioning Body. All activities scheduled and coordinated at the track must be sanctioned by USA BMX-American Bicycle Association.

Section 15. Alterations.

Organization may not make any alterations, additions or improvements, to, in or about the Leased Premises without prior written consent of the Parks Director. All approved alterations, improvements, and additions made by Organization upon the Leased Premises, although at Organization's expense, shall become the property of the City in fee simple without any other action or process of law at the end of this Agreement.

Section 16. Tax.

Organization shall be responsible for timely payment of all taxes, special assessments, or levies, if any, assessed during the term of this Agreement, against or relating to this Agreement, the Premises or Improvements, including ad valorem taxes pursuant to the Texas Property Tax Code, throughout term of this Agreement. Organization shall be responsible to timely collect and remit any applicable sales taxes. Organization must provide proof of payment upon request of Parks Director.

Section 17. Assignment and Subleasing.

Organization must not assign, encumber or sublease this Agreement, without prior written consent of the City Manager. Any attempted assignment or sublet without prior written consent renders this Agreement void.

Section 18. Payment for Utilities.

Organization must pay for all utilities used by it or for any activity sponsored by Organization on the Premises on or prior to the due date for payment. Failure to pay any utility bill on or prior to the due date is grounds for termination of this Agreement.

Section 19. Signs.

- (A) Organization must not exhibit, inscribe, paint, erect, or affix any signs, advertisements, notices, or other lettering (**Signs**) on the Premises or on any Improvements without the Director's prior written approval.
- (B) If Signs are approved, the Director, in writing, may require Organization to remove, repair, or repaint any Signs. If the Signs are not removed, repaired, or repainted within ten (10) days of the Director's written demand, the City may do or cause the work to be done, and Organization must pay the City's costs within thirty (30) days of receipt of Director's invoice. Failure

to pay the City's costs within thirty (30) days of receipt of the invoice constitutes grounds for termination of this Agreement.

- (C) Prior to use of Premises for any of the following types of recreational activities (hockey and in-line hockey; skating, in-line skating, roller-skating, skateboarding, and roller-blading; soap box derby use; or paintball use); Organization must post and maintain a clearly readable sign in a clearly visible location on or near the premises. The sign shall contain the following warning language:

WARNING

TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF A GOVERNMENTAL UNIT FOR DAMAGES ARISING DIRECTLY FROM HOCKEY, IN-LINE HOCKEY, SKATING, IN-LINE SKATING, ROLLER-SKATING, SKATEBOARDING, ROLLER-BLADING, PAINTBALL USE, OR SOAP BOX DERBY USE ON PREMISES THAT THE GOVERNMENTAL UNIT OWNS, OPERATES, OR MAINTAINS FOR THAT PURPOSE.

Section 20. Advertising.

The Director has the right to prohibit any advertising by Organization which impairs the reputation of the Premises or the City.

Section 21. Security. Organization shall contract and pay for any and all security it requires at the Premises during the term of this Agreement.

Section 22. Inspection.

The City Manager and the Director, or their respective designee, has the right to inspect the Premises and/or the Improvements at any time during the term of this Agreement. If an inspection reveals that maintenance is not being properly carried out, the Director, or his designee, may provide written notice to Organization demanding compliance. If Organization has not complied within five (5) days after receipt of the demand, the City may undertake the work and Organization shall pay the City's cost plus ten percent (10%) overhead within thirty (30) days of receipt of the Director's invoice. Failure to pay the City's invoice for maintenance within thirty (30) days of receipt of the invoice constitutes grounds for termination of this Agreement. Alternatively, the City may elect to terminate this Agreement after ten (10) days written notice to Organization.

Section 23. Non-Discrimination. Organization shall not discriminate nor permit discrimination against any person or group of persons, as to employment and in the provision of services, activities, and programs, on the grounds of race, religion, national origin, sex, physical or mental disability, or age, or in any manner prohibited by the laws

of the United States or the State of Texas. The City Manager, or his designee, retains the right to take such action as the United States may direct to enforce this non-discrimination covenant.

Section 24. Compliance with Laws.

- (A) Organization must comply with all Federal, State, and local government laws, rules, regulations, and ordinances, which may be applicable to its operation at the Premises and its performance under this Agreement. This Agreement is also subject to applicable provisions of the City Charter.
- (B) All actions brought to enforce compliance with any law or to enforce any provision of this Agreement will be brought in Nueces County where this Agreement was executed and will be performed.
- (C) Organization shall immediately provide Parks Director with copy of any claim or notice of violation received from any Federal, State or local government agency.

Section 25. Costs. Noncompliance with the terms herein may result in termination of this Agreement and repossession of the Premises and its Improvements by the City or its agents. If the City undertakes legal action to enforce compliance or collect damages resulting from noncompliance, Organization must pay all of the City's court costs and expenses, including reasonable attorneys' fees.

Section 26. Indemnity. *Organization covenants to fully indemnify, save, and hold harmless the Corpus Christi Industrial Development Corporation, the City, their respective its officers, employees, representatives, and agents (collectively, Indemnitees) from and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments asserted against or recovered from City on account of injury or damage to person including, without limitation on the foregoing, premises defects, workers compensation and death claims), or property loss or damage of any kind whatsoever, to the extent any damage or injury may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, (1) the existence, use, operation, maintenance, alteration, or repair of Premises and the Organization's operations; (2) the exercise of rights under this Agreement; (3) an act or omission, negligence, or misconduct on the part of other persons having involvement in, participation*

with, or business with the Premises, Organization, or the Organization's program whether authorized with the express or implied invitation or permission of Organization (collectively, Organization's Invitees) entering upon the Premises or its Improvements pursuant to this Agreement, or trespassers entering upon the Premises or its Improvements during Organization's use or physical occupation of the Premises; or (4) due to any of the hazards associated with sporting events, training, or practice as a spectator or participant and including any injury or damage in any other way and including all expenses arising from litigation, court costs, and attorneys fees, which arise, or are claimed to arise from, out of, or in connection with the asserted or recovered incident.

Organization covenants and agrees that if Corpus Christi Industrial Development Corporation ("CCIDC") or City is made a party to any litigation against Organization or in any litigation commenced by any party, other than Organization relating to this Agreement, Organization shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend CCIDC and City in all actions based thereon with counsel satisfactory to Indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, demand, claim, or action.

Section 27. Insurance.

- (A) Organization must secure and maintain at Organization's expense, during the term of this Agreement, a Commercial General Liability insurance policy with the limits and requirements shown on Exhibit B, which is attached hereto and incorporated herein by reference. Failure to maintain such insurance at the limits and requirements shown on Exhibit B constitutes grounds for termination of this Agreement.**
- (B) Organization must provide proof, by Certificate of Insurance meeting the limits and requirements set out in Exhibit B", to the Director and Risk Management or designee prior to commencing use of the Premises under this Agreement.**
- (C) Organization must provide the Director and Risk Management thirty (30) days written notice of cancellation, intent not to renew, or material change of**

any insurance coverages required herein.

- (D) Organization shall, during the term of this Agreement, provide copies of all insurance policies to the City Manager or the Director upon written request.
- (E) Organization shall, prior to any addition or alteration to the Premises or to the Improvements, obtain clearance, in writing, from Risk Management.

Section 28. Furniture, Fixtures and Equipment.

City has no responsibility to furnish any equipment or furnishings for Organization. Parks Director retains right to approve all furnishings, and fixtures that may be installed in the Premises, prior to installation. At end of the Agreement, any property remaining on the Premises shall revert to the City for the City's use or disposal.

Section 29. Director's Right to Access Premises.

Organization shall provide Parks Director with keys to the Premises and a current contact list in event of emergency. Parks Director and designee have right to enter the Premises during regular hours of operation or at anytime in an emergency.

Section 30. Appropriations. Organization recognizes that the continuation of any expenditure by the City, after the close of any fiscal year of the City, shall be subject to appropriations and budget approval providing for such expense as an expenditure in said budget. The City does not represent that said budget item will be actually adopted, said determination being within the sole discretion of the City Council at the time of adoption of such budget.

Section 31. Warranty of Title. City and CCIDC do not warrant its title to the Premises. This agreement and the rights and privileges granted Organization in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Agreement may be construed to imply the conveyance to Organization of rights in the Premises that exceed those owned by City and CCIDC.

Section 32. Notices.

All notices, demands, requests, or replies provided for or permitted, under this Agreement, by either party must be in writing and must be delivered by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or, (3) by deposit with an overnight express delivery service, for which service has been prepaid. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. All such communications must only be made to the following:

IF TO CITY or CCIDC:

City of Corpus Christi
 Attn: Director of Park & Recreation
 P. O. Box 9277
 Corpus Christi, TX 78469-9277
 (361) 880-3461

IF TO ORGANIZATION:

South Texas BMX, LLC
 Attn: President
 P. O. Box 18305
 Corpus Christi, TX 78480

Either party may change the address to which notice is sent by using a method set out above. Organization will notify the City of an address change within thirty (30) days after the address is changed.

Section 33. Amendments. No alterations, changes, or modifications of the terms of this Agreement nor the waiver of any provision will be valid unless made in writing and signed by a person authorized to sign agreements on behalf of each party. The City Manager is authorized to execute amendments which do not change the essential purpose of this Agreement.

Section 34. Waiver.

- (A) The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights hereunder.
- (B) No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement by either party at any time, express or implied, shall be taken to constitute a waiver of any subsequent breach of the covenant or condition nor shall justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition hereof.
- (C) If any action by the Organization requires the consent or approval of the City on one occasion, any consent or approval given on said occasion will not be deemed a consent or approval of the same or any other action at any other occasion.
- (D) Any waiver or indulgence of Organization's default of any provision of this Agreement shall not be considered an estoppel against the City. It is expressly understood that, if at any time Organization is in default in any of its conditions or covenants hereunder, the failure on the part of City to promptly avail itself of said rights and remedies which the City may have will not be considered a waiver on the part of the City, but the City may at any time avail itself of said rights or remedies or elect to terminate this Agreement on account of said default.

Section 35. Force Majeure. No party to this Agreement will be liable for failures or delays in performance due to any cause beyond their control including, without limitation, any failures or delays in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. The rights and obligations of the parties will

be temporarily suspended during this period to the extent performance is reasonably affected.

Section 36. Background Checks.

Organization shall require satisfactory criminal background checks on each of its employees and any volunteers

Section 37. Acceptance of Premises Disclaimer:

A. ORGANIZATION ACKNOWLEDGES THAT IT IS SUBLEASING THE PREMISES "AS IS" WITH ALL FAULTS, AS MAY EXIST ON THE PREMISES, AND THAT NEITHER CITY, CCIDC, NOR ANY EMPLOYEE OR AGENT OF THEM, HAS MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH PREMISES. ORGANIZATION HEREBY WAIVES ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS, AND DAMAGES BASED ON ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE, ANY AND ALL WARRANTIES OF HABITABILITY, AND ANY OTHER IMPLIED WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. ORGANIZATION ACKNOWLEDGES AND AGREES THAT ORGANIZATION HAS BEEN PROVIDED, TO ITS SATISFACTION, THE OPPORTUNITY TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO WHICH ORGANIZATION INTENDS TO PUT THE PREMISES, AND IS RELYING ON ITS OWN INSPECTION. THIS SUBLEASE IS SUBJECT TO ALL COVENANTS, EASEMENTS, RESERVATIONS, RESTRICTIONS AND OTHER MATTERS OF RECORD AND NOT OF RECORD APPLICABLE TO THE PREMISES.

B. ORGANIZATION ACKNOWLEDGES THAT ANY AND ALL STRUCTURES AND IMPROVEMENTS EXISTING ON THE PREMISES ON THE COMMENCEMENT DATE, IF ANY, ARE ACCEPTED "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO. ORGANIZATION ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION WITH RESPECT TO ANY EXISTING STRUCTURES OR IMPROVEMENTS, BUT IS RELYING ON ITS EXAMINATION THEREOF.

C. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS SUBLEASE.

Section 38. Publication. Organization agrees to pay the cost of newspaper publication of this Agreement and related ordinance as required by the City Charter.

Section 39. Captions. The captions in this Agreement are for convenience only, are not a part of this Agreement, and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 40. Severability.

A. If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application hereof to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent

jurisdiction, then the remainder of this Agreement, or the application of said term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected thereby, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word hereof be given full force and effect for its purpose.

- B. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected thereby, and in lieu of each such illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

Section 41. Complaint Notice. Organization will post a notice at Premises, in a form approved by the **Parks Director**, that if any participant or spectator has any complaints or concerns they may contact the City at 880-3461 and talk to the **Parks Director**, or designee.

Executed in duplicate originals on the _____ day of _____, 2012.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

By: _____
Ronald L. Olson
City Manager

ORGANIZATION: South Texas BMX, LLC

By: [Signature]
Name: Jeffrey N. Click
Title: PRESIDENT
Date: 8/27/12

STATE OF TEXAS §
 §
COUNTY OF NUECES _____ §

This instrument was acknowledged before me on the 27 day of August, 2012,
by Jeffrey N. Click, as the President, for South Texas BMX, LLC, a
Texas limited liability corporation, on behalf of the corporation.

Notary Public, State of Texas: [Signature]

Printed Name: Michael L. Budd

Commission expires:

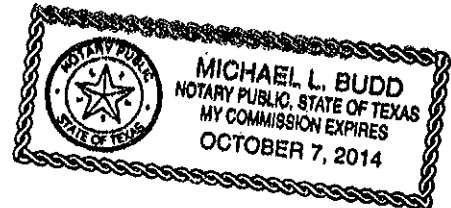


EXHIBIT A

Property Description either survey or metes and bounds

[to be inserted]

Description of Improvements to be constructed by Organization/Organization:

Approximately 1000 feet of track

Concession stand 10' x 20'

Lighting

Fencing

Gates

BMX LEASE AREA

**STATE OF TEXAS
COUNTY OF NUECES**

BEING a tract of land containing 3.59 Acres (156,434 Sq. Ft.) of land out of Tract G, Cliff Maus, as shown in Volume 27, Page 95 of the Map Records of Nueces County, Texas. This 3.59 Acre Tract being more particularly described by metes and bounds as follows:

BEGINNING at a Point on the southerly boundary line of Lot 32, Block 5, Harlem Park Addition as recorded in Volume 9, Page 57 of the Map Records of Nueces County, Texas, from which a Found 1" Iron Pipe bears N61°26'10"W a distance of 54.61';

THENCE S60°26'10"E along the southerly boundary line of said Block 5 a distance of 450.00' to a Point from which a Found 1" Iron Pipe bears S60°26'10"E, a distance of 429.18', being the northeasterly corner of this tract;

THENCE S29°33'50"W through Tract G, Cliff Maus as recorded in Volume 27, Page 95 of the Map Records of Nueces County, Texas, a distance of 400.00' to a Point, being the southeasterly corner of this tract;

THENCE N44°59'38"W continuing through said Tract G, a distance of 500.00' to a Point on a chain link fence, being the southwesterly corner of this tract;

THENCE N36°23'24"E continuing through said Tract G a distance of 268.77' to the **POINT AND PLACE OF BEGINNING** and containing 3.59 Acres of land.

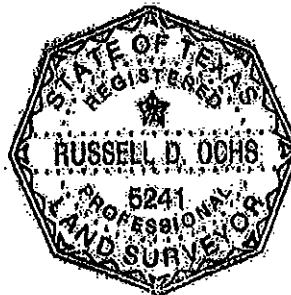
Bearings are with reference to a southerly boundary line of Block 5 (S60°26'10"E), Harlem Park Addition as recorded in Volume 9, Page 57 of the Map Records of Nueces County, Texas.

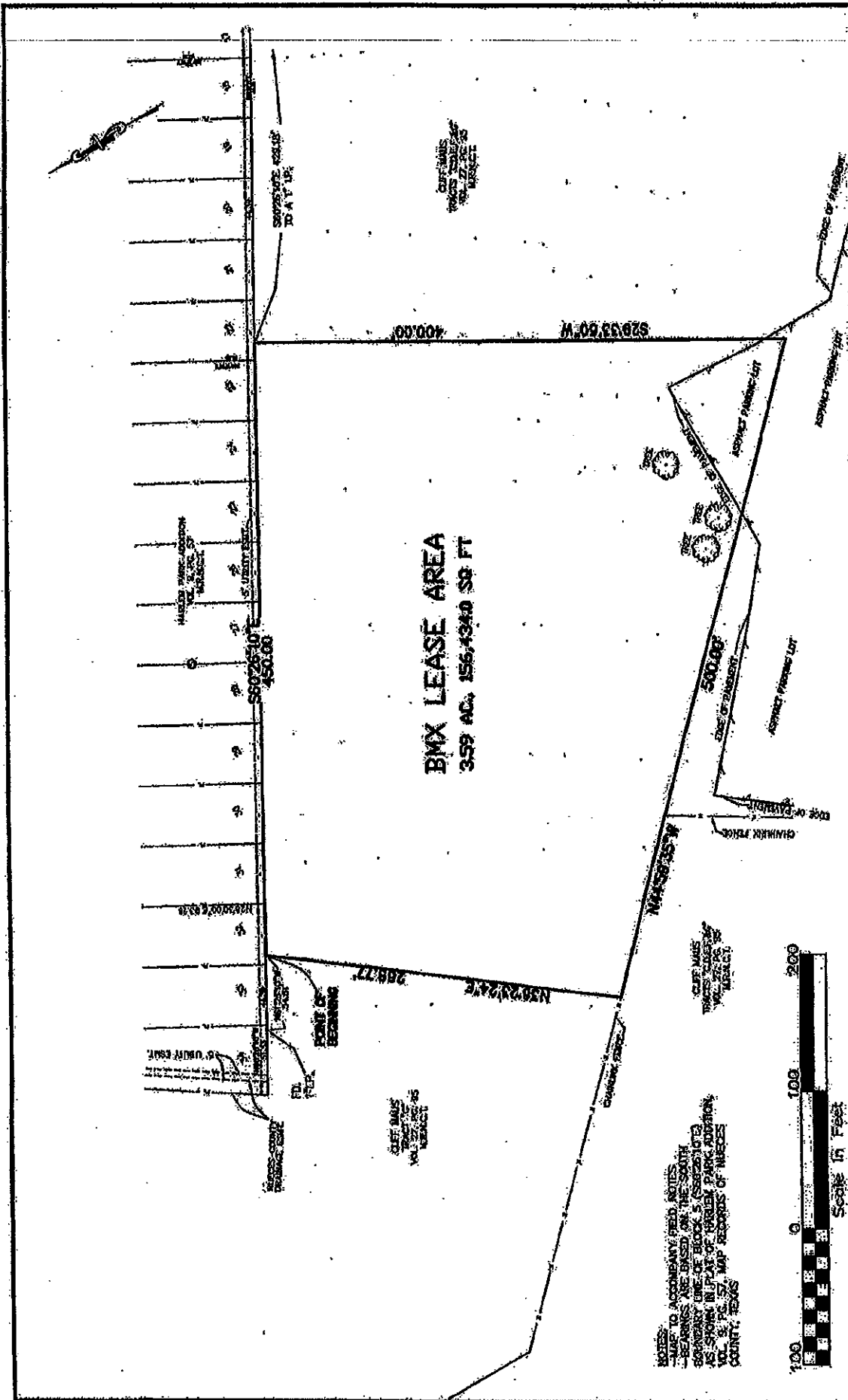
**State of Texas
County of Nueces**

I, Russell D. Ochs, a Registered Professional Land Surveyor for the City of Corpus Christi, TX, hereby certify that the foregoing field notes were prepared by me from a land survey made on the ground under my direction.

This the 12TH day of July, 2012

Russell D. Ochs
Russell D. Ochs
State of Texas License No. 5,241





CITY OF CORPUS CHRISTI, TEXAS
 Department of Engineering Services
 Survey Division 361-426-3311

Date Drawn: 10-17-12
 Drawn By: P. RESARDA
 Checked By: R. D. DODGE
 Project:

BMX LEASE AREA
 OWNER: Corpus Christi Industrial Development Corporation
 Doc# 2002810830

BEGING A TRACT OF LAND CONTAINING 3.59 ACRES (156,434.50 SQ FT) OUT
 OF A PORTION OF TRACT 6, CLIFF MARSH TRACTS "C.D. E.F. & F.S." VOLUME
 27, PAGE 95, OF THE MAP RECORDS OF NUECES COUNTY, TEXAS.

NOTES:
 -MAP TO ACCOMPANY FIELD NOTES
 -BEARINGS ARE BASED ON THE SOUTH
 -BOUNDARY LINE OF BLOCK 5 (S88221073)
 -AS SHOWN IN PLAT OF HARDEN PARK ADDITION,
 VOL. 5, PG. 57, MAP RECORDS OF NUECES
 COUNTY, TEXAS

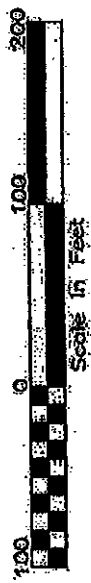


EXHIBIT B
INSURANCE REQUIREMENTS

I. ORGANIZATION'S LIABILITY INSURANCE

- A. Organization must not commence work under this agreement until insurance required herein has been obtained and such insurance has been approved by the City. Organization must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.
- B. Organization must furnish to the City's Risk Manager, (two) 2 copies of Certificates of Insurance, with applicable policy endorsements, naming the City and the Corpus Christi Industrial Development Corporation as additional insureds for all liability policies. A blanket waiver of subrogation is required on all applicable policies showing the following minimum coverage by insurance company(s) acceptable to the City's Risk Manager.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day written notice of cancellation, material change, non-renewal or termination is required on all certificates or by policy endorsements	Bodily Injury and Property Damage Per occurrence / aggregate
Commercial General Liability Including: 1. Commercial Form 2. Premises - Operations 3. Products/ Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors 7. Personal Injury	\$1,000,000 COMBINED SINGLE LIMIT
LIQUOR LIABILITY COVERAGE If liquor being served	\$1,000,000 COMBINED SINGLE LIMIT
Property Coverage	Organization is responsible for any and all damage to property or equipment used, regardless if owned, rented leased or borrowed.
WORKER'S COMPENSATION	Applicable for paid employees which complies with the Texas Workers' Compensation Act and Section II of this Exhibit
EMPLOYERS' LIABILITY	\$500,000/\$500,000/\$500,000

- C. In the event of accidents of any kind, Organization must furnish the Risk Manager with copies of all reports of any accidents within ten (10) day of any accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Organization must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Organization will be promptly met.
- B. Organization's financial integrity is of interest to the City; therefore, subject to Organizations right to maintain reasonable deductibles in such amounts as are approved by the City, Organization shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Organization's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Organization shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Organization shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager and
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Organization agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives the Corpus Christi Industrial Development Corporation as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Organization shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Organization's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Organization's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Organization to stop work hereunder, and/or withhold any payment(s) which become due to Organization hereunder until Organization demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Organization may be held responsible for payments of damages to persons or property resulting from Organization's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Organization's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

EXHIBIT C

Schedule of Activities and Hours of Operation

Attached as Exhibit is Organization Schedule of activities, Hours of Operation, Membership and User Fees

EXHIBIT
Schedule of Activities and Hours of Operation

Day	Hours
Tuesday (Practice & Race)	5-9 pm
Thursday (Clinic)	6-8 pm
Saturday (Practice & Race)	5-9 pm
Parties	Hours Available
Saturday	11am-4pm
Sunday	11am-6pm

EXHIBIT
Membership and Use Fees

Rep Names	Cost
Temporary Membership	\$ 25.00
Annual Membership	\$ 45.00
Practice	\$ 5.00
Race and Practice	\$ 10.00
Clinics	\$ 20.00
Parties	\$ 250.00
Concession	Cost
Various	\$0.25 - \$5.00
Souvenirs	Cost
Water Bottles	\$ 7.50
T-shirts	\$ 15.00
Hats	\$ 10.00
Decals	\$ 2.50