SUBJECT: SPORTS COMPLEX BMX (BICYCLE MOTO-X) TRACK

SOURCE: Department of Parks & Leisure Services

COMMENT: The Youth Bicycle Moto-X Track at the Sports Complex is now ready for development. We have checked for parties interested in operating and maintaining the track and found that Ronald and Sherri Jones are the only people who expressed interest. Mr. and Mrs. Jones currently operate the BMX track at the Tulare County Fairgrounds and have guided a successful program. Mr. and Mrs. Jones have equipment, such as the starting gate, which is needed to race. The track will be open to all youth for racing and practices. Racing fees would be $10.00, and practice, $5.00 per event. The proposed schedule for racing is on Saturday evenings, with practice on Wednesday.

The track development will be done by the Joneses and volunteers, coordinated through the Parks and Leisure Services Department. It is anticipated that the track would be open by September, depending on track construction time. The attached agreement requires Mr. and Mrs. Jones to pay the City each month a fee of $1.00 per rider per day, which we anticipate will cover the cost of water, electricity, rubbish service and porta potties.

RECOMMENDATION: That the City Council approve the BMX Track/Porterville Sports Complex Agreement.

ATTACHMENTS: BMX Track/Porterville Sports Complex Agreement

ITEM NO.: 15
RENTAL AGREEMENT
BMX TRACK/PORTERVILLE SPORTS COMPLEX

THIS AGREEMENT by and between the CITY OF PORTERVILLE, hereinafter called City and RONALD AND SHERRI JONES/DBA PORTERVILLE BMX

WITNESSETH:

1. THAT WHEREAS, The Renter desires to secure from the City certain rights and privileges and to obtain permission from the City to use City premises:
   July 17, 2002 - July 16, 2003

2. NOW, THEREFORE, City hereby grants to the Renter the right to occupy the space(s) described below for the purposes hereinafter set forth, subject to the terms and conditions of this agreement.

   BMX Track, Porterville Sports Complex

3. The purposes of occupancy shall be limited to construction, operation and maintenance of a BMX Track, the holding of BMX events as specified in this agreement, the service of concessions related to BMX events as specified in this agreement, and any other purpose specifically described in the other sections of this agreement, and shall be for no other purposes whatsoever.

   BMX Bicycle Racing

4. Renter agrees to pay to City for the rights and privileges hereby granted, the amounts and in the manner set forth below:

   Rent: $1.00 per participant per day/payable on the first of each month/
   Daily Sign In Sheets are to be submitted with Rent

5. City shall have the right to audit and monitor any and all sales and shall have access to the premises.

6. Renter further agrees to indemnify and save harmless City from any and all claims, causes of action and suits accruing or resulting from any damages, injury or loss to any person or persons, including all persons to whom the Renter may be liable under any Worker’s Compensation law and Renter, himself, and from any loss damage, cause of action, claims or suits for damages, including but not limited to loss of property, goods, wares or merchandise, caused by, arising out of, or in any way connected with the exercise by Renter of the privileges herein granted.

7. Renter will not transfer, sell, exchange or barter, or permit his employees to sell, exchange or barter, any permits issued to Renter or his employees hereunder.

8. It is mutually agreed that this contract or the privileges granted herein, or any part thereof, cannot be assigned or otherwise disposed of without the written consent of City.

9. It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein and no alterations or variations of the terms hereof, unless made in writing and signed by the parties hereto, shall be binding upon any of the parties hereto.
10. In the event Renter fails to comply in any respect with the terms of this agreement, all payments for this rental space shall be deemed earned and non-refundable by City and City shall have the right to occupy the space in any manner deemed for the best interests of City.

11. A City of Porterville Business License is required.

12. Renter will conduct his business in a quiet and orderly manner, will deposit all rubbish and garbage in receptacles provided by the City within said area for such purpose, and will keep the area within and surrounding said concessions free from all rubbish and debris on a daily basis.

13. All buildings, tents or enclosures erected under the terms of Rental Agreement shall have the prior approval of City. All eating concessions shall be approved by the City and the Tulare County Health Department. Renter is responsible for all fees related to Approvals.

14. Renter will furnish City with a list of all sales prices and other charges of any kind whatsoever to be charged by the Renter.

15. Renter will cause to be posted in a conspicuous manner at the front entrance to the concessions, a sign showing the prices to be charged for all articles offered for sale to the public under the Rental Agreement, the size of said sign, manner and place of posting to be approved by City.

16. The sale, consumption or disposal of alcoholic beverages is prohibited anywhere on site.

17. The failure of the City to insist on strict compliance with any of the terms, covenants or conditions of this agreement by Renter shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

18. This rental agreement shall be subject to termination by either party at any time during the term hereof by giving the other party notice in writing at least 30 days next prior to the date when such termination shall become effective. Such termination shall relieve the City of any further performances of the terms of this agreement.

19. The City shall have the privilege of inspecting the premises covered by this agreement at any time or all times.

20. The parties hereto agree that Renter, and any agents and employees of Renter, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the City.

21. Renter agrees to provide and maintain all capital and facility improvements associated with but not limited to: construction of BMX track, regular maintenance of existing facilities and landscaping. Any capital improvements to existing facilities become the property of the City. Upon termination of agreement, the BMX track “arena” must be returned to original condition in order to avoid penalty. (Unless mutually agreed otherwise).

22. City shall provide utilities, water, electricity, portable restrooms and a one yard debris container.

23. Renter shall have someone in attendance at all times of operation who has authority to make any and all decisions on behalf of the Renter.

24. Renter shall provide controlled supervision of people using facilities. To provide all necessary personnel for the conduct of the business and to be responsible for all damages, malicious mischief and/or vandalism to said premises. The City may make an inspection of all facilities at any time. Renter shall provide all necessary personnel for the conduct of the business and shall be responsible for damages, malicious mischief and/or vandalism to said premises.

25. Renter shall be responsible for all upkeep and maintenance of the specified area and keep it in a clean and orderly manner at all times. To pay for all supplies used in conjunction with this business and to provide a clean appealing facility at all times that Renter has area under his control. Renter shall pay for all supplies used in conjunction with this business and shall provide a clean appealing facility at all times that Renter has area under his control.

26. If renter puts any locks onto any facilities, City staff must be issued a key/combination.

27. No City equipment or personnel may be used in the operation of business.
28. No physical changes may be made without prior approval, in writing, from the City Council, Parks and Leisure Director and City Engineer.

29. Renter will respect all other renters and will not do, or permit anything to be done in, or about the premises which will in any way obstruct or interfere with the rights of other occupants of the City’s premises, or injure or annoy them or cause, maintain or permit any nuisance in, on, or about the premises.

30. Renter shall vacate area on dates where conflicts may arise, as designated by City. Renter must submit a monthly schedule established by renter, and have such schedule approved by the City, one month in advance.

31. Securities of equipment, merchandise, and other miscellaneous items used in conjunction with business are the sole responsibility of the Renter.

32. Renter agrees to meet with management after six months in order to conduct an evaluation and review of the agreement. Evaluation items include; conduct of Renter and costs relative to utilities and facilities.

33. The following are the types of reasons which may act as cause for termination of this agreement. These reasons include, but are not limited to, Renter bankruptcy, breach of contract, a felony conviction by Renter, failure to pay rent when due, IRS violation, failure to comply with Agreement, and death of Renter.

34. Renter agrees to enforce all applicable City Ordinances during track operations.

35. Renter, Ronald and Sherri Jones, d.b.a. Porterville BMX, shall obtain and maintain, at all times during the term this Agreement, Commercial General Liability Insurance of not less than $1,000,000.00 per occurrence, naming, by way of an Endorsement, the City of Porterville, its officers, employees, agents and volunteers, as “Additional Insured” against all claims arising out of, or in connection with, Renters use and operations of City premises. Renter shall provide the City of Porterville with the Certificate of Insurance and the Endorsement, and with renewals, thereof, prior to Renters use of the premises, and thereafter, prior to expiration of coverage.

a. Said Certificate of Insurance and Endorsement shall be originals, fax and xerographic copies not acceptable; the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than $1,000.00.

b. Said insurance shall be primary to insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A: VII, and the insurance company must be an “admitted” insurer in the State of California.

36. Renter may allow, as a public service, vendors who sell bike paraphernalia, on site; however, service vendors must provide the City of Porterville with a Certificate of Insurance naming the City as an additional insured in the amount of $1,000,000 and have a City of Porterville Business License.

37. This agreement may only be transferred to another party with the written approval to do so granted by the City. Any new party is subject to credit approval and review and may be subject to provide an advance deposit as good faith. Any changes or amendments to the agreement are subject to City Council approval.

38. The prevailing party is entitled to collect reasonable attorneys’ fees or any legal fees in the event of any legal action concerned with this Agreement.

39. The City reserves the right to charge a $2.00 per automobile fee for parking at large BMX events above the normal racing schedule.

40. Renter shall provide City with a copy of signed Parent Liability Release form on all riders.

IT IS FURTHER UNDERSTOOD AND AGREED that the City retains the right to revoke this Agreement in its entirety if its terms are not carried out as herein stipulated.

CITY OF PORTERVILLE

By: ____________________________________________________________________________
Gordon T. Woods, Mayor

RONALD AND SHERRI JONES, DBA PORTERVILLE BMX

By: ____________________________________________________________________________
Owner

ATTEST: __________________________________________________________________________
APPROVED AS TO FORM:

John Longley, City Clerk

Julia M. Lew, City Attorney