

#14

MEMORANDUM

TO: Brian C. Blad, Mayor; Members of the City Council
FROM: Ian Johnson, Deputy City Attorney
RE: Use Agreement Between Airport and Pocatello TMX for April 29, 2023
DATE: January 17, 2023

A handwritten signature in blue ink, appearing to be 'IB', is written over the 'RE' line of the memorandum header.

I have reviewed the above-referenced Use Agreement Between Airport and the Pocatello TMX and approved it for review by the City Council and Mayor's signature upon approval of the counsel.

If you have any questions, please feel free to contact me.

#16

CITY COUNCIL REGULAR MEETING
FEBRUARY 2, 2023
AIRPORT USE AGREEMENT
EXECUTIVE SUMMARY

Pocatello TMX leases property at the airport on which they have a motocross speedway where they hold off-road motorcycle recreational and competitive events. As they have in previous years, they would like to hold a cross-country race and need to use additional airport property for this one-day event. The event will be on Saturday, April 29th and they will be allowed to use the property from the 28th-30th for set up and take down. Pocatello TMX will pay \$200.00 for use of the additional property.

USE AGREEMENT

THIS USE AGREEMENT, hereinafter referred to as “**Agreement**”, made and entered into this ____ of February, 2023 by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as the “**City**”; and Jerame D. Teel, d/b/a Pocatello TMX, hereinafter referred to as the “**User**”.

WHEREAS, the City owns and operates the Pocatello Regional Airport, incorporated with the City and located in Power County, Idaho; and

WHEREAS, the City leases a portion of the airport to the User for the purposes of operating a motocross speedway for off-road motorcycle recreational and competitive activities; and

WHEREAS, the User wishes to use an additional portion of airport property for the purpose of conducting a one (1) day Enduro Cross Country race; and

WHEREAS, the City wishes to support the User in providing these types of activities for the benefit of the User, participants, and spectators in the community; and

WHEREAS, it is the parties desire to enter into an agreement which sets forth their respective rights and responsibilities;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

I. PURPOSE

The City shall allow the User to use the portion of the Pocatello Regional Airport as identified in the diagram attached hereto, marked Exhibit 1, and incorporated herein, and hereinafter described as “the premises”. Further, the User understands that it will have exclusive use of the premises during its event and understands that, except for access roads and right of

ways, for the safety of User's participants, User is responsible to make sure that its activities are not in conflict with any activity hosted by the Pocatello Trap Club at the same time.

II. TERM

The term of this Agreement shall be from April 28, 2023 to April 30, 2023, from 8:00 a.m. until 8:00 p.m., for the Enduro Cross Country event.

III. COMPENSATION TO CITY

The User agrees to pay the City \$200.00 for the use of the premises for three (3) days.

IV. CARE OF PREMISES

The User will be responsible for the care and maintenance of the premises during its scheduled dates and times of use. The User agrees that upon completion of the event sponsored by the User, the User shall arrange to have the premises restored to the condition which existed prior to its use, including the removal of any trash and/or garbage, ordinary wear and tear excepted. The User will be responsible for any damages to the premises during its use and will be responsible for all costs associated with the repair of any damages.

V. USE OF PUBLIC RIGHT-OF-WAY

The User's race course for the intermediate and expert riders crosses the public right-of-way; therefore, the User shall set up detour guards to divert traffic to the north of Pit Road around the pit to accommodate this travel in the public right-of-way. The City hereby grants such use for the limited purpose of conducting this event.

VI. COMPLIANCE WITH LAWS

The User shall strictly comply with all federal, state, and local laws, rules, regulations, and ordinances. Further, the User and all participants in its event agree to abide by the rules and regulations regarding use of the premises, and failure to comply with said rules and regulations may result in suspension or termination of privileges to use the premises.

VII. INDEMNIFICATION

The User shall have the responsibility for the safety of persons and property during its occupancy and use of the premises. The User agrees to fully indemnify and hold harmless, and agrees to protect and defend at their own cost and expense, the City, its officers, employees, agents, and successors from and against any and all risks, suits, judgments, expenses, claims, settlements, or liabilities which the City, its officers, employees, agents, and successors may incur or become liable for as a result of injury or death of any person or persons, or loss or damage of any property, arising out of or in connection with activities of User granted herein, or by any of User's employees, agents, invitees, or any other person acting on behalf of User.

VIII. INSURANCE

In order to effectuate the foregoing indemnification provisions, User shall maintain insurance coverage as follows:

A. User shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify City from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. The City shall be named as an additional insured or be acknowledged by User's insurance carrier as a covered entity under the terms of said policy. Moreover, the User is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with User without first giving the City at least thirty (30) days written notice.

B. User shall purchase personal property insurance in an amount sufficient to insure any and all User's personal property which might be used in User's operation of the business or which might be present on the airport premises.

C. If applicable, User shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to April 28, 2023. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section VII. "Indemnification". The User's failure to maintain insurance shall be a basis for immediate termination of this agreement.

IX. ASSIGNMENT

That no right or obligation of this Agreement, nor right in the premises described herein, may be assigned, mortgaged, or subleased by the User without written consent of the City.

X. MISCELLANEOUS

1. NON-DISCRIMINATION. User, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, religion, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of the Premises, (2) that in the construction of the buildings, infrastructure or any other improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, religion, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination, (3) that User shall use the Premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the nondiscrimination covenants contained herein, the City shall have the right to terminate the Agreement, and to reenter and repossess said land and facilities thereon, and hold the same as if said Agreement had never been made or issued; provided, however, that User allegedly in breach shall have the right to contest said alleged breach under applicable procedures, and any sanctions under or termination of the Agreement shall be withheld pending completion of such procedures.

2. NO WAIVER. The failure by either party to require strict performance of any condition of this Agreement shall not affect the party's right to subsequently enforce the same, nor shall a waiver of any term or condition be construed to be a waiver of any succeeding term or condition of this clause. To be effective, any waiver by a party must be in writing.

3. SECTION CAPTIONS. The captions appearing under the section number designations of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of the Agreement.

4. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

5. JURISDICTION AND VENUE. Any action or proceeding to enforce the provisions of this Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

6. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement between City and User respecting the use of and access through said City-owned premises by User, or the agreement terms herein provided and correctly sets forth the obligations of City and User to each other as of its date. No prior promises, representations, or agreements, written or

oral, shall amend, change, or add to any of the expressed provisions herein contained. This Agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

7. THIRD-PARTY GOVERNMENTAL AGENCIES. User acknowledges and agrees to immediately provide City with a copy of any written correspondence or verbal and/or written demands provided to User regarding the leased demise by any third-party governmental agency including, but not an exhaustive list, any county, local taxing district or any Tribal authority. Moreover, User shall not enter into any written agreement with any third-party governmental agency regarding the used premises or User's operations thereon without first obtaining City's written consent to do so.

8. SEVERABILITY. If any provision or portion of any provision of this Agreement shall be deemed illegal or unenforceable by a court of competent jurisdiction, the unaffected provisions or portions hereof shall remain in full force and effect.

9. MERGER CLAUSE. This writing represents the entire Agreement between the parties. No promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

10. CORPORATE AUTHORITY. Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation

for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

XI. NOTICES

All notices under this Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

City: City of Pocatello
Attn: Legal Dept.
P.O. Box 4169
Pocatello, ID 83205

User: Jerame D. Teel
d/b/a Pocatello TMX
252 N. 3rd Ave.
Pocatello, ID 83201

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

XII. COST OF LITIGATION

If suit or legal action is instituted by any party hereto to establish or enforce any right under this Agreement, to recover any amount due hereunder, to correct a breach of covenant, term, or condition hereto, or to litigate any other matter arising from the execution of the Agreement, the prevailing party in the trial court and the prevailing party on any appeal shall recover reasonable attorney's fees awarded by the trial and appellate courts, in addition to costs and disbursements. The parties agree that a reasonable rate for attorney's fees will be \$150.00 per hour. This provision shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representative the day and year first above written.

Approved as to Form and Content

CITY OF POCATELLO, a municipal corporation of Idaho

IAN C. JOHNSON, Deputy City Attorney

BRIAN C. BLAD, Mayor

ATTEST:

KONNI R. KENDELL, City Clerk

JERAME D. TEEL, d/b/a
POCATELLO TMX

JERAME D. TEEL, President

STATE OF IDAHO)
 :SS
County of Bannock)

On this ___ day of _____, 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Konni R. Kendell, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in: _____
Commission expires: _____

STATE OF IDAHO)
 :SS
County of Bannock)

On this ___ day of _____, 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared Jerame D. Teel, d/b/a Pocatello TMX, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in: _____
Commission Expires: _____