

**AGREEMENT FOR OPERATION OF BMX FACILITY
AT DESERET PEAK COMPLEX --
KEVIN RADFORD AND DANIELLE RADFORD**

AGREEMENT dated this 10 day of August, 2021, by and between Tooele County ("County"), and Kevin Radford and Danielle Radford (jointly and severally, "Operators").

WHEREAS, County owns a dilapidated and currently unused BMX track ("facility") at the Deseret Peak Complex in Grantsville, Utah; and

WHEREAS, Operators desire to return the facility to operational condition and to operate the facility during the term of this Agreement;

NOW THEREFORE, the parties mutually agree as follows:

1. Operators shall:
 - bring the track up to current USABMX racing standards on or before May 1, 2022, and subsequently maintain the track at USABMX racing standards throughout the term of this Agreement
 - be well-versed in and follow USABMX's rules and regulations
 - increase the use of the facility, grow interest in the sport, and provide safe instruction and coaching
 - hold multiple sanctioned events
 - pay for electricity used at the facility
 - obtain and maintain, from a company or companies authorized to do business in the State of Utah which carry a Moody's rating of not less than A, a general liability and/or special event insurance policy that carries a minimum of \$2,000,000 per occurrence and \$3,000,000 aggregate
 - provide proof of the required insurance to County every March 1 and every November 1
 - indemnify and hold County and its officers and employees harmless from all losses and injuries, except those losses and injuries caused by the negligence or intentional acts of the county, its officers, agents, or employees
 - provide labor, materials, and equipment to operate and maintain the facility in exemplary condition and at no cost to County
 - maintain track surface dirt at a proper consistency to maintain safe riding conditions
 - provide dumpster, keep garbage cans emptied, cleanup loose garbage
 - maintain the irrigation system
 - establish and maintain hours of operation
 - establish and collect all fees
 - on March 1 of each year beginning in 2022, pay County an annual fee of \$1,000

- accurately track the number of riders and uses of the track
- on November 1 of each year, pay to County \$1 per rider per paid use day for the period from October 1 of the previous year to September 30 of the current year (for example, if rider A pays to participate in events at the track spanning 9 days during the specified period and pays to use the track on 16 additional days during the specified time period, Operators will pay \$25 to County on November 1 for rider A's use of the track during the specified period)

2. This Agreement may only be assigned upon mutual consent of the parties. If the parties agree to an assignment, this Agreement shall be binding upon the assignee(s).

3. Operators shall defend, indemnify and hold County and its officers, employees and volunteers harmless from all claims, lawsuits, demands, judgments and liabilities directly or indirectly arising out of Operators' negligent acts, intentional acts, errors or omissions.

4. This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties. The contractual relationship between County and Operators is one of independent contractor and not agency. Operators are not County employees and have no authority to enter obligations on behalf of County.

5. This Agreement shall expire on November 1, 2023, but shall be renewable for up to three additional two-year periods upon written consent of the parties. This Agreement may be terminated, with or without cause, by either party upon 30 days' written notice to the other party. Upon termination, Operators shall immediately pay all amounts due County through the date of termination. Upon expiration or termination, all permanent fixtures and all permanent physical improvements made to the facility by Operators or at Operators' request shall become County property and shall remain with the facility.

6. Failure by either party to insist upon the strict performance of any provision of this Agreement shall not constitute a waiver of such party's right to demand strict compliance by the other party in the future. All remedies permitted or available to a party under this Agreement, or at law or equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

7. In the event of default by either party hereto, the defaulting party shall pay all costs and expenses of the non-defaulting party, including a reasonable attorney's fee, which may be incurred by the non-defaulting party in enforcing its rights and remedies resulting from such default.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

9. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing signed by the parties.

10. Each party has expressly authorized the execution of this Agreement on its behalf.

11. Operators represent that they have not: (a) provided an illegal gift or payoff to a county officer or employee or former county officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; or (c) knowingly influenced (and hereby promise that they will not knowingly influence) a county officer or employee or former county officer or employee to breach any of the ethical standards.

12. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, or by email with proof of transmission, and addressed as follows:

TOOELE COUNTY
Andy Welch, County Manager
47 S. Main Street
Tooele, UT 84074
andy.welch@tooeleco.org

KEVIN RADFORD
DANIELLE RADFORD
2901 West Southpointe Road
South Jordan, UT 84095
eclipseracingut@yahoo.com

13. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

14. Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, war or pandemic beyond that party's reasonable control.

X

X

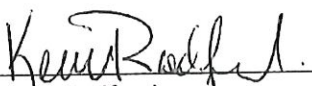
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TOOELE COUNTY:


James A. Welch
Tooele County Manager

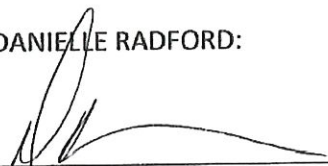
KEVIN RADFORD:


Kevin Radford

APPROVED AS TO FORM:


Colin Winchester
Deputy Tooele County Attorney

DANIELLE RADFORD:


Danielle Radford