



Contract Number: CTN-PR-13 \* 303  
Effective Date: 5-21-13  
Term Date: 5-20-23  
Cost: ✓  
Revenue: ✓  
Total: ✓ NTE:           
Action: 2-1-23  
Renewal By:           
Term: 5-20-23  
Reviewed by:         

## **BOARD OF SUPERVISORS AGENDA ITEM SUMMARY**

Requested Board Meeting Date: May 21, 2013

### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:**

The American Bicycle Association Foundation request that the Agreement for the Operation and Management of Fun Spot BMX Park to operate and manage Fun Spot BMX Park located at M.J. Sportspark to conduct and promote motocross bicycle racing for the benefit of the citizens of Pima County be approved.

CONTRACT NUMBER (If applicable): CTN 13\*303

### **STAFF RECOMMENDATION(S):**

Staff respectfully request that the American Bicycle Association Foundation Agreement for the Operation and management of Fun Spot be approved.

CORPORATE HEADQUARTERS: Natural Resources, Parks and Recreation

To: CHH- 5-16-13  
CoB- 5-16-13  
Agenda 5-21-13  
Addendum (3)

MAY 16 12:13 PM 1038 PC CLK DE BD

Procure Dept 05/15/13 PM 04:21

CLERK OF BOARD USE ONLY: BOS MTG. May 21, 2013

ITEM NO. \_\_\_\_\_

PIMA COUNTY COST: \_\_\_\_ and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): \_\_\_\_\_

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

**Advertised Public Hearing:**

		YES	X	NO
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**Board of Supervisors District:**

1		2		3		4		5		All	xx
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**IMPACT:**

**The Agreement for the Operation and Management of Fun Spot BMX Park will be approved.**

**IF APPROVED:**

**Fun Spot's BMX Track will open.**

**IF DENIED:**

**The BMX Track will not open.**

DEPARTMENT NAME: Natural Resources, Parks and Recreation

CONTACT PERSON: Evelyne Thorpe TELEPHONE NO.: 877-6230

<b>PIMA COUNTY DEPARTMENT OF: NATURAL RESOURCES, PREMISESS &amp; RECREATION</b>	<b>CONTRACT</b>
<b>PROJECT: Agreement for the Operation of Fun Spot BMX Park</b>	
<b>PARTIES: A.B.A. Foundation, Inc.</b>	<b>NO. CTN-PR. 1300000 00000 00000 303</b>
<b>REVENUE CONTRACT</b>	<b>AMENDMENT NO. _____</b> This number must appear on all invoices, correspondence and documents pertaining to this contract.
	<b>TERM: Ten (10) Years</b>

## AGREEMENT FOR THE OPERATION AND MANAGEMENT OF FUN SPOT BMX PARK

**1. Parties.** This Agreement for the Operation and Management of Fun Spot BMX Park ("**Agreement**") is made and entered into between PIMA COUNTY, a body politic of the State of Arizona (hereinafter referred to as "**County**"), and A.B.A. FOUNDATION, Inc., an Arizona nonprofit corporation (hereinafter referred to as "**Manager**"). County and Manager are individually referred to as a "**Party**" and collectively as the "**Parties**". This Agreement shall be effective (the "**Effective Date**") on the date it is signed by County and Manager.

### **2. Background and Purpose.**

2.1. County owns real property known as Mike Jacob Sports Park, located at 6901 North Casa Grande Highway, Tucson, AZ 85743 described on **Exhibit A** attached hereto. Located within Exhibit A is a separate property known as the Fun Spot, which is depicted on **Exhibit A-1** (the "Premises"). The Premises includes all of the following: an area to be used as a bicycle track (the "**Track**") a parking area; and a building with bathrooms, kitchen, office space, storage and social area (the "**Main Building**"), all as depicted on **Exhibit A-1**. The Lifeguard Shack and the Main Building are hereinafter collectively referred to as the "**Buildings**".

2.2. Manager is a nonprofit, tax-exempt corporation formed to promote bicycling. Manager currently operates a BMX track on County-owned property pursuant to a Lease agreement with the County, the term of which commenced on September 1, 2004 (County Contract No. 04-05-A-134995-0904). As previously extended, the Lease will expire on June 30, 2014. Manager wishes to relocate its operation.

2.3. MANZANITA BMX RACEWAY, LLC., an Arizona limited liability company ("Manzanita") is a limited liability company organized to conduct and promote motocross bicycle racing for the benefit of the citizens of Pima County.

2.4. County is authorized, pursuant to A.R.S. § 11-932, to enter into agreements for the management and operation of County public parks.

2.5. Manager intends to construct a BMX track on the Premises to be known as FUN SPOT BMX PARK (the "**Track**").

2.6. Manager intends to occupy the Buildings.

2.7. The Parties desire to have Manager operate and maintain the Premises according to the terms of this Agreement.

2.8. The Parties acknowledge that the structures on the Premises are in need of repair.

### **3. Term and Option Periods.**

3.1. Initial Term. The initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and shall terminate ten (10) years after the Effective Date (the "**Termination Date**").

3.2. Option Period. This Agreement may be renewed for three (3) periods of five (5) years each (the "**Option Periods**"), as follows:

3.2.1. Manager shall submit to the County Administrator or his designee written notice that Manager desires to extend the term. Said notice shall be submitted no sooner than one year prior to the Termination Date or the end of the each Option Period, but no later than ninety (90) days prior to the Termination Date or the end of each Option Period.

3.2.2. The County Administrator shall submit Manager's request to extend the term for the applicable Option Period to the Pima County Board of Supervisors. Manager shall have the right to extend the term for the applicable Option Period unless Manager is in default of this Agreement, or the Board of Supervisors determines, for good cause, including Manager's past performance and the condition of the Premises, that such renewal is not in the best interests of the County.

### **4. Use of Premises.**

4.1. Use of Premises. The Premises will be open to the public for use as a County park according to the applicable laws, rules and regulations of Pima County, and the terms of this Agreement. Manager may use the Premises to conduct and promote motocross bicycle racing and related activities, including offices and a concession stand, all for the benefit of the citizens of Pima County. Manager shall operate the motocross

bicycle racecourse in a manner reflecting the BMX industry competition sites for training standards. In the event Manager desires to use the Premises for any other purpose, including but not limited to special events, Manager must enter into a separate written agreement with County.

4.2. Construction of Track. The Track must be built by Manager in conformance with nationally recognized bicycle motocross racecourse standards. The Track configuration must conform to all applicable codes. The plans and final construction must be approved by the Pima County Risk Manager.

4.3. Initial Repair Work. Manager has inspected and is aware of the condition of the Premises and all the improvements thereon, and is taking the Premises in its "as is" condition without warranty of any kind as to its condition or its suitability for Manager's purposes.

4.4. Concessions. Manager may operate concessions and food services on the Premises only in connection with its other permitted activities. Any concession operation must be conducted in compliance with all applicable regulations and laws. If third parties are given concessions to operate a food service or conduct any other commercial activities on the Premises, Manager must charge reasonable market-value concession fee.

4.5. Fees. Manager may charge reasonable fees for the use of the Premises by members of the public. An initial fee schedule is attached as Exhibit B. Operator must obtain the prior approval of the Director of the Pima County Natural Resources, Parks & Recreation Department for any fee increase. All proceeds from the operation of the Premises, including any concession fees collected, must be utilized for the operation or improvement of the Premises.

4.6. Manzanita. Manager may utilize the services of Manzanita in its day-to-day operation of the Premises. This will not, however, relieve Manager of any of its liability and responsibilities under this Agreement.

## **5. Repairs and Maintenance.**

5.1. Maintenance by Manager. Manager may be responsible for all repairs and maintenance of the Premises, including HVAC units and both interior and exterior of the Buildings. The Property shall be kept in good, clean, safe condition and repair.

5.2. Use of Buildings. Manager is not permitted to use the Buildings unless and until Manager obtains all applicable permits for the use and makes repairs and improvements to the Buildings to bring them into compliance with all applicable building, electrical, plumbing and safety or other codes, laws, and regulations, including the Americans with Disabilities Act. All work done on the Buildings must comply with the provisions of section 10 of this Agreement.

## 6. Utilities and Services

6.1. Utilities. Manager shall be responsible to pay for all light, power, garbage removal, security services, water, sewer and all other services and utilities supplied to the Premises.

6.2. Interruption of Services. County shall not be liable to Manager if any utilities or services, whether or not furnished by County hereunder, are interrupted or terminated because of necessary repairs, installation or improvements, or any other cause beyond County's reasonable control, nor shall any such termination relieve Manager of any of its obligations under this Agreement. County shall have no liability to Manager if any utility service is interrupted by the utility provider or otherwise.

## 7. Insurance.

### 7.1. Insurance Requirements.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. County in no way warrants that the minimum limits contained herein are sufficient to protect Manager from liabilities that might arise out of the performance of the work under this Agreement by Manager, its agents, representatives, employees or subcontractors, and Manager is free to purchase additional insurance.

Manager shall obtain and maintain at its own expense, during the entire term of this Agreement the following type(s) and amounts of insurance:

#### 7.1.1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	\$5,000,000
• Products – Completed Operations Aggregate	\$5,000,000
• Personal and Advertising Injury	\$5,000,000
• Each Occurrence	\$5,000,000
• Blanket Contractual Liability – Written and Oral	\$5,000,000

a. The policy shall be endorsed to include the following additional insured language: *"Pima County" is named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Manager.*

b. Policy shall contain a waiver of subrogation against County for losses arising from work performed by or on behalf of the Manager.

7.1.2. Auto Liability Insurance: Bodily injury and property damage for any owned, non-owned and hired vehicles used in the performance of this contract with a Combined Single Limit (CSL) of \$1,000,000. The policy shall be endorsed to include Pima County as additional insured.

7.1.3. Workers' Compensation Coverage with statutory limits. Policy shall contain a waiver of subrogation against the County.

7.1.4. *Property Insurance.* Property insurance for the full insurable value of the personal property owned by, or under the control of, Manager. Pima County will not be responsible for damage to loss of personal property belonging to Manager.

**7.2. Certificates of Insurance.** Manager shall provide County with copies of certificates of insurance showing the current status of all insurance policies. Manager shall, in addition, provide full, certified copies of all required insurance policies when requested by County in writing. All certificates of insurance shall provide for a guaranteed thirty (30) days written notice of cancellation or non-renewal. Any modifying language in a certificate of insurance must be deleted.

### 7.3. Additional Insurance Requirements

**7.3.1. On insurance policies where Pima County is named as additional insured, Pima County shall be additional insured to the full limits of liability purchased by the Manager even if those limits of liability are in excess of those required by this contract.**

7.3.2. The Manager's insurance shall be primary insurance and non-contributory with respect to all other available sources.

7.3.3. The Commercial General Liability, Automobile Liability, and Workers' Compensation policies shall all contain a waiver of transfer of the rights of recovery (subrogation) against the County for any claims arising out of the Manager's services.

7.3.4. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona with an "A.M. Best" rating of A-VII. The County in no way warrants or represents that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

**7.4. Adjustments to Insurance.** County may review the coverage, form, and amount of insurance required hereunder at any time. County shall notify Manager in writing of any changes to the aforesaid insurance requirements, and Manager shall have sixty (60) days to comply with the requirements as changed.

7.5. Injury Reports. By the 15<sup>th</sup> of each month, Manager shall provide to County a report listing any incident involving injury to persons or damage to property occurring at the Property. If any such injury to persons requires emergency medical treatment, Manager shall contact County within one (1) business day of such incident. County shall have the right to investigate any incident involving injury to persons or property occurring at the Property and Manager shall provide County with all information available to Manager about such incident.

**8. Indemnification.** To the fullest extent permitted by law, Manager shall defend, indemnify, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, losses, damage, cost and expense, including but

not limited to reasonable attorney's fees and/or litigation expenses, arising out of or resulting from the conduct or management of the Premises, or any accident, injury, damage, or violation of law whatsoever occurring in or at the Premises allegedly caused in whole or in part by any act or omission of Manager or anyone directly or indirectly employed by it, its agents, representatives, contractors, subcontractors, licensees, or anyone for whose acts it may be liable, regardless of whether it is caused in part by the negligent act or omission of County or any of its officers, agents, or employees. To the fullest extent permitted by law, Manager shall also indemnify County against any claim, liability, damage, cost, or expense arising out of the presence, disposal, or release of any hazardous substance, hazardous waste, hazardous materials, or petroleum products or by products on, from or under the Premises during the term of this Lease.

**9. Compliance with Laws.** Manager shall not use the Premises, or permit anything to be done in, on, or about the Premises, which will in any way conflict with any federal, state, or local law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

## **10. Improvements.**

**10.1. Right to Construct.** Manager shall have the right to construct improvements to the Premises, provided that the Premises are maintained as a public park and the provisions of this section 10 are complied with.

### **10.2. Consent of County Required.**

**10.2.1.** Manager may not make any improvements, alterations, additions, or changes to the Premises (the "**Alterations**") involving an expenditure of less than \$15,000.00, without obtaining the prior written consent of the NRPR Director or his designee.

**10.2.2.** Manager may not make any Alterations involving an expenditure of more than \$15,000.00, without obtaining the prior written consent of the County Administrator or his designee if the cost of the Alterations is greater than \$15,000.00 and less than \$100,000.00; and the County's Board of Supervisors if the cost of the Alterations is more than \$100,000.00.

**10.3. Notice of Alterations.** For any Alteration Manager shall provide County with prior written notice of the proposed Alteration (the "**Notice of Alterations**"). The Notice of Alterations shall include plans and specifications for the Alterations. County shall have forty-five (45) days after receipt of the Notice of Alterations to approve or reject the proposed Alterations. Failure of County to respond to the Notice of Alterations within forty-five (45) days after receipt of the Notice of Alterations by County shall be deemed approval.



**10.4. County Consent.** County shall not unreasonably withhold consent to proposed Alterations; provided, however, it shall be reasonable for County to withhold consent if, among other reasons, the Alterations:

10.4.1. Adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Premises or affect the integrity of the Premises or the Premises features or its infrastructure;

10.4.2. Result in County being required to perform any work that County could otherwise avoid or defer;

10.4.3. Result in an increase in the premiums for any hazard or liability insurance carried by County or result in an increased risk of liability or pose a safety hazard; or

10.4.4. Result in an increase in the demand for utilities or services (including wastewater treatment) that County provides to the Premises.

**10.5. No County Liability for Approval of Alterations.** County's review of the plans and specifications (including the Risk Manager's review of the BMX track as provided in paragraph 4.2 above) shall be solely for the County's purposes and shall not imply that the County has reviewed the plans and specifications for quality, design, laws, compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by any County architects, engineers, or consultants, County shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Manager's indemnity set forth in the Indemnification Clause of this Agreement shall specifically apply to the construction drawings. County's review shall be to determine that the proposed Alterations are consistent with the purposes of this Agreement of providing recreational opportunities for the benefit of the residents of the County.

**10.6. Construction of Improvements.** All improvements shall comply with the applicable local building code and must be constructed by a licensed contractor unless the use of someone other than a licensed contractor is approved by the appropriate County representative, as provided in paragraph 10.2 above (except that in no event will a failure to object to the proposed Alterations be deemed to be permission to use other than a licensed contractor for the work). All construction contracts shall include an indemnification provision requiring the contractors to indemnify, defend and hold harmless the Manager and the County from all losses, claims, suits, demands, expenses, attorney's fees or actions of any kind or nature arising from the contractor's negligent or intentional acts, errors or omissions. Manager shall cause said contractors to obtain insurance coverage of a type and amount acceptable to County and to name the Manager and County as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements that exceed that Maximum Expenditure Amount, Manager shall deliver to County a complete and reproducible set of the plans and specifications of the

improvement or buildings as built. County may inspect the Alterations as they are being constructed, at any time.

10.7. Indemnification by Manager. Manager shall indemnify, hold County harmless, and defend County against liability for any damage to property or injury to persons occasioned by any construction by Manager on the Premises.

10.8. Property of County. All improvements to the Premises shall become the property of County at the time they are placed thereon, and shall be surrendered to County upon the termination of this Agreement, free and clear of all liens and encumbrances of every kind, and in good and operable condition, reasonable wear and tear excepted.

11. **Liens and Encumbrances.** Manager shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Manager.

## 12. **Environmental Compliance.**

12.1. Hazardous Material. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term Hazardous Material includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

12.2. Hazardous Materials Prohibited; Clean Air Act. Manager shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Premises by Manager, its agents, employees, contractors or invitees, without the prior written consent of County, other than such Hazardous Materials which are necessary or useful to Manager's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Manager's operations on the Premises shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.

12.3. Indemnity. In the event (i) Manager breaches the obligations stated in Section 11.2; or (ii) contamination of the Premises or ground water by Hazardous Material otherwise occurs for which Manager is legally liable; or (iii) contamination

occurs elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Premises; then, in any such event, Manager shall indemnify, protect, defend and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Premises or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Premises or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Premises or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Agreement as a result of such contamination. The foregoing obligation of Manager to indemnify, protect, defend and hold County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Manager, its agents, employees, contractors or invitees, in the Premises or the soil or ground water on, under or adjacent to the Premises, or elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Premises.

**12.4. Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises, is caused or permitted by Manager, or its agents, employees, contractors or invitees, and results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Manager shall promptly notify County in writing and take all actions, at Manager sole cost and expense, as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that County's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

**12.5. Pre-existing Contamination.** County agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Manager shall not result in liability for Manager under this Section 11 except to the extent such contamination is aggravated by the action or inaction of Manager.

**12.6. Notices Regarding Environmental Conditions.** Manager shall, within ten (10) business days following receipt thereof, provide County with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Manager or the Premises alleging any violation of any local, state or federal environmental law or regulation or requiring Manager to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Manager may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous

Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

12.7. Survival. Manager' and County's obligations under this Section 12 shall survive the expiration or earlier termination of this Agreement and vacation of the Premises.

**13. Access to Premises.** Commencing on the Effective Date, Manager shall have access to the Premises seven days a week, between the hours of 8 a.m. and 9 p.m.

**14. Default and Remedies.**

14.1. Default. The occurrence of any one or more of the following events shall constitute a default (a "**Default**") and breach of this Agreement by Manager:

14.1.1. *Vacation or Abandonment*. The vacating or abandonment of the Premises, or any portion thereof, by Manager, where such failure shall continue for a period of ten (10) calendar days after notice of such default is sent by County to Manager.

14.1.2. *Insurance*. The failure by Manager to maintain insurance policies as set forth above for any time; in which event Manager must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, County may, in County's sole discretion, obtain necessary insurance coverage in which event Manager shall, within ten (10) days of demand, reimburse and pay to County the full amount of any costs and premiums expended by County to obtain such coverage, including any deductibles or losses within a self-insurance retention.

14.1.3. *Gross Negligence*. If Manager or any employee or agent of Manager acts in a grossly negligent or intentionally wrongful manner and such results in significant injury to any person, or substantial damage to any of the Premises which County is required to repair under the terms of this Agreement.

14.1.4. *Other Covenants*. The failure by Manager to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Manager, where such failure shall continue for a period of thirty (30) days after written notice thereof by County to Manager; provided, however, that if the nature of Manager's default is such that more than thirty (30) days are reasonably required for its cure, then Manager shall not be deemed to be in default if Manager commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred twenty (120) days of the notice by County.\

14.1.5. *Repeated Defaults*. More than three (3) material Defaults by Manager, as set forth in Sections 14.1.1 to 14.1.7 above, in any calendar year, even if Manager cures the defaults within the applicable grace periods set forth above.

## **14.2. Remedies.**

**14.2.1. Termination by County.** This Agreement may be terminated by County in the event of a Default by Manager, without advance notice and without further obligation by County.

**14.2.2. Other Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

**15. Subcontractors.** Manager will be fully responsible for all acts and omissions of any subcontractor of Manager, and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that Manager is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

**16. Sustainability Plan.** Manager shall prepare and implement an integrated waste management plan to re-use, recycle, and/or compost any consumable materials utilized in the performance of this Agreement, and shall submit the plan for County review at least annually.

**17. Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

**County:** Attn: Director  
Pima County Natural Resources, Parks & Recreation  
3500 West River Road  
Tucson, AZ 85741

**Manager:** Attn: BA Anderson  
A.B.A. Foundation, Inc.  
1645 W. Sunrise Blvd.  
Gilbert, AZ 85233

## **18. Miscellaneous**

**18.1. Non-Discrimination.** Manager agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of

this Agreement, Manager shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, sexual orientation, disability or national origin.

18.2. Americans with Disabilities Act. Manager will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, provided that Manager shall have no obligation to make any improvements to the existing Premises in order to comply with the Americans with Disabilities Act.

18.3. **Nonassignable.** This Agreement shall not be assigned in whole or in part by Manager without first obtaining the written consent of County. County reserves the right to withhold approval at County's sole discretion.

**18.4. Compliance with Applicable Law.** The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performances of this Agreement and any disputes hereunder. Any actions relative to this Agreement shall be brought in a court of the State of Arizona in Pima County.

**18.5. Binding Agreement.** This Agreement shall be binding upon the Parties hereto, their permitted successors and assigns.

### 18.6. Legal Arizona Workers Act Compliance.

18.6.1. Manager hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Manager's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "***State and Federal Immigration Laws***"). Manager shall further ensure that each subcontractor who performs any work for Manager under this Agreement likewise complies with the State and Federal Immigration Laws.

18.6.2. County shall have the right at any time to inspect the books and records of Manager and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

18.6.3. Any breach of Manager's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this Section, shall be deemed to be a material breach of this Agreement subjecting Manager to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Manager shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

18.6.4. Manager shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the subcontractor's books and records to insure that subcontractor is in compliance with these requirements. Any breach of this Section by subcontractor will be deemed to be a material breach of this Agreement subjecting subcontractor to penalties up to and including suspension or termination of this Agreement."

18.6.5. Any additional costs attributable directly or indirectly to remedial action under this Section shall be the responsibility of Manager. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of Manager's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Manager shall be entitled to an extension of time, but not costs.

18.7. Scrutinized Business Operations. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Manager hereby certifies that it does not have scrutinized business operations in Iran or Sudan. The submission of a false certification by Manager may result in action up to and including termination of this Agreement.

18.8. Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

18.9. Independent Contractor. The status of Manager shall be that of an independent contractor. Neither Manager, nor its officers, agents or employees, shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. Manager shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Agreement and shall indemnify and hold County harmless from any and all liability which County may incur because of Manager's failure to pay such taxes.

18.10. Authority to Contract. Manager warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County shall not be liable to Manager or any third party by reason of such determination or by reason of this Agreement.

18.12. Severability. Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

Page 14 of 16



The Parties hereto have executed this Agreement on the day, month and year written below.

**PIMA COUNTY, a body politic of the State of Arizona:**

\_\_\_\_\_  
Chairman, Board of Supervisors

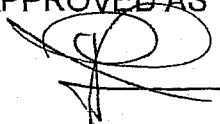
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Date

ATTEST:

\_\_\_\_\_  
Robin Brigode, Clerk of Board

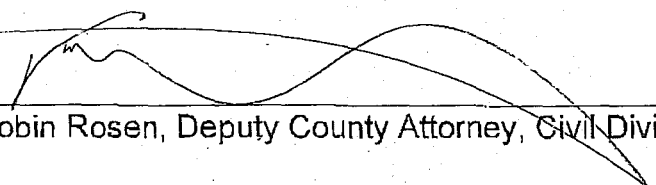
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Date

APPROVED AS TO CONTENT:

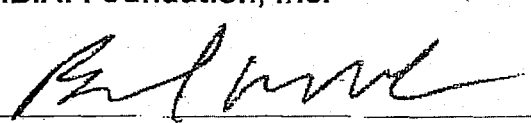
  
\_\_\_\_\_  
Rafael Payan, Ph. D., Director, Natural Resources, Parks and Recreation

04.18.2013

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Tobin Rosen, Deputy County Attorney, Civil Division

**A.B.A. Foundation, Inc.**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

4/16/13

\_\_\_\_\_  
Bernard A. Anderson, President

Exhibits:

- A: Mark Jacobs Park
- A-1: Premises
- B: Initial Fee Schedule

Exhibit A

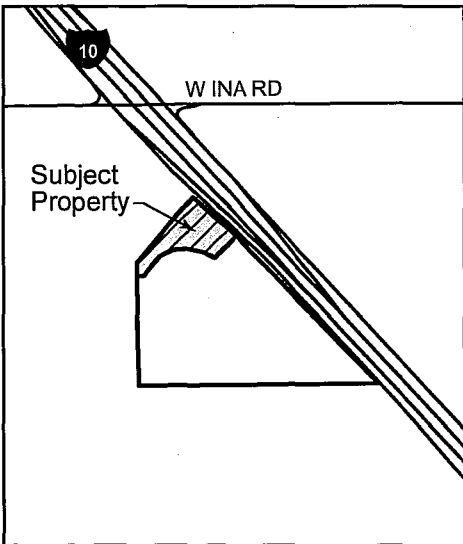
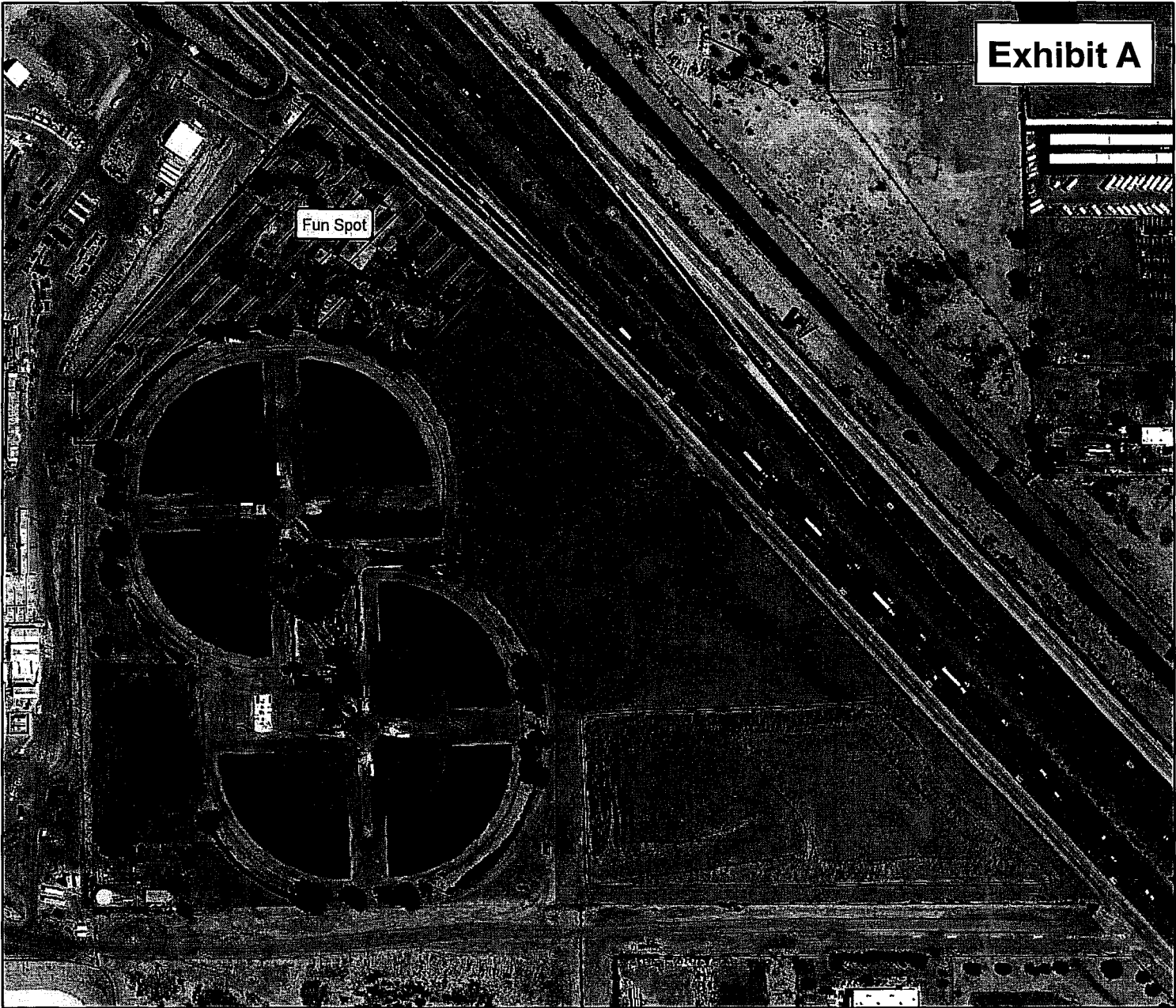
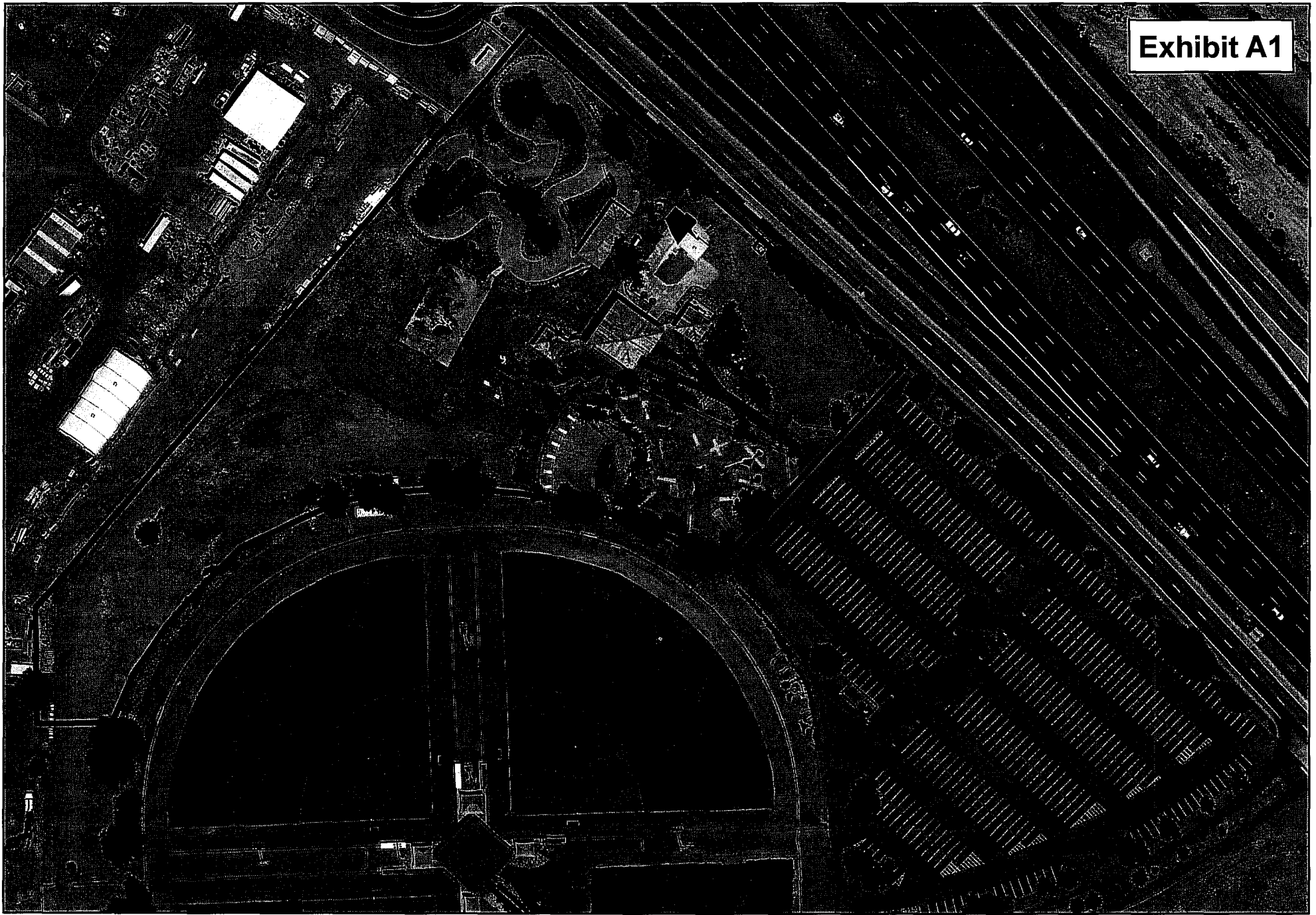


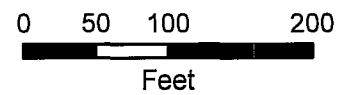
EXHIBIT A  
MIKE JACOB SPORTS PARK





**EXHIBIT A1**  
**MIKE JACOB SPORTS PARK**  
**FUN SPOT**

 **FUN SPOT**



## EXHIBIT B

### Fee Schedule:

USA BMX License for one year	\$60.00
Sports Park BMX Racing fee	\$10.00
Sports Park BMX Practice fee	\$ 7.00