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**Parks and Recreation
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Staff Report

ITEM 4-1

To: Lemoore City Council
From: Joe Simonson, Parks and Recreation Director
Date: May 28, 2014
Subject: Lease Agreement with Framework Racing

Discussion:

At the May 20, 2014 study session, Council discussed a proposal from Framework Racing to enter into a lease with the City of Lemoore and construct a BMX track. Staff showed two proposed sites near Highway 41 and Idaho Avenue to be considered by Council. Discussion also took place regarding Framework Racing raising \$12,000 in order to put the lease with the City of Lemoore into effect. The initial proposal was to use the \$12,000 along with the City's \$25,000 to fund the initial cost of building the track. Framework Racing also informed Council that in order to solicit contributions from Corporations or major sponsors, a signed lease with the City must be in place. After discussion, Staff believes the consensus of Council was to go forward with option B with access off of Idaho Avenue, to allow Framework Racing to keep the \$12,000 raised for startup cost and to fund the \$37,000 initial build cost of the track.

Option B is located directly east of the Lemoore Raceway and in preliminary discussions with the owner of the Raceway, he was open to having a BMX track adjacent to his property. As discussed at last council meeting, parking and event dates would have to be coordinated and will be discussed at the July 8, 2014 Planning Commission Meeting. Framework Racing is on the agenda when the Planning Commission will consider their Conditional Use Permit. The owner of Lemoore Raceway will be notified that Framework Racing is on the agenda

A draft of the lease agreement is attached for Council to review.

Budget Impact:

Park and Recreation Impact Fees (Fund 074) estimated balance as of June 30, 2014 is \$1,260,204. If granted by City Council, funding expenditures would be \$37,000.

Recommendation:

That Council agree to lease the land located directly east of the Lemoore Raceway to Framework Racing and that the lease takes effect when Framework Racing has an account with \$12,000 controlled by its board.

LEASE AGREEMENT

CITY OF LEMOORE AND FRAMEWORK RACING, INC.

This Lease Agreement (hereinafter "Agreement") is made by and between Framework Racing, Inc. (hereinafter "Lessee"), and City of Lemoore, a municipal corporation, (hereinafter "City"). City and Lessee are collectively referred to herein as "Parties."

RECITALS

- A. City owns real property located at _____ (hereinafter "Property");
- B. Lessee wishes to lease the Property to build and operate a bicycle motocross track sanctioned by the National Bicycle League. Lessee will have until July 1, 2015 to raise \$12,000 to put toward the production of the track. Once the funds are in place, the lease will become binding;

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual obligations agreed to by the parties listed herein, City and Lessee agree as follows:

1. Lease of Property.

1.1 Lease. City owns in fee and hereby leases to Lessee, in "as is" condition the Property. A map depicting the Property is attached to this Agreement as Exhibit "A", and is incorporated as though fully set forth herein.

1.2 Conditions Precedent. This Agreement will become effective once Lessee has raised \$12,000.00 in funds as initial financing towards the production of a bicycle motocross track. Lessee will deposit the funds into a trust account subject to the purposes set forth in this Agreement. Lessee will provide proof to the City of the deposit. This deposit must be made by July 1, 2015. If Lessee fails to deposit the required funds and provide proof of the deposit to the City by this date, this Agreement will be rescinded.

1.3 Term of Lease. The term of this Agreement shall be for a period of ten (10) years. The Agreement may be extended for additional one year periods upon Lessee's written notice to City at least thirty days before the end of the ten year period, unless sooner terminated pursuant to the terms of this Agreement. Lessee understands that notwithstanding this provision, the City has the right to give thirty days notice to terminate the Agreement at any time.

1.4 Utilities. Lessee will be responsible for the cost of water, sewage, trash, gas and electricity arising from Lessee's use of the Property.

1.5 Rent. Lessee will pay One Dollar and No/100 (\$1.00) per year for the lease of the Property.

1.6 Improvements and Use of Property. It is understood that Lessee shall construct certain improvements on the Property. The improvements consist of a bicycle motocross sanctioned by the USA BMX – American Bicycle Association. Lessee shall adhere to all City, State and Federal laws regarding construction of the improvements, and agrees to obtain all necessary permits to construct said improvements. \$12,000 of the initial construction costs of the improvements will be borne by Lessee with \$2000 for fencing, \$1,500 for electrical hook up and \$8,500 for a starting gate. City shall be responsible for \$25,000 of initial construction costs after the \$12,000 commitment is funded by Lessee. This \$25,000 will pay for ground work, leveling and a fence. Lessee will use the Property for operation of a bicycle motocross track sanctioned by USA BMX – American Bicycle Association. Lessee may undertake improvements additional to above only (i) upon approval of the City, in its sole discretion, and (ii) at Lessee’s sole cost, expense and risk. Lessee shall be responsible for all required permits/approvals. Lessee is solely responsible for maintenance and repairs of the improvements and shall keep the improvements in good working order and safe conditions.

Lessee agrees to comply with all applicable laws, ordinances and regulations in connection with its use of the Property. Persons engaged by Lessee to provide labor and service shall not be deemed or considered employees, agents, or independent contractors of City.

Lessee shall not commit any waste or any public or private nuisance upon the Property. Lessee shall not do anything on the Property that will cause damage to the Property.

Insurance. Lessee agrees to obtain and maintain in full force and effect during the term of this Agreement insurance, against claims for injuries to persons or damages to property which may arise from or in connection with the use of the Property by Lessee as provided in this Agreement. Insurance is to be placed with insurers with a current A. M. Best’s rating of no less than A:VII. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by City Council. Lessee agrees to provide City with copies of required policies upon request.

Lessee shall provide the following scope and limits of insurance:

- (a) Minimum Scope of Insurance: Coverage shall be at least as broad as:
 - (1) Insurance Services Office Form Commercial General Liability coverage (Occurrence Form CG 0001).
 - (2) Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1, “any auto” and endorsement CA 0025, or equivalent forms subject to written approval of City.
 - (3) Workers’ Compensation insurance as required by the Labor Code of the State of California and Employer’s Liability insurance and covering all persons providing services on behalf of the Lessee and all risks to such persons under this Agreement.
- (b) Minimum Limits of Insurance: Lessee shall maintain limits of insurance no less

than:

- (1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(c) Other provisions: Insurance policies required by this Agreement shall contain the following provisions:

- (1) All Policies: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested has been given to City .
- (2) General Liability and Automobile Liability Coverage:
 - (i) City and their respective elected and appointed officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities Lessee performs; products and completed operations of Lessee; premises owned, occupied or used by Lessee; or automobiles owned, leased, hired or borrowed by Lessee. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials or employees.
 - (ii) Lessee's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Lessee's insurance.
 - (iii) Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (iv) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.
- (3) Employer's Liability Coverage: Unless the City Council otherwise agrees

in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Lessee.

(d) Other Requirements: Lessee agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been met. The City Attorney may require that Lessee furnish City with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

- (1) Lessee shall furnish certificates and endorsements from each subcontractor identical to those Lessee provides.
- (2) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- (3) The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

1.8 Indemnification. Lessee shall indemnify, defend, and hold harmless City, its Council, officers, and employees from any and all costs, expenses (including reasonable attorney's fees and court costs), damages, claims, causes of action, losses or any other liabilities arising out of the negligent or wrongful acts, errors or omissions of Lessee, its agents, employees or contractors in the lease of the Property.

1.9 Assignment of Lease. No assignment or any interest in the lease shall be valid or operative unless City shall formally approve the assignee and assignee executes a lease agreement with City on the same terms or conditions as the assigned lease. Lessee shall not sublease without the written consent of City.

1.10 Condition of Land. Lessee specifically acknowledges that City is leasing the Property on an "As Is" basis, and that Lessee is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its agents or brokers as to any matters concerning the Property, including without limitation: the quality, nature, adequacy and physical condition of the Property, including the quality, nature, adequacy and physical condition of soils, geology and any groundwater; merchantability or fitness, suitability, value or adequacy of the Property for any particular purpose; the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity.

1.11 City's Right of Entry for Flood Protection. City and its representatives, shall have an unconditional right to enter and use the Property for water ponding capacity as may be needed by City to protect City against flooding.

2. Non Performance and Termination.

2.1 Any event of nonperformance by either party that is not cured within 30 days written notice thereof (or if not reasonably capable of cure within said 30 days when said cure is not commenced within the 30 day period and continued to completion of cure) shall be an event of default. Upon default, the non-defaulting party may, notwithstanding any other available right/remedy elect to terminate this Agreement.

2.2 Upon expiration or earlier termination of this Agreement, Lessee shall surrender the Property to City in as good a condition and repair as existed on the date of this Agreement, less reasonable wear and tear. All additions or improvements become the Property of the City at the conclusion of the lease.

3. Mutually Binding Terms.

3.1 Governing Law. Any controversy or claim arising out of, or relating to, this Agreement which cannot be amicably settled without court action shall be litigated either in the appropriate State court for Kings County, California, or as appropriate in the U.S. District Court for the Eastern District of California, located in Fresno County. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

3.2 Attorney's Fees. Both parties agree in the event it becomes necessary for the non-breaching party to enforce any of the provisions of this Agreement, the breaching party is to pay a reasonable amount as and for attorney's fees as may be determined by the Court.

3.3 Notice. Any notice or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement by the other party shall be in writing, and shall be deemed duly served and given when personally delivered to the party to whom it is directed or any managing employee of that party or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed as follows:

City:

**City of Lemoore
119 Fox St.
Lemoore, CA 93245
Attention: City Manager**

Lessee:

**Framework Racing Inc.
3340 Ticonderoga Ave.
Lemoore, CA 93245
Attention: Derek Weisser**

Either party may change its address for purposes of this section by giving written notice of the change to the other party in the manner provided in this section.

3.4 Entirety - Succession. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, superseding all prior negotiations,

representations, and contracts, and constitutes the entire agreement concerning City's leasing of the Property to Lessee.

3.5 Binding on Successors. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment of such assignee has been approved by City in writing as provided in Paragraph 1.8 of this Agreement.

3.6 Authority. All individuals executing this Agreement on behalf of that entity represent that they are authorized to execute and deliver this Agreement on behalf of that entity.

3.7 Sole Agreement. This Agreement constitutes the sole and only agreement between City and Lessee respecting the lease of the Property described in this Agreement. Any agreements or representations respecting the lease of said Property, not expressly set forth in this Agreement are null and void.

IN WITNESS THEREOF, the parties execute this Agreement on the date first above written:

“City”
CITY OF LEMOORE

“Lessee”
FRAMEWORK RACING. INC

y: _____
Jeff Laws
City Manager

y: _____
ts: _____
By: _____
Its: _____

Attachment: Exhibit “A” – Description of Property