



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 13Ordinance/Resolution# 13-032For Meeting of _____
(Ordinance First Reading Date)For Meeting of September 4, 2012
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AN AGREEMENT TO OPERATE THE CITY BMX TRACK BETWEEN WILD CHILE BMX, INC., A NON-PROFIT ORGANIZATION AND THE CITY OF LAS CRUCES PARKS AND RECREATION DEPARTMENT.

PURPOSE(S) OF ACTION:

To approve an agreement.

COUNCIL DISTRICT: All		
<u>Drafter/Staff Contact:</u> Mark Johnston	<u>Department/Section:</u> Parks & Recreation	<u>Phone:</u> 541-2550
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City previously had an agreement with Southwest Youth Sports to operate and administer a program at the City BMX track. They resigned from this agreement on December 31, 2011.

Wild Chile BMX, Inc. stepped forward to become the new program administrator and have been providing services and recreational programming at the BMX track since March 1, 2012. Staff has been satisfied with the efforts and would like to formalize the agreement for this ongoing relationship.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", City of Las Cruces and Wild Chile BMX, Inc. Agreement.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$_____ for FY_____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution and agreement.
2. Vote "No"; this will not approve the resolution and agreement.
3. Vote to "Amend"; and provide changes required.
4. Vote to "Table"; and provide staff with further direction.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION NO. 13-032

A RESOLUTION APPROVING AN AGREEMENT TO OPERATE THE CITY BMX TRACK BETWEEN WILD CHILE BMX, INC., A NON-PROFIT ORGANIZATION AND THE CITY OF LAS CRUCES PARKS AND RECREATION DEPARTMENT.

The City Council is informed that:

WHEREAS, the parties set forth in writing an agreement and understanding as to their respective responsibilities in establishing this cooperative agreement for the purpose of operating a B.M.X. program which will provide athletic and recreational opportunities; and

WHEREAS, these opportunities will benefit the entire community in providing a non traditional recreation program; and

WHEREAS, through this cooperative agreement skilled management of this unique program and City facility will be gained at no cost to the City and which allows utilization of the City facility.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City Council approves the agreement between Wild Chile BMX, Inc. and the City of Las Cruces subject to the terms and conditions set forth in Exhibit "A", attached hereto, and made a part of this resolution.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 20_____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

**CITY OF LAS CRUCES
AND
WILD CHILE BMX, INC.
AGREEMENT**

THIS AGREEMENT is entered into between Wild Chile BMX, Inc., a non-profit organization, hereinafter referred to as the "Association", and the City of Las Cruces, New Mexico, a municipal corporation, hereinafter referred to as the "City".

WHEREAS, the parties set forth in writing an agreement and understanding as to their respective responsibilities in establishing this cooperative agreement for the purpose of operating a B.M.X. program which will provide athletic recreational opportunities and benefit the community in providing a non traditional recreation program.

IT IS THEREFORE AGREED AS FOLLOWS:

1. The Association will:

- a. Provide program administration and operation of the BMX program; including maintenance of the track. All improvements made to the track, grounds and track facilities will be considered City property if this agreement is severed by either party.
- b. Provide a detailed financial statement on an annual basis, within 30 days after conclusion of program activities or special event(s), covering funds received and expended for Association operations to include local, state, regional, or national events for the previous year program. The City may also require an audit of the organization's expenses in cases where the City provides funding or direct support.
- c. Provide proof of insurance on an annual basis, or thirty (30) days prior to the upcoming season or special event listing the City of Las Cruces as additionally insured. The insurance company must issue an endorsement stating that the City of Las Cruces is additionally insured. The amount of insurance shall

coincide with the limitations of the *New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1*. If for any reason insurance expires prior to conclusion of Agreement, the Association will provide proof of up-to-date information.

- d. Provide proof of non-profit corporation status with the State of New Mexico Public Regulation Commission on an annual basis, stating that the Association is in good standing throughout the Agreement term. If for any reason status expires prior to the conclusion of this Agreement, the Association will provide proof of up-to-date information.
- e. Provide a prior-year copy of Form 990 Tax Exempt Report, filed with the Internal Revenue Service, within thirty (30) days of the taxable year-end date.
- f. Assist the City with preparation and submission of reports required by the City, at the conclusion of each racing season to include participant, team, coaches and volunteer numbers.
- g. Procure and maintain a policy of Worker's Compensation Insurance of its employees, and a policy of general liability insurance, with limits of coverage as specified in the New Mexico Tort Claims Act with the City being named as an additional insured on such liability policy. The Association will not undertake any activities under this Agreement until the City is provided proof of such insurance.
- h. Not discriminate against any person, regarding access to, or participation in any program contemplated by this Agreement, or any facility used in connection therewith, on the basis of race, color, sex national origin, age or disability.
- i. Ensure that all programs, services, and activities are accessible to and usable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective

communication for persons with speech, hearing and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations adhering to the City of Las Cruces Communication Policy. If portable toilets are going to be provided, accessible units must also be provided at each bank of standard units.

- j. Provide sportsmanship orientation/training for managers, coaches and participants on an annual basis.
- k. Provide an established, written appeals procedure for participants, parents, coaches, managers, and board members.
- l. Provide a written, established policy on corrective action to be taken by Association officials dealing with the consumption of alcohol by parents, coaches and managers prior to, during, and after races and events, and corrective action by Association officials on reports of mistreatment of participants.
- m. Provide a written, established refund policy.
- n. Have designated officials attend financial training provided by the City Finance Department.
- o. Conduct a minimum of one public meeting open to the public on an annual basis. The meeting shall include the election of the board of directors for the Association and shall be held prior to the start of the season(s). Additionally, the meeting shall be held to discuss and formally approve any changes in rules or regulations and/or formal action to be considered by the Association. The Association shall notify the City of the meeting place, date and time; and shall also advertise the same a minimum of one (1) week in advance through a newspaper of general circulation. The minutes of this meeting shall be recorded, transcribed and forwarded to the City Parks and Recreation Department along with a copy of the public notice.

Failure to conform to this section may delay the award of City funds to the Association.

2. The City will:

- a. Provide athletic facilities only after this Agreement has been signed, the City will notify the Association when the Agreement is ready to be signed.
- b. Provide cash handling and financial management training, and may disburse monies in accordance with the City's Finance Department policies, after receipt of proof of expenditures by the Association.
- c. Have the Internal Auditor's Office review the financial statement as needed.
- d. Pay for utilities and maintain the water and electrical system infrastructure.

IT IS FURTHER AGREED by and between the parties:

1. That the Association has expressly agreed to indemnify and hold harmless the City from all claims or causes of actions including attorney fees and court costs that may arise out of or as a result of this Agreement.
2. That this Agreement shall not be altered, changed, or amended except in writing by both parties.
3. That this Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter, hereof, and all such covenants, agreements, and understands verbal or otherwise, of the parties or their agents shall not be valid or enforceable unless embodied in this written Agreement.
4. That this Agreement shall be governed by the laws of the State of New Mexico.

- 5. That failure of the Association to sign this Agreement, and attend required financial training will be cause to terminate the Agreement as well as the use of City athletic facilities.
- 6. This Agreement will extend from March 1, 2012, through December 31, 2012. At the end of the term, the Agreement will remain in effect until negotiations are complete with a new Agreement or until one party notifies the other of intent not to renegotiate an Agreement.
- 7. That the City shall reserve the right to reschedule, cancel, or postpone activities, tournaments, and/or parks special events due to inclement weather, or unforeseen City related events.

DONE AND APPROVED THIS _____ DAY OF _____, _____.

WILD CHILI BMX, INC

BY: _____

TITLE: _____

CITY OF LAS CRUCES, NEW MEXICO

BY: _____

(ATTEST)

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY