



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 1

DATE: June 23, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *PS*
Real Estate Management Division

FROM: Alex Feinman, Leasing Program Manager *WFB*
Real Estate Management Division *FCM*

CONTACT PERSON: Paul Sladek, Manager

DIVISION: Real Estate Management
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Second Amendment to Lease Agreement by and between Orange County and ORLBMX, Inc. and delegation of authority to the Real Estate Management Division to exercise renewal options and furnish notices, required or allowed by the lease, as needed

PROJECT: Orlando BMX at Barnett Park
4801 West Colonial Drive, Orlando, Florida 32808
Lease File #5028

District 6

PURPOSE: To continue to provide land for operation of a BMX race track.

ITEM: Second Amendment to Lease Agreement
Revenue: \$1,200 annually
Size: 4.283 acres
Term: 5 years
Options: Two, 5-year renewals

REVENUE: Account No.: 1050-068-1812-4725

APPROVALS: Real Estate Management Division
Parks and Recreation Division
Risk Management Division

REMARKS: The County currently leases land inside Barnett Park to ORLBMX, Inc., (BMX) under a Lease Agreement approved by the Board on April 28, 2009, as amended by a First Amendment to Lease Agreement approved by the Board on November 15, 2011, and as extended by a First Renewal to Lease Agreement dated April 30, 2014. BMX has leased the site from the County since 1999.

This Second Amendment to Lease Agreement (Amendment) will provide for BMX's continued use of a portion of Barnett Park for operation of a BMX race track. This Amendment renews the lease for five years and provides for up to two additional 5-year renewals with the County's consent. This Amendment also more clearly outlines the maintenance and repair responsibilities for the site, and updates the insurance, indemnification, and certain other requirements as outlined by the Risk Management Division.

All other terms and conditions of the lease shall remain in effect.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
JUL 16 2019

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this “**Second Amendment**”) is made effective as of the date last executed below (the “**Effective Date**”) and entered into by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, (“**Lessor**”) and ORLBMX, INC., a Florida not for profit corporation (“**Lessee**”).

RECITALS

A. Lessor and Lessee (the “**Parties**”) entered into that certain “Lease Agreement” approved by the Orange County Board of County Commissioners (“**BCC**”) on April 28, 2009 (the “**Original Lease**”), pursuant to which Lessor leased to Lessee approximately 4.283 acres of land within Barnett Park at 4801 West Colonial Drive, Orlando, Florida, as more particularly described in the Original Lease, (the “**Leased Premises**”) to provide for continued operation of a BMX race track.

B. The Parties thereafter entered into that certain “First Amendment To Lease Agreement” approved by the BCC on November 15, 2011, (the “**First Amendment**”) pursuant to which the Parties made certain modifications to the Original Lease, as more particularly set forth in the First Amendment.

C. The Parties thereafter entered into that certain “First Renewal to Lease Agreement” last executed on April 30, 2014, (the “**First Renewal**”), pursuant to which the Parties extended the term of the Original Lease, as amended by the First Amendment, as more particularly set forth in the First Renewal.

D. Lessee is remains in possession of the Leased Premises.

E. The Parties acknowledge that the Original Lease, as amended by the First Amendment and extended by the First Renewal, (collectively, the “**Amended Lease**”) is set to expire on April 30, 2019.

F. The Parties have agreed to further extend the term of the Amended Lease and to make certain additional modifications of the Amended Lease and desire to enter into this Second Amendment for the purpose of setting forth the terms and conditions of such extension and such additional modifications.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Definitions. Defined (capitalized) terms used herein, but not defined herein, shall have the meanings given to such terms by the Amended Lease Agreement.

3. Second Renewal Term. The term of the Amended Lease shall be extended for one (1) additional term of five (5) years commencing on May 1, 2019, and terminating on April 30, 2024 (the "**Second Renewal Term**").

4. Extensions. Upon the expiration of the Second Renewal Term, the term of the Amended Lease may be extended for up to two (2) additional terms of five (5) years each upon the mutual written consent of Lessor and Lessee. The Manager of Lessor's Real Estate Management Division is hereby authorized to consent to said extensions on behalf of Lessor.

5. Rent. Section 3 of the Amended Lease (i.e. Section 3 of the Original Lease, inclusive of Subsections 3.A and 3.B of the Original Lease, as amended by Section 1 of the First Amendment), is hereby stricken in its entirety and replaced with the following:

3. *Rent.*

A. As base rent for the use and occupancy of the Leased Premises, during each year of the term of this lease, Lessee shall pay to Lessor in lawful money of the United States of America an annual sum of One Thousand Two Hundred and No/100 U.S. Dollars (\$1,200.00), payable on or before the first day of November of each year during the term of this lease. Such payment, when paid on or before the first day of November of each year, shall be half in arrears and half in advance of each lease year (May 1 – April 30).

B. In addition to the base rent described in Section 3.A above, Lessee shall remit to Lessor, simultaneously with its payment of annual base rent to Lessor, an additional amount equal to any and all sales and use taxes imposed upon or measured by the base rent. For avoidance of doubt, this paragraph shall not be applicable during the period of time when Lessee has in effect, and has provided to Lessor a copy of, a valid Consumer's Certificate of Exemption (Form DR-14) issued to Lessee by the Florida Department of Revenue.

C. In addition to the base rent described in Section 3.A above, Lessee shall pay directly to the Florida Department of Revenue when due all sales and use taxes, if any, applicable to or arising from Lessee's use of and/or operations on the Leased Premises.

6. Care of Leased Premises. Lessor and Lessee shall maintain the Leased Premises and shall be responsible for all costs and maintenance, operations, system repair, and janitorial services, etc., as outlined in Exhibit "A".

7. Insurance. Section 4 of the Original Lease is hereby stricken in its entirety and replaced with the following:

4. *Insurance. Lessee shall procure and maintain at its sole cost and expense throughout the term of this Lease, the following insurance coverage through insurance carriers with an A.M. Best rating of A- VIII or better and authorized to do business in the State of Florida. Lessee shall provide Lessor with a certificate of insurance for all required coverage prior to the Lease commencement date and shall provide renewal certificates upon renewal or replacement of any policy or upon request from Lessor. Lessee shall not cancel, alter, or allow expiration or other termination of any coverage required herein without at least thirty (30) days prior written notice to Lessor. Any program of self-insurance maintained by Lessee must be approved by Lessor.*

(a) Lessee shall maintain "all-risk" property insurance, including furniture, fixtures, and equipment, for the full replacement value of such property. Likewise, Lessee shall maintain "all-risk" property insurance, covering any improvements made to, on, or within the Leased Premises for the full replacement value of such property and any income in connection therewith until such time that Lessee no longer holds an insurable interest to said improvements. Notwithstanding anything stated to the contrary herein, Lessee hereby agrees to waive and release Lessor from all claims related to or arising out of damage to its respective property, howsoever caused, to the extent the claim or damage is covered by its respective insurance. Lessee also agrees to require its respective insurance carrier to provide a waiver of subrogation in favor of Lessor.

(b) General liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence to cover Lessee, Lessor, and any others designated by Lessor against liability for injury and/or death of any person or persons and for damage to personal property occasioned by or arising out of any construction, condition, use or occupancy of the Leased Premises. Lessee agrees to endorse Lessor as an Additional Insured with a CG 20 26 Additional Insured -- Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County, Florida.

(c) Commercial auto liability in an amount not less than five hundred thousand dollars (\$500,000) per accident or combined single limit to cover all owned, non-owned and hired vehicles including mobile equipment while being towed or stored on the Leased Premises.

(d) *Workers' compensation coverage for its employees with statutory Workers' Compensation limits, and no less than one hundred thousand dollars (\$100,000) for employers' liability. Said coverage shall include a waiver of subrogation in favor of Orange County and its officers, employees and agents.*

(e) *Sexual abuse and molestation coverage with limits of not less than \$100,000 per incident.*

8. Indemnification. Section 20 of the Original Lease is hereby stricken in its entirety and replaced with the following:

20. *Indemnification. To the fullest extent permitted by law, Lessee shall be solely responsible for all claims, including but not limited to, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature, arising out of its negligent acts, errors and omissions in connection with this Lease, or the acts, errors and omissions of anyone acting under its direction, control, or on its behalf; and accordingly, Lessee shall, defend, indemnify, and hold harmless Lessor, its agents, employees, and officers, at all times from and against any and all liability, loss, or expense arising from said claims to the extent allowed by law. However, nothing contained herein shall constitute a waiver by Lessor of its sovereign immunity or the provision of Section 768.28, Florida Statutes.*

9. Safety and Protection of Persons and Property. The following is hereby added as a new Section 33 of the Amended Lease:

33. *Safety and Protection of Persons and Property. Lessee shall as all times initiate, maintain, and supervise all safety precautions and programs in connection with its services or use of the Leased Premises. Lessee shall:*

(a) *Take all reasonable precautions to prevent injury to employees, including County employees and all other persons affected by their operations.*

(b) *Take all reasonable precautions to prevent damage or loss to property of Orange County, or of other vendors, consultants, or agencies and shall be held responsible for replacing or repairing any such loss or damage.*

(c) *Comply with all ordinances, rules, regulations, standards, and lawful orders from authority bearing on the safety of persons or property or their protection from damage, injury or loss. This includes but is not limited to:*

*Occupational Safety and Health Act (OSHA)
National Institute for Occupational Safety & Health (NIOSH)*

*National Fire Protection Association (NFPA)
American Society of Heating, Refrigeration & Air-Conditioning Engineers
(ASHRAE)*

(d) Comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address listed below:

<http://www.orangecountyfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

10. HIPAA Requirements. The following is hereby added as a new Section 34 of the Amended Lease:

34. HIPPA Requirements. Where applicable, Lessee will comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as all regulations promulgated thereunder (45 CFR Parts 160, 162, and 164). If required by 45 CFR Parts 160, 162, and 164, the following provisions shall apply [45 CFR 164.504(e)(2)(ii)]:

(a) Lessee hereby agrees not to use or disclose Protected Health Information (“PHI”) except as permitted or required by state or federal law.

(b) Lessee agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Lease or applicable law.

(c) Lessee agrees to report to Lessor’s Parks and Recreation Division any use or disclosure of the information not provided for by this Lease or applicable law.

(d) Lessee hereby assures Lessor’s Parks and Recreation Division that if any PHI is received from Lessor’s Parks and Recreation Division or received by Lessee on Lessor’s Parks and Recreation Division’s behalf, is furnished to Lessee’s subcontracts or agents in the performance of tasks required by this Lease, that those subcontracts or agents must first have agreed to the same restrictions and conditions that apply to Lessee with respect to such information.

(e) Lessee agrees to make PHI available in accordance with 45 C.F.R. 164.524.

(f) Lessee agrees to make PHI available for amendment and to incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526.

(g) Lessee agrees to make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528.

(h) Lessee agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from Lessor's Parks and Recreation Division or created or received by Lessee on behalf of Lessor's Parks and Recreation Division available for purposes of determining Lessee compliance with these assurances.

(i) Lessee agrees that at the termination of this Lease, if feasible, and where not inconsistent with other provisions of this Lease concerning record retention, it will lawfully return or destroy all PHI received from Lessor's Parks and Recreation Division or received by Lessee on behalf of Lessor's Parks and Recreation Division, that Lessee still maintains regardless of form. If not feasible, the protections of this Lease are hereby extended to that PHI which may then be used only for such purposes as make the return or destruction infeasible.

(j) A violation or breach of any of these assurances shall constitute a material breach of this Lease.

11. Background Screening of Staff and Volunteers. The following is hereby added as a new Section 35 of the Amended Lease:

35. *Background Screening of Staff and Volunteers.* Lessee and all Lessee's staff shall comply with all Federal, State, County, and City laws, ordinances, rules, and regulations that relate to the background screening process of those applying for work with children, seniors, or the disabled. In addition, all Lessee's staff contributing to the delivery of the units of service and volunteers that meet the criteria of Chapter 408, Chapter 435, and/or Section 110.1127, Florida Statutes, and/or Section 65C-14.025, Florida Administrative Code, must be in compliance with these Florida laws and are required, at a minimum, but may not be limited to perform the following screenings prior to supervision and/or direct care at no cost to Lessor:

1. *An initial Level 2 background screening*
 2. *Additional Level 2 background screenings at one (1) year intervals between April and June*
- A. *The Level 2 background screening shall consist of an employment history check including:*
1. *Fingerprinting used to process the following screenings*
 2. *Statewide Criminal and Juvenile Records Checks through the Florida Department of Law Enforcement*

3. *Federal Criminal Records Check through the FBI*
4. *May include Local Criminal Records Checks through Local Law Enforcement*

Under Chapter 435, Florida Statutes, Level 2 positions, which are defined as all employees in positions designated by law as positions of trust or responsibility, shall be required to undergo security background investigations as a condition of employment and continued employment.

Under Section 110.1127, Florida Statutes, positions that will need background screenings are all positions in programs providing care to children, the developmentally disabled, or vulnerable adults for fifteen (15) hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records.

Section 65C-14.025, Florida Administrative Code, provides that volunteers in a facility which utilizes volunteers to work directly with children on an intermittent basis for more than forty (40) hours per month must be screened in the same manner as the employees of the facility. A volunteer who assists on an intermittent basis for less than forty (40) hours per month is exempt from screening provided that the volunteer is under direct and constant supervision by staff at the facility.

An Annual Recheck will happen prior to any interaction with youth by any volunteer or employee, Lessee shall provide Lessor's Manager of the Parks and Recreation Division and/or designee with the confirmation that such screenings have been conducted, upon whom, and that the results are acceptable to Lessor based upon the criteria stipulated below.

B. Eligibility Criteria. NO Student Intern Full-Time, Contractor, Casual labor, Volunteer, or On Call Applicant will be accepted who has been:

1. *Arrested or convicted of any crime involving sexual misconduct with or against a minor*
2. *Arrested or convicted for any type of violent crime*
3. *Arrested or convicted of any crime involving illegal drugs or alcohol*
4. *Arrested or convicted of child abuse or domestic violence.*

Failure to comply with the above requirements shall constitute a material breach of this Lease. Lessee may utilize background screenings conducted by the Orange County Public School System providing that all Level II requirements are met, including additional background screenings at five-year intervals. Upon request, Lessee shall submit to Lessor's Parks and

Recreation Division written confirmation that such screenings have been conducted and that the results are acceptable to Lessor. Lessee shall, upon request, provide confirmation of the actual screening results to Lessor.

12. Incident Reporting and Client Risk Prevention. The following is hereby added as a new Section 36 of the Amended Lease:

36. Incident Reporting and Client Risk Prevention. A report shall be filed and submitted to Lessor's Manager of the Parks and Recreation Division or designee for the following: in the event Lessee staff or subcontractor becomes aware of an occurrence of any incident of injury to a client receiving program services through Lessor, requiring medical treatment by a licensed physician; any lawsuit entered into or against Lessee, all allegations of any kind of abuse, neglect, or exploitation of Lessee clients with the exception of those agencies whose primary function is working with those that have been abused, neglected or exploited unless the allegation is against Lessee's staff member; media coverage relating to the media expressing an interest in a case or issue concerning a client of Lessee or an employee; or any other unusual circumstance such as death of a client or employee on Lessee premises, a fire, hostage situation, bomb threat, epidemic or any circumstance which may impact the service provision. All occurrences must be reported no later than 10:00 a.m. the following business day in writing to Lessor. These reporting requirements in no way supersede the requirements for notification of allegations of abuse/neglect/exploitation to the State of Florida Abuse Hotline as mandated in Chapter 415, Florida Statutes.

13. Effect; Conflicts. Except as set forth in this Second Amendment, all other terms and provisions of the Amended Lease are hereby ratified and confirmed and shall remain in full force and effect. In the event of any conflict between the provisions of this Second Amendment and the Amended Lease, the provisions of this Second Amendment shall control.

14. Counterparts. This Second Amendment may be executed in two or more counterpart copies, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

(signature pages follow)

Orlando BMX at Barnett Park
Lease File #5028

IN WITNESS WHEREOF, Lessor and Lessee have caused this "First Amendment to Lease Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Effective Date.

LESSOR:



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: *16 July 2019*

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopysa*
for Deputy Clerk

Craig A. Stopysa
Printed Name

Orlando BMX at Barnett Park
Lease File #5028

IN WITNESS WHEREOF, Lessor and Lessee have caused this "First Amendment to Lease Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the Effective Date.

LESSEE:

Signed, sealed, and delivered
in the presence of:

ORLBMX, INC.,
a Florida not for profit corporation

Witness: Timothy Waples

Print Name: Timothy Waples

Witness: Jimmy Trimm

Print Name: JIMMY TRIMM

By: Bryan F. Isaacson

Name: Bryan F. Isaacson

Title: President

Date: May 6 2019

EXHIBIT "A"
MAINTENANCE RESPONSIBILITY

Lessor and Lessee acknowledge and agree the following will constitute Maintenance and Repair responsibilities regarding the Leased Premises:

	Lessor ("County") or Lessee ("BMX")	Comments
Cabinets, Vanities, and Countertops	County	
Carpet and/or Tile (incl. Deep Cleaning, Repair, and Replacement)	County	
Changes / Additions to Building	County	
Common Area Maintenance	County	
Dumpsters / Trash	N/A	
Elevators	N/A	
Exterior Cleaning	BMX	
Exterior Doors (incl. Closure Devices, Frames, Molding, etc.)	County	
Exterior Electrical: Meter Base, Outlets, Switches, etc.	County	
Exterior Lighting (Pole and Building Fixtures)	County	
Exterior Painting	County	
Exterior Plumbing (incl. Septic Tanks, Lift Stations, Pumps, etc.)	County	
Exterior Walls, Building Envelope, and other Structural Components	County	
Exterior Windows	County	
Fire Alarm Systems (incl. False Alarms)	N/A	
Fire Extinguishers	BMX	
Generators	N/A	
HVAC (incl. Filters, Repairs, and Replacement)	County	
Interior Doors (incl. Closure Devices, Frames, Molding, etc.)	County	
Interior Electrical: Main Switchgear & Breakers	County	
Interior Electrical: Outlets, Switches, Light Fixtures, Distribution Panels, etc.	County	
Interior Decoration (incl. Paint, Hanging Pictures, Shelves, TV's, Dispensers, etc.)	BMX	
Interior Plumbing: Faucets, Toilets, Sinks, Water Heaters, Appliances etc. (incl. Leaks under Slab or Inside Walls)	County	
Interior Windows, Glass Partitions, Window Treatments, Ceiling Tiles	County	
Irrigation Systems (incl. Controllers, Pumps)	N/A	
Janitorial	BMX	
Landscaping (incl. Debris Clean-up & Storm Drainage)	County	
Life Safety / Fire Sprinklers / Fire Hood Suppression	N/A	
Locks / Key Management	County	
Overhead Doors / Automatic Gates (incl. Closure Devices, etc.)	County	
Parking Lot and Driveway (incl. Hardscapes)	County	
Pest Control (incl. removal/disposal of dead animals)	County	

Orlando BMX at Barnett Park
 Lease File #5028

Roof	County	
Security Systems / Cameras	BMX	
Signage	BMX	
Utilities – Electrical	BMX	
Utilities – Internet Access, Phones, IT equipment	BMX	
Utilities – Water / Sewer	BMX	
Other: Racetrack	BMX	
Other: Concession Building	BMX	
Other: Bleachers	BMX	
Other: Watchtower	BMX	
Other: Fences	County	