

AGENDA

ITEM

NO. 11

**AIRPORT LEASE AGREEMENTS
EXECUTIVE SUMMARY
MAY 7, 2020 COUNCIL MEETING**

The Airport is requesting approval of two lease agreements:

A. Mr. Matt Sammons has purchased an aircraft hangar that is currently located on the airfield and so a lease agreement is needed for the property upon which the hangar will be located. Due to planned expansion of the BLM wildland firefighting base, the hangar will be relocated by Mr. Sammons to another parcel on the airfield. The lease agreement will be for a parcel of bare ground, approximately 2,000 square feet. The rental rate will be \$372.00 per year and the lease term will be five years with a five-year renewal option.

B. The Pocatello Motocross Park (a current tenant at the airport) was recently purchased by a new owner, so a lease agreement is needed with the new owner, Pocatello TMX. The agreement will be for a parcel of bare ground, approximately 4.04 acres. The purpose will be to operate a motocross speedway with off-road motorcycle recreational and competitive activities. Rental rate will be \$1,184.91 per year and the lease term will be one-year with four, one-year renewal options.

Both leases will include annual rental rate review by the Airport Commission with an increase at least by the amount of the CPI increase for the previous year.

GROUND LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into effective the _____ day of _____, 2020, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as "Lessor", and Matt Sammons, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessor is the owner of certain lands located in Power County, Idaho, commonly known and designated as the Pocatello Regional Airport, which property is subject to certain covenants and restrictions imposed under the Surplus Property Act of 1944; and

WHEREAS, Lessee desires a five (5) year lease of the hereinafter described land for the purposes of operation of an aircraft storage hangar along and adjacent to the flight line at the Pocatello Regional Airport.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

I. PREMISES

Lessor leases to the Lessee the following described real property consisting of 2,000 square feet, upon which T Hangar Lot #1, Row #4 is situated. Said property is depicted and more particularly described on Exhibit "A" attached hereto.

II. TERM

This lease shall be for a five (5) year period, commencing the May 7, 2020, and ending the May 6, 2025. The rental rates shall be renewed on an annual basis in accordance with Paragraph IV below.

III. PURPOSE

The premises described herein shall be used by the Lessee solely for the purpose of private aircraft storage and the storage of such equipment as may be incidental and/or necessary to the operation thereof. Lessee may store flammables on or about the lease premises as long as said storage complies with Pocatello City Code 11.05 "Fire Protection". Any aircraft or equipment which is permitted to be stored pursuant to the terms of this agreement must be stored within the Hangar. Further, Lessee is prohibited from using the demised premises for pecuniary gain or other commercial purpose(s).

IV. RENTAL

Commencing May 7, 2020, and terminating May 6, 2021, Lessee shall pay to Lessor the annual rental sum of Three Hundred Seventy-Two Dollars (372.00), which sum is payable on or before June 1, 2020. For each succeeding one year period of the Lease term, the rental rate shall increase in an increment of not less than the annual inflation rate as measured by the Western Consumer Price Index for the preceding year. However, in no event shall Lessee's annual rental obligation be less than \$372.00. For each succeeding rental period the rental payment shall be made on or before June 1 of that year.

Late Charges and Interest: Lessee acknowledges that a late payment of rent from Lessee to Lessor will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges. Therefore, if any installment of rent due from Lessee is not received when due, Lessee shall pay to Lessor the additional sum of \$150.00 as a late charge. The Parties agree this late charge is not a penalty but represents a fair and reasonable estimate of the costs Lessor will incur by reason of a late payment by Lessee. The acceptance of any late charge shall not

constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor. The payment of said late charge shall be required to cure the default occurring by reason of the failure of Lessee to timely pay a rental installment. All amounts not paid by Lessee when due shall bear interest at the rate of eighteen percent (18%) annual percentage rate.

V. EXAMINATION OF PREMISES

Lessee has inspected the aforescribed premises and accepts the same in "as is" condition. Lessor makes no warranties, express or implied, concerning the property and Lessee in executing this Lease is relying upon its own judgment, information, and inspection of the leased premises. Lessee hereby acknowledges that it is accepting the leased premises from the City subject to any and all physical conditions of the premises. Lessee further affirms that the City, its agents, employees, and/or attorneys have not made, nor has Lessee relied upon, any representation, warranty, or promise with respect to the leased premises or any other subject matter of this Lease Agreement except as expressly set forth in this Agreement, including without limitation, any warranties or representations expressed or implied as the general plan designation, zoning, value, use tax status or physical conditions of the leased premises or improvements thereon, or any part thereof, including, but not limited to the flood elevations, drainage patterns and soil and subsoil compositions and compaction level, and other conditions at the leased premises, or the existence or non-existence of toxic or hazardous materials on or under the premises, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or report therefore.

VI. WASTE

Lessee covenants that it will not commit or allow others to commit waste on the premises.

VII. MAINTENANCE OF FACILITY

Lessee shall keep and maintain the leased premises and all improvements of any kind in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto. Lessee shall provide proper containers for trash and garbage, and shall keep the leased premises free and clear of rubbish, debris, and litter at all times. Furthermore, Lessee shall not store any items outside of the leased property. Lessor shall at all times during ordinary business hours, have the right to enter upon and inspect said premises, but shall attempt to make such inspections at a mutually agreeable time.

VIII. UTILITIES

Lessee shall promptly pay any charges for water, electricity, telephone, and all other charges for utilities which may be furnished to the leased premises at Lessee's order or with Lessee's consent. No water or sewer connection shall be made without prior approval of Lessor.

IX. NO SUBLEASE OR ASSIGNMENT

Lessee shall not directly or indirectly assign, transfer or encumber any of the rights in or to this Lease or any interest herein, nor any improvements made to the premises, without the express written consent of Lessor. Lessee acknowledges that Lessor has the right to require termination of this Lease and the execution of a new Lease on the part of a prospective sublessee or assignee rather than consenting to any sublease or assignment and Lessee agrees to so inform any interested party.

X. INDEMNIFICATION

Lessee agrees that it will at all times maintain Worker's Compensation coverage for the benefit of his employees, and adequate liability and property damage insurance as specified in Article XI covering the activities of Lessee, its agents, servants and employees, on the leased premises.

Lessee further agrees to defend, indemnify, and save Lessor, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of Lessee, its agents, servants, invitees, officers, and employees, in connection with this Lease, or the use in common with others of the Pocatello Regional Airport.

XI. INSURANCE

In order to effectuate the foregoing indemnification provisions, Lessee shall maintain insurance coverage as follows:

A. Lessee shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify Lessor from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. Lessor shall be named as an additional insured or be acknowledged by Lessee's insurance carrier as a covered entity under the terms of said policy. Moreover, the Lessee is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with Lessee without first giving Lessor, City of Pocatello, at least thirty (30) days written notice.

B. Lessee shall purchase personal property insurance in an amount sufficient to insure any and all Lessee's personal property which might be used in Lessee's operation of the business or which might be present on the airport premises.

C. If applicable, Lessee shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Lease Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Article X "Indemnification." The Lessee's failure to maintain insurance shall be a basis for immediate termination of this lease.

XII. DISCHARGE OF LIENS

Lessee agrees to pay when due all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon or about the premises herein leased, which may be secured by any mechanic's, materialman's or other lien against the premises herein leased or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. Provided however, Lessee may in good faith contest any mechanic's or other lien filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest. In any event, Lessee agrees to defend and indemnify the Lessor for any such claim and/or lien.

XIII. RELEASE AND RELINQUISHMENT

Notwithstanding the terms of Article II above, either party may, at any time, terminate this Lease Agreement upon giving ninety (90) days written notice to the other party. Thereupon, neither Lessee nor Lessor shall have further liability or responsibility to perform under this Lease Agreement except for the payment of monies due under Section IV herein up to and including the date of termination, and except for the disposition of any appurtenances provided for in Section XIV herein.

In the event Lessor terminates this Lease Agreement during any lease term, Lessor shall reimburse

Lessee the unearned portion of the rental paid by Lessee on a pro-rata basis to the effective date of the termination.

XIV. TERMINATION

On the termination date of this lease Lessee shall forthwith surrender possession of the hangar site along with the remainder of the leased premises, in good condition, reasonable wear and tear excepted. Thereupon the hangar, appurtenances, and improvements constructed or installed thereon under this lease shall be forthwith removed by Lessee. In so doing, Lessee shall ensure that the hangar site is not damaged but is left as it would have been without such removal.

In the event Lessee does not remove the hangar within sixty (60) days of the termination date, unless a written agreement to the contrary has been executed by Lessee and Lessor, Lessee shall forfeit all of its right, title, and interest in and to said hangar, appurtenances, and any remaining fixtures, which shall thereupon become the property of the Lessor as if conveyed by separate instrument without any recompense, payment, or reimbursement of any kind to Lessee.

XV. STATUTES, ORDINANCES, RULES AND REGULATIONS

Lessee, for itself, its employees, agents, successors and assigns, expressly agrees to obey all applicable laws and regulations of the United States, including regulations of the State of Idaho, of Power County, and of the City of Pocatello, including the rules and regulations of the Pocatello Regional Airport. Lessee further agrees to conform to the requirements of the Airport Master Plan and those agreements between the United States and the City of Pocatello pertaining to the Pocatello Regional Airport.

XVI. DEFAULT

A. Failure of Lessee to pay rent or any other charge within ten (10) days after it is due shall constitute default.

B. Failure of Lessee to comply with any term or condition or to fulfill or comply with any obligation of this Lease, other than as specified in subparagraph A above, within thirty days after written notice by Lessor specifying the nature of the default with reasonable particularity, shall constitute default.

C. The following shall constitute default by insolvency: 1) Insolvency of Lessee; 2) An assignment by Lessee for the benefit of creditors; 3) The filing by Lessee of a voluntary Petition in Bankruptcy; 4) An adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; 5) The filing of an involuntary Petition of Bankruptcy and failure of the Lessee to secure dismissal of the Petition within thirty (30) days after filing; and 6) Attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy or execution within ten (10) days.

XVII. REMEDIES IN DEFAULT

In the event of default, the Lessor, at its option, may terminate this Lease. In the event of a Termination on Default, Lessor shall be entitled to recover the reasonable costs of reentry and re-letting, including, without limitation, the costs of any cleanup, refurbishing, removal of Lessee's property and fixtures or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, and any attorney fees, court costs, broker commissions and advertising costs, along with the loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured. The remedies afforded the Lessor in this section shall not be exclusive but shall be cumulative, and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease Agreement.

XVIII. ENVIRONMENTAL MATTERS

Lessee hereby indemnifies, agrees to defend and shall hold Lessor harmless from and against all liability, loss, claim, damage or expense, including but not limited to reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees and government fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes introduced to the leased premises by Lessee or its agents or from sources within Lessee's reasonable control in violation of any Environmental Law, as defined hereinafter, from and after the commencement date of this lease and through and until the date on which Lessee vacates the leased premises. Lessor hereby indemnifies, agrees to defend and shall hold Lessee harmless from and against all liability, loss, claim, damage or expense, including, but not limited to, reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees, and governmental fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes existing on the leased premises in violation of any Environmental Law, as defined hereinafter, as of the commencement date of this lease, or which come onto the leased premises during the term of this lease from sources outside of Lessee's reasonable control including, without limitation, any expense associated with the removal of any underground storage tanks at the leased premises and any costs of remediation associated therewith. As used herein, 'Environmental Law' means any one or more of all federal, state and local environmental protection, occupational, health, safety and similar laws, ordinances, restrictions, licenses and regulations, including, without limitation the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. Sec. 300f *et seq.*), Toxic Substance Control Act (15 U.S.C. Sec. 2601 *et seq.*), Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.*), Hazardous Materials Transportation

Act (49 U.S.C. Sec. 1801 *et seq.*), and other similar federal, state or local laws, statutes, ordinances, orders, decrees, rules and/or regulations, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter be applicable.

XIX. HAZARDOUS MATERIALS

"Hazardous Material" means any use or activity involving any substance which would cause (1) the leased premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the leased premises within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law, (2) a release or threatened release of hazardous waste from the leased premises within the ambit of, the Comprehensive Environmental response, Compensation and Liability Act of 1980, or any similar federal or state law or ordinance or any other environmental law, or (3) the discharge of pollutants or effluent into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards on conduct concerning any hazardous material.

Lessee expressly assumes the risk and responsibility for any hazardous material during the term of this Lease Agreement, hereafter located on the leased premises, and hold harmless the City, its officers, employees, representatives, agents, and successors from and against any and all judgments, claims expenses, causes of action, damages, liability (including reasonable attorneys' fees

and costs) (1) including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials on the leased premises, and (2) including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the leased premises.

XX. SIGNS

Lessee shall have the right to install or cause to be installed appropriate signs on the leased premises to advertise the nature of its business. The cost of such installations and operations shall be borne by Lessee. Lessee shall not erect, install, operate or cause, nor permit to be erected, install, or operated upon the premises herein any sign or other advertising device without first having obtained Lessor's written consent thereto as to size, construction, location, general appearance, and adherence to Pocatello Municipal Code.

XXI. MISCELLANEOUS

A. **TAXES AND FEES.** In the event the State of Idaho, Power County, or any State or local agency imposes a property tax or any substitute therefore on the demised premises, and/or the leasehold, Lessee shall pay the tax promptly when due.

B. **NON-DISCRIMINATION.** Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, sex, age, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, and (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race,

color, sex, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the nondiscrimination covenants contained herein, Lessor shall have the right to terminate the lease, and to reenter and repossess said land and facilities thereon, and hold the same as if said lease had never been made or issued; provided, however, that Lessee allegedly in breach shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures, and any sanctions under or termination of the lease shall be withheld pending completion of such procedures.

C. SUBORDINATION. This Lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States relative to the operation and maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. In the event there is a conflict between the terms of this Lease Agreement and Federal Grant Assurances, the Grant Assurances will take precedence and govern.

D. NO WAIVER. The failure by the City to require strict performance of any condition of this Airport Hangar Lease Agreement shall not affect the City's right to subsequently enforce the same, nor shall a waiver of any term or condition be construed to be a waiver of any succeeding term or condition of this clause. To be effective, any waiver by the City must be in writing.

E. SECTION CAPTIONS. The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of the Lease.

F. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

G. JURISDICTION AND VENUE. Any action or proceeding to enforce the provisions of this Lease Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

H. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the demised premises, the leasing of said premises to Lessee, or the lease term herein provided and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

I. THIRD-PARTY GOVERNMENTAL AGENCIES. Lessee acknowledges and agrees to immediately provide Lessor with a copy of any written correspondence or verbal and/or written demands provided to Lessee regarding the leased demise by any third-party governmental agency including, but not an exhaustive list, any county, local taxing district or any Tribal authority. Moreover, Lessee shall not enter into any written agreement with any third-party governmental agency regarding the Leased Premises or Lessee's operations thereon without first obtaining Lessor's written consent to do so.

XXI. NOTICES

All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

LESSOR: City of Pocatello
 Attn: Legal Dept.
 P.O. Box 4169
 Pocatello, ID 83205

LESSEE: Matt Sammons
 P O Box 4633
 Pocatello, ID 83204

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

XXII. ATTORNEYS FEES UPON BREACH

In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

IN WITNESS WHEREOF, the parties hereto have executed this lease by and through their authorized representatives the date and year first-above written.

APPROVED BY LEGAL

Date 8/27/20 Atty B. B. B.

Comments _____

LESSOR:

CITY OF POCA TELLO, a municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

RUTH NEWSOM, City Clerk

LESSEE:

MATT SAMMONS

STATE OF IDAHO)
 : ss
County of Bannock)

On this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth Newsom, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, who executed the foregoing instrument, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in _____

STATE OF IDAHO)
 :SS
County of Bannock)

On this ___ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Matt Sammons Allen, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in: _____

11(b)

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of May, 2020, by and between the CITY OF POCATELLO, a municipal corporation of Idaho, hereinafter referred to as "LESSOR", and JERAME D. TEEL, d/b/a POCATELLO TMX, hereinafter referred to as "LESSEE",

WITNESSETH:

WHEREAS, Lessor is the owner of certain lands located in Power County, Idaho, commonly known and designated as the Pocatello Regional Airport, which property is subject to certain covenants and restrictions imposed under the Surplus Property Act of 1944; and

WHEREAS, the property described below has historically been leased to certain individuals for the operation of a motocross speedway with off-road motorcycle recreational and competitive activities; and

WHEREAS, Lessee has recently purchased the speedway track and business and desires to enter into a Lease as hereinafter described to continue such off-road motorcycle recreational and competitive activities.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

I. PREMISES

Lessor hereby lets and rents to Lessee the following described land upon the terms and conditions hereinafter set forth; such property so let being described as follows:

A rectangular parcel of land comprised of approximately 4.04 acres and measuring approximately 320 feet on its eastern and western sides, and approximately 550 feet on its northern and southern sides, which parcel is located in the Northeast quarter of Section 10, T.6S, R.33E, B.M., and is more commonly described as being located at the Southwest corner of the

intersection of Pitt Road and the BLM access road, within the boundary lines of the City of Pocatello Regional Airport in Power County, Idaho. Said parcel is depicted on Exhibit "A", attached hereto and made a part hereof.

II. TERM

The initial term for this Lease shall be for one year, commencing May 1, 2020 and terminating on April 30, 2021. However, this Lease may be renewed on an annual basis for an additional four (4) one (one) year terms, unless sooner terminated by either Party. The notice of non-renewal of this Lease may be made as hereinafter provided on or before March 31st, at the end of each Lease period.

III. PURPOSE

Lessee may use the leased premises of operating a motocross speedway with off-road motorcycle recreational and competitive activities and for no other purposes without the expressed written authorization of the Lessor.

IV. RENTAL

For the first Lease term, commencing May 1, 2020 and terminating April 30, 2021, Lessee shall pay to Lessor the sum of One Thousand One Hundred Eighty-Four and 91/100 Dollars, (\$1,184.91), which sum is payable on or before the 1st day of June. For each succeeding Lease term, the rental rate shall increase in an increment of not less than the annual inflation rate as measured by the Western Consumer Price Index for the preceding year. However, in no event shall Lessee's annual rental obligation be less than \$1,184.91. For each succeeding rental period the rental payment shall be made on or before the 1st day of June of that year.

Lessee acknowledges that a late payment of rent from Lessee to Lessor will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely

difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges. Therefore, if any installment of rent due from Lessee is not received when due, Lessee shall pay to Lessor the additional sum of \$150.00 as a late charge. The Parties agree this late charge is not a penalty but represents a fair and reasonable estimate of the costs Lessor will incur by reason of a late payment by Lessee. The acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor. The payment of said late charge shall be required to cure the default occurring by reason of the failure of Lessee to timely pay a rental installment. All amounts not paid by Lessee when due shall bear interest at the rate of eighteen percent (18%) annual percentage rate.

V. EXAMINATION OF PREMISES

Lessee has inspected the aforescribed premises and accepts the same in "as is" Condition. Lessor makes no warranties, express or implied, concerning the property and Lessee in executing this Lease is relying upon its own judgment, information, and inspection of the leased premises. Lessee hereby acknowledges that it is accepting the leased premises from the City subject to any and all physical conditions of the premises. Lessee further affirms that the City, its agents, employees, and/or attorneys have not made nor has Lessee relied upon any representation, warranty, or promise with respect to the leased premises or any other subject matter of this Lease Agreement except as expressly set forth in this Agreement, including without limitation, any warranties or representations expressed or implied as the general plan designation, zoning, value, use tax status or physical conditions of the leased premises or improvements thereon, or any part thereof, including, but not limited to the flood elevations, drainage patterns and soil and subsoil compositions and compaction level, and other conditions

at the leased premises, or the existence or non-existence of toxic or hazardous materials on or under the premises, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or report therefore.

VI. WASTE

Lessee covenants that it will not commit or allow others to commit waste on the premises.

VII. MAINTENANCE OF FACILITY

Lessee shall not alter the leased premises without prior written permission of Lessor. Lessee shall keep and maintain the leased premises and all improvements of any kind in good and substantial repair and condition, and shall make all necessary repairs and alterations thereto. Lessee shall provide proper containers for trash and garbage, and shall keep the leased premises free and clear of rubbish, debris and litter at all times. All roadways or other paved/asphalt areas within the demised premises shall be maintained by Lessee at Lessee's expense. Lessor shall have the right to enter upon and inspect said premises, but shall attempt to make such inspections at a mutually agreeable time.

VIII. UTILITIES

Lessee shall promptly pay any charges for water, electricity, telephone, and all other charges for utilities which may be furnished to the leased premises at Lessee's order or with Lessee's consent.

IX. NO SUBLEASE OR ASSIGNMENT

Lessee shall not directly or indirectly assign, transfer or encumber any of the rights in or to this Lease or any interest herein, nor any improvements made to the premises, without the express written consent of Lessor. Lessee acknowledges that Lessor has the right to require

termination of this Lease and the execution of a new Lease on the part of a prospective sublessee or assignee rather than consenting to any sublease or assignment and Lessee agrees to so inform any interested party.

X. INDEMNIFICATION

Lessee agrees that he will at all times maintain Worker's Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section XI covering the activities of Lessee, his agents, servants and employees, on the leased premises.

Lessee further agrees to defend, indemnify, and save Lessor, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of Lessee, his agents, servants, invitees, officers, and employees, in connection with this Lease, or the use in common with others of the Pocatello Regional Airport.

XI. INSURANCE

In order to effectuate the foregoing indemnification provisions, Lessee shall maintain insurance coverage as follows:

A. Lessee shall purchase a comprehensive liability insurance policy in the amount of \$1,000,000 combined single limit to indemnify Lessor from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. Lessor shall be named as an additional insured or be acknowledged by Lessee's insurance carrier as a covered entity under the terms of said policy. Moreover, the Lessee is required to put its surety on notice, that said surety may not change or cancel the existing

insurance policy with Lessee without first giving Lessor, City of Pocatello, at least thirty (30) days written notice.

B. Lessor does not provide insurance that will cover the Lessee's personal property that may be located on the demised premises. Lessee may purchase personal property insurance in an amount sufficient to insure any and all Lessee's personal property which might be used in Lessee's operation of the business or which might be present on the airport premises. In the event Lessee elects to forego maintaining personal property insurance, and Lessee suffers loss of personal property stored on leased property, Lessor will not be held responsible due to Lessee's lack of personal property insurance.

C. If applicable, Lessee shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Lease Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section X "Indemnification." The Lessee's failure to maintain insurance shall be a basis for immediate termination of this lease.

XII. DISCHARGE OF LIENS

Lessee agrees to pay when due all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon or about the premises herein leased, which may be secured by any mechanic's, materialman's or other lien against the premises herein leased or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any

obligation secured by any such lien matures or becomes due. Provided, however, that Lessee may in good faith contest any mechanic's or other lien filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest. In any event, Lessee agrees to defend and indemnify the Lessor for any such claim and/or lien.

XIII. RELEASE AND RELINQUISHMENT

Notwithstanding the terms of Section II above, either party may, at any time, terminate this Lease Agreement upon giving 90 days written notice to the other party. Thereupon, neither Lessee nor Lessor shall have further liability or responsibility to perform under this Lease Agreement except for the payment of monies due under Section IV herein up to and including the date of termination, and except for the disposition of any appurtenances provided for in Section XIV herein. In the event Lessor terminates this Lease Agreement during any lease term, Lessor shall reimburse Lessee the unearned portion of the rental paid by Lessee on a pro-rata basis to the effective date of the termination.

XIV. TERMINATION

On the termination date of this lease Lessee shall forthwith surrender possession of the leased premises, in good condition, reasonable wear and tear excepted. Thereupon any appurtenances and improvements constructed or installed thereon under this lease shall be forthwith removed by Lessee, including fixtures at the option of Lessor. In so doing, Lessee shall ensure that any remaining equipment and furnishings are not damaged but are left as they would have been without such removal.

In the event Lessee does not remove the improvements within sixty (60) days of the termination date, unless a written agreement to the contrary has been executed by Lessee and

Lessor, Lessee shall forfeit all of its right, title, and interest in and to said appurtenances, and fixtures, which shall thereupon become the property of the Lessor City as if conveyed by separate instrument without any recompense, payment, or reimbursement of any kind to Lessee.

XV. CONSTRUCTION OF IMPROVEMENTS

Prior to any construction, alteration, or changes upon the lease premises, Lessee shall submit to Lessor final plans and specifications, site-use plans and architectural plans renderings thereof and shall not commence any construction until approval has been given by the City through the Airport Manager and appropriate building permits are issued.

XVI. STATUTES, ORDINANCES, RULES AND REGULATIONS

Lessee, for itself, its employees, agents, successors and assigns, expressly agrees to obey all applicable laws and regulations of the United States, including regulations of the State of Idaho, of Power County, and of the City of Pocatello, as well as the rules and regulations of the Pocatello Regional Airport. Lessee further agrees to conform to the requirements of the Airport Master Plan and those agreements between the United States and the City of Pocatello pertaining to the Pocatello Regional Airport.

XVII. DEFAULT

A. Failure of Lessee to pay rent on or before its due date or any other charge within ten (10) days after it is due shall constitute default.

B. Failure of Lessee to comply with any term or condition or to fulfill or comply with any obligation of this Lease, other than as specified in subparagraph A above, within thirty (30) days after written notice by Lessor specifying the nature of the default with reasonable particularity, shall constitute default. If the default is of a nature that it cannot be cured within the said thirty (30) day period, Lessee may, within said period, present a plan, in writing, to the

Airport Manager that provides a schedule in which Lessee will be able to cure the default. If the Lessee's plan is approved by the Airport Manager, Lessee's default will be held in abeyance so long as the Lessee thereafter proceeds with reasonable diligence, in good faith and is able to meet the plan's deadlines, then the default shall be deemed cured.

C. The following shall constitute default by insolvency: 1) Insolvency of Lessee; 2) An assignment by Lessee for the benefit of creditors; 3) The filing by Lessee of a voluntary Petition in Bankruptcy; 4) An adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; 5) The filing of an involuntary Petition of Bankruptcy and failure of the Lessee to secure dismissal of the Petition within thirty (30) days after filing; and 6) Attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy or execution within ten (10) days.

XVIII. REMEDIES IN DEFAULT

In the event of default, the Lessor, at its option, may terminate this Lease. In the event of a Termination on Default, Lessor shall be entitled to recover the reasonable costs of reentry and re-letting, including, without limitation, the costs of any cleanup, refurbishing, removal of Lessee's property and fixtures or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, and any attorney fees, court costs, brokerage commissions and advertising costs, along with the loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured. The remedies afforded the Lessor in this section shall not be exclusive but shall be cumulative, and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease Agreement.

XIX. ENVIRONMENTAL MATTERS

Lessee hereby indemnifies, agrees to defend and shall hold Lessor harmless from and against all liability, loss, claim, damage or expense, including but not limited to reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees and government fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes introduced to the leased premises by Lessee or its agents or from sources within Lessee's reasonable control in violation of any Environmental Law, as defined hereinafter, from and after the commencement date of this lease and through and until the date on which Lessee vacates the leased premises. Lessor hereby indemnifies, agrees to defend and shall hold Lessee harmless from and against all liability, loss, claim, damage or expense, including, but not limited to, reasonable attorneys' and experts' fees, clean-up or other remediation costs and fees, and governmental fines, arising out of or in connection with the existence of any toxic or hazardous materials, pollutants, contaminants or hazardous wastes existing on the leased premises in violation of any Environmental Law, as defined hereinafter, as of the commencement date of this lease, or which come onto the leased premises during the term of this lease from sources outside of Lessee's reasonable control including, without limitation, any expense associated with the removal of any underground storage tanks at the leased premises and any costs of remediation associated therewith. As used herein, 'Environmental Law' means any one or more of all federal, state and local environmental protection, occupational, health, safety and similar laws, ordinances, restrictions, licenses and regulations, including, without limitation the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. Sec. 300f *et seq.*), Toxic Substance Control Act (15 U.S.C. Sec. 2601 *et seq.*), Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*), Comprehensive Environmental Response,

Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.*), Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 *et seq.*), and other similar federal, state or local laws, statutes, ordinances, orders, decrees, rules and/or regulations, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter be applicable.

XX. HAZARDOUS MATERIALS

"Hazardous Material" means any use or activity involving any substance which would cause (1) the leased premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the leased premises within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law, (2) a release or threatened release of hazardous waste from the leased premises within the ambit of, the Comprehensive Environmental response, Compensation and Liability Act of 1980, or any similar federal or state law or ordinance or any other environmental law, or (3) the discharge of pollutants or effluent into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards on conduct concerning any hazardous material.

Lessee expressly assumes the risk and responsibility for any hazardous material during the term of this Lease Agreement, hereafter located on the leased premises, and hold harmless the City, its officers, employees, representatives, agents, and successors from and against any

and all judgments, claims expenses, causes of action, damages, liability (including reasonable attorneys' fees and costs) (1) including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials on the leased premises, and (2) including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the leased premises.

XXI. SIGNS

Lessee shall have the right to install or cause to be installed appropriate signs on the leased premises. The cost of such installations and operations shall be borne by Lessee. Lessee shall not erect, install, operate or cause, nor permit to be erected, installed, or operated upon the premises herein, any sign or other advertising device without first having obtained Lessor's written consent thereto as to size, construction, location, general appearance, and adherence to Pocatello Municipal Code.

XXII. MISCELLANEOUS

A. TAXES AND FEES. In the event the State of Idaho, Power County, or any State or local agency imposes a property tax or any substitute therefore on the demised premises, and/or the leasehold, Lessee shall pay the tax promptly when due.

B. NON-DISCRIMINATION. Lessee, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in,

be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the nondiscrimination covenants contained herein, Lessor shall have the right to terminate the lease, and to reenter and repossess said land and facilities thereon, and hold the same as if said lease had never been made or issued; provided, however, that Lessee allegedly in breach shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures, and any sanctions under or termination of the lease shall be withheld pending completion of such procedures.

C. SUBORDINATION. This Lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States relative to the operation and maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. In the event there is a conflict between the terms of this Lease Agreement and Federal Grant Assurances, the Grant Assurances will take precedence and govern.

D. NO WAIVER. The failure by the City to require strict performance of any condition of this Airport Hangar Lease Agreement shall not affect the City's right to

subsequently enforce the same, nor shall a waiver of any term or condition be construed to be a waiver of any succeeding term or condition of this clause. To be effective, any waiver by the City must be in writing.

E. SECTION CAPTIONS. The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of the Lease.

F. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

G. JURISDICTION AND VENUE. Any action or proceeding to enforce the provisions of this Lease Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

H. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the demised premises, the leasing of said premises to Lessee, or the lease term herein provided and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

I. THIRD-PARTY GOVERNMENTAL AGENCIES. Lessee acknowledges and agrees to immediately provide Lessor with a copy of any written correspondence or verbal and/or written demands provided to Lessee regarding the leased demise by any third-party

governmental agency including, but not an exhaustive list, any county, local taxing district or any Tribal authority. Moreover, Lessee shall not enter into any written agreement with any third-party governmental agency regarding the Leased Premises or Lessee's operations thereon without first obtaining Lessor's written consent to do so.

XXIII. NOTICES

All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

LESSOR: City of Pocatello
 Attn: Legal Dept.
 P.O. Box 4169
 Pocatello, ID 83205

LESSEE: Jerame D. Teel
 d/b/a Pocatello TMX
 252 North 3rd Avenue
 Pocatello, ID 83201

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

XXIV. ATTORNEY'S FEES UPON BREACH

In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their authorized representatives the date and year first above written.

APPROVED BY LEGAL

Date 4/16/20 Atty Bjce

Comments _____

CITY OF POCATELLO, a municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

RUTH NEWSOM, City Clerk

JERAME D. TEEL, d/b/a POCATELLO TMX

JERAME D. TEEL

STATE OF IDAHO)
 :SS
County of Bannock)

On this ___ day of May, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth Newsom, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in _____

STATE OF IDAHO)
 :SS
County of Bannock)

On this ___ day of May, 2020, before me, the undersigned, a Notary Public in and for the State, personally appeared Jerame D. Teel, d/b/a Pocatello TMX, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing in _____

N.89°34'52"E. 1,182.50' 189

N.00°08'03"E. 1,324.02'

T-3

S.39°41'20"W. 917.90'

T-2

SEC. 1

EXHIBIT
1