



CITY MANAGER'S OFFICE

December 24, 2015

Todd Sadow
c/o Grand Junction Off Road – Epic Rides
534 N. Stone Avenue
Tucson, AZ 85705

Via e-mail and United States Postal Service

Re: Epic Rides – 2016 Grand Junction Off-Road Event Host Community Agreement

Dear Dave and Todd,

Set forth below are the proposed terms and conditions for the City's participation in the Epic Rides – 2016 Grand Junction Off-Road event. The Grand Junction event will be referred to herein as "the 2016 Event" or "2016 Event." Epic Rides will be referred to as "Promoter" or "the Promoter."

The City is very pleased to be the Host Community of the 2016 Event. We continue to operate under the assumption that the Grand Junction Off-Road will be a long-standing event; however, due to the constraints of the Colorado Constitution the City may only obligate funds on an annual basis. Therefore, the funding referred to herein is for the 2016 Event only.

While the City has reason to believe that the 2016 Event will be successful, please know that the City shall not be liable to you for any cost or expense you incur in the promotion and/or production of the 2016 Event beyond what we agree to and/or the City shall not be liable for any lost profit, lost advantage or lost opportunity that occurs because the 2016 Event does not proceed and/or is not as successful as you may anticipate.

In support of the 2016 Event you have provided us with certain written materials describing the event. Those materials are incorporated by this reference as if fully set forth. Because the representations made therein are essential to the formation of a working relationship between you and the City, the City has and will continue to rely on the information that you have supplied as being complete and accurate. You must update the City if/when the information changes. For purposes of this agreement ("Agreement") the City and the Downtown Business Improvement District ("BID") may be referred to together as "the City" or "City" unless the specific context otherwise requires. The City will also rely on any oral representations that you make or have made regarding the 2016 Event and your commitment to carry out agreements pertaining to it.

Please provide written confirmation that Mountain Bike America LLC is the legal parent entity of Epic Rides/Grand Junction Off-road, that any and all entities supporting, sponsoring or promoting the 2016 Event are in good standing in the state of registration/creation and that all

rights in the intellectual property "the IP" or "IP" are vested in Mountain Bike America LLC and/or an entity that has full and lawful right to us the IP.

Our review and approval of the legal status of the entity(ies) is an express precondition to our agreeing to sponsor the 2016 event.

Mountain Bike America LLC doing business as Epic Rides (Promoter) is in the business of organizing, promoting, and operating mountain bike events throughout the United States and accordingly the City and the Promoter desire and agree that, with support and assistance from the City that the Promoter plan, organize, promote and operate a three-day mountain bike event to be held in Grand Junction, Colorado and the surrounding trails/area.

NOW, THEREFORE, in exchange for the mutual consideration, promises and obligations, the Promoter and the City agree as follows:

- 1) The Promoter shall produce a three-day combined mountain bike ride, music festival and beer service event collectively the 2016 Event to be held May 20 through May 22. The 2016 Event will include mountain bike rides and races, with participation opportunities for riders of all levels, a , a bike and outdoor industry expo and beer service areas/gardens extending between 3rd and 7th on Main Street in downtown Grand Junction, Colorado. The bike ride(s)/race(s) participation opportunities shall be determined by the Promoter through the permitting process including 3 amateur rides, 2 kids' rides, and 2 pro races.
- 2) Except as otherwise expressly provided herein, the Promoter shall determine in consultation with the City and subject to all City, State and as applicable Federal law rules, and regulations, the planning, staging, content, marketing and promotion of the 2016 Event. Because of the Promoter's experience/expertise in the business of organizing, promoting, and operating mountain bike events throughout the United States, which experience induced the City to enter into this agreement and on which the City is relying to make the 2016 Event safe and successful, the Promoter shall be solely responsible for all aspects of producing the mountain bike ride component of the 2016 Event, including all planning, preparation, operation, and wrap-up of the rides, races and bike industry and outdoor expo aspects of the 2016 Event. The final route(s), composition of the ride(s)/race(s), participation opportunities and details of the bicycling aspects of the 2016 Event shall be, subject to the permitting process and requirements of any and all governmental and/or regulatory agency(ies) having jurisdiction, determined by the Promoter. The Promoter shall be solely responsible for participant registration, ride operations, safety, timing, press relations and other functions customarily related to a mountain bike event and as all of the same are set forth in the 2016 Event Operations Plan, which is attached hereto as Exhibit A and is incorporated by this reference as if fully set forth.
- 3) The Promoter understands, acknowledges and agrees that any and all of the following agencies may have permitting and/or operational requirements that the Promoter shall satisfy. The Promoter specifically recognizes authority of the Greater Grand Junction

Sports Commission, the Downtown Grand Junction Business Improvement District (BID), Mesa County, the City and its Visitors and Convention Bureau (VCB) the Colorado State Patrol and the Grand Junction Field Office of the BLM. The Promoter designates Dave Grossman as its representative and the City designates Kris Ashbeck as its principal representative for the 2016 Event. Ms. Ashbeck and Mr. Grossman shall coordinate and jointly approve in writing any applicable copy, press release(s), promotion(s) and other public announcement(s) related specifically to the Event held in Grand Junction, CO. Ms. Ashbeck may designate or assign a representative for certain aspects of the 2016 Event.

- 4) Revenues generated by The Event including but not limited to participant fees, sponsorship fees paid to the Promoter and the profit, if any, from sales of merchandise by the Promoter or its contracted agents shall belong to the Promoter. The Promoter agrees to expend those funds, and any and all other funds necessary or required, to pay the costs of the 2016 Event and to assure that no debts, liens or encumbrances, other than those legitimately arising out of a valid dispute, accrue to it. In no event shall the Promoter cause a lien or debt claim to be made against the City.
- 5) Mr. Grossman and Robin Brown, the BID representative for the 2016 Event, shall jointly be responsible for planning, organizing, hiring and promoting the music festival aspect(s) of the 2016 Event. Once Ms. Brown and Mr. Grossman agree in writing on the musical acts, the compensation to be paid to those acts and the schedule for the appearance of the acts, Ms. Brown/the BID shall book the musical acts and shall pay any and all related expenses for the acts, all as more particularly stated in the booking agreement(s). The booking agreement(s) shall be attached to this agreement as Exhibit _____. There shall be no entrance or ticket fee to attend any of the musical performances during the 2016 Event. BID shall provide all outdoor staging, sound/mixing equipment, lighting equipment, scaffolding, and pedestrian railings to accommodate a minimum of three (3) stages throughout the 2016 Event. As necessary or required the BID and the Promoter may enter into an agreement further defining and describing the relationship between the BID and the Promoter. Aforementioned agreement will supersede any music festival related terms included in this agreement.
- 6) Ms. Brown shall be responsible for planning and organization of all food and beverage concessions in the Downtown venue only for the duration of the Event. The location of all food and beverage concessions shall be subject to licensing/permitting by the City.. Expense and revenue from the food and beverage concessions shall be the BID's.
- 7) Food and beverage sales may be subject to requirements of Event sponsorship agreement(s). The Promoter shall provide the BID with proof of such agreement(s) by providing the agreement(s) with any and all provision(s) that are not applicable to the BID redacted. If the BID does not agree that it can reasonably comply with the event sponsorship agreement(s) and/or if the BID reasonably believes that it cannot reasonably comply because of the redactions, it shall as soon as possible notify the promoter in writing of its inability to comply. In the event of such a notice the dispute resolution process in paragraph 31 shall be applied.

- 8) Following execution of this agreement by persons authorized to sign and bind the entity for which they sign, the City agrees to pay the Promoter a \$40,000.00 Host Community fee in two payments for its faithful performance of the terms of this Agreement to produce the Event. Payments will be made via check mailed to the Promoter's address in the following amounts and schedule: \$20,000.00 by December 31, 2015 and \$20,000.00 by April 15, 2016.
- 9) Except as otherwise provided herein, the Promoter shall negotiate and contract sponsorship(s) for the Event. Revenue derived from sponsorship(s), other than music and alcohol, will belong solely to the Promoter.
- 10) On or before February 15, 2016 the Promoter shall prepare and provide to the City a plan for the location and conduct of the 2016 Event ("Event Plan" or "the Plan.") The Plan shall include but not be limited to the locations for the 2016 Event activities. The City Representative will review the Plan and if Ms. Ashbeck finds it acceptable in her sole discretion, approve the Plan in writing within 30 days of its submittal. If the Plan is not acceptable the City Representative and the Event Representative may negotiate until a final, mutually acceptable plan is determined. In any event a plan must be agreed to on or before April 1, 2016 or this agreement will terminate. Promoter shall promote, produce and manage the 2016 Event in a manner that is customary to events of the type and scope thereof.
- 11) The Promoter and BID may use the Downtown streets and public places agreed upon in the Plan at no cost to it for the 2016 Event.
- 12) In addition to the \$40,000 Host Community fee Public Safety, Traffic Control, EMS/First Aid and Sanitation shall be provided by the City as an in-kind service in an amount not to exceed the value of \$10,000.00. The City will use its best efforts to provide necessary safety equipment (e.g., barriers, signs, traffic control) and personnel within the \$10,000.00 in-kind budget. If the City is unable to provide the necessary equipment and services for \$10,000.00, the City must provide Promoter written notice 90 days prior to the Event. The Promoter shall pay any and all cost in excess of that amount. The City agrees no other services it provides to or for the Event shall be included in the in-kind services \$10,000.00 budget.
- 13) The Promoter shall pay for the provision, maintenance, and removal of all portable toilets and wash stations in such numbers and at such locations as necessary to support all venues both in Downtown and at other remote locations of the Event as described in the Plan.
- 14) Epic Rides may contract with any service provider(s) for the planning, promotion, and production of the Event so long as the same are subject to the terms of this Agreement as applicable, including but not limited to the contractor(s) working through the City's and the Promoter's designated representatives.

- 15) The Promoter shall, within ninety (90) days after the Event provide to the City's Representative a written report of the estimated economic impact of the Event on Grand Junction, which shall be based on actual data collected during the annual Event through the efforts of Epic Rides, the Greater Grand Junction Sports Commission, and the VCB. Data collected will be measured against benchmarks established through the 2013 economic impact analysis of the Whiskey Off-Road conducted by Arizona State's Siedman Research Institute
- 16) The Promoter shall own all rights to its intellectual property related to, and created by, the Event, including registered trademark(s) and trade name(s) logo(s) and copyright(s.) The City by and with this agreement licenses and authorize the Promoter to use its logo for purposes of production and marketing of the Event.
- 17) This Agreement may be terminated upon default of Promoter. If the Promoter defaults on any of the terms and conditions contained herein Promoter shall immediately repay the funds to the City.
- 18) Promoter hereby agrees to indemnify and hold harmless the City, the BID and its officers, agents and employees of both from and against any and all loss of, or damage to, property or injuries to, or death of any person or persons and shall indemnify and hold harmless the City and the BID, their respective officers, agents and employees from any and all claims, suits, damages, costs, expenses, liabilities, actions or proceedings arising out of the Promoter's activities and/or the Promoter's negligence and including acts and omissions of the Promoter's officers, employees and representatives. The Promoter's obligation to indemnify or hold harmless the City and the BID, their respective officers, agents and employees under this paragraph shall not apply to liability or damages resulting from the negligence of the City's and/or BID's officers, agents and employees. This paragraph shall survive the termination of this Agreement.
- 19) The Promoter further agrees to secure and deliver to the City Representative, by March 31, 2016 and to keep in force at all times during the duration of the Event, a general liability policy covering all of the Promoter's operations hereunder with a minimum combined single limit amount of one million (\$1,000,000.00) dollars for each occurrence with a deductible of not more than \$5000. The Promoter shall provide the City with a certificate evidencing the existence of the insurance required above. The Certificate of Insurance shall contain valid provisions or endorsements stating "the insurance coverage under this policy will not be canceled or otherwise terminated without first giving thirty days prior written notice to the City Attorney at 250 N. 5th Street, Grand Junction, Colorado, 81501 sent by certified mail, return receipt requested." The general liability policy shall contain a valid provision or endorsement stating that it includes blanket contractual liability coverage and that the coverage afforded the City (including the VCB) and the BID as additional insureds shall be primary coverage.
- 20) The Promoter shall procure and maintain worker's compensation insurance with an authorized insurance company or through the Colorado State Compensation Insurance Authority or through an authorized self-insurance plan approved by the State of

Colorado, insuring the payment of workers benefits to all its employees. The Promoter shall provide the City Representative with certificate(s) showing that the Promoter has the required worker's compensation insurance. The City requires this type of insurance because of the possible interpretations that might exist of whom may be considered an "employee" of an event. Normally, volunteers are not compensated and are not "employed." The workers compensation statute does, in fact, exempt "volunteers" because, generally, a volunteer is not an employee. There may be a situation, however, where a "volunteer" may be converted to an "employee" if he/she expects or receives compensation or successfully argues that an employment relationship was created. The potential exists that a volunteer, if injured, could argue that he/she created or intended to create an employment relationship with the Promoter and that workers compensation is due. The Promoter shall provide workers compensation insurance for all persons with which it creates an employment relationship. Promoter shall satisfy itself that workers compensation insurance is or is not required due to the nature of the event and its management. By accepting Funds the Promoter affirmatively represents that it has done the same.

- 21) The City and/or the BID by and through the funding or otherwise supporting the 2016 Event is(are) not creating an employment relationship with the Promoter or any person or persons producing or assisting in the production of the event. If an event-related injury arises which is outside of the insurance coverage provided by the Promoter, the Promoter shall fully indemnify and defend the City, the BID and its officers and employees from any and all claims.
- 22) Notices concerning this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement and other notices of similar importance shall be made in writing by the City and/or BID to Promoter at 534 N. Stone Ave. Tucson, AZ 85705 and by the Promoter to the City in care of the City Attorney at 250 North 5th Street, Grand Junction, Colorado 81501, by prepaid United States mail, return receipt requested.
- 23) The Promoter agrees not to assign, pledge or transfer its duties and rights in the Agreement, in whole or in part, without first obtaining the written consent of the City.
- 24) No assent, express or implied, to any breach of any one or more terms and conditions of this Agreement shall be deemed to be or taken to be by the City as a waiver of any subsequent breach of such terms or conditions.
- 25) The City shall have the right to audit, examine and copy Promoter's records related to this Agreement. Promoter shall retain these records for three years after the completion of the event funded under this Agreement and shall make such records available to the City, within the City, upon request.
- 26) For all purposes under this Agreement, Promoter is not intended to be an employee of the City or of the BID nor shall it be construed that the Promoter or its employees, agents,

volunteers or any person claiming a relationship to, through or with the Promoter are employees, officers or agents of the City or of the BID for any purpose whatsoever.

- 27) The Promoter agrees that it, its subsidiaries, affiliates, principals or employees, will not engage in any transaction, activity or conduct which would result in a conflict of interest with or activity which may be construed there as reflecting adversely on the City of Grand Junction and/or the BID. The Promoter represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment or actions of the Promoter by placing the Promoter's own interests, or the interest of any party with whom the Promoter has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this agreement in the event such a conflict exists after it has given the Promoter written notice which describes the conflict. The Promoter shall have fourteen days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City. Failure to eliminate or cure the conflict of interest may as determined by the City Representative constitute an event of default as provided by this Agreement or by law.
- 28) The Promoter shall promptly pay, when they are due, all taxes, excises, and license fees of whatever nature applicable to the event funded under this Agreement and shall take out and keep current all required municipal, county, state or other regulatory agency licenses required to perform the event. The City of Grand Junction agrees to waive City of Grand Junction permit fees related to this event. The Promoter shall furnish the City Representative, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. The Promoter shall promptly pay, when due, all bills, debts and obligations incurred.
- 29) The Promoter shall assure that the 2016 Event shall comply with applicable laws, rules, regulations and codes of the United States, the State of Colorado, and with the charter, ordinances, rules and regulations of the City of Grand Junction.
- 30) Promoter agrees that the event funded under this Agreement and all publicity and advertising thereof, shall comply with all applicable trademark and copyright laws, rules, regulations and copyright unless the Promoter has obtained proper permission and all releases and other necessary documents. Promoter agrees to release, indemnify and save harmless the City and the BID, the officers, agents, and employees of both, from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the event funded under this agreement which infringes upon any trademark, patent or copyright protected by law.
- 31) Disputes arising under or related to this Agreement shall be resolved by mediation by a mediator agreed to by both parties. If mediation is unsuccessful the parties expressly reserve the right to arbitrate or file a cause of action pursuant to the Colorado Rules of

Civil Procedure. The parties hereto agree that mediation shall be a precondition to other action being taken.

- 32) In the event any records made available to the City for audit are requested to be produced to a third party under or in accordance with the Colorado Open Records act and/or a subpoena, the City shall provide written notice to the Promoter and the Promoter may assert any legal reason(s) that it may have to not produce the records. All reports and other documents submitted to the City by the Promoter become and are the property of the City and the City may, without restriction, make use of such documents without additional consent and/or compensation of any kind to the Promoter. The Promoter shall not be liable for any damage which may result from any use of said documents for purposes other than those described in the Agreement.
- 33) In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.
- 34) The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Promoter, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Promoter that any other person other than the City, the BID or the Promoter receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.
- 35) This Agreement shall be deemed to have been made and performed in, and shall be construed and interpreted in accordance with the laws of, the City of Grand Junction, Mesa County, Colorado.
- 36) The parties agree that in the performance of the terms and requirements of this Agreement that time is of the essence.
- 37) The parties acknowledge and agree that the provisions contained herein constitute the entire Agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the City Representative, or his/her designee, shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.
- 38) This Agreement is expressly subject to and shall not become effective or binding on the City and/or the Promoter until it is fully executed by all signatories. If any part of this Agreement is determined to be invalid or unenforceable, that part will be amended to achieve, as nearly as possible, the same effect as the original. The invalidity or unenforceability of any provision shall not affect the enforceability of the remainder of this Agreement, unless such invalidity or unenforceability would materially alter the

consideration due a party, in which event, the affected party may elect to rescind this Agreement.

- 39) This Agreement may be executed in counterparts. Each counterpart shall be deemed an original and all taken together shall constitute one and the same instrument.
- 40) Unless the context requires otherwise, words denoting the singular shall be construed as including the plural, and words in the plural shall be construed as including the singular. Words of one gender shall be construed as including another gender or neuter if appropriate within the context.
- 41) This Agreement is a result of negotiations between the parties. Therefore, this Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared it.
- 42) If the performance of any party or any of its obligations under this Agreement is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the party obligated to perform (a "Force Majeure"), then the party so affected shall, upon giving written notice to the other party, be excused from such performance to the extent such prevention, restriction, interference or delay, provided that the affected party shall use its best efforts to avoid or remove such causes of nonperformance and shall continue performance with its best efforts whenever such causes are removed. Force Majeure, shall include, but shall not be limited to, inclement weather which might reasonably impact the safety of Event riders, whether through direct contact, or through such weather's effect on the trails, as determined solely by Epic Rides or the City of Grand Junction, Colorado State Patrol, or Grand Junction Field Office of the Bureau of Land Management.

If the terms and conditions set forth above are acceptable to you, please sign and date the enclosed copy of this letter and return the same. As your event planning progresses please let me know and we can work on finalizing an agreement. If the terms are acceptable we will sign as indicated and consider this to be a binding agreement.

EPIC RIDES
Mountain Bike America, LLC

By: 

Todd Sadow
President

CITY
City of Grand Junction

By: 

Tim Moore
Interim City Manager