

**MEMORANDUM OF UNDERSTANDING**  
**FOR THE OPERATION OF BAYVALE PARK**

THIS MEMORANDUM OF UNDERSTANDING ("the Agreement") is made and entered into this 02 day of March, 20 23, by and between AUGUSTA, GEORGIA (hereinafter referred to as "Augusta"), a political subdivision of the State of Georgia, by and through its Parks and Recreation Department and AUGUSTA R/C SUPERCROSS, INC., a domestic not-for-profit corporation with business address of P.O. Box 333  
(hereinafter referred to as "R/C Supercross"). Evans GA 30809

**WHEREAS**, Augusta and R/C Supercross deem that it would be beneficial to both the Augusta taxpayers and local Augusta residents for R/C Supercross and Augusta to jointly operate Bayvale Park ("The Park"), located at 3470 Milledgeville Road, Augusta, GA 30909.

**WHEREAS**, R/C Supercross will accept the responsibility to staff, develop, and implement sound programs, specifically remote control car racing for nitro and electric cars, for the best interest of this community; and

**NOW, THEREFORE**, for and in consideration of the mutual promises and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**I. RESPONSIBILITIES OF R/C Supercross**

1. R/C Supercross shall provide staff and volunteer members for the operation and maintenance of the Park as it relates to remote control car racing.
  - i. "Staff," "staff members," and/or "members of staff" is hereby defined as individuals who are certified in CPR and First Aid and are employees of R/C Supercross.
  - ii. "Volunteer members" are individuals who are certified in CPR and First Aid and have entered into a volunteer agreement with R/C Supercross.
  - iii. R/C Supercross is responsible for selecting adequate staff and volunteer members, and shall practice and apply due diligence in the pre-employment and employment of said members. This includes but is not limited to background checks, drug and alcohol testing, and other measures as deemed necessary by R/C Supercross. R/C Supercross shall communicate to staff or volunteer members all restrictions, obligations, and responsibilities of R/C Supercross and R/C Supercross's staff and volunteer members.
2. R/C Supercross shall meet with Augusta annually ("the annual meeting") to discuss operations and programs, as well as any changes, modifications, or amendments to this lease agreement and/or any fees that may need to be

modified or implemented. The annual meeting shall be held no later than June 30 of the calendar year.

3. R/C Supercross shall be an organization incorporated by the State of Georgia, and at all times maintain good standing as such. R/C Supercross shall at all times be a tax-exempt organization under 501(c)(3) of the Internal Revenue Code. At the annual meeting, R/C Supercross shall provide the Director of the Parks and Recreation Department of Augusta proof of its good standing as an incorporated organization and its IRS tax filing for the previous financial year.
4. R/C Supercross shall maintain a current inventory of all supplies furnished by Augusta for the Park. A copy of this inventory shall be provided at the annual meeting.
5. R/C Supercross shall follow all policies, rules, regulations and administrative procedures in place for the operation of parks owned by Augusta, Georgia.
6. R/C Supercross shall receive the proceeds from their programming conducted at the Park. R/C Supercross in its accounting shall set aside these revenues as specially marked and shall not commingle these monies with any other funds. In order to accommodate the requirement of this paragraph, R/C Supercross may, but is not required to, maintain separate financial accounts at an FDIC-insured institution to accomplish this accounting purpose. R/C Supercross shall only expend those revenues on the following and for no other purpose:
  - i. Materials or supplies solely for the use of the Park;
  - ii. Maintenance of the Park or services directly and solely in support of the Park, except that in no way shall this provision be expected to relieve Augusta from its obligations to provide janitorial, maintenance, and cleaning supplies under II(2) of this Agreement;
  - iii. Wages for staffing at the Park, or stipends for volunteers at the Park; and
  - iv. Supplies or other physical goods solely for the use or support of programming solely held at the Park, such as program supplies.
7. R/C Supercross shall receive any generated revenues through fundraising conducted at the Park. "Fundraising" in this paragraph shall mean those programs solely for the purpose of generating excess funds for R/C Supercross above and beyond the cost of the programming itself.
8. R/C Supercross shall maintain an accounting of the number of patrons by program and activity, and the revenue received by program and/or activity. R/C Supercross shall provide a quarterly report and an annual report, on a form provided by Augusta, of the aforementioned information.

9. R/C Supercross shall provide a summary report of revenues and expenditures at the annual meeting.
10. R/C Supercross shall perform general maintenance of the park, which includes maintaining the racetrack and picking up litter from the grounds. The Director of the Parks and Recreation Department has the sole discretion to determine the compliance of this paragraph and reserves the right to direct R/C Supercross to conduct specific maintenance activities on an irregular or regular basis for the Park particular needs or for the needs of Augusta. Augusta shall be responsible for providing such items and supplies to R/C Supercross as is required to comply with this paragraph.
11. R/C Supercross agrees to indemnify and hold harmless Augusta, its officers, employees, and agents from and against any and all liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees, arising out of or resulting from R/C Supercross's operation of the Park or any other part of this Agreement, except as a result of Augusta's own negligence or responsibilities under this Agreement. R/C Supercross further agrees that the foregoing agreement to indemnify and hold harmless applies to any claims for damage or injury to itself and/or any individuals employed or retained by it in connection with any changes, additions, alterations, modifications and/or improvements made to the Park, and hereby releases Augusta, its officers, employees, and agents from liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees in connection with the aforementioned.
12. R/C Supercross shall, at all times that this Agreement is in effect, cause to be maintained in force and effect an insurance policy that will ensure and indemnify Augusta against liability or financial loss resulting from injuries occurring to persons or property or occurring, as a result of any negligent error, act or omission of R/C Supercross during the term of this Agreement. R/C Supercross shall provide, at all times, Worker's Compensation insurance in accordance with the laws of the State of Georgia. Augusta will be named as an additional insured with respect to R/C Supercross's liabilities hereunder in insurance coverages. The policies shall be written by a responsible company(s), to be approved by Augusta, and shall be noncancellable except on thirty (30) days' written notice to Augusta. The requirements contained herein, as well as Augusta's review or acceptance of insurance maintained by R/C Supercross is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by R/C Supercross under this Agreement:
  - i. Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

- ii. Additional Insured – R/C Supercross agrees to endorse the Augusta as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'Augusta as its interest may appear'.
  - iii. Certificate of Insurance – R/C Supercross agrees to provide Augusta a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. If R/C Supercross receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, R/C Supercross agrees to notify Augusta within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.
  - iv. Upon an affidavit by R/C Supercross that there are no employees of the R/C Supercross and shall be no employees, the Worker's Compensation requirement shall be waived.
13. R/C Supercross shall follow all safety guidelines set forth by Augusta. R/C Supercross shall immediately notify Augusta of any violation of law, including but not limited to trespass, burglary, theft, assault, and/or battery. R/C Supercross shall immediately notify Augusta in the event of any property damage to the Park. R/C Supercross shall immediately notify Augusta in the event of any medical emergency, accident resulting in injury or property damage, or in the event of break-ins, property damage, emergencies, injuries, or incidents. An Augusta-issued incident report must be submitted immediately following the incident.
14. R/C Supercross shall abide by all federal, state, and local laws.
15. R/C Supercross acknowledges and consents that at all times the Park remains the property of Augusta. Augusta may, at any time, for any reason or for no reason, with notice or without notice, enter and inspect any part or portion of the Park and its premises.
16. R/C Supercross shall not utilize the Park for any purpose other than for the benefit of the population at large. R/C Supercross, its officers, staff, and volunteer members shall not utilize the Park or any part or portion thereof except as necessary to perform its obligations and responsibilities under this Agreement.

## **II. RESPONSIBILITIES OF AUGUSTA**

1. Augusta shall provide utilities for the Park, as well as provide repairs and technical maintenance. Whether any particular obligation or responsibility of "maintenance" is an obligation of Augusta or of R/C Supercross is at the sole

discretion of the Director of the Parks and Recreation Department of Augusta, Georgia.

2. Augusta shall provide for trash collection and recycling from the existing refuse and recycling bins on the premises of the Park. Augusta shall provide janitorial, cleaning, and other maintenance supplies for Park.
3. Augusta shall comply with all federal, state, and local laws, including, but not limited to, ensuring that the Park complies with the Americans with Disabilities Act (ADA).
4. Augusta shall provide guidelines, manuals, or rules concerning any obligation or responsibility of R/C Supercross under this Agreement.
5. Augusta shall be responsible for managing any and all improvements to the park, or other property owned by Augusta regardless of funding source.
6. Augusta shall provide, at all times, contacts for persons within Augusta to R/C Supercross for R/C Supercross to perform its obligations and responsibilities under this Agreement.
7. Augusta may, but is not required to, provide personnel to assist R/C Supercross with those responsibilities as described in this Agreement, including, but not limited to, facility and playground inspections, order maintenance supplies, submit work orders, and help assist with programming.

### **III. GENERAL TERMS**

1. The law of the State of Georgia shall govern the Agreement between Augusta and R/C Supercross with regard to its interpretation and performance, and any other claims related to this agreement. All claims, disputes and other matters in question between Augusta and R/C Supercross arising out of or relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. R/C Supercross, by executing this Agreement, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.
2. R/C Supercross acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, R/C Supercross is deemed to possess knowledge concerning Augusta's ability to assume contractual obligations and the consequences of R/C Supercross's provision of goods or services to Augusta under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that R/C Supercross may be precluded from recovering payment for such unauthorized goods or services. Accordingly, R/C Supercross agrees that if it provides goods or services to Augusta under a

contract that has not received proper legislative authorization or if R/C Supercross provides goods or services to Augusta in excess of any contractually authorized goods or services, as required by Augusta's Charter and Code, Augusta may withhold payment for any unauthorized goods or services provided by R/C Supercross. R/C Supercross assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, however characterized, including, without limitation, all remedies at law or equity.

3. The terms of this agreement supersede any and all provisions of the Georgia Prompt Pay Act.
4. The term of this Agreement shall terminate absolutely and without obligation on the part of Augusta each and every December 31<sup>st</sup>, unless terminated earlier in accordance with the termination provisions of the Agreement. This Agreement automatically renews on each January 1<sup>st</sup>, unless terminated in accordance with the termination provisions of the Agreement. This Agreement terminates absolutely, with no further renewals, on December 31, 2024, which is two (2) years from the Effective Date of this Agreement.
5. This Agreement shall supersede any and all previously executed agreements between the parties.
6. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.
7. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
8. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
9. This relationship is intended solely for the mutual benefit of the parties hereto, and there is no intention, express or otherwise, to create any rights or interests for any party or person other than R/C Supercross and Augusta; without limiting the generality of the foregoing, no rights are intended to be created for any student, parent or guardian of any student, spouse, next of kin, employer, prospective employer, or any other third party.

10. Neither party, or its agents or employees, is an agent, employee, or servant of the other party. Augusta and R/C Supercross acknowledge and agree that the volunteer participants are not employees of R/C Supercross or Augusta by reason of such participation. Volunteer participants shall in no way hold themselves out as employees of R/C Supercross or Augusta.
11. Except as otherwise provided in this Agreement, R/C Supercross may not transfer, sell, or otherwise contract with any other person or organization its obligations or responsibilities in this Agreement without prior written approval of Augusta.

#### **IV. TERMINATION AND NOTICES**

1. To the extent that it does not alter the scope of this Agreement, Augusta may unilaterally order an immediate temporary halt of the performance by R/C Supercross under this Agreement.
2. Failure of R/C Supercross to perform or otherwise comply with any condition, obligation, procedure, undertaking, or any other term of the Agreement shall constitute default. Augusta may terminate this contract in part or in whole upon written notice to R/C Supercross pursuant to this term.
3. The parties may terminate this Agreement in part or in whole upon sixty (60) days' written notice to the other party.
4. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, local states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, or the availability of funds in the budget of Augusta.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

**AUGUSTA R/C SUPERCROSS, INC.**

**AUGUSTA, GEORGIA**

By: 

By: \_\_\_\_\_

Name: Robert Davis

Name: \_\_\_\_\_

Title: CEO

Title: \_\_\_\_\_

Date: 3-2-2023

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: Lena J. Bonner

Title: Clerk of Commission

Address for Notices:

Address for Notices:

Augusta R/C Supercross, Inc.

Augusta, Georgia

Attention: Robert Davis

Office of the Mayor

P.O. Box 333

Mayor Garnett L. Johnson

Evans, GA 30809

535 Telfair Street, Suite 200

Augusta, GA 30901

With copies to:

ARC Law Department

Wayne Brown, General Counsel

535 Telfair Street, Building 3000

Augusta, GA 30901

Augusta Parks & Recreation Department

Maurice McDowell, Director

2027 Lumpkin Road

Augusta, GA 30906



# STATE OF GEORGIA

Secretary of State  
Corporations Division  
313 West Tower  
2 Martin Luther King, Jr. Dr.  
Atlanta, Georgia 30334-1530

## CERTIFICATE OF INCORPORATION

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

**Augusta R/C Supercross, Inc.**  
a Domestic Nonprofit Corporation

has been duly incorporated under the laws of the State of Georgia on **08/05/2022** by the filing of articles of incorporation in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on **08/16/2022**.



*Brad Raffensperger*

Brad Raffensperger  
Secretary of State

**ARTICLES OF INCORPORATION**

\*Electronically Filed\*  
Secretary of State  
Filing Date: 8/5/2022 12:03:41 PM

**BUSINESS INFORMATION**

**CONTROL NUMBER** 22173983  
**BUSINESS NAME** Augusta R/C Supercross, Inc.  
**BUSINESS TYPE** Domestic Nonprofit Corporation  
**EFFECTIVE DATE** 08/05/2022

The corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

**PRINCIPAL OFFICE ADDRESS**

**ADDRESS** P.O. Box 333, Evans, GA, 30809, USA

**REGISTERED AGENT**

NAME	ADDRESS	COUNTY
Robert Anthony Davis	5785 Brian Ln, Grovetown, GA, 30813, USA	Columbia

**INCORPORATOR(S)**

NAME	TITLE	ADDRESS
Robert Anthony Davis	INCORPORATOR	P.O. Box 333, Evans, GA, 30809, USA

**MEMBER INFORMATION**

The corporation will not have members.

**OPTIONAL PROVISIONS**

N/A

**AUTHORIZER INFORMATION**

**AUTHORIZER SIGNATURE** Robert Anthony Davis  
**AUTHORIZER TITLE** Incorporator



AUGURCS-01

BSANDERS

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/2/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
ACHS insurance  
1201 Town Park Lane  
Evans, GA 30809

CONTACT NAME: **Dillon Howlett**PHONE (A/C, No, Ext): **(706) 868-1610**

FAX (A/C, No):

E-MAIL ADDRESS: **dhowlett@achsinsurance.com**

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: **Scottsdale Insurance Company**

41297

INSURED

**Augusta RC Supercross**  
PO BOX 333  
Evans, GA 30809

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	PAV0077988	3/17/2022	3/17/2023	EACH OCCURRENCE \$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
						MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
						\$
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	OTHER:					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO OWNED AUTOS ONLY					BODILY INJURY (Per person) \$
	HIRED AUTOS ONLY					BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	NON-OWNED AUTOS ONLY					\$
	UMBRELLA LIAB					EACH OCCURRENCE \$
	EXCESS LIAB					AGGREGATE \$
	DED RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)	Y/N	N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

City of Augusta as its interest may appear

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE