

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and between the City of Lompoc, a municipal corporation ("City") and the Lompoc Valley Park, Recreation and Pool Foundation, Inc., a California public benefit non-profit corporation ("LVPRPF").

RECITALS

- A. LVPRPF desires to install an interim Off-Highway Vehicle Park (the "Kid's Motorcycle Fun Park") at River Park (the "Property") to increase the recreational activity opportunities for youth in the community and region.
- B. The Property is illustrated and further defined in [Exhibit A](#), which by this reference is incorporated herein.
- C. City has indicated a willingness to grant LVPRPF, through its Motorsport Park Committee (the "Committee") access to and use of the Property for the installation of the Kid's Motorcycle Fun Park.
- D. The parties desire to enter into this MOU to establish a framework for a productive working relationship for the design and construction of the Kid's Motorcycle Fun Park in a quality and timely manner.
- E. At its meeting of February 26, 2013, City's City Council approved this MOU.

Now, therefore, in consideration of the foregoing and the terms set forth below, the parties agree as follows:

1. Recitals. The foregoing Recitals are incorporated into this MOU.
2. Scope of Development. LVPRPF, through the Committee, shall design and construct the Kid's Motorcycle Fun Park that conforms to the conceptual plan attached hereto as Exhibit A (the "Conceptual Plan"). The Conceptual Plan shall conform with the following Conditions of Approval and the requirements of the then current City Codes, including State Building, Fire, Mechanical, Plumbing, Electrical, Energy, and Green Building and all related codes and regulations:
 - A. Fire extinguishers of a type determined by the Fire Department shall be provided in areas designated by the Fire Marshal during the parks hours of operation.

- B. Volunteers that have been designated to oversee daily park operations shall be trained in basic first-aid and CPR.
 - C. The parks operations plan shall include procedures that shall be followed in the event of an injury, including but not limited to how police/fire dispatch will be notified.
 - D. Accessible hard surface path of travel must be provided to the main entrance and bathrooms.
 - E. Permits are required for electrical, plumbing, building and installation of the trailer. The trailer must be secured by an approved anchoring system. An accessible ramp must be provided into the trailer.
 - F. Fence and gates should be protected with straw bales or other suitable safety barriers.
 - G. LVPRPF shall provide the City with the Head Volunteer name and phone number assigned to the Park. This individual will be responsible for coordinating all items for construction, including preparing plans, obtaining permits, coordinating construction including dust control, responding to complaints, and ensuring all work conforms to the requirements of this MOU.
3. Schedule of Performance. The parties agree the design, installation, maintenance and operation of the Kid's Motorcycle Fun Park shall meet the timeframes outlined in the Schedule of Performance described in [Exhibit B](#), which by this reference is incorporated herein.
4. City Work. City shall pay for any necessary City Permits.
5. Maintenance and Operation. An Operation Plan for the Kid's Motorcycle Fun Park is attached hereto as [Exhibit C](#), which the City shall rely on for maintenance and operation of the Kid's Motorcycle Fun Park. All items necessary for maintenance and operation shall be funded by LVPRPF at no cost to City, except as noted in the Operations Plan.
6. Improvements for and Closure of the Kid's Motorcycle Fun Park.
- A. The Kid's Motorcycle Fun Park shall be designed to meet all required Conditions of Approval for the Kid's Motorcycle Fun Park. Items include, but are not limited to, plans and documentation referenced in the Conditions of Approval and required permits. All items necessary for design, permitting and construction shall be funded by LVPRPF at no cost to City, except as noted herein.

- B. Construction Oversight. LVPRPF shall oversee the volunteer training, management and construction of the Kid's Motorcycle Fun Park.
- C. Grading. The Kid's Motorcycle Fun Park will be left flat with no track improvements. No hills, jumps, paths, walls or any other obstacles will be allowed in the Kid's Motorcycle Fun Park, other than safety barriers and unfixed, portable traffic cones. No grading shall be done for the Kid's Motorcycle Fun Park, other than that necessary for construction of the parking lot and access driveway.
- D. Irrigation. LVPRPF shall furnish and install all improvements necessary to provide water to the Park for dust control. Improvements shall include, but not be limited to: a pressure tank and pressure switch at the existing pumphouse, irrigation line from pumphouse to Park, and no less than three (3) hose bibs at the Park. LVPRPF shall use the existing well and re-use any existing improvements in the pumphouse at their own risk. Repairs and maintenance of the well and water delivery system will be funded by LVPRPF. Installation of all improvements within the pumphouse shall be performed by a licensed contractor hired by LVPRPF. A licensed contractor shall verify the water delivery system is designed per the manufacturer's recommendations of City well pump. All improvements shall be of adequate size and type to minimize rapid cycling or other damage to City well pump. A licensed contractor shall inspect, test and maintain the water delivery system annually and a copy of the report shall be provided to City.
- E. Electrical. A licensed contractor shall install all improvements necessary to provide electricity to the LVPRPF furnished office trailer and City well. LVPRPF shall be billed directly by the utility. Failure to pay the utility bill could result in closure of the Kid's Motorcycle Fun Park by City, at City's sole discretion.
- F. Office Trailer. LVPRPF shall furnish and install an office trailer. The trailer shall be installed as required by the Building Code.
- G. Fencing. Installation of all fencing and gates for the Kid's Motorcycle Fun Park shall be performed under the direction of LVPRPF. Such work shall be completed per the Conceptual Plans.
- H. Landscaping. No landscaping improvements are proposed.

- I. Other Improvements. LVPRPF shall provide, maintain and empty two trash receptacles in the parking lot in locations approved by City for the duration of the interim park.
- J. Chemical Toilets. LVPRPF shall provide at least one clean working chemical toilet, as well as removal of sewage, as needed, for the duration of the interim park. Failure to provide the toilet and removal of the sewage, as approved by City, could result in closure of the Kid's Motorcycle Fun Park by City, at City's sole discretion.
- K. Removal of Improvements. All parties agree and acknowledge the Kid's Motorcycle Fun Park is an interim use of the Property and the City has other short- and long-term uses planned for the location. Based on that understanding: if (i) in its sole discretion, City determines, at a duly noticed public meeting, it is in the best public interest to discontinue construction or operation of the Kid's Motorcycle Fun Park or (ii) the Kid's Motorcycle Fun Park is still on the Property three full calendar years after the effective date of this MOU, then LVPRPF shall be responsible for removal of all improvements installed as part of the Kid's Motorcycle Fun Park, as directed by City, or pay City no more than Two Thousand Dollars (\$2,000.00) to fund that removal. Such payment shall be made if LVPRPF fails to satisfactorily remove, as reasonably determined by City, the improvements within sixty (60) days after notice is sent from City to LVPRPF indicating construction of the Kid's Motorcycle Fun Park is to be discontinued or the Kid's Motorcycle Fun Park is to be closed and the improvements are to be removed.
- L. Indemnification and Insurance. LVPRPF shall ensure all contractors it hires or uses for the Kid's Motorcycle Fun Park (i) indemnify City, LVPRPF and each of their officers, employees and agents from any and all liability that may arise from that contractor's (or any of the contractor's officer's, employee's, agent's or subcontractor's) acts or omissions regarding that contract and (ii) carries general liability insurance in a minimum single-limit amount of \$1,000,000. LVPRPF shall provide an estimate as to the cost of all improvements.
- M. Volunteers. The parties understand individual volunteers may not be protected by the above referenced indemnities and insurance coverage for potential liability that could result for those volunteers' actions or inactions related to any construction activities of the Kid's Motorcycle Fun Park. LVPRPF shall inform each of those volunteers of that risk.

7. City Administrator Authority. Unless otherwise specifically stated, whenever this MOU requires an approval of City, such approval, at his/her sole discretion, may be given by City's City Administrator or his/her designee, if so designated in writing; provided, that the City Administrator, in his/her sole discretion, may decide to bring any matter to the City Council; and provided, further, that the City Council reserves the right to determine whether to terminate this MOU as described in Paragraph 8. The City Administrator also has the authority to allow minor deviations from the requirements of this MOU, if, in his/her sole discretion, he/she determines it is in the public interest to do so and such deviations are memorialized in writing.
8. Termination by City. City shall have the right to terminate this MOU in the event LVPRPF fails to comply with all the terms of this MOU, including all exhibits, unless such failure is caused by City. City's right of termination shall be subject to a 15-day notice.
9. Termination by LVPRPF. LVPRPF shall have the right to terminate this MOU in the event City fails to comply with all the terms of this MOU, including all exhibits. LVPRPF's right of termination shall be subject to a 15-day formal notice.
10. Notices.
 - A. Any formal notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of City and LVPRPF set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.
 - B. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

If to City:

City of Lompoc
Attn: City Administrator
100 Civic Center Plaza
P O Box 8001
Lompoc CA 93438-8001
Telephone – 805.875.8212
Facsimile – 805.875.8302

With a copy to:

Aleshire & Wynder, LLP
Attn: Joseph W. Pannone
2361 Rosecrans Avenue, Suite 475
El Segundo CA 90245-4916
Telephone – 310.527.6663
Facsimile – 310.532.7395

If to LVPRPF:

Jim Mosby
President, Lompoc Valley Park, Recreation and Pool
Foundation, Inc.
601 East Ocean Avenue, Suite 17
Lompoc CA 93436

Carl Creel
Chairman, LVPRPF Motorsports Park Committee
601 East Ocean Avenue, Suite 17
Lompoc CA 93436

11. Litigation Costs. If any legal action or any mediation or arbitration or other proceeding is brought for the enforcement or interpretation of this MOU, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this MOU, then the successful or prevailing party or parties will be entitled to recover reasonable attorneys' fees and other costs (including experts' fees and costs) incurred in that action or proceeding, in addition to any other relief to which they may be entitled.
12. Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. This MOU cannot be assigned without the written agreement of each party.

13. Governing Law. This MOU shall be governed, construed, interpreted and enforced in accordance with and under the laws of the State of California.
14. Entire Agreement. This MOU represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Kid's Motorcycle Fun Park. This MOU may not be amended unless agreed as such in writing and certified by the signatures of the parties hereunder.
15. Effective Date. It is understood and agreed this MOU shall not be effective until it has been signed by all parties and shall be effective as of the date it is signed on behalf of City.

THE CITY OF LOMPOC, a municipal corporation

Dated: _____, 2013

By: _____
Laurel M. Barcelona, City Administrator

ATTEST

APPROVED AS TO FORM:
Aleshire & Wynder, LLP

Stacey Alvarez,
City Clerk

By: _____
Joseph W. Pannone, City Attorney

[Signatures continued on page 8]

[Signatures continued from page 7]

LOMPOC VALLEY PARK, RECREATION AND
POOL FOUNDATION, INC. a California public
benefit non-profit corporation

Dated: _____, 2013

By: _____
Jim Mosby, President

Dated: _____, 2013

By: _____
Carl Creel,
Chairman of Motorsports Park Committee

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