

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("this 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 a River Bend Bike Park at the River Bend Park (the "Property") to increase the recreational activity opportunities for youth and others in the community and region (the "River Bend Bike Park Project").
- 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 River Bend Bike Park Committee (the "Committee") access to and use of the Property for the installation of the River Bend Bike Park Project.
- 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 River Bend Bike Park Project in a quality and timely manner.
- E. At its meeting of February 5, 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 River Bend Bike Park that conforms to the conceptual plan attached hereto as Exhibit A (the "Conceptual Plan"). The Conceptual Plan shall conform with Conditions of Approval and Mitigation Measures adopted by Planning Commission Resolution No. 406 (05) approving the Development Plan (DR 04-34) for the River Bend Park, Trail Master Plan (EIR 04-02) and the requirements of the then current Building code and all related codes and regulations.

3. Schedule of Performance. The parties agree the design, installation, maintenance and operation of the River Bend Bike Park shall meet the timeframes outlined in Schedule of Performance described in Exhibit B, which by this reference is incorporated herein.
4. City Work. City shall install the waterline and water meter on-site to service the River Bend Bike Park. (If, during grading, more water is needed than can be accommodated by that meter, then LVPRPF will rent a hydrant meter from City and connect that meter to the existing hydrant at the street.) Installation of all the infrastructure to serve the water needs of the River Bend Bike Park from the water meter installed by City shall be LVPRPF's sole responsibility and cost.
5. Design Professional. LVPRPF shall have the park designed by Hilride Progression Development Group, LLC ("Hilride") and ensure Hilride provides adequate insurance coverage for liability that may result from design of the River Bend Bike Park Project. Hilride has also provided a maintenance and operation plan for the River Bend Bike Park Project, attached hereto as Exhibit C, which City shall rely on for maintenance and operation of the River Bend Bike Park.
6. Improvements for and Closure of the River Bend Bike Park Project.
 - A. The River Bend Bike Project shall be designed to meet all required Conditions of Approval and Mitigation Measures of the approved River Park Master Plan. Items include but are not limited to plans and documentation referenced in the Conditions of Approval, required permits and any required monitors during construction. All documents shall be prepared by licensed professionals. 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 engage Hilride to oversee the volunteer training, management and construction of the River Bend Bike Park Project.
 - C. Mass Grading - Mass grading for the River Bend Bike Park Project shall be performed by a licensed contractor hired by LVPRPF. Such work shall be completed according to the stamped civil site grading and drainage plans, as approved and permitted by City (the "Approved Grading and Drainage Plans").
 - D. Irrigation - Except as provided in Paragraph 4., above, Installation of all irrigation, lines and connections for the River Bend Bike Park Project shall be performed by a licensed contractor hired by

LVPRPF. Such work shall be completed per the Approved Grading and Drainage Plans.

- E. Fencing - Installation of all fencing and gates for the River Bend Bike Park Project shall be performed by a licensed contractor hired by LVPRPF. Such work shall be completed per the Approved Grading and Drainage Plans.
- F. Landscaping - Installation of all landscaping for the River Bend Bike Park Project shall be performed on behalf of LVPRPF, under the supervision of Hilride. Such work shall be completed per the Approved Grading and Drainage Plans.
- G. Other Improvements - Other improvements for the River Bend Bike Park Project will include installation of wooden structures for use as confidence and skill builders for riders. Installation of those structures shall be performed on behalf of LVPRPF under the supervision of Hilride. Such work shall be completed per the drawings or specifications approved by City.
- H. Chemical Toilets – City shall provide two clean working chemical toilets for the River Bend Bike Park Project, as well as removal of sewage as needed. LVPRPF shall pay City for those toilets on a quarterly basis. City shall invoice LVPRPF in advance for each quarterly payment. Alternatively, LVPRPF can provide the two clean working chemical toilets, as well as removal of sewage, as needed, all subject to reasonable approval of City. Failure to make such payment timely or provide the toilets and for removal of the sewage, as approved by City, could result in closure of the River Bend Bike Park by City, at City’s sole discretion.
- I. Removal of Improvements - If, in its sole discretion, City determines, at a duly noticed public meeting, it is in the best public interest to (i) discontinue construction of the River Bend Bike Park Project before completion or (ii) within ten (10) years after the effective date of this MOU, close the River Bend Bike Park, then LVPRPF shall be responsible for removal of all improvements and landscaping installed as part of the River Bend Bike Park Project, as directed by City, or pay City no more than Ten Thousand Dollars (\$10,000.00) to fund that removal. Such payment shall be made if LVPRPF fails to satisfactorily remove, as reasonably determined by City, the improvements and landscaping within sixty (60) days after notice is sent from City to LVPRPF indicating construction of the River Bend Bike Park Project is to be discontinued or the River Bend Bike Park is to be closed and the improvements and landscaping are to be removed.

- J. Indemnification and Insurance - LVPRPF shall ensure all contractors it hires or uses for the River Bend Bike Park Project (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 \$2,000,000. LVPRPF shall provide a designer or an engineer's estimate as to the cost of all improvements.
- K. 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 River Bend Bike Park Project. 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.
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 fifteen-day (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 fifteen-day (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.
- C. 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

D. If to LVPRPF:

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

Dave Baker
Chairman, LVPRPF River Bend Bike 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 River Bend Bike Park Project. 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 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: _____
Dave Baker,
Chairman of Bike Park Committee

DRAFT