

**Memorandum of Understanding  
Between the City of Bay City  
and Bay City Gas Company  
for Construction and Maintenance of BMX Park**

This Memorandum of Understanding (the “MOU”) is entered into by and between the City of Bay City, Texas (“City”), and Bay City Gas Company (“BCGC”), collectively “the Parties.”

**Recitals**

**Whereas** the City and BCGC desire to enter into an MOU whereby the Parties would design, construct, manage, maintain, program, and operate a BMX Bicycle Park, as more particularly set forth herein; (the “Park”);

**Whereas** the City is stewards of public lands in the City, and the Parties recognize through cooperation, these publicly-held lands can be used to meet broader community needs for recreation and open space than either party can provide separately;

**Whereas** the Texas Interlocal Cooperation Act, codified at Chapter 791 of the Texas Government Code, authorizes the Parties to this Agreement who are governmental entities to contract with one another to perform governmental functions and services; and

**Agreement**

**Now Therefore**, in consideration of the mutual representations, warranties, covenants and promises herein contained, the parties hereto agree as follows:

**Article 1  
Goals of Mutual Cooperation**

1.1 **Purpose.** The purpose of this MOU is to establish and define the roles of each Party in relation to the Park; to provide for the Parties’ expectations regarding the construction and operation of the Park, and to provide for disposition of the Property in the event of termination of this MOU.

1.2 **Term.** This MOU will begin effective the date of final execution, below, and will continue until terminated in accordance with Paragraph 1.3.

1.3 **Termination.** Either Party may terminate this MOU in the event of a material breach of an obligation by the other Party that is not timely cured. If a Party intends to terminate this MOU as a result of a material breach, the Party must provide to the breaching Party a written notice of intent to terminate, identifying the breach or default and providing thirty (30) days for the breaching Party to cure the breach on or before the expiration of such 30 days by performing the defaulted obligation or, if such breach cannot reasonably be cured within 30 days, responding with an acceptable plan to cure the breach, which plan shall not unreasonably be rejected.

**Article 2**  
**BMX Park Cost Sharing**

2.1 **Responsibilities of the City.** The City shall be responsible presently and in the future for the following.

(a) **The Land.** The City shall provide the land for the BMX park at the location of the City Park currently known as the City Field, located at 3212 Avenue E, Bay City, Texas 77414;

(b) **Maintenance.** The City shall maintain the buildings, facilities, and other improvements outside of the perimeter walking track in a safe, clean and attractive condition and free of any litter. The City shall remove all trash and debris left on or near the tracks, and make sure that the park is free of any unsafe or dangerous conditions that may form outside of the BMX tracks;

(c) **Restroom.** The City shall maintain the existing restrooms of the park. Providing the public with functional, clean, and sanitary bathrooms; and

(d) **Rest Area Shade Structure.** The City shall provide a canopy shade of at least 100 square feet for the rest area that provides shade and UV protection for the patrons of the park. The parties agree that any expense in excess of \$5,000 shall be split equally by the Parties.

(e) **Picnic Tables.** The City shall purchase and install two (2) picnic tables at BCGC's expense, not to exceed the amount \$2,500.00 and shall be from a vendor previously used by the City. The Parties agree that any expense in excess of \$2,500.00, but not to exceed \$3,500.00, for the purchase of the picnic tables shall be split equally by the Parties.

(f) **Donations.** The City shall, through its police department, donate impounded bikes to BCGC to be given away to members of the community. The City and BCGC agree that the recipient(s) of the donated bikes shall have met any requirements set forth by BCGC before they are able to take the bike home.

(g) **Signage.** The City shall construct and install signage as designed by BCGC and approved by the Parties.

(h) **Construction.** The city shall assist BCGC in the construction of the BMX Park by providing the following:

- i. City shall remove existing backstop, dugouts, and other structures that are not to be included in the park design;
- ii. City shall provide grader or other earth moving equipment, if available to BCGC for initial construction work; and
- iii. City shall supply and deliver dirt and fill as requested by BCGC for initial construction and ongoing maintenance needs. BCGC will reimburse material cost only if purchased from a 3<sup>rd</sup> party vendor.

2.2 **Responsibilities of BCGC.** BCGC shall be responsible presently and in the future for the following:

(a) **Design.** BCGC shall design the BMX trails for the Park and provide the design plans to the City for approval prior to commencement of construction. BCGC shall not commence construction of the trails prior to receiving written approval of the design, such approval not to be unreasonably withheld.

(b) **Construction.** BCGC shall construct the BMX trails within the Park in accordance with the design approved by the City.

(c) **Security Lights.** BCGC shall repair existing lights or purchase and install new security lights for the Park. The Parties anticipate that the cost of the lights shall not exceed \$2,500.00 and agree that any cost for the purchase of the lights in excess of \$2,500.00 shall be split evenly between the parties. Lighting costs that exceed \$2,500 shall be agreed upon by both parties to ensure budget appropriation is in place. The lights will be approved by the City prior to purchase if new lighting is necessary for the BMX Bike Park.

(d) **Signage.** Signs are required to have the City and BCGC logo. It is required that there be at a minimum a sign for the following; BMX Park rules, skills rules, and the name of the park.

2.3 **Shared Responsibilities.** The Parties agree that upon completion of construction of the Park, the Parties shall continue to cooperate in the ongoing maintenance and operation of the Park as follows:

(a) **Continuing Maintenance.** The Parties agree to share one half (1/2) of the cost for any future improvements, labor, and/or repairs related to the BMX park. This shall include minimizing the presence of any ruts rocks, loose dirt, potholes, or similar conditions that may form on or around the track. The Parties also agree to share one half (1/2) of the cost for future amenity improvements such as picnic tables, park lighting, and shade structures.

(b) **Promotion.** The Parties shall promote the Park on their respective social media pages (i.e. Facebook, etc.). The City shall also promote the Park on the City website. BCGC shall promote the Park on the company website and the billing invoices that go out to the community. BCGC shall make efforts to engage civic clubs to support maintenance work, provide free bicycles, and/or to provide free bicycles helmets. Such participating civic organizations may be allowed to be recognized on the park signage.

### **Article 3 Dispute Resolution**

3.1 **Dispute Resolution.** While it is understood that the Parties shall strive in good faith to work collaboratively to fulfill the purpose of the MOU, each Party recognizes that legitimate conflicts may arise regarding the construction of the Park. Should a conflict related to construction arise, the Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this MOU, the Parties will first attempt to resolve the dispute by taking the following steps:

(a) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied Party to the other Party, which notice shall request a written response to be delivered to the dissatisfied Party not less than 5 days after receipt of the notice of dispute.

(b) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied Party, the dissatisfied Party shall give notice to that effect to the other Party whereupon each Party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute, which meeting and deadline for resolution shall occur not later than ten (10) days after notice is given pursuant to this subdivision (2).

(c) Should these efforts fail to timely resolve the dispute, in the opinion of the dissatisfied Party, the Parties shall mediate the dispute through the use of a mutually selected independent mediator, which mediation shall occur on or before 30 days after the failure of resolution at the step provided in subdivision (3). Should mediation efforts fail to resolve the dispute, either Party may terminate this MOU by providing written notice to the other. This MOU

shall terminate 10 days after receipt of such notice unless the Parties can come to an amenable resolution before the expiration of the 10-day notice period.

3.2 **Deadlines.** All deadlines with regard to steps in the process of resolution may be extended by written agreement of the Parties.

**Article 4**  
**Miscellaneous Provisions**

4.1 **Compensation.** The City and BCGC shall not be entitled to any compensation for work performed pursuant to this MOU.

4.2 **Nondiscrimination.** There shall be no discrimination of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, age, handicap, ancestry, or national origin in the administration of this Park.

4.3 **Severability.** In the event any provision of this MOU shall be found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity, legality, and enforceability of the remainder of this MOU.

4.4 **Entire MOU.** This MOU constitutes the entire MOU between the Parties on the subject matter hereof and supersedes any and all prior MOUs, arrangements, and understanding, oral or written, between the Parties relating to this MOU.

4.5 **Amendments.** This MOU may be amended at any time only in writing by the Parties with mutual consent and authorization of their respective entities.

4.6 **Recitals.** The recitals hereto are incorporated herein for all purposes.

**In witness whereof,** the Parties hereto certify by their signatures below that they are duly authorized to sign this MOU.

ATTEST:

CITY OF BAY CITY, TEXAS:

\_\_\_\_\_  
JEANNA THOMPSON  
City Secretary

\_\_\_\_\_  
ROBERT K. NELSON  
Mayor

ATTEST:

BAY CITY GAS COMPANY:

\_\_\_\_\_  
THOMAS GWOSDZ  
Attorney

\_\_\_\_\_  
KEVIN HECHT  
Director