

## **MEMORANDUM OF AGREEMENT BETWEEN**

### **THE CITY OF RAPID CITY**

**and**

### **Rapid City BMX, Inc.**

This agreement is by and between the City of Rapid City, South Dakota, a municipal corporation (hereinafter referred to as City), and Rapid City BMX, Inc., (hereinafter referred to as BMX Inc.), a non-profit organization in Rapid City, South Dakota.

### **PREAMBLE**

The subject of this agreement is a portion of the Rapid City Greenway approximately 3.67 acres located on West Omaha St, Hwy 44 in Rapid City, SD.

The City has approved BMX Inc, to pursue development planning of this parcel for a BMX facility. The BMX facility will be leased to BMX Inc, upon City acceptance of the final plans and specifications according to a city-approved development plan.

The BMX facility will be designed for active outdoor recreation and be operated and managed by BMX Inc. as a membership only facility consistent with the sanctioning body, USA BMX or its successor. The facility may be opened to the public at times prescribed by BMX Inc. Improvements are intended to create a facility to replace an existing facility operated by BMX within Robbinsdale Park.

### **AGREEMENT**

The City and BMX Inc. agree to cooperate in development planning for a Proposed BMX facility at this location in the Greenway at 1801 W Omaha Street and legally described as:

Tract 15 Revised in Section 35, Township 2N, Range 7E of Pennington County, South Dakota.

Both the City and BMX Inc, agree to the following regarding the BMX Facility:

1. BMX Facility. BMX Inc, shall pursue fundraising and planning for development of a new BMX facility that they will lease from the City upon completion. The City will be responsible for review and final approval of the BMX Facility and the planned improvements.

2. Intended Use of BMX Facility. The BMX Facility shall be operated and maintained by BMX Inc, as a membership only facility consistent with the sanctioning body, USA BMX or its successor. Subject to the membership requirements set forth above, the facility shall be open to the public at times prescribed or scheduled by BMX Inc.

3. Planning & Design. Unless otherwise agreed to by the City, BMX Inc agrees to provide all funds and resources for planning and design of the BMX Facility. BMX shall work with the City throughout the planning process and shall be responsible for submitting all necessary Development Applications to the City for review.

4. Construction. Unless otherwise agreed to by the City, BMX Inc agrees to provide the funds, materials, and resources for construction of the BMX Facility once a Development Plan has been approved by the City Council. BMX Inc will seek and obtain all necessary permits for proposed development and activities associated with the park improvements. All costs expected and unexpected will be paid by BMX Inc unless other arrangements are made with the City. Any portion of the project paid for with public funds shall comply with applicable bid laws.

5. BMX Inc's Maintenance Responsibilities. Unless otherwise agreed to by City, BMX Inc agrees to provide regular and routine maintenance of the entire BMX Facility constructed by BMX Inc as part of this agreement. BMX Inc will be responsible for irrigating and seeding all areas disturbed during park development from initial construction of the BMX Facility or any subsequent disruptions

6. City's Maintenance Responsibilities. The City will be responsible for maintaining areas of existing grass throughout the park, as necessary, and maintaining trees within the park area during the planning and development of the BMX Facility. The City will be responsible for maintaining public parking areas, paths from parking areas to the BMX Facility, and paths and areas outside the facility. The City will provide police and fire protection within the facility.

7. Specifications for Improvements. All improvements will be in accordance with any and all City, State, and Federal rules and regulations and shall adhere to Rapid City's Floodplain Development Policy. Construction of improvements shall follow the City of Rapid City Standard Specifications for Public Works Construction (2007 Edition), as currently revised. BMX Inc will be responsible for seeking and obtaining any and all permits required for the improvements.

8. Ownership. All permanent improvements which are constructed as part of this Agreement will be owned by the City of Rapid City and all

temporary improvements will be owned by BMX Inc. Permanent improvements shall be un-moveable improvements which the City stipulates during development review as necessary for public health, safety, and welfare at the specified location. Temporary improvements shall be un-vegetated earth features and structures which are movable and/or removable and specific to the operation of BMX events. BMX Inc., unless otherwise agreed to, retains no ownership rights over the property and upon expiration of this agreement and/or future lease(s) will, upon vacating the premises, remove all temporary improvements and restore the site to its original state,

9. Communication. BMX Inc shall keep the City informed of the planning and development progress on the BMX Facility. If BMX Inc. retains a consultant/contractor for any improvements, the consultant/contractor shall keep the City informed of progress.

10. Insurance. BMX Inc will ensure that they or the Project contractor obtains liability insurance as required within the Standard Specifications adopted by the City for the Project construction. Any and all liability insurance policies obtained by BMX Inc or by any contractor, subcontractor, or other entity involved with the Project construction shall name the City as an additional insured, and any entity securing liability insurance shall furnish to City evidence of the same by a certificate of insurance. BMX Inc shall name the City an additional insured for the life of this agreement.

11. Indemnification. BMX Inc agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct by BMX Inc, its designees, and/or its contractors.

12. Term of Agreement. This agreement will remain in effect for a period of five years from the date of signature to complete planning and development of the facility. If the parties wish to renew the agreement, with or without alterations, they shall execute an addendum to this agreement setting forth the terms of the renewal agreement. If the parties do not agree upon the terms of any renewal of the agreement, this agreement shall expire five years from the date of signature. This agreement does not amend, alter, or nullify any existing Agreements or Leases between City and BMX Inc.

13. Notice to Terminate. If, at any time prior to final approval of the development plan, either party determines that development of a BMX Facility at this location is not feasible for any reason, that party will provide written notice of this determination to the other party and an alternate

location(s) will be considered. If no alternate location is agreed upon by the parties, either party may terminate this agreement.

If, at any time, the City deems BMX Inc to be in default under this agreement, the City will provide BMX Inc with notice of the defect/default and give BMX Inc ninety (90) days to comply with the terms of this agreement or correct the defect. If the defect/default is not corrected within 90 days, the City may terminate this agreement and exercise any rights it has under the law.

14. Cancellation. Upon final approval of the development plan by the City. BMX Inc and the City agree to negotiate and enter into a Standard City Lease Agreement of Recreational Facilities for the completed BMX Facility.

15. Independent Contractor. Nothing contained herein shall be construed as creating a partnership or joint venture between City and BMX Inc, nor construed as making BMX Inc anything other than a tenant of City. BMX Inc shall have no right or power to act for City other than as contemplated in this agreement or otherwise expressly authorized by City.

16. Costs and Expenses. Each party shall pay all of its own costs and expenses incurred in connection with performance of its duties hereunder.

17. Waivers. No waiver of any breach of any of the terms or conditions of this Agreement shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

18. Consideration. The parties agree that this agreement constitutes sufficient good and valuable consideration for BMX Inc to pursue development planning for a BMX Facility at 1801 W Omaha Street and upon City Approval of a Final Development Plan the subsequent construction of the BMX Facility.

19. Miscellaneous Provisions.

a. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard for its conflict of laws provisions. The parties agree to bring any suit at law or equity only in Seventh Judicial Circuit Court in Pennington County, South Dakota.

b. **TITLES AND CAPTIONS.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

c. ENTIRE AGREEMENT. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

d. AGREEMENT BINDING. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

e. SEVERABILITY. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE: In witness where, the parties hereto have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

RAPID CITY BMX INC

\_\_\_\_\_  
*By* \_\_\_\_\_  
*Its* \_\_\_\_\_

STATE OF SOUTH DAKOTA      )  
  )ss.  
COUNTY OF PENNINGTON    )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself to be the \_\_\_\_\_ of Rapid City BMX, Inc. of Rapid City, and as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of Rapid City BMX, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public, State of South Dakota  
My Commission Expires: \_\_\_\_\_

CITY OF RAPID CITY

\_\_\_\_\_  
Sam Kooiker, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer  
(SEAL)

State of South Dakota     )  
  SS.  
County of Pennington     )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)