

April 26, 2016

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF RED LODGE  
AND  
THE ROTARY CLUB OF RED LODGE, MONTANA**

On this \_\_\_ day of \_\_\_\_\_, 2016, this Memorandum Of Understanding ("MOU") is made and entered into by and between the City of Red Lodge, a municipal corporation organized and existing under the laws of the State of Montana whose address is P.O. Box 9, Red Lodge, Montana 59068, hereinafter referred to as "City" and the Rotary Club of Red Lodge, Montana, a 501c3 organization registered to conduct business in the State of Montana, whose address is P.O. Box 1205, Red Lodge, MT 59068, hereinafter referred to as "Rotary".

**WITNESSETH**

WHEREAS, an MOU between the City and Rotary was executed on June 30, 2005 for the purpose of providing the best park conditions and facilities for Rotary Park at Rock Creek, and

WHEREAS, it is the intention of the City and Rotary to update and continue their MOU to maintain the park area and provide updated facilities on land owned by the City and defined as Rotary Park, and

WHEREAS, the Parties have discussed the contents of this MOU and acknowledge that they understand their respective duties and obligations and that each party intends to perform their respective duties and obligations as agreed hereunder; and

WHEREAS, Rotary Park is located in the City and is more specifically identified as located between 19<sup>th</sup> Street on the north, Park Avenue on the east, Rock Creek on the west and Highway 308 on the south, and

WHEREAS, both Parties agree that the continued existence and operation of Rotary Park is in the best interest of the public, and

WHEREAS, to further Rotary Park's existence and availability to the public, the Parties agree to enter into this MOU, to provide services and necessities for Rotary Park without charge to the other party.

NOW, THEREFORE, in light of and furtherance of the matters set forth in the above recitals, the City and Rotary agree as follows:

**Rotary shall:**

1. Provide improvements to Rotary Park including, but not limited to, picnic tables including at least one that is handicap accessible, barbeque pits and grills, and landscaping additions approved by the Red Lodge Parks Board including grass, tree, shrub and other plantings.

2. Assist in maintaining park cleanliness during the tourist season of May 1<sup>st</sup> to October 15<sup>th</sup>.
3. Provide sign(s) welcoming visitors to Rotary Park, noting the involvement of Rotary with the name of the park. The sign(s) shall meet the requirements identified in the Red Lodge Zoning Ordinance.
4. Provide an inventory of any City owned materials and equipment used by Rotary in performance of this MOU to the City Planner no later than May 1st of each year this MOU is in effect.

**The City shall:**

1. Maintain liability coverage through the Montana Municipal Interlocal Authority in order that the volunteers for Rotary are a Covered Party consistent with Section 5.2.3 of the MMIA Memorandum of Liability, July 1, 2015 or subsequently updated, in that Covered Party is defined as “All persons who perform a service on a volunteer basis for a Member Entity” (City of Red Lodge) “provided such performance is under the direction and control” (MOU) “of the Member Entity.”
2. Assist in improving, maintaining and repairing Park facilities in accordance with projects recommended by the Red Lodge Parks, Trees and Recreation Board.
3. Provide bear-proof garbage facilities.
4. Provide utility services to include electric power and garbage pick-up services.
5. Provide public restrooms during the tourist season of May 1 to October 15<sup>th</sup>, with the exception of when maintenance of the restrooms is compromised due to vandalism.
6. Provide tree trimming, weed control and mowing.
7. Provide access from Park Avenue and the parking area to the Park.
8. Provide funding for improvements to Rotary Park, if available, through recommendation of the Red Lodge Parks Board and the Mayor to the City Council.

**General Provisions:**

1. The term of this MOU is for five years commencing on the date of approval by both Parties. The Parties may extend this MOU by a duly approved and signed written agreement.
2. Either Party may terminate this MOU, with or without cause, without liability or damages, by written notice given at least 30 days prior to the effective date of termination to the other Party.
3. This MOU is not intended to create any authority, partnership, venture, employment, fiduciary, trust or agency relationship between the Parties. Each Party shall be an

independent contractor of the other Party. No Party may bind another Party without the other Party's written permission and consent.

4. This MOU shall not preclude a Party from entering third-party agreements/relationships that do not conflict with this MOU.
5. Nothing in this MOU is intended to, nor shall this MOU transfer or grant any property interest, franchise, license, right, permission or approval except as expressly provided herein.
6. Each Party shall bear its own costs and expenses in pursuit of its duties, responsibilities and obligations herein except to any extent expressly provided herein.
7. The Parties' representatives for the purposes of this MOU and notice hereunder are as follows or as designated by a Party to the other Party in writing from time-to-time:

CITY OF RED LODGE:  
Attn: Red Lodge Mayor  
P.O. Box 9  
Red Lodge, MT 59068

ROTARY CLUB OF RED LODGE, MONTANA  
Attn: President  
P.O. Box 1205  
Red Lodge, MT 59068

8. The Parties acknowledge that this MOU in its final form is the result of the combined efforts of the Parties. Should any provision of this MOU be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this MOU in favor or against any Party, but rather by construing the terms in accordance with their generally accepted meaning.
9. Modifications or amendments to this MOU must be in writing signed by an authorized agent of each Party.
10. Each Party agrees to use best efforts in pursuit of this MOU, and shall at all times comply with all applicable federal, state and local laws, regulations and requirements now in force and as they may be enacted, issued, or amended during the term of this MOU for any acts taken hereunder.
11. This MOU constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this MOU.
12. The Parties agree that the laws of the State of Montana govern this MOU. The Parties agree that the venue is proper within the courts of Carbon County, Montana. If a dispute arises, the Parties, through a representative(s) with full authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten business days

after the dispute arises. If negotiations fail, the Parties may use a third party mediator and equally share the costs of the mediator or file suit.

13. If any action is filed in relation to this MOU, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either is ordered to pay, a reasonable sum for the successful party's attorney's fees and all costs, charges, and expenses related to the action.

14. The Parties recognize that Title 8, Chapter 7 of the Red Lodge City Code provides policies intended to establish, improve, care for, regulate and manage a system of public recreation and public trees under the authority of the Red Lodge Parks, Trees and Recreation Board that may impact the provisions of this MOU.

15. The MOU between the City and Rotary, dated June 30, 2005 is terminated.

**IN WITNESS WHEREOF**, the Parties hereto have executed this MOU as of the day and year first herein above written:

\_\_\_\_\_  
Mayor, City of Red Lodge, Montana

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
President, Rotary Club of Red Lodge, Montana

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public