

MEMORANDUM OF UNDERSTANDING
B E T W E E N
THE CITY OF RED LODGE
A N D
THE RED LODGE AREA COMMUNITY FOUNDATION

The City of Red Lodge (hereinafter referred to as the City) and the Red Lodge Area Community Foundation (hereinafter referred to as the Foundation) enter into a Memorandum of Understanding (MOU) concerning the creation, maintenance, and administration of a permanent endowment fund (hereinafter “endowment”) to ensure funding for a City Pool or other such recreational facilities, and to provide for the creation of additional similar endowment(s) as necessary.

SECTION 1 - INTENT

The Red Lodge City Pool offers excellent recreational and educational opportunities to the City and to the surrounding region. It is the desire of the Foundation and the City to ensure that adequate funding continues to exist to keep the City Pool and other recreational facilities that benefit the youth of the community open and offering programs to the public.

SECTION 2 – THE FOUNDATION

A - Authorization: The Foundation is authorized for the following:

- 1) Create a permanent endowment to provide funding for the operation and maintenance of a City Pool and / or other recreational facilities that benefit the youth of the community. The endowment shall be managed by the Montana Community Foundation or another agency mutually agreed upon by both parties.
 - a) The Montana Community Foundation, or other agreed upon agency, may deduct fund management and investment management fees from the invested endowment funds. The fees may be deducted on a recurring basis. As of 2014, current fund management fees are about 1.25% annually and current investment management fees are about 0.7% annually. The fees shall remain substantially similar and reported to the parties at least annually.
- 2) Set a minimum amount the endowment must reach before payments from the endowment will be available. Once the endowment size is set it shall not change.
- 3) Utilize the benefits provided the City for purposes of marketing and other communications regarding the establishment of, or donations to, the endowment.

- 4) Deduct a fee of up to 6% from any non-city donations to this endowment to cover their expenses in creating, growing and administering the endowment; the fees, for each donation, would be deducted only once, at the time of donation. Donations made by the City or any City Department are exempt from this fee.

B - Obligations: In order to ensure effective operation of this endowment, the Foundation SHALL:

- 1) Twice annually, for the periods ending December 31 and June 31, provide the City with a complete financial report regarding all aspects of the endowment. The Foundation should provide these reports by April 1 and June 31 following these reporting periods; or as soon as made available from Montana Community Foundation. The report shall at the minimum include:
 - a) The beginning market value of the endowment at the last measurement point, and during the period, the income earned, the realized and unrealized gains, any additions or withdrawals from the fund for fees and distributions, and the ending market value of the endowment.
 - b) Average rate of return over the 6 and 12 month, 3 year, and 5 year periods compared to an agreed upon benchmark for performance.
 - c) Amount of withdrawal from the endowment to the City for its up-coming fiscal year (beginning July 1). Both parties understand the endowment may not be created until at least \$25,000 has been raised and further no withdrawals shall be made until the endowment has been created and existing for at least 3 years or has reached \$1 million in market value, whichever is earlier.
 - d) Withdrawals from the endowment will be determined by the Montana Community Foundation according to its spending policy, which smooths the withdrawal amounts by measuring changes in market value as well as endowment earnings over rolling periods of measurement. Should the Montana Community Foundation cease to manage the endowment, any successor manager shall determine withdrawals on a similar basis.
- 2) Upon receiving the City Council-approved budget the foundation shall distribute the approved endowment funds. However, the Foundation shall not distribute funds that exceed the amount available as reported to the City Council in the April report or funds exceeding the amount approved in the City's budget. Payment shall be made between July 1 and July 31
- 3) Provide, in a timely manner, information on current fund management fees and investment management fees to any member of the public who requests such information as it pertains to the endowment.

C - Restrictions: In order to protect both parties, the Foundation SHALL NOT:

- 1) Hold the City responsible for any expenses that the Foundation may incur while building and / or

administering the endowment.

- 2) Withhold funds or otherwise manipulate the endowment in order to dictate the use of funds by the City except as provided by this MOU.

D - If the Foundation ceases to exist, all funds endowed with the Montana Community Foundation (or other such determined agency) shall remain endowed and the City shall work directly with the Montana Community Foundation for future disbursements from the endowment according to the Montana Community Foundation's spending policy, as described above. If the endowment has not yet been created, all funds collected for this purpose shall be distributed to the City and held in a restricted account for this purpose until another non-profit organization can be found to resume the functions performed by the Foundation.

SECTION 3 – THE CITY

A - Authorization: The City is authorized to do the following:

- 1) Continue or discontinue the operation and maintenance of a City Pool and / or other recreational facilities that benefit the youth of the community at the sole discretion of the City Council in order to best serve the needs of The City
- 2) Direct potential donors interested in supporting a pool or other recreational facilities to the Foundation.

B - Obligations: In order to ensure effective operation of this endowment, the City SHALL:

- 1) As part of its annual budget process, show endowment funds as a revenue source and explicitly report how endowment funds are being used to cover operation and maintenance expenses:
 - a) If a City Pool is included in the budget, then the lesser of 95% of the endowment's annual spending allocation or 95% of the pool's operations and maintenance costs shall be the minimum amount of the endowment funds allocated to the pool. Any additional spending allocation may, by agreement of the City and the Foundation, be used for other recreational facilities that benefit the community.
 - b) If the endowment spending allocation covers 50% or more of the pool's operations and maintenance costs, at least 10% of the endowment spending allocation shall be used to support educational / developmental programs for community members.
 - c) If the endowment spending allocation exceeds the operation and maintenance costs projected for the pool, the City may request that the Foundation grant:
 - (I) Additional funds for other recreational facilities that benefit the youth of the community, or
 - (II) Reinvest any excess spending allocation in the endowment to increase its principal value, or

(III) Transfer of excess spending allocation to a program for capital improvement / replacement of the City Pool and / or other recreational facilities

2) Provide a reasonable space at the City Pool to allow the Foundation to promote the endowment and encourage donations.

C - Restrictions: In order to protect both parties, the City SHALL NOT:

- 1) Hold the Foundation responsible for the performance or returns of the endowment except as provided by law.
- 2) Expend any endowment funds in any way inconsistent with this MOU or inconsistent with the approved budget for that year.

D - If the City should cease to exist, whatever governmental body takes over primary jurisdiction of the majority of the land that is included within the City at the time this MOU was last approved shall be provided the opportunity to take the City's place in this MOU or a similar agreement. If no other governmental body exists, the endowment shall be made available for recreational facilities for Carbon County Montana.

S E C T I O N 4 - SUMMARY STATEMENT & RENEWAL

The City and the Foundation hereby agree to this Memorandum of Understanding. The aforementioned also commit to a review, re-evaluation and re-approval at least every five years. No funds may be transferred from the endowment to the City if more than 65 months have passed since the last re-approval of this MOU. Any spending allocation accrued during any such period shall be granted within the community through the variance power held by the Foundation board of directors consistent with IRS regulations and the intent of the endowment as laid out in this MOU.

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Approval by RLACF Board of Directors	Tracy Timmons, Executive Director Red Lodge Area Community Foundation	Date

_____	_____	_____
Approval by Red Lodge City Council	Ed Williams, Mayor City of Red Lodge	Date