

GLEN LAKE ROTARY PARK – MANAGEMENT AGREEMENT

THIS AGREEMENT (“Agreement”), made and entered into this _____ day of _____, 2018, between the Montana Department of Fish, Wildlife and Parks, whose main address is 1420 East Sixth Avenue, Helena, Montana 59620 (“FWP”) and the City of Bozeman, a self-governing municipality operating pursuant to its Charter and the laws of the state of Montana whose main address is 121 N. Rouse Ave., Bozeman, Montana with a mailing address of PO Box 1230, Bozeman, MT 59771 (“City” and together with FWP the “Parties”).

WITNESSETH:

WHEREAS, FWP owns the East Gallatin State Recreation Area located in Gallatin County, Montana, more particularly described on attached Exhibit A and shown on attached Exhibit B.

WHEREAS, FWP has been vested with duties and powers for the purposes of conserving recreational resources of the state and providing for their use and enjoyment (MCA § 23-1-101) and wishes to work closely with the State’s landowners to provide quality recreational opportunities; and

WHEREAS, under MCA § 23-1-107, FWP is authorized to enter into cooperative agreements with local agencies in matters relating to developing, improving, or maintaining recreational areas; and

WHEREAS, public use at the Park has been managed by the City as East Gallatin State Recreation Area since 1991 with the approval of FWP and will now be called Glen Lake Rotary Park;

WHEREAS, the City and its community partner, Sunrise Rotary Club, have developed the Park and facilities for public recreation and seek to continue this relationship into the future; and

NOW, THEREFORE, in consideration of the following stipulations and agreements, it is mutually agreed as follows:

1. **DESCRIPTION OF THE PROPERTY**. The property that is subject to this Agreement is described on the attached Exhibit A (the “Park”).
2. **PURPOSE AND PERMITTED USES**. FWP agrees that the City shall have the right of control and management of public recreation at the Park in the manner described below, and that the City may make and enforce rules necessary to regulate the public use, subject to all restrictions, agreements, and easements presently existing or of record or as may be created by FWP in the future. FWP agrees such future agreements, restrictions, or easements will not unreasonably interfere with City’s use of the Park for the purposes described in this Agreement.

The City agrees that it will be responsible for the management of public access and recreational uses and facilities at the Park. The City shall be responsible for maintenance of grounds and facilities in the Park and for snow removal from access

roads and parking lots. The City agrees that the general public shall not be excluded from reasonable and proper enjoyment of the Park's natural or constructed recreational facilities, and that it will make such rules as are necessary to regulate the public use of the Park. The City may charge fees to public users for use of the leased area; and the City may issue and administer licenses, permits, and concession contracts under which services are made available to the public in the Park.

3. REMOVAL OF IMPROVEMENTS. Upon termination of this Agreement, the City, in its discretion, may remove any permanent or non-permanent improvements. Any improvements not removed by the City within twelve months of termination of this Agreement become the property of FWP.
4. WEED CONTROL. The City shall assume all obligations for control of state-designated noxious weeds as defined in MCA § 7-22-2101(8)(a) within the Park as shown on Exhibit A. Weed control activities shall be coordinated with the Gallatin County Weed Control District (or a private herbicide applicator) and comply with all applicable state guidelines.
5. HOLD HARMLESS. The City shall indemnify and hold FWP harmless from and against any and all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising out of, or resulting from, the City's performance of this Agreement, except any such damage to property or injury to persons that is due, in whole or in part, to the error, omission, or negligent, reckless or intentional action of FWP or any of its employees or agents. FWP shall indemnify and hold the City harmless from and against any and all claims, demands, or actions from damages to property or injury to persons or other damage to persons or entities arising out of, or resulting from, FWP's performance of this Agreement, except any such damage to property or injury to persons that is due, in whole or in part, to the error, omission, or negligent, reckless, or intentional action of the City or any of its employees or agents. Nothing in this Agreement shall be construed or interpreted as authorizing the City, its agents, or employees, to act as an agent or representative for or on behalf of FWP or to incur any obligation of any kind on behalf of FWP.
6. LIAISONS AND NOTICES. The City designates its Parks & Recreation Director as its representative. FWP designates its Region 3 Parks Manager as its representative. Notices to the parties may be given by mail at the addresses provided herein. Notice shall be deemed delivered when the notice is deposited with the U.S. Post Office, first class postage prepaid.
7. TERM. The term of this Agreement shall expire on January 1, 2068, unless renewed in writing and signed by all parties. This Agreement supersedes and terminates any prior agreement pertaining to the Park between FWP and the City. To the degree a conflict exists between any prior agreement and this Agreement, the terms of this Agreement control.

8. TERMINATION. This Agreement shall terminate and all rights of the City herein cease:
 - a. Upon expiration of the term.
 - b. Upon mutual agreement of the parties in writing.
 - c. Upon six months' written notice by either Party to the other.

9. RENTAL. The City's accommodations for public use of the Park is the consideration for this Agreement, and no cash rental will be paid during the term of the Agreement.

10. INTEGRATION; MODIFICATIONS. This Agreement constitutes the sole and entire agreement between the parties. No statements, promises or inducements made by either party which are not contained in this Agreement are valid or binding unless evidenced in writing and signed by both parties. The City shall not assign this Agreement or any interest in it without the written consent of FWP, but the provisions of this Agreement shall apply and bind the successors and assigns of FWP and the City. This Agreement may not be amended except in a writing signed by the Parties.

11. RESTROOM AND TRASH FACILITIES/SECURITY. The City shall provide restrooms and trash facilities at the Park. Restrooms will be managed pursuant to City policy. Replacement or additional construction of such systems are subject to FWP written approval in accordance with Section 12, and the systems shall be constructed and maintained in accordance with the rules, regulations, and recommendations of the City, the County and the Montana Department of Environmental Quality.

12. IMPROVEMENTS. The City may construct at the Park a reasonable amount of improvements directly related to the necessary use of the Park as specified in this Agreement to include improvements to enhance security and protect improvements from vandalism. All construction, improvements, or alterations to the site, structures or appurtenances must be approved in writing in advance by FWP. Requests for these improvements shall be submitted, together with a schedule for completion of the proposed work, in writing at least 30 days in advance of the proposed work. At its discretion, FWP may require the review of plans including labeled drawings that specify dimensions, materials, and structural support design as well as plumbing and electrical design. No work shall commence until written approval has been received from FWP. The City agrees to maintain improvements to a reasonable condition. Maintenance of improvements (including replacement in-kind) does not require prior approval. The City further agrees it will identify FWP as owner of the Park through placement of a sign in a mutually agreed-upon place and manner.

13. WATER RIGHTS AND IRRIGATION.
 - a. Potable water for the Park is currently provided by the City from its own municipal water supply. Irrigation water is currently provided by use of a City-owned well located on FWP property approximately 40 feet east of the existing restrooms. City shall continue to provide its own water supply for irrigation of the Park and a potable supply for the restroom, drinking fountains and any improvements it may construct

as contemplated by Paragraph 12 of this Agreement. FWP hereby grants the City permission to continue to site the City well on FWP property, but this Agreement does not constitute an easement or otherwise convey any real property interest to City for the siting of the well. If requested by FWP or the City, the parties shall jointly explore the possibility of FWP granting the City an easement on FWP property for siting the well.

- b. FWP owns several water right statements of claim that are appurtenant (at least in part) to Park property. Nothing herein shall prohibit, limit or obligate FWP to retain, use, modify, change or manage any FWP-owned statement of claim. However, to the extent that any FWP-owned statement of claim is used by the City's performance of this Agreement or by public use of the Park or the pond located therein, such use may be considered beneficial use of FWP's claim(s).
 - c. FWP holds Provisional Water Use Permit No. 41H 45176-00. The permit is for fish and wildlife and recreation use in the pond located in the Park. This Agreement entitles the City to use the permit in accordance with its terms. Public use of the park shall be considered use of the permit.
14. PROPERTY TAXES AND OTHER CHARGES. FWP will pay any and all taxes required, if any, and special local assessments including but not limited to assessments for special improvement districts, street and tree maintenance districts, arterial and collector special district assessments, etc.
 15. COUNTERPARTS. This Agreement may be executed in counterparts, which together constitute one instrument.
 16. APPLICABLE LAW. The Parties agree that this Agreement is governed in all respects by the laws of the State of Montana. Jurisdiction for any dispute or claim raised under this Agreement or proceeding brought to interpret the Agreement shall lie solely in the State of Montana, Gallatin County.
 17. DISPUTE RESOLUTION. Any claim, controversy, or dispute between the Parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the Parties, the Parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions. If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute shall be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.
 18. SEVERABILITY. If any portion of this Agreement is held to be void or unenforceable, the balance thereof shall continue in effect.
 19. WAIVER. A waiver by a Party of any default or breach by the other Party of any covenants, terms, or conditions of this Agreement does not limit the non-breaching

Party's right to enforce such covenants, terms, or conditions or to pursue that Party's rights in the event of any subsequent default or breach.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first written above.

City of Bozeman

Montana Fish, Wildlife and Parks

By:_____

Martha Williams, Director

STATE OF MONTANA)
 : ss.
County of Lewis and Clark)

This instrument was acknowledged before me this ____ day of _____, 2018, by Martha Williams, as Director of the Montana Department of Fish, Wildlife, and Parks.

(seal)

Printed Name
Residing at: _____
My commission expires: _____

STATE OF MONTANA)
 : ss.
County of Gallatin)

This instrument was acknowledged before me this ____ day of _____, 2018, by _____, City of Bozeman.

(seal)

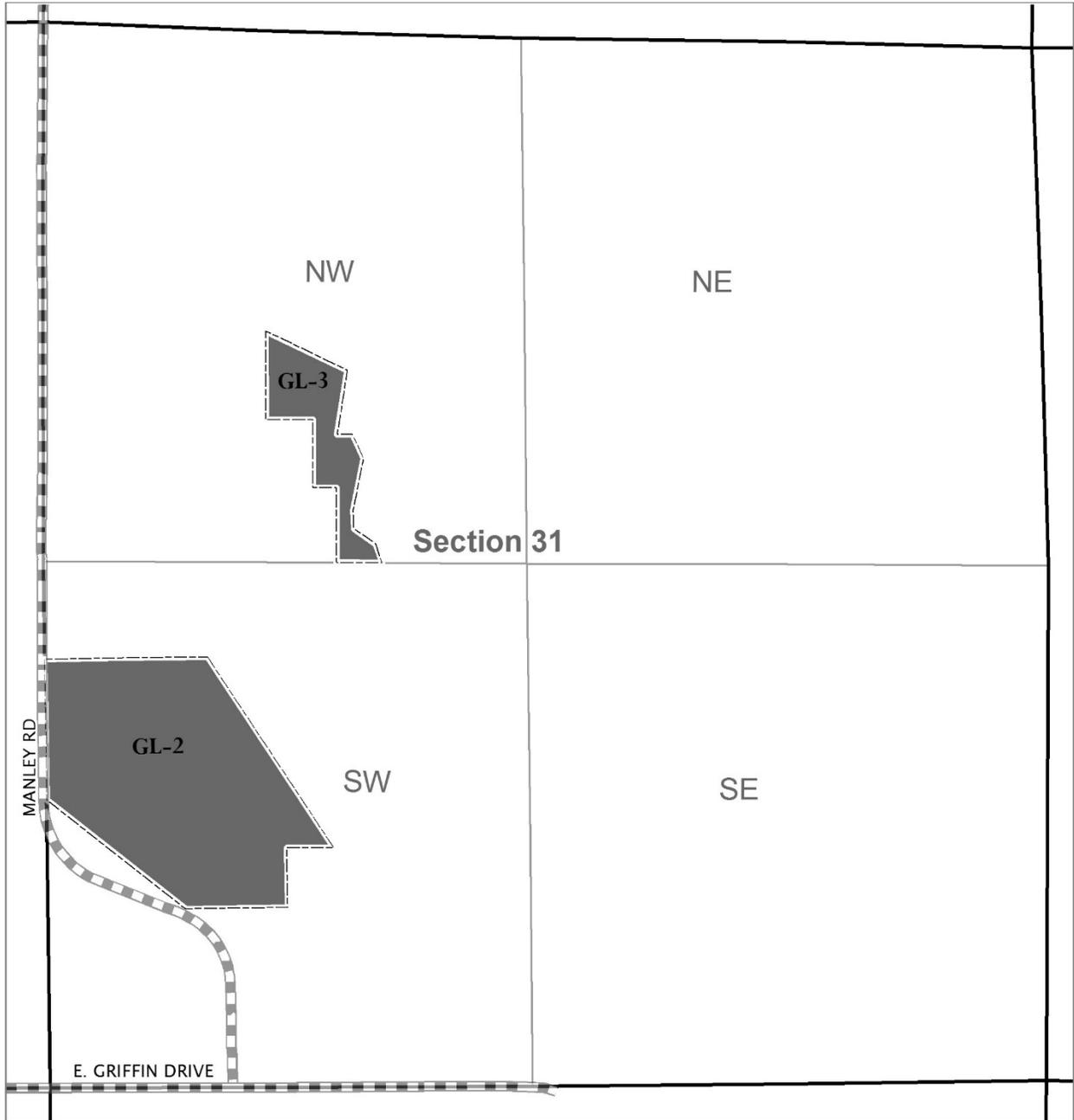
Printed Name
Residing at: _____
My commission expires: _____

EXHIBIT A

Tract GL - 2 and Tract GL - 3 of Certificate of Survey No. 1221, located in Section 31, Township 1 South, Range 6 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record as Document # 130197 in the office of the County Clark and Recorder of Gallatin County, Montana.

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EXHIBIT B



**Township 1 South, Range 6 East, Section 31
Gallatin County**

Glen Lake Rotary Park 
Road 

0 500 Feet

