CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2019-613: authorizing the City of Joplin to enter into a memorandum of understanding with the Wildcat Glades Friends Group, a Missouri Nonprofit Corporation ("Friends Group") for the purpose of establishing responsibilities in maintaining and operating Wildcat Park.

MEETING DATE
May 20, 2019

ORIGINATING DEPT
Parks

ATTACHMENTS
CB2019-613 Ordinance; Exhibit A: City-Friends Group MOU; MDC-Friends Group MOU.

REVIEWED BY
Dept. Head: Paul Bloomberg; City Attorney: Peter Edwards; Interim City Manager: Dan Pekarek

SUMMARY
This Council Bill authorizes the City to enter into an MOU with the Friends Group for the purpose of establishing responsibilities in maintaining and operating Wildcat Park.

BACKGROUND
In 2003, the City, MDC, and Audubon agreed that Audubon would create and operate a nature center called the Wildcat Glades Conservation and Audubon Center. In 2005, the City entered into a ground lease with MDC for an approximately 58-acre portion of a property in the City of Joplin known as Wildcat Park. Also in 2005, MDC assigned the ground lease to Audubon. In 2011, the ground lease was amended to expand the leased real estate. In 2018, Audubon gave notice to MDC that it desired to terminate the assignment and MDC accepted said termination. Council Bill 2019-612 authorizes the City to enter into an agreement with MDC and Audubon for the purpose of terminating the assignment of ground lease and MOU between MDC and Audubon.

MDC has agreed to continue to operate the nature center with the help of the Friends Group. Please see the attached MOU between MDC and the Friends Group. The City will continue to operate Wildcat Park with the help of the Friends Group. This Council Bill authorizes the City to enter into an MOU with the Friends Group for the purpose of establishing responsibilities in maintaining and operating Wildcat Park.

FUNDING SOURCE
N/A

RECOMMENDATION
Staff recommends adoption of this Council Bill on a non-emergency basis.

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding (herein "MOU") is made on this _____ day of _____, 2019, by and between the Wildcat Glades Friends Group, a Missouri Nonprofit Corporation (hereinafter referred to as "Friends"), and the City of Joplin, a Missouri Municipal Corporation (hereinafter referred to as "City").

WHEREAS, City owns Wildcat Park (hereinafter referred to as "Park"), a map of which is attached hereto and incorporated by reference as Exhibit A; and

WHEREAS, Friends is a Missouri Nonprofit Corporation formed by citizens of the Joplin, MO area in early 2018; and

WHEREAS, Friends' purpose is "To protect the area known as Wildcat Park and the surrounding chert glade environment, habitat, and wildlife by promoting awareness and sustainability, providing education and recreation space and programs, and sponsoring nature-based activities."

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Friends and City agree as follows:

1. Responsibilities of Friends. Friends will assist City in maintaining and operating the Park, including but not limited to:

a. Friends will screen and train any volunteers. Furthermore, any volunteers will be required to sign a Volunteer Agreement, attached hereto and incorporated by reference as Exhibit B.

b. Trail Stewardship. Friends will assist City in the maintenance and operation of the

EXH. A

trail system including but not limited to maintaining the path and adjacent landscaping (approximately two (2) feet on either side of the trail) where it is reasonably practical and safe to do so, and keeping the same clear of obstruction, such as trash, vegetation, etc. Friends will immediately notify the City of any dangerous condition on the trail and will not attempt to remedy the same.

c. Water Festival. Friends has agreed to assume primary responsibility for the Water Festival, which is an event held in early August and provides educational and recreational activities for the public. Friends and City agree to make a good faith effort to work together to assure the safety of the attendees and the success of the event.

d. Pavilion. Friends agrees to maintain the pavilion, including cleaning and removal of recycling and trash. Friends is permitted to rent the pavilion for a reasonable amount in order to cover the costs associated with these responsibilities.

e. Ball Fields. Friends and City agree to make a good faith effort to work together to facilitate future events and programming in the park area currently occupied by the ball fields.

2. Responsibilities of City. City will bear primary responsibility in maintaining and operating the Park.

3. Term. The term of this MOU shall be for a period of one (1) year from the date hereof. This MOU shall automatically renew for up to four (4) successive one (1) year terms upon the same terms, covenants, and conditions as herein specified.

4. Insurance. Friends shall provide liability insurance during the term of this Agreement, issued by an insurance company authorized to do business in the State of Missouri, covering City, its agents, employees, and invitees, and naming City as an additional insured, in the amount of One Million Dollars ($1,000,000.00) for Combined Single Limit for Personal Injury or Property

Damage. Such insurance shall be evidenced by filing with the City an Insurance Certificate, naming City as an additional insured under such policy, and providing that such policy shall not be cancelled without thirty (30) days written notice to City. Friends agrees to indemnify and hold and save harmless the City from any and all damages, claims, and assessments of every type and character arising from Friends' activities at or in any way related to the Park.

5. Nature of Relationship. Friends shall perform as an independent contractor and shall not hold itself out to third parties as an agent of City. Friends shall not be considered an agent of City nor shall any of the employees, agents, officers, members, or other personnel of Friends be considered sub-agents of City.

6. Termination. Either party may terminate this MOU at any time by giving ninety (90) days' written notice to the other party.

7. Notices. All notices, requests, and demands to or upon the parties of the MOU shall be deemed to have been given or made when delivered by hand or via certified mail addressed as follows or to other such addresses as may be hereafter designated in writing:

City: City of Joplin
602 S. Main St.
Joplin, MO 64801

Friends: Wildcat Glades Friends Group
P.O. Box 3063
Joplin, MO 64803

8. Amendments. This Agreement contains all of the agreements and conditions made between the parties and may only be modified by written agreement signed by all parties to this Agreement.

9. Assignment. This Agreement shall not be assignable by Friends without the express written consent of City being first obtained.

10. Choice of Law. This Agreement has been made, and its validity, performance, and effect shall be determined, in accordance with the laws of the State of Missouri, and venue for

litigation between the parties shall be solely and exclusively in the Circuit Court of Jasper County, Missouri, or the United States District Court for the Western District of Missouri.

11. Compliance with the Law. Friends agrees to comply with all applicable laws in connection with the performance of this MOU.

12. Severability: The invalidity, illegality, or unenforceability of any provision of this MOU shall not affect the validity, legality, or enforceability of the other provisions of this MOU which shall remain effective.

IN WITNESS WHEREOF, this Memorandum of Understanding has been executed and approved and is effective and operative as to each of the parties as herein provided.

City of Joplin, Missouri

By: _____
Daniel Pekarek, Interim City Manager

ATTEST:

By: _____
Barbara J. Gollhofer, City Clerk

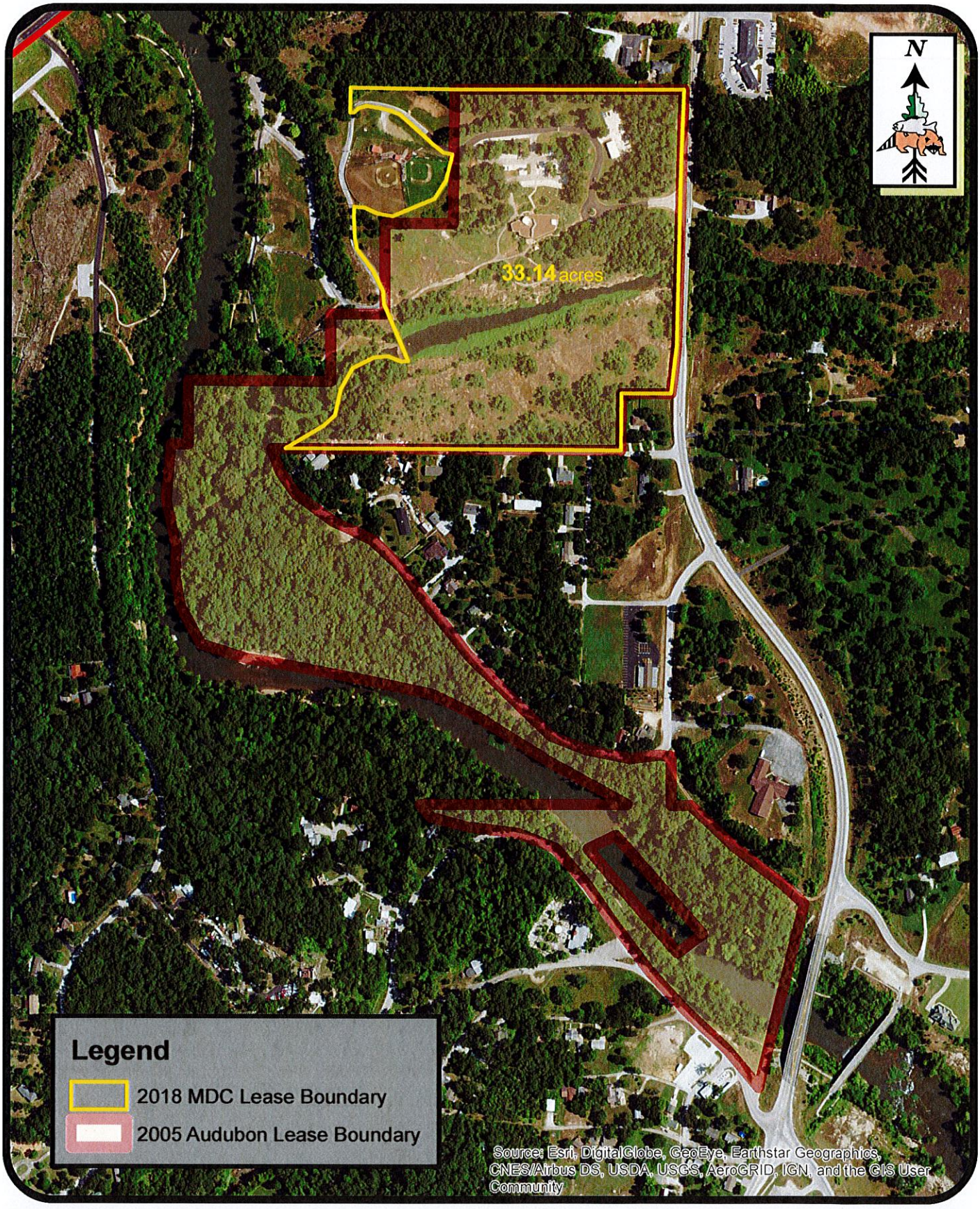
Wildcat Glades Friends Group

By: _____
(Print)
(Title)

ATTEST:

By: _____
(Print)
(Title)

Lease Boundary Map



0 0.05 0.1 0.2 Miles

EXH A

Volunteer Service Agreement

THIS AGREEMENT, made and entered into this _____ day of _____, 20__, by and between _____, hereinafter referred to as "Volunteer", and Wildcat Glades Friends Group, a Missouri Nonprofit Corporation, hereinafter referred to as "Friends Group".

W I T N E S S E T H

WHEREAS, Volunteer desires to provide certain services to Friends Group; and

WHEREAS, Friends Group desires to receive certain services from Volunteer

NOW THEREFORE, in exchange for no consideration except for the opportunity to satisfactorily complete assignments for personal achievement and betterment, Volunteer and Friends Group agree as follows:

1. Volunteer hereby waives any rights he or she may have to compensation for the services performed and any other compensation or remuneration from Friends Group such as overtime, deferred compensation, unemployment compensation, sick leave, vacation, and insurance.

2. Volunteer acknowledges and agrees that the opportunity to volunteer is sufficient consideration for all such volunteer services provided to Friends Group and that the primary benefit of said Volunteer's service is to Volunteer and not to Friends Group.

3. Volunteer shall comply with all lawful directions from his or her supervisor and shall be required to follow all policies of the Friends Group, including but not limited to employment and nondiscrimination policies, and acknowledges and agrees that each party may terminate the relationship, without cause, at any time.

4. Volunteer acknowledges and agrees that he or she is not an employee or independent contractor. Volunteer is only a volunteer.

5. Volunteer acknowledges and agrees that Friends Group may release Volunteer from his or her service at any time, for any reason, with or without notice.

6. Volunteer acknowledges and agrees, and does hereby recognize and assume all risks pertaining to Volunteer's activities with the Friends Group wheresoever located, and does further release himself or herself, his or her heirs, dependents, and assigns, the Friends Group, its officers, employees, contractors, and subcontractors from any and all liability whatsoever for injuries (including death), damages, and claims that may arise out of his or her volunteer service.

"Volunteer" "Friends Group"

_____ _____

EXH B

COOPERATIVE AGREEMENT
BY AND BETWEEN
MISSOURI DEPARTMENT OF CONSERVATION
AND
WILDCAT GLADES FRIENDS GROUP

I. PURPOSE OF COOPERATIVE AGREEMENT

This Cooperative Agreement is entered into between the Missouri Department of Conservation (Department) and Wildcat Glades Friends Group(WGFG), a Missouri nonprofit corporation in good standing whose mission includes promoting awareness, providing education, and sponsoring nature-based activities primarily focused on the Shoal Creek area and its unique chert glades. It is mutually beneficial for the Department and WGFG to promote conservation education and experiences at the Shoal Creek Conservation Education Center (Conservation Center).

II. MEASURABLE OUTCOMES

A. WGFG

1. Will promote and support conservation education and experiences at the Conservation Center by
   - Operating and staffing the gift shop at the Conservation Center and using the net proceeds from sales to further educational programs and experiences at the Conservation Center.
   - Conducting conservation related programs at the Conservation Center that shall be agreed upon, each quarter, by both parties, in conjunction with a special or partner event at no charge to participants.

B. THE DEPARTMENT

1. Will provide one office and the gift shop space at the Conservation Center for WGFG under the terms and conditions provided in this Agreement.

2. Will allow the WGFG to use the Conservation Center for approved programs; however, the Department will have priority regarding such use. The WGFG will work with the Conservation Center manager to schedule use of the Conservation Center.

III. MEASURABLE DELIVERABLES

WGFG will provide documentation of the MEASURABLE OUTCOMES (described above) and all other accomplishments realized as a result of this arrangement, according to the schedule described in the REPORTING REQUIREMENTS section of this agreement. The report shall also include other measurable outcomes or project benefits that may not be specifically described above.

IV. USE

WGFG agrees that the designated office space and gift shop provided inside the Conservation Center will be used by the occupant as an office and gift shop, subject to any rules or policies that would normally apply to Department staff located at this facility.

V. RIGHT OF ENTRY

The Department shall, at all times, have the right of entry to the designated space and every part thereof for the purpose of inspecting, performing maintenance, routine cleaning. The Department recognizes the Friends Group will have office furniture (cabinets and filing cabinets) that are locked to protect the privacy of the organization, its volunteers and constituents. The Department does not require access to such office equipment.

VI. OFFICE FURNISHINGS AND EQUIPMENT

A. THE DEPARTMENT

1. Will provide basic support in the form of a desk or similar workspace, chair, telephone, and mail box for receiving incoming mail. The Department will not provide any direct clerical support.
2. Provide support for the two wired network cables within the building: One to the computer used for the point of sale system and one to the Friends Group office computer.
   a. Requests for support must be made to the MDC IT Help Desk.
   b. If on-site assistance is required, MDC-IT will make best effort to respond within two business days.
3. Provide power for the WGFG network switch and internet provider equipment.
4. Keep the WGFG network and connection to the internet separate from the MDC network.
5. Provide indoor access to the internet provider and contractors as required to work on the WGFG network and internet connection.

B. WGFG

1. Pay for any installation and repair charges for two wired network cables within the building: One to the computer used for the point of sale system and one to the Friends Group office computer.
2. Provide or pay for one network switch, including installation, support, and replacement costs.
3. Pay for its own wired internet provider service directly, including any installation charges.
4. Serve as the sole contact for billing and support with the internet provider.
5. Provide all support for its own hardware and software, including the network switch, computers, and any cyber security systems.

VII. COST

The Department will provide the space and support described herein at an annual cost to WGFG of seventeen dollars and fifty cents ($17.50) per square foot of office space. Space covered in this agreement is 583 square feet for a total annual cost of $10,202.50 for the term of this agreement; however, this provision will be reviewed and negotiated when, and if, this agreement is renewed. Monthly payments in the amount of eight-hundred and fifty dollars and twenty-cents ($850.20) will be made to the Department by the end of each month.

VIII. RIGHT TO CONDUCT BUSINESS

WGFG shall have the right to conduct and operate the gift shop to include selling Department produced materials and conservation related material and or products and permits. In connection therewith, the WGFG agrees to:

1. Honor the Heritage/Permit Card discount to customers on all qualifying Department materials. The Department reserves the right to deny the WGFG from selling any merchandise that is inconsistent with the Department's mission or otherwise deemed inappropriate by the Department.
2. Purchase Department produced materials, other than permits, from the Department at resale vendor list price, the WGFG may determine the retail price of the items, other than permits.
3. Maintain or cause to be maintained at its expense commercial general liability insurance against negligent acts, errors or omissions of WGFG directors, officers, employees, volunteers and agents. The Conservation Commission and Department of Conservation shall be named as additional insureds. Any insurance policy required as specified in this section shall be written by a company that is licensed and authorized to issue such insurance in the state of Missouri and shall provide insurance coverage for not less than the following limits of liability:
    a. **General Liability:** Not less than **$500,000** for any one person in a single accident or occurrence, and not less than **$3,000,000** for all claims arising out of a single occurrence;
4. Establish itself as a permit issuing agent and sell state hunting, fishing and trapping permits in accordance with the provisions of the Section 3 CSR 10-5.225.
    a. Keep the gift shop open during regular business hours of the Conservation Center.
5. Use the net proceeds from the sales of merchandise in the gift shop to further educational programs and experiences at the Conservation Center
6. To keep the gift shop neat and orderly.
7. That the Department shall approve any signs, literature or advertising posted in the gift shop.

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IX. PARTIES AND CONTACTS

WILDCAT GLADES FRIENDS GROUP
Steve Gaarder
P.O. Box 3063
Joplin, MO 64803-3063
417-483-1543
steve@wildcatglades.org

MISSOURI DEPARTMENT OF CONSERVATION
Kevin Badgley
Interpretive Center Manager
201 West Riviera Dr.
Suite B
Joplin, MO 64804
417-629-3423
Kevin.Badgley@mdc.mo.gov

X. AGREEMENT PERIOD

This Cooperative Agreement shall be in effect on the opening day of the Education Center through June 30, 2019, and may be renewed for four (4) one-year periods. If the Department decides to not renew the agreement, notice of sixty days will be provided to the Friends Group.

XI. FUNDING AMOUNT AND SOURCES

There are no funds associated with this project.

XII. REPORTING REQUIREMENTS

WGFG will submit written reports to the Department on or before June 30, 2019, for activities accomplished and the volunteer hours and/or other resources committed, including annual sales data for the gift shop. The reports will include the status of the activities and the completion dates for all agreement activities. All reports shall be sent electronically to the Department Contact listed in Section IX of this agreement.

XIII. OWNERSHIP

WGFG will retain ownership of any equipment and merchandise purchased by WGFG necessary to achieve the MEASURABLE OUTCOMES listed in this agreement and as well as any equipment and merchandise purchased for any other purpose.

XIV. MONITORING REQUIREMENTS

The designated Department Contact (listed in Section IX) will monitor the agreement conditions and required reports from WGFG.

XV. AMENDMENTS TO THIS AGREEMENT

Changes to this Cooperative Agreement must be approved in advance by the Department and WGFG Contacts listed in Section IX of this agreement or their successors.

XVI. TERMINATION

Either party may terminate this Cooperative Agreement, in whole or in part when it is determined, after a joint meeting of the parties, that there has been failure to comply with any of the conditions of this agreement. After such meeting, any party shall notify the other party, in writing, of any remaining problems and give thirty (30) days for the other party to initiate corrective action. If, after the 30-day period, the corrective changes are insufficient, the terminating party shall promptly notify the other party, in writing, of the termination, reasons for termination, and the effective date for termination. Upon termination, WGFG will have 30 days to remove all items from the Education Center. Any items remaining after 30 days will be forfeited to the Department.

XVII. APPLICABLE LAWS AND REGULATIONS/HOLD HARMLESS/ INDEMNIFICATION

WGFG shall comply with all local, state, and federal laws and regulations related to the performance of this agreement to the extent that the same may be applicable to the entity.

WGFG will indemnify, defend, and hold harmless the Conservation Commission, Department of Conservation and its employees, agents, contractors, and subcontractors in all claims of personal or property damage resulting from the actions or omissions of WGFG officers, directors, employees, volunteers, or agents or any other claims arising out of the activities authorized by this agreement.

In Witness Whereof, the parties have executed this agreement.

MISSOURI DEPARTMENT OF CONSERVATION

By: _____ Date _____
Jeff Cockerham, Division Chief
Outreach & Education

Approved as to form only by
General Counsel

_____

WILDCAT GLADES FRIENDS GROUP

By: _____ Date _____
Steve Gaarder

COUNCIL BILL NO. 2019-613 ORDINANCE NO

AN ORDINANCE authorizing the City of Joplin to enter into a memorandum of understanding with the Wildcat Glades Friends Group, a Missouri Nonprofit Corporation ("Friends Group") for the purpose of establishing responsibilities in maintaining and operating Wildcat Park; and authorizing the Interim City Manager to execute said memorandum of understanding by and on behalf of the City of Joplin.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the memorandum of understanding with the Friends Group for the purpose of establishing responsibilities in maintaining and operating Wildcat Park, a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit A," be and the same is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreements, or agreements in substantially similar form, by and on behalf of the City of Joplin.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a _____ vote.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney