

**CITY OF JOPLIN  
COUNCIL AGENDA ITEM**

**ITEM**

Council Bill 2019-612: authorizing the City of Joplin to enter into an agreement with the Missouri Department of Conservation, an agency of the State of Missouri, ("MDC"), and the National Audubon Society, Inc., a New York not-for-profit corporation, ("Audubon"), for the purpose of terminating the assignment of ground lease and memorandum of understanding between MDC and Audubon; authorizing the City of Joplin to enter into an agreement with MDC to amend the ground lease between the City of Joplin and MDC for the purpose of reducing the leased real estate.

**MEETING DATE**

May 20, 2019

**ORIGINATING DEPT**

Parks

**ATTACHMENTS**

CB2019-612 Ordinance; Exhibit A: Termination of Assignment of Ground Lease and MOU; Exhibit B: Amendment to Ground Lease.

**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 agreement with MDC and Audubon for the purpose of terminating the assignment of ground lease and MOU between MDC and Audubon. This Council Bill further authorizes the City to enter into an agreement with MDC to amend the ground lease between the City and MDC for the purpose of reducing the leased real estate.

**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. The City's consent to termination of the assignment of ground lease and MOU is necessary to proceed.

MDC has agreed to continue to operate the nature center with the help of the Wildcat Glades Friends Group; however, a reduction in the leased real estate is necessary. The City will continue to operate Wildcat Park with the help of the Friends Group. Council Bill 2019-613 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.

TERMINATION OF ASSIGNMENT OF GROUND LEASE AND MOU

THIS AGREEMENT, effective as of June 30th, 2018, by and between the MISSOURI DEPARTMENT OF CONSERVATION, an agency of the State of Missouri ("MDC"); NATIONAL AUDUBON SOCIETY, INC., a New York not-for-profit corporation ("Audubon"); and the CITY OF JOPLIN, Missouri ("City").

WHEREAS, under a March 2003 Memorandum of Agreement ("MOU") between the City, MDC, and Audubon, the parties agreed, *inter alia*, that Audubon would create and run a nature center called the Wildcat Glades Conservation and Audubon Center ("Center");

WHEREAS, by an agreement dated May 1, 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 ("Ground Lease");

WHEREAS, the Ground Lease contemplated MDC assigning the Ground Lease to Audubon and by an assignment agreement dated March 28, 2005, MDC did assign all its right, title and interest in and to the Ground Lease to Audubon ("Assignment"); and

WHEREAS, Audubon assumed and agreed to make all the payments and perform all the covenants and conditions of the lessee in the Ground Lease and agreed to be bound by such covenants and conditions as if Audubon were the original lessee; and

WHEREAS, the Ground Lease was amended January 3, 2011 to add additional land to the leased Premises but otherwise remained in effect as written; and

WHEREAS, on March 27, 2018, Audubon gave notice to MDC that it desired to terminate the Assignment effective June 30, 2018 and MDC accepted such termination; and

WHEREAS, the parties also wish to terminate the MOU and release Audubon from all obligations connected with the MOU, Ground Lease, Sublease, and any and all other documents relating to the Center and to terminate all rights, responsibilities and obligations relating to Audubon and MDC and to Audubon and the City with respect to the Center.

NOW THEREFORE, MDC, Audubon, and the City agree as follows:

1. The Assignment of the Ground Lease to Audubon is terminated and declared null and void. Audubon has no further rights or obligations under the Assignment. The City agrees with and consents to MDC's revocation of the Assignment.
2. The MOU is terminated and the parties waive any notice requirements set forth in the MOU.
3. An endowment account held by Audubon dedicated to Wildcat Glades shall be permanently transferred by Audubon to the Missouri Conservation Heritage Foundation to be held by the Heritage Foundation as an endowment dedicated to Wildcat Glades.
4. The parties release each other from all claims or causes of action related to or arising out of the Center or Wildcat Park, and the Ground Lease, Assignment, MOU, or related documents,

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and hold each other harmless from all costs and expenses related to any such claims or causes of action asserted by any third person or entity thereto.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement as of the day and year first above written.

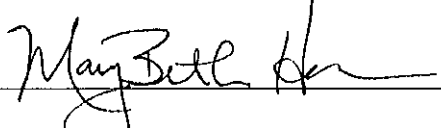
MISSOURI DEPARTMENT OF CONSERVATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NATIONAL AUDUBON SOCIETY, INC.

By:  \_\_\_\_\_

Mary Beth Henson  
Vice President & Chief Financial Officer

CITY OF JOPLIN, MISSOURI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Amendment to Ground Lease

THIS AMENDMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Joplin, Missouri (“Landlord”), and the Missouri Department of Conservation (“Tenant”).

WITNESSETH:

WHEREAS, a ground lease (the “Ground Lease”) was entered into on May 1, 2005, between Landlord and Tenant; and

WHEREAS, the Ground Lease provided for the lease of approximately 58 acres by Landlord to Tenant; and

WHEREAS, with Landlord’s consent dated June 23, 2005, Tenant assigned the Ground Lease to the National Audubon Society, Inc. (“Audubon”); and

WHEREAS, on March 27, 2018, Audubon and Tenant agreed to a termination of the assignment effective June 30, 2018, at which time Tenant will re-take possession of the leased premises; and

WHEREAS, Landlord and Tenant desire to amend the Ground Lease dated May 1, 2005, by reducing the leased acreage from approximately 58 acres to approximately 33.14 acres.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Landlord and Tenant agree to the above recitals and as follows:

1. Paragraphs 1.1 and 1.2 of the Ground Lease are hereby amended by changing the number of acres of real property being leased to Tenant by Landlord from approximately 58 acres to approximately 33.14 acres. The 33.14 acres are part of the 58 acres originally leased and shown in Exhibit A attached hereto. The parties acknowledge that the 33.14 acres have not been surveyed; however, Landlord agrees to do so if the parties deem a survey to be necessary at some point in the future.

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"B"

2. The parties hereby adopt, ratify, and confirm the Ground Lease as it is hereby amended.

LANDLORD:

TENANT:

City of Joplin, Missouri

Missouri Department of Conservation

by: \_\_\_\_\_  
Daniel Pekarek,  
Interim City Manager

by: \_\_\_\_\_  
Sara Parker Pauley, Director

Approved as to Form:

Attest:

\_\_\_\_\_  
General Counsel

\_\_\_\_\_  
Barbara J. Gollhofer, City Clerk

Approved as to Form:

\_\_\_\_\_  
Peter C. Edwards, City Attorney

AN ORDINANCE authorizing the City of Joplin to enter into an agreement with the Missouri Department of Conservation, an agency of the State of Missouri, ("MDC"), and the National Audubon Society, Inc., a New York not-for-profit corporation, ("Audubon"), for the purpose of terminating the assignment of ground lease and memorandum of understanding between MDC and Audubon; authorizing the City of Joplin to enter into an agreement with MDC to amend the ground lease between the City of Joplin and MDC for the purpose of reducing the leased real estate; and authorizing the Interim City Manager to execute said agreements 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 agreement with MDC and Audubon for the purpose of terminating the assignment of ground lease and memorandum of understanding between MDC and Audubon, 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 agreement with MDC to amend the ground lease between the City of Joplin and MDC for the purpose of reducing the leased real estate, a true and accurate copy of said agreement being attached hereto and incorporated as "Exhibit B," be and the same is hereby approved.

Section 3. 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