

## RESOLUTION NO. 2017-12-03

### AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH MORGAN COUNTY SCHOOL DISTRICT RE-3 FOR THE USE OF PROPERTY LOCATED AT LEGION PARK

**WHEREAS**, Morgan County School District RE-3 ("School District") has previously been utilizing property, also known as Legion Park, pursuant to a temporary use agreement; and,

**WHEREAS**, the City of Fort Morgan ("City") and School District desire to set forth an agreement for the long term use of the property; and,

**WHEREAS**, the City and School District have developed an agreement allowing the School District to lease and maintain the property for a period of thirty (30) years.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:**

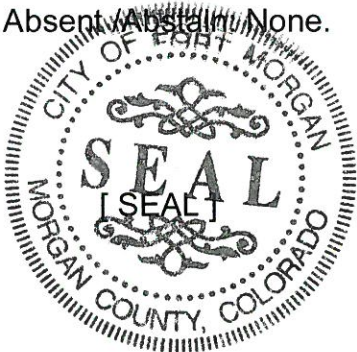
**Sec. 1:** The Mayor is hereby authorized to execute the **LEASE AGREEMENT BETWEEN THE CITY OF FORT MORGAN AND MORGAN COUNTY SCHOOL DISTRICT RE-3 FOR THE USE OF PROPERTY LOCATED AT LEGION PARK** attached hereto as Exhibit A.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of December, 2017, the vote upon roll call being as follows:

Ayes: Mayor Shaver, Councilmembers Anderson, Castoe, Howe, Lindell, Marler, and Northrup.

Nays: None.


Absent/Abstain: None.



THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY: \_\_\_\_\_

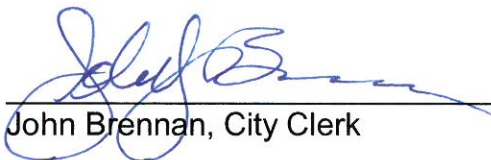
  
Mayor Ronald Shaver

ATTEST:   
John Brennan, City Clerk

STATE OF COLORADO                    )  
COUNTY OF MORGAN                 )     ss.                 **CERTIFICATE**  
CITY OF FORT MORGAN )

I, John Brennan, City Clerk for the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the Council of Fort Morgan, Colorado, and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have affixed the seal of the City of Fort Morgan this 19<sup>th</sup> day of December, 2017.

  
John Brennan, City Clerk

**LEASE AGREEMENT BETWEEN THE CITY OF FORT MORGAN AND  
MORGAN COUNTY SCHOOL DISTRICT RE-3 FOR THE USE OF  
PROPERTY LOCATED AT LEGION PARK**

**THIS AGREEMENT** entered into this 19<sup>th</sup> day of DECEMBER 2017, by and between **THE CITY OF FORT MORGAN, COLORADO**, a political subdivision of the State of Colorado, hereinafter referred to as "City", and the **MORGAN COUNTY SCHOOL DISTRICT RE-3**, a political subdivision of the State of Colorado, hereinafter referred to as "School District".

**WHEREAS**, School District is desirous to utilize property owned by the City for high school baseball programing; and,

**WHEREAS**, the School District has been using the property ("property") described below subject to Temporary Use Agreement between the City of Fort Morgan and the School District; and,

**WHEREAS**, the City recently completed the annexation of the property but, according to City Ordinances, cannot sell or transfer the property without prior approval of the electorate of the City of Fort Morgan; and,

**WHEREAS**, the School District requires continued use of the property for athletic extracurricular programs and further desires to make enhancement improvements on the property.

**NOW THEREFORE, BE IT HEREINAFTER AGREED BY THE PARTIES AS FOLLOWS:**

1. **Description of Premises:** City agrees to allow School District to utilize the Eddie Underwood baseball field located at the Legion Park, surrounding property in Legion Park, and Deuel Street Field.
2. **Term:** The term of this agreement shall commence on the date shown above and shall continue for a term of thirty (30) years to expire on December 31, 2047.
3. **Early Termination:** Either Party may terminate this Agreement prior to the expiration of the term subject to the following:
  - a. Terminating party must give the other party six (6) months notice of intent to terminate the Agreement.
  - b. If Early Termination is exercised by the City, the City shall be responsible to pay the School District the depreciated value of any capital expenditures as calculated in section 7 below.
4. **Payments:** School District shall pay the City one dollar (\$1) per year for the term of the lease agreement.

5. **Purpose:** School District intends to utilize the property in conjunction with School District sponsored activities. The School District understands that the property must remain open to the public pursuant to the Great Outdoors Colorado (GOCO) grant funding terms and conditions.
6. **Upkeep and Maintenance:** School District shall maintain the property throughout the year, including mowing, dragging the infield, watering, routine maintenance. The City shall be responsible maintaining the parking and driving areas and may stockpile snow as needed on the property.
7. **Capital Expenditures:** School District may, upon prior written approval from the City, make improvements or upgrades to the property at their expense. For purposes of this Agreement, the value of the capital expenditures shall be depreciated on an annual fixed basis over the remaining length of the term above per the formula below:

$$\text{Annual Depreciation} = \frac{\text{Total Expenditure}}{\text{Years Remaining in Term}}$$

8. **Utilities:** City shall pay for the costs of electricity and water for the property, so long as the premises are used for school sponsored activities sanctioned by the board of education or City use. School District shall be responsible for all other utilities associated with the property. The School District shall be responsible for the costs utilities associated with the use of the property by third parties and may recover their actual costs for utilities from third parties at the School District's discretion. City shall assume all utility, janitorial, or damage repair expense resulting from the City's use of the Property.
9. **Scheduling:** School District shall be the scheduling agent for the property. School District will ensure that the American Legion Baseball program has priority for its summer baseball program to utilize Eddie Underwood Field. Remaining scheduling shall occur with the following priorities: School District activities, City activities, other non-profit uses or programs, any other utilizations of the property. The City shall provide School District 30 days notice for City programing, after which time the City shall forfeit its priority scheduling. The City shall not be required to pay any fees for the use of the property. Any fees obtained by the School District for the use of the property shall be retained by the School District.
10. **Compliance with Grant Requirements:** School District understands and agrees that certain portions of the property must remain accessible to the public pursuant to grant agreements with Great Outdoors Colorado when not in active use by School District.

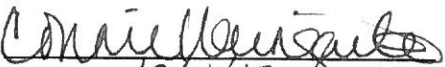


11. **Indemnification:** The City shall have no responsibility for the safety and or security of any person participating in the non-City use of the property. To the extent allowed by applicable law, School District expressly agrees to indemnify and hold harmless the City, its officers, employees, and agents, from all cost, loss and expense arising out of any liability or claim of liability for injury or damage to person resulting directly or indirectly from their participation in School District's use of the property, regardless of whether such use was authorized or not, and regardless of whether the liability or claim of liability arises of out of the act or omission of School District.
12. **Insurance:** School District agrees to procure an insurance policy with a licensed company doing business in the State of Colorado to provide \$1,000,000.00 with the City being listed as the Additional Insured on a primary and noncontributory basis for all activities occurring on the property. School District shall provide a copy of the Certificate of Insurance to the City upon the execution of this agreement. The City shall provide secondary insurance for property and liability in the above amount for any City activities on the Property. Notwithstanding anything in this Agreement, neither the School District or City intend to waive their respective Governmental Immunity.
13. **Compliance with Law:** School District shall comply with all laws of the United States and of the State of Colorado, all ordinances of the City of Fort Morgan, all rules and requirements of the Police and Fire Departments or other municipal authorities of the City of Fort Morgan. School District will not do or suffer to be done anything on the designated premises during the term of this agreement in violation of any such laws, ordinances, rules, or requirements. If School District's attention is called to any such violation on their part or of any person employed by or admitted to the designated premises by School District, they will immediately desist from and correct or cause to be corrected such violation.
14. **Encumbrances:** School District will not encumber any property under the terms of this Agreement for any purpose, including but not limited to: the purchase of any goods, supplies, materials, labor, taxes or fees or permits, unless mutually agreed upon by the parties.
15. **Assignment:** School District shall not assign this agreement without the prior written consent of the City.
16. **Release:** City shall not be responsible for any damage from any cause whatsoever prior, during, or subsequent to the period covered by this agreement. School District hereby expressly releases and shall require any third party users of the property to expressly release the City from any and all claims for such loss, damage, or injury.

17. **Binding Effect:** This agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties.
18. **Governing Law:** It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado.
19. **Entire Agreement:** This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party, except to the extent incorporated in this agreement.
20. **Modification:** Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

The undersigned hereby certifies that he/she is authorized to enter into and execute this Agreement on behalf of the School District and the City, respectively, and that the School District and the City acknowledge and accept the terms and conditions herein.

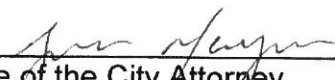
**MORGAN COUNTY SCHOOL  
DISTRICT RE-3 ("School District")**

BY:   
12/4/17 Date

**CITY OF FORT MORGAN ("City")**

BY:   
Mayor Ronald Shaver Date

**Approved as to form:**

  
Office of the City Attorney