

RESOLUTION NO. 23-

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO APPROVE FIRST AMENDMENT OF A FACILITY USE
AGREEMENT WITH HIGH PLAINS LITTLE LEAGUE**

WHEREAS, El Paso County completed Phase 2 construction of the Falcon Regional Park on April 5, 2022; and

WHEREAS, this second phase of the Falcon Regional Park included one additional youth baseball /softball field and one multi-use field; and

WHEREAS, on April 5, 2022, El Paso County and High Plains Little League previously entered a Facility Use Agreement that addressed the \$15,000 contribution, the field use scheduling process and corresponding payments, field maintenance, and other general requirements for utilizing Falcon Regional Park; and

WHEREAS, the current Facility Use Agreement term is set to end on December 1, 2025; and

WHEREAS, the High Plains Little League has requested to install and maintain scoreboards for the fields located at Falcon Regional Park at the expense of the High Plains Little League; and

WHEREAS, El Paso County and High Plains Little League would like to amend the current Facility Use Agreement to allow for the proposed scoreboard installation and a copy of the First Amendment of Facility Use Agreement with El Paso County and High Plains Little League is attached hereto as Exhibit 1;

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the attached First Amendment of the Facility Use Agreement entered on April 5, 2022.

BE IT FURTHER RESOLVED, that Cami Bremer, Chair of the Board of County Commissioners of the County of El Paso, State of Colorado, or Carrie Geitner, Vice Chair of the Board of County Commissioners shall be appointed and authorized to execute all documents reasonable and necessary to carry out the intent of the Board as described herein.

DONE THIS ____ day of _____, 2023 at Colorado Springs, Colorado.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By: _____
Steve Schleiker
El Paso County Clerk and Recorder

By: _____
Cami Bremer, Chair

**FIRST AMENDMENT OF
FACILITY USE AGREEMENT
(High Plains Little League)**

This First Amendment of Facility Use Agreement (“First Amendment”) is made this ____ day of _____, 2023, by El Paso County by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (“County”) whose address is 200 S. Cascade, Colorado Springs CO 80903, and HIGH PLAINS LITTLE LEAGUE (“HPLL”), whose principal street address is 11605 Meridian Market View, Unit # 124, PMB 132, Falcon, CO 80831. The County and HPLL may be collectively referred to herein as the Parties.

Recitals

WHEREAS, the Parties previously entered into a Facility Use Agreement (the “Agreement”) on April 5, 2022 relating to the Falcon Regional Park;

WHEREAS, the Agreement’s term ends on December 1, 2025; and

WHEREAS, the HPLL has requested to install and maintain scoreboards for the fields located at Falcon Regional Park at HPLL’s sole expense; and

WHEREAS, the Parties have enjoyed a mutually beneficial relationship pursuant to the Agreement, and the Parties now desire to enter into this First Amendment to allow HPLL to install and maintain scoreboards.

Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.

2. Incorporation of the Facility Use Agreement. The Parties incorporate the Facility Use Agreement dated April 5, 2023, as approved by El Paso County Board Resolution 22-114A, into this First Amendment as if fully stated herein, and the Agreement’s terms and conditions shall remain in full force and effect except as otherwise modified below:

The Parties hereby agree to amend “Paragraph 4. Facility Use Terms and Conditions:” within the Agreement by adding the following new paragraph thereunder:

q. Notwithstanding paragraphs (l) and (m) above, HPLL is authorized to install scoreboards outside the perimeter baseball fields fencing with written consent from El Paso County on final design(s) and location. HPLL agrees to be solely responsible for any and all costs associated with the installation and ongoing maintenance of any scoreboards HPLL so installs. The scoreboards shall be considered personal property of HPLL and in the event the Agreement terminates or otherwise expires, HPLL agrees to

remove the scoreboards and restore the property into substantially the same condition as it existed prior to the installation of the scoreboards, unless otherwise requested by El Paso County.

The Parties further hereby agree to amend and replace "Paragraph 12, Entire Agreement." within the Agreement as follows:

12. Entire Agreement. This Agreement and First Amendment, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

Made and entered into on the effective date set forth above.

BOARD OF COUNTY COMMISSIONERS

By: _____
Chair

Attest:

Clerk and Recorder

APPROVED AS TO FORM:

County Attorney's Office

HIGH PLAINS LITTLE LEAGUE


By: Jared Holtz
Its: President

Date: 3/10/23

FACILITY USE AGREEMENT

THIS AGREEMENT ("Agreement") is made this 9th day of April, 2022, by El Paso County by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO ("County") whose address is 200 S. Cascade, Colorado Springs CO 80903, and HIGH PLAINS LITTLE LEAGUE ("HPLL"), whose principal street address is 11605 Meridian Market View, Unit# 124, PMB 132, Falcon, CO 80831. The County and HPLL may be collectively referred to herein as the Parties.

Recitals

WHEREAS, the County has completed phase 2 construction of Falcon Regional Park; and

WHEREAS, the second phase of Falcon Regional Park includes one youth baseball/softball field and one multi-use field; and

WHEREAS, HPLL has supported the development of the fields and desires to use the fields at Falcon Regional Park for league activities.

Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above stated Recitals into this Agreement as if fully stated herein.
2. Description of the Premises. This Agreement affects portions of the Falcon Regional Park which are generally depicted on Exhibit A as the baseball/softball fields, attached hereto and incorporated herein, and is known as the Premises.
3. Nature of Agreement. As this Agreement only creates a Non-Exclusive priority of scheduling in the nature of a license in land, each Party's rights and obligations stated hereunder are exclusively contractual. Thus, each Party agrees and understands that this Agreement does not create a real estate interest of any kind or nature nor any type of possessory estate or possessory interest in the County's property. With the exception of priority in scheduling, nothing in this Agreement shall be construed as any limitation on the County or the general public's use of the baseball/ softball fields.
4. Facility Use Terms and Conditions:
 - HPLL provided \$15,000 to the County to support the development of one youth baseball / softball field and one multi-use field constructed as part of Phase 2 of Falcon Regional Park. It is anticipated the fields will be ready for play by **April 1, 2022.**
 - a. The County will provide HPLL the first right to schedule the fields for practices, regular season games and tournaments for summer season (March 15 through July 15) and fall season (August through October). The schedule for the summer practices,

regular season games and tournaments must be provided to the County by March 1 of each year and the schedule for the fall practices, regular season games, and tournaments must be provided by July 1. The County reserves the right to schedule the fields for other use when not in use by HPLL. Any additional field reservations made after the dates listed above (rainouts) will be scheduled through the Administrative Coordinator at the EPC Parks Office and the fields will be available on a first come- first served basis.

b. HPLL will pay \$15 per hour per field for all practices, regular season games and tournaments for the term of this agreement. All County special event fees applicable to HPLL events at the baseball / softball fields will be waived. For the summer season, the rental fees will be paid. in equal installments on April 1 and June 1 and August 1 for the entire fall season.

c. HPLL will access the facility through the main parking lot and walk-through field gates only. The County will install combination locks on gates and provide HPLL with combination lock codes. All locks are County property and shall not be cut or replaced with non-County locks. If HPLL desires access through other property gates or field gates, the HPLL president shall coordinate with the Park District Supervisor.

d. HPLL will ensure that all gates are locked after use and notify the County if locks have been vandalized or removed.

e. The County will notify HPLL when fields are unplayable due to inclement weather a minimum of three hours before the respective scheduled event.

f. The County will be responsible for turf maintenance including mowing the athletic fields weekly or as needed and will maintain a turf height of approximately three inches, completing annual turf management (aeration, overseeding), and irrigation system maintenance and repair.

g. HPLL will prepare the fields for the games. The field preparation will include filling holes with infield mix provided by the County, dragging the fields, chalking lines, and installing bases and pitching rubbers provided by HPLL.

h. HPLL is responsible for returning the facility to a clean condition after each event. HPLL will clean the dugouts and spectator areas at the completion of all practices and games. All trash shall be bagged and deposited in or placed next to the trash receptacles provided by the County. All other trash will be the responsibility of HPLL to remove and properly dispose.

i. HPLL will provide a certificate of insurance which names El Paso County as the additional insured and showing coverage in minimum amounts of \$1,000,000 for personal injury and property damage. The dates and location will be listed on the certificate.

j. HPLL will be allowed to utilize a storage container onsite. The location of the container will be approved by the County prior to placement. Container(s) shall be graffiti free and maintained by HPLL to remain functional. Any damaged or unsightly storage containers, trash, unusable field amenities, etc. will be the responsibility of HPLL to remove and properly dispose.

k. The County will provide and clean restroom facilities (either portable or permanent) for HPLL practices and games.

l. The County will consider the opportunity for HPLL to install temporary banners on the outfield fence to generate sponsorships to support HPLL activities. If an agreement is reached, the installation of banners will be addressed under a separate agreement. HPLL shall contact the Executive Director for any banner installation request.

m. HPLL will not construct any other fixtures or improvements of a temporary or permanent nature upon without the express written consent of the County.

n. HPLL shall not engage in and/ or permit any unlawful use or activity on the athletic fields or park premises.

o. HPLL may request the installation of rules signs at the respective fields. The County will consider and / or approve the sign request within five business days. The signs will be removed at the completion of each playing season.

p. The County will consider HPLL managing a concession stand at Falcon Regional Park during regular season games and tournaments. If agreeable, this use will be addressed in a separate agreement.

5. Term and Commencement of Agreement. The Agreement shall commence on the date first written above, hereinafter referred to as the Commencement Date, and it shall continue until **December 1, 2025**, unless terminated in whole or in part as set forth in Paragraph 6 below. The County and HPLL may negotiate an extension of this Agreement or a new agreement relating to the youth baseball/softball fields; to the extent such negotiations take place, they will be initiated in **2025**.

6. Suspension of Agreement - Termination. This Agreement may be suspended by the County or HPLL at any time and for any purpose through written notice. The County also reserves the right, in its sole subjective discretion, to suspend this Agreement in the event that the County determines use of the baseball / softball fields by HPLL fails to adhere to County Park rules and regulations and / or stipulations in this agreement. If the County elects to suspend this Agreement, the County shall notify HPLL as set forth in Paragraph 14. Upon written notification by County, the County's obligations and HPLL use of the fields under this Agreement shall be immediately suspended. The County shall notify HPLL in writing of its intent to reinstate this Agreement upon reasonable satisfaction that any issues have been corrected to the County's sole subjective satisfaction. Failure by HPLL to resolve the issues within fifteen (15) days of notice may result in the Agreement being terminated by the County.

7. Condition of the Baseball / Softball Fields. HPLL agrees and understands that it commences its use of the baseball / softball fields "AS IS" and without any warranties of any kind or nature, including without any warranties as to the state of the County's title to the softball/baseball fields. Upon termination of this Agreement, HPLL shall remove any equipment owned by HPLL within thirty (30) days.

8. Indemnification. HPLL shall defend, indemnify and hold the County free and harmless from and against any and all liabilities, demands, claims, damages, suits, judgments and

decrees, and Court awards including costs, expenses and attorneys' fees, on account of injuries to or death or any person or persons or damage to any property arising out of or related to HPLL's intentional or negligent acts, errors or omissions or that of its agents, officers, servants and employees, subcontractors or assignees, whether contractual or otherwise, during the term of this Agreement and pursuant to its terms. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to the County pursuant to the Colorado Governmental Immunity Act or otherwise provided by law.

9. Assignment/Transfer. HPLL shall not assign its rights and obligations under this Agreement without the express written consent of the County.

10. Right to Access. The softball/baseball fields are County property and the County, at its sole subjective discretion, may enter upon the softball/baseball fields without notice at its leisure for any or no purpose.

11. Remedies and Jurisdiction. In the event of any breach of this Agreement, the non-breaching party may pursue any and all remedies or causes of action available to it at law or in equity. Venue and jurisdiction shall be exclusively that of the Fourth Judicial District of Colorado.

12. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

13. No Third-Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages, or to bring any legal action or other proceeding against any Party for any breach or other failure to perform this Agreement.

14. Notices. All notices or other communications to the Parties shall be either be personally delivered or be sent by United States Mail, return receipt requested, postage prepaid, to the addresses set forth or to any other address which the Parties may substitute in writing. Such notices shall be deemed received when personally delivered, or if mailed, notice shall be deemed received within three (3) days after the date of mailing the same.

County: Executive Director
Community Services Department
2002 Creek Crossing
Colorado Springs, Colorado 80903

President
High Plains Little League
11605 Meridian Market View, Unit# 124, PMB 132
Falcon, CO 80831

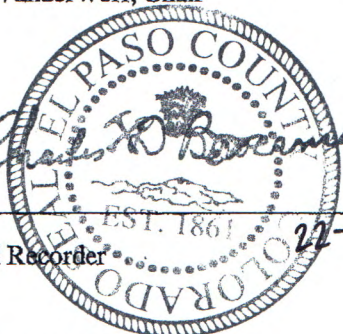
Made and entered into on the effective date set forth above.

BOARD OF COUNTY COMMISSIONERS

By: Stan VanderWerf
Stan VanderWerf, Chair

Attest:

Christina Baccamari
Clerk and Recorder **22-114A**



APPROVED AS TO FORM:

Steven Klaffky
Steven Klaffky (Apr 4, 2022 16:04 MDT)

County Attorney's Office

HIGH PLAINS LITTLE LEAGUE

Alan A. Bury
President