

ORDINANCE NO. 2019-19

AN ORDINANCE OF THE CITY OF FRUITA APPROVING A PARKING LOT CONSTRUCTION, MAINTENANCE, AND LICENSE AGREEMENT BETWEEN THE CITY OF FRUITA AND FAMILY HEALTH WEST.

WHEREAS, the City of Fruita and the Lower Valley Hospital Association entered into a certain Ground Lease Agreement dated April 10, 2007 along with Amendment #1 dated August 19, 2008 and Amendment # 2 dated December 18, 2017 (collectively referred to as “Lease”) pursuant to which City of Fruita leased to the Lower Valley Hospital Association certain property located in the City of Fruita, County of Mesa, State of Colorado; and

WHEREAS, parking for employees and the guests of the parties and for the public has become increasingly difficult on the leased property and adjacent property owned by the City of Fruita; and

WHEREAS, the Lower Valley Hospital Association desires to construct, at its cost a new parking lot for the benefit of the parties on the adjacent real property owned by the City of Fruita; and

WHEREAS, the parties desire to cooperate to construct and maintain a new parking lot on City owned property adjacent to the Fruita Community Center.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. The Parking Lot Construction and Lease Agreement, attached hereto as Exhibit “A” and incorporated herein by this reference, is hereby approved by the City of Fruita.

Section 2. The Mayor of the City of Fruita is hereby authorized and directed to execute the attached Parking Lot Construction and Lease Agreement.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS 16TH DAY OF JULY, 2019.

CITY OF FRUITA

Lori Buck, Mayor Pro Tem

ATTEST:

Margaret Sell, City Clerk

**PARKING LOT CONSTRUCTION, MAINTENANCE AND LICENSE
AGREEMENT**

THIS AGREEMENT is entered into and made effective as the _____ day of _____, 2019, by and between the CITY OF FRUITA, COLORADO, a Colorado home rule municipal corporation, whose address is 325 East Aspen, Fruita, Colorado (the "City") and the LOWER VALLEY HOSPITAL ASSOCIATION, d/b/a Family Health West ("FHW"), a Colorado non-profit corporation. Collectively, FHW and The City are referred to herein as the "Parties."

RECITALS

WHEREAS, FHW and the City entered into a certain Ground Lease Agreement dated April 10, 2008 along with Amendment #1 dated August 19, 2008 and Amendment #2 dated December 18, 2017 pursuant to which the City leased to FHW property adjacent to the City's Community Center and FHW has constructed medical facilities on such property (the "Leased Property"); and

WHEREAS, parking for employees of the Parties and for the public has become increasingly difficult on the Leased Property and surrounding areas; and

WHEREAS, the City owns that certain real property described in Exhibit A (the "Subject Property") attached hereto and incorporated herein; and

WHEREAS, FHW desires to construct a new parking lot to benefit the Parties on the Subject Property; and

WHEREAS, the Parties desire to cooperate to construct and maintain a new parking lot on the Subject Property for their mutual benefit.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Construction of Parking Lot and Warranty.

a. Subject to the City's final approval of all contracts, plans and specifications, FHW, at its sole cost and expense, shall plan, design, acquire permits and construct a parking lot providing for a minimum of thirty-two (32) parking spaces (the "Work"). Said Work shall include the installation of two (2) light poles to be tied in to the City's Community Center.

b. FHW warrants to Owner for a period of one (1) year from the date hereof that the work provided in connection with the parking lot will be of good quality and free from material faults and defects, and for a period of five (5) years from the date hereof

that materials furnished under the Agreement will be of good quality and new, unless specified otherwise in the plans and specifications. If FHW receives written notice from the City prior to the expiration of the applicable warranty period notifying FHW of any material defects in materials and/or workmanship or that the work is not in accordance with the requirements of the plans and specifications, FHW shall, at FHW's sole cost, promptly repair or replace, at FHW's option, any defective work or materials or nonconforming work. If FHW fails to commence corrective repairs or replacement within thirty (30) days after receipt of written notice from City, unless it is not reasonably feasible to do so, City may make the corrective repairs or replacement at FHW's cost. Actions taken by FHW to correct a defect(s) shall extend the term of this warranty.

2. Maintenance of Parking Lot. Upon completion of construction of said parking lot and approval by the City of such construction, the City shall be responsible for general maintenance of the parking lot, as determined by the City in its reasonable discretion, including the following:

- a. Removal of snow and ice;
- b. Clean the area of litter, trash and debris;
- c. Updating striping when required;
- d. Seal coating as necessary;
- e. Asphalt repair if necessary;
- f. Maintenance of drainage and irrigation;
- g. Maintain and pay for monthly electrical pole lighting fees.
- f. Maintain all vegetation

Notwithstanding the forgoing, FHW shall reimburse the City for costs associated with the maintenance and repair of the parking lot due to damage caused by FHW, its employees, agents, guests or invitees, normal wear and tear excepted.

3. Creation and Description of License.

a. The City hereby grants to FHW for the benefit FHW and its officers, employees, tenants and guests a non-exclusive license to enter all or any part of the parking lot for the purposes of conducting vehicular, overflow parking for FHW's employees, tenants and guests in the Parking Area. Notwithstanding the foregoing, nothing herein shall provide the City nor the general public from using the parking lot.

b. The Parties acknowledge the parking lot may be used by the City, its

guests, employees, and invitees as well as by FHW, its guests, employees and invitees. The parking lot shall be a shared use facility with no reserved parking spaces for either Party.

4. Term. The term of this Agreement shall commence upon execution of this Agreement by both parties and shall terminate thirty (30) years from the effective date. Provided, however, the City may sooner terminate the License upon a determination by the City Council that use of the Subject Property is required for other municipal activities and functions. In such an event, the City shall give FHW at least one (1) year advance notice of the City's intent to terminate this Agreement.

5. Insurance. At all times during the term of this Agreement both Parties shall procure and maintain, and shall cause any contractor or subcontractor of a Party to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to both Parties. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations.

- a. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each accident, ONE MILLION DOLLARS (\$1,000,000) disease - policy limit, and ONE MILLION DOLLARS (\$1,000,000) disease - each employee.
- b. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors and products. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis.
- c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each Party's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Such issuance must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement.
- d. The policies required by (b) and (c) above shall be endorsed to include the

other party and its officers, agents and employees as additional insureds.

- e. Upon completion of the parking lot improvements by FHW, and upon acceptance of said improvements by the City, the City's insurance shall be deemed primary insurance, and with respect to the Subject Property any insurance carried by FHW, its officers or employees shall be excess and not contributory insurance to that provided by the City.

6. Signage. With mutual written consent, which consent shall not be unreasonably withheld, the Parties may provide signage on the Subject Property as permitted by the City Ordinances.

7. Towing of Vehicles. The Parties reserve the right to tow, at owner's expense, vehicles improperly parked or abandoned on the Subject Property.

8. Meetings of Parties. The Parties agree to meet on occasion to work out any problems that may arise in regard to the shared use of the Subject Property.

9. Miscellaneous Provisions.

- a. Waiver of Defects. In executing this Agreement the Parties waive all rights they may have concerning defects, if any, of the form of this Agreement, or the formalities whereby it is executed; and concerning the procedure, substance and form of any ordinances or resolutions adopting this Agreement.
- b. Failure to Exercise Rights. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by written amendment to this Agreement signed by the Parties; the waiver of any default under this Agreement shall not be deemed a waiver of any subsequent default or defaults or the same type.
- c. Complete Agreement. This Agreement contains all of the understandings, conditions and agreements between the Parties relating to the construction, maintenance and use of a parking lot on the Subject Property and no other prior or current representation, oral or written, shall be effective or binding upon the Parties.
- d. Attorney's Fees. In the event any action is filed or maintained by either party in relation to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney's fees, including legal assistant's fees. All rights concerning remedies or attorney's fees shall survive termination of this Agreement.

- e. Amendments. This Agreement may be amended from time to time by written agreement duly authorized by the Parties.
- f. Time of the Essence. Time is of the essence of this Agreement.
- g. Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado and the laws of the State of Colorado shall govern its interpretation, validity and enforceability.
- h. Jurisdiction and Venue of Courts. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement will be deemed to be proper only if such action is commenced in the District Court for Mesa County, Colorado. Both parties expressly waive any right to bring such action in or to remove such action to any other court, whether State or federal.
- i. Provisions Deemed Severable. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the Parties will be construed as if the part, term or provision was never part of the Agreement.
- j. Recordation of Agreement. the City shall record a copy of this Agreement in the office of the Clerk and Recorder of Mesa County, Colorado.
- k. Indemnification. To the fullest extent permitted by law, the FHW agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the work, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the FHW or any subcontractor of the FHW, or any officer, employee, or agent of the FHW or any subcontractor, or any other person for whom FHW is responsible. The FHW shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The FHW's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a home rule municipal corporation, acting by and through its City Council.

By: _____
Joel Kincaid, Mayor

ATTEST:

Margaret Sell, City Clerk

THE LOWER VALLEY HOSPITAL ASSOCIATION
d/b/a Family Health West
a Colorado nonprofit corporation

By: *Rori Randall*
Mark J. Francis, President/CEO

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A parcel of land situated in the NW¼ NW¼ Section 17, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Northwest Corner of said Section 17 from whence the Southwest Corner of the NW¼ NW¼ of said Section 17 bears S0°10'36"E a distance of 1324.06 feet;
thence along the West line of the NW¼ NW¼ of said Section 17 S0°10'36"E a distance of 423.79 feet;
thence N89°51'09"E a distance of 30.00 feet to a point on the East right of way line for Coulson Street;
thence along said right of way N0°10'36"W a distance of 393.65 feet to a point on the South right of way for Ottley Avenue;
thence along said right of way S89°52'49"E a distance of 609.80 feet to a point on the West right of way for Cherry Street;
thence along said right of way S0°08'56"E a distance of 448.15 feet to the southeast corner of the existing lease boundary as described in book 4646 page 1, reception number 2434615, to the POINT OF BEGINNING;
thence along said right of way S0°09'00"E a distance of 174.59 feet to a point on the West right of way for Cherry Street;
thence S42°40'36"W a distance of 10.38 feet;
thence S89°45'58"W a distance of 98.34 feet;
thence N0°30'30"E a distance of 12.53 feet;
thence N37°33'18"E a distance of 27.25 feet;
thence N0°09'00"W a distance of 125.32 feet to a point on the existing lease boundary curve to the left;
thence along said curve to the left with an arc length of 83.78 feet, a central angle of 64°00'03" and a radius of 75.00 feet whose chord bears N74°17'24"E a distance of 79.49 feet to the start of a curve to the right;
thence along said curve to the right with an arc length of 4.15 feet, a central angle of 47°32'45" and a radius of 5.00 feet whose chord bears N66°04'38"E a distance of 4.03 feet;
thence N89°51'00"E a distance of 8.32 feet to the POINT OF BEGINNING.
Said parcel contains: 0.343 acres as described, with perimeter: 544.65 feet.