

**PARKS, RECREATION & CULTURAL SERVICES DEPARTMENT
MEMORANDUM # 12-2018**

DATE: June 25, 2018
TO: Honorable Mayor Carol Dodge and City Council Members
FROM: Robert Webber, Acting City Manager
Amanda J. Peterson, Director of Parks, Recreation and Culture *ajp Rkw*
SUBJECT: CR-82 - Adams 12 Five Star Schools MOU for the Use of Undeveloped Property West of the Justice Center

PURPOSE

Staff is seeking approval of the attached Memorandum of Understanding (MOU) between Adams 12 Five Star Schools and the City of Northglenn for temporary use of a portion of city property at the undeveloped parcel to the west of the Justice Center.

BACKGROUND

Through their bond program, Adams 12 Five Star Schools is making significant improvements to schools throughout the district, including those in Northglenn. One of those projects is the installation of a new fiber optic network to improve connectivity between all schools and other district facilities. The school district has requested to temporarily utilize approximately one acre of the property to the west of the Justice Center (the area informally known as "Justice Center West Park") during construction, and intends to dedicate fiber strands to the city to improve connectivity between city facilities as a part of the project.

The temporary area is defined in Exhibit A. The temporary use includes staging a construction trailer and storage containers on the site, which will be fully fenced with screened chain link. The district will be responsible for all costs associated with the staging area, as well as restoration of the site to the existing condition at the conclusion of the project. All construction traffic will enter the site from Community Center Drive, to minimize any impact to the residential properties on the south. Construction traffic is anticipated to include 15-20 staff at the start of the work day to pick up equipment and materials for the day, and 2-3 staff on site throughout the day.

The district has requested use of the space for approximately 21 months, from July 2018 to April 2020. The city is currently in the concept phase of a new park proposed for this property. It is anticipated that the design will be complete in 2019. At this time, no funds have been allocated for the construction phase. A project budget has been proposed in the five-year Capital Improvement Program Plan for 2020, for consideration during the 2019 budget process. If this budget is approved, park development could begin in 2020, following the conclusion of the school district project.

If the city were to desire to begin park development sooner, the contract may be terminated at any time, with 120 days notice, as identified in section 8 of the MOU. It is not anticipated that the city would be prepared to begin park construction prior to the completion of the school district's project

UPDATE

None

BUDGET/TIME IMPLICATIONS

All expenses associated with this MOU are the responsibility of Adams 12 Five Star Schools. The school district wishes to begin construction by July 1, 2018.

NEXT STEPS/CITY COUNCIL OPTIONS

Council may request modifications to the MOU, approve the MOU or deny the MOU.

RECOMMENDATION

The impact to the city and our residents should be very minimal. By providing the school district with an appropriate staging area for the project, the schools and the students in our community will benefit. In addition, the city will benefit from the installation of additional fiber optic lines by the school district, which will be dedicated for city use.

Staff recommends that the MOU be approved, as presented.

STAFF REFERENCE

For additional information, please contact Amanda Peterson, Director of Parks, Recreation & Culture at apeterson@northglenn.org or 303.450.8950.

ATTACHMENTS

- ATTACHMENT 1 MOU
- ATTACHMENT 2 Exhibit A

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-82
Series of 2018

Series of 2018

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND ADAMS 12 FIVE STAR SCHOOLS FOR USE AND ACCESS OF CITY OWNED PROPERTY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Northglenn and Adams 12 Five Star Schools, attached hereto, for the use and access of City-owned property for the Adams 12 Five Star Schools Fiber Optic Network Connectivity Project is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED, at Northglenn, Colorado, this _____ day of _____, 2018.

CAROL A. DODGE
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NORTHGLENN
AND ADAMS 12 FIVE STAR SCHOOLS
FOR USE AND ACCESS**

This **MEMORANDUM OF UNDERSTANDING** is made and entered into this day _____ of _____, 2018 (the "Effective Date"), by and between the **CITY OF NORTHGLENN**, hereinafter referred to as the "City", and **ADAMS 12 FIVE STAR SCHOOLS**, hereinafter referred to as "Adams 12," and collectively referred to as the "Parties."

WHEREAS, on or about July 1, 2018, Adams 12 is commencing construction of a fiber optic network to provide connectivity between all Adams 12 schools and facilities (Project); and

WHEREAS, Adams 12 will require use of and exclusive access to approximately one (1) acre of the property immediately west of the new City of Northglenn Justice Center and Water Tanks which is owned by the City identified on Attachment A (the "Property") for temporary activities related to the Project, including storage of construction materials, construction vehicle ingress/egress/parking, and placement of a temporary construction trailer/office within the Property, as described herein; and

WHEREAS, the City wishes to collaborate with Adams 12 and support and facilitate the completion of the Project, and such Project and related improvements are in the best interests of the community and the Parties; and

NOW, THEREFORE, AND IN CONSIDERATION of the covenants and agreements below appearing, the Parties agree as follows:

1. The City hereby grants permission to Adams 12 and its agents and contractors to enter, remain upon, and except as otherwise stated in this Agreement, exclusively occupy the Property for the term of this Agreement and to conduct any work or other activities or engage in any uses related to the Project, including such work as is described above. The Project is expected to commence by July 1, 2018 and be completed by April 30, 2020.
2. Adams 12 shall pay for all costs incurred with regard to such entry upon and use of Property including arranging all necessary utility locates and any temporary utility line installations and shall not permit any liens to be filed against the Property as a result of work on the Project.
3. Except as otherwise stated in this Agreement, Adams 12 shall within a reasonable timeperiod effect repair of any damage caused to the Property by Adams 12, or its agents or subcontractors as a result of their entry onto the Property or the performance of the above described work and, upon completion of those activities restore the Property to the condition that existed prior to their entry upon it.
4. Adams 12 will notify the City of the Project schedule and coordinate Project activities with the City and shall not create any unreasonably hazardous or unsafe conditions on the Property.
5. Adams 12 shall work and coordinate with the City to provide City use of selected fiber strands constructed as part of the Adams 12 project for connecting City facilities to the City network. The Parties agree to negotiate in good faith to develop a separate agreement to address the City use of fiber constructed as part of the Adams 12 Project.
6. Adams 12 shall procure and maintain at its sole and exclusive expense insurance coverage, including comprehensive liability, personal injury, property damage, and worker's compensation for the

property in an amount no less than the monetary limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (presently three hundred fifty thousand dollars (\$350,000.00) per person and nine hundred ninety thousand dollars (\$990,000.00) per occurrence). Evidence of coverage shall be sent to the City's Risk Manager. The certificate of insurance shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the other party.

7. The term of this Agreement shall commence as of execution of this Agreement by both Parties and terminate on April 30, 2020 and may be further extended upon mutual written agreement of the Parties.
8. This Agreement may be terminated only within thirty (30) days of April 30, 2020, or at any time thereafter, upon receipt of written notice by either party. Notwithstanding the foregoing, Adams 12 understands that if the City determines to develop the Property prior to April 30, 2020, the City may provide Adams 12 with one-hundred twenty (120) days written notice to terminate this Agreement.
9. In the event that there is a dispute under this Agreement that cannot be resolved to the mutual satisfaction of the Parties, the Parties shall meet to attempt to resolve the dispute or the anticipated recourse or remedy. If this attempted resolution or negotiation fails, the City Manager and the Adams 12 Superintendent or their respective designees shall meet to attempt to resolve or negotiate the matter. If this fails, the Parties may mutually agree to any other mediation attempts and if those attempts fail, either party may exercise any other legal remedies available to them.
10. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado.
11. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.
12. No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.
13. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the Parties.
14. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: _____
City of Northglenn
P.O. Box 330061
Northglenn, CO 80233

Adams 12: Phil Spare, General Counsel
Adams 12 Five Star
Schools 1500 E 128th
Avenue Thornton, CO
80241

15. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
16. This Agreement may only be modified upon written agreement of the Parties.
17. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either party without the written consent of the other.
18. Each party's financial obligations are subject to annual appropriations as required by Article X, Section 20 of the Colorado Constitution.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF NORTHGLENN

By: _____

ATTEST:

Johanna Small, City Clerk

APPROVED AS TO FORM:

Cory Y Hoffmann, City Attorney

ADAMS 12 FIVE STAR SCHOOLS

By: _____

ATTEST:

Ginger Barton, Sr Administrative Assistant

APPROVED AS TO FORM:

Phil Spare, General Counsel

ATTACHMENT A

PROPOSED PROJECT ACTIVITIES

Staff / Activities at Site:

- One (1) 65'x8' construction trailer and two (2) 20'x8' connex containers for storing expensive tools/materials & equipment, and a dumpster (all within the fenced in area)
- Typically, 2-3 staff on-site during the work day
- Maximum of 15-20 staff on site (4 crews) at the start of the work day in the morning for a safety review meeting, pick up equipment/materials for the day, and then returning at the end of the day
 - Staff will park inside the fence at the job site
- Material deliveries anticipated to include 1-2 truckloads per month, somewhat higher at the start of the project, the larger items include:
 - Conduit Reels (8'H x 4'W)
 - Fiber Optic Cable Reels (4'H x 3'W)
 - Handholes (3'L x 2'W x 2'D & 3'L x 2'W x 3'D)
- The site, including work in the field, are non-smoking sites

Site Plan:

- Approximately one (1) Acre in size
- Fencing is a temporary 6' high chainlink fence with a mesh screen
- Grading and yard preparation to be completed per City direction
- Will place Road Base in the yard area, including a combination of approximately 4" of road base with 2" top coat of gravel & finds (i.e. sands to provide compaction)
- The Adams 12 contractor, Henkels & McCoy, will coordinate with the City for a water meter for the site and will coordinate with Xcel Energy for electrical for the job trailer on the site

See Attached Drawing for Site Plan

