

**WOODFORD COUNTY BOARD OF EDUCATION
AGENDA ITEM**

ITEM #: IV B **DATE:** February 13, 2019

TOPIC/TITLE: Lease Agreement

PRESENTER: D. Scott Hawkins

ORIGIN:

- ☐ TOPIC PRESENTED FOR INFORMATION ONLY (No board action required.)
- ☒ ACTION REQUESTED AT THIS MEETING
- ☒ ITEM IS ON THE CONSENT AGENDA FOR APPROVAL
- ☐ ACTION REQUESTED AT FUTURE MEETING: (DATE)
- ☒ BOARD REVIEW REQUIRED BY

- ☐ STATE OR FEDERAL LAW OR REGULATION
- ☐ BOARD OF EDUCATION POLICY
- ☐ OTHER:

PREVIOUS REVIEW, DISCUSSION OR ACTION:

- ☒ NO PREVIOUS BOARD REVIEW, DISCUSSION OR ACTION
- ☐ PREVIOUS REVIEW OR ACTION

- ☐ DATE:
- ☐ ACTION:

BACKGROUND INFORMATION:

SUMMARY OF MAJOR ELEMENTS:

We are requesting Board approval of the attached revised Lease Agreement with the Kentucky Softball Foundation.

IMPACT ON RESOURCES:

TIMETABLE FOR FURTHER REVIEW OR ACTION:

SUPERINTENDENT'S RECOMMENDATION: ☒ Recommended ☐ Not Recommended



LEASE

THIS LEASE AGREEMENT made and entered into pursuant to the Governmental Leasing act, KRS 65.940 *et seq.*, this the ____ day of _____, 20____, by and between the KENTUCKY SOFTBALL FOUNDATION, with its principal office at 7000 Arbor Meadow Way, Versailles, KY 40383, hereinafter referred to as LESSOR, and the BOARD OF EDUCATION OF WOODFORD COUNTY, with its principal office at 330 Pisgah Pike, Versailles, Kentucky 40383, hereinafter referred to as LESSEE.

WITNESSETH:

That LESSOR shall, for and in consideration of the rental payment by the LESSEE hereinafter set forth, lease unto LESSEE, for its nonexclusive use, the restroom/concession stand building constructed and located at the Woodford County Park, at 275 Beasley Road, Versailles, Kentucky, hereinafter referred to as "leased premises."

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereto belonging unto said LESSEE, its successors and assigns, during its priority seasonal usage period, described herein below, and beginning on _____, 2019, and ending on _____, 2049. If LESSOR, LESSEE agree, and Woodford County Fiscal Court agree, LESSOR and LESSEE may execute an option to renew, or a new successor Lease, if the parties are so inclined in either regard.

The following terms and conditions shall apply to this Lease:

1) Rental Payment. The total rental payment due and owing by the LESSEE to the LESSOR for the term of the Lease as set out hereinabove shall be \$30,000. In lieu of the LESSEE making equal monthly rental payments during the term of this Lease, the LESSEE desires to make and the LESSOR agrees to accept the LESSEE making a one-time payment of \$30,000, on or before _____, 2019, for the leasehold improvement of installation/construction of restroom/concession stand building.

It is further understood and agreed to by and between the LESSOR and the LESSEE that if the LESSOR takes action to terminate this Lease for convenience prior to _____, 2049, the installation/construction of the building referenced herein above, using the amount of \$30,000 as the base figure, the LESSOR shall reimburse the Lessee on a pro rata basis with the sum being owed calculated and determined by the number of months, whole or partial, left on the term of this Lease following written notice of termination given by the LESSOR to the LESSEE. Before the LESSOR is entitled to give notice of termination of this Lease for cause the LESSEE will be provided written notice of any conduct believed to be in violation of the terms of this Lease or other asserted breach of this Lease with the LESSEE having not less than sixty (60) calendar days thereafter to address and resolve any issue raised by the LESSOR.

2) Use of Leased Premises. The subject leased premises are being leased to LESSEE to facilitate use during the spring season for Woodford County High School (WCHS) softball, with priority and primary use to be accorded to LESSEE for these softball activities from February 15 – June 15th of each year (priority seasonal use time). LESSEE may also utilize the leased property for its middle school softball program, based however, upon field availability, as such use is not deemed priority use as it is for the high school program.

The LESSOR shall during the term of this Lease maintain the restroom/concession stand building facilities in a safe and fully functional condition, and in a timely fashion perform basic maintenance and minor repair or patch work, resulting from, or due to, the age or general depreciation of the building. The parties to this Lease agree that any upgrades to the facility are considered "improvements," the cost and payment for which

would have to be separately negotiated between the parties, each of whom commit to act in good faith in such regard. As concerns the structure, the LESSOR shall satisfy any code requirements governing LESSOR under Federal, State, and Local laws; provided, however, this last proviso shall not be interpreted by the LESSEE to bind LESSOR to comply with any Americans With Disabilities (ADA) standards LESSEE might otherwise be required to adhere to.

3) Prohibited Uses. LESSEE shall not allow smoking or use of any tobacco product anywhere within or upon the leased premises, nor any consumption of alcoholic beverages at any time. LESSEE agrees to strictly enforce this policy during its use of the leased premises.

4) Insurance. LESSEE agrees to maintain at all times public liability insurance on the leased property for the purposes of protecting the LESSOR from any claims which may be made as a result of injury to any person or property which may occur on the leased premises, proof of which shall be made available to LESSOR prior to the effective date of this Lease and, subsequently, at any time upon demand. The LESSEE shall at all times during the term of this Lease, protect and save harmless the LESSOR from any and all claims, demands, and damages for injuries to person or property incurred on the leased premises occupied by LESSEE and growing out of the neglect of LESSEE or any of its employees or agents. Such insurance shall afford minimum protection of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence of bodily injury or death and of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for each occurrence of property damage.

The LESSOR agrees to indemnify and hold harmless the LESSEE, its officers, employees, and agents against claims or demands arising from providing the leased premises under this Lease. The LESSOR agrees to provide comprehensive liability insurance for the entire term of this Lease with a company licensed to do business in the Commonwealth of Kentucky, insuring both the LESSOR and LESSEE, with policy limits of \$1,000,000 combined single limit, including broad form comprehensive general liability, and to deliver to the LESSEE a certificate of insurance reflecting the coverage prior to the effective date of this Lease.

The LESSOR also agrees to maintain adequate property insurance during the term of this Lease that will cover the restroom/concession stand building.

5) Improvements. Although no major renovation or expenditure will be made on the restroom/concession stand building absent approval of the LESSOR, during the term of this Lease, the LESSEE may from time to time change, alter, or otherwise add to the improvements being now or hereinafter located upon the leased premises in any manner in which said LESSEE may from time to time decide, provided always that such changes or alterations shall not lessen the value of the leased premises, or appreciably diminish and decrease the usable space, and provided further that LESSEE will be solely responsible for the cost for same. Further, LESSEE covenants that, upon the termination of this Lease or upon failure of the LESSEE to renew said Lease as set forth in this Lease, or upon failure of LESSEE to pay or perform under the terms and covenants of this Lease, any improvements or additions thereto made by LESSEE during the term of the Lease shall be deemed to be the property of the LESSOR.

6) Assignment. No assignment or transfer of the Lease shall be made by the LESSOR or LESSEE without prior written consent from the other party and the Woodford County Fiscal Court.

7) Right of Enjoyment. The LESSOR hereby covenants and agrees that LESSEE shall have

peaceable and quiet possession and enjoyment of the leased premises. LESSOR shall reserve upon themselves the right to come upon the leased premises for the purpose of making any reasonable or necessary inspections of said leased premises, even during LESSEE's term of priority usage.

8) Use of Premises by Other Parties. LESSEE understands, acknowledges and agrees that its use of the restroom/concession stand building is not exclusive, even while it maintains priority standing during the priority seasonal use time. LESSEE shall have exclusive use and control of, and responsibility, for, the dedicated concession stands, and LESSEE shall be responsible for complying with any health or food or structural inspection codes, or permit requirements, with regard to the sale of food, drinks, and novelties from within the concession stand.

9) Entire Agreement. This Lease contains the entire agreement of the parties, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied in this Lease, shall be of any force and effect. Amendments to this Lease, such as for renewal, may be mutually agreed upon and reduced to writing, pending approval of the Woodford County Fiscal Court.

10) Governing Law. This Lease has been executed and delivered in the Commonwealth of Kentucky, and all the terms and provisions hereof and with the rights and obligations of the parties hereto shall be construed and enforced in accordance with the laws thereof.

11) Preservation of Defense. The Lessee is an agency of the Commonwealth of Kentucky and is vested with governmental immunity in all aspects relating to this Lease. Nothing in this Lease shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or personal injury or death arising out of or during the performance or otherwise associated in any manner of this Lease. It is agreed that neither of the parties shall be deemed to have accepted the obligation of the other, whether by reason of loss hereunder or otherwise. It is further understood and agreed that neither of the parties hereto waive by entering into this Lease any right that may exist to use any immunity or other defense to any claim which may be asserted against any party hereto.

12) Non-Discrimination. The LESSOR and LESSEE agreed to not discriminate against any individual in or relative to the use of the leased premises at any time on the basis of race, color, national origin, sex, religion, age, gender genetic information, or disability.

13) Binding Effect. LESSOR and LESSEE agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

14) Severability. If, during the term of this Lease, it is found that a specific provision or language used is illegal under Federal or State law, the remainder of the Lease not affected by such ruling or determination, to the extent legally permissible, shall remain in force.

15) No Third Party Rights. Nothing in this Lease is intended by the parties and shall not be construed as creating rights, entitlements, and/or benefits of any kind whatsoever for anyone as a third-party beneficiary.

16) Notices. For purpose of notice requirements, the following addresses shall be utilized for the parties hereto:

Kentucky Softball Foundation
Attention:

Board of Education, Woodford County
Attention: Superintendent

7000 Arbor Meadow Way
Versailles, KY 40383

330 Pisgah Pike
Versailles, Kentucky 40383

17) Duplicate Originals. This Lease is being executed in duplicate originals.

IN TESTIMONY WHEREOF, the parties hereto have executed this Lease on this the day and year first above written.

Kentucky Softball Foundation

BY: _____

TITLE: _____

DATE APPROVED: _____

Witness

Board of Education of Woodford County

BY: _____

TITLE: _____

DATE APPROVED: _____

Attest
Secretary to the Board of Education