

Issue Paper

DATE:

March 8, 2021

AGENDA ITEM (ACTION ITEM):

Consider/Approve The contract for table and chair rental for the upcoming AP testing in May of 2021.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

Due to the number of students who will be taking the AP tests in May of 2021 at Dixie, we need to rent additional tables and chairs to accommodate those students along with meeting AP testing spacing requirements and guidelines.

FISCAL/BUDGETARY IMPACT:

We have obtained three bids in regards to the table and chair rental with the lowest cost of 650.00 for rental provided by Tri-State Tent and Party Rentals. Cost of rental will be paid from Dixie Instructional Funds.

RECOMMENDATION:

Approval to Dixie Heights High School to contract with Tri-State Tent and Party Rentals for table and chair rental to accommodate AP testing.

CONTACT PERSON:


Lafon Benton/Teresa Catchen



Principal/Administrator



District Administrator



Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.



Terms and Conditions

TERMS AND CONDITIONS OF RENTAL CONTRACT

(Enlarged Version)

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For good and valuable consideration, you and Tri State Tent & Party Rentals LLC (also referred to in this Contract as "TSTP," "Lessor," "we," "us" and "our") agree as follows:

1. As used herein, "P1" means your order or reservation identifying the item(s) being rented to you hereunder; "Contract" means P1 together with these Terms and Conditions; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P1 (including any "Instructions" provided per Section [or "§"] 4 of this Contract); "Site" means the location where the Item(s) is/are to be delivered and/or used (if applicable), as set forth on P1; and "Customer," and "Lessee," "you" and "your" mean the customer, renter or lessee identified on P1 (and as applicable, each and every permitted borrower, sublessee, successor and/or assign of such Lessee per § 6).
2. You agree to rent from TSTP the Rented Item(s) for the period(s) specified on P1 (the "Term"), at the end of which, your rights to use and possess the Rented Item(s) shall expire and terminate. You agree to pay us the applicable rental rate(s) set forth on P1 (the "Rent"), and all other charges accruing hereunder, without proration, reduction or setoff, and remain liable for all associated injuries and damages, for the entire Term and until all Rented Item(s) is/are returned to and accepted by TSTP in the return condition required under § 11. Unless otherwise specifically agreed by TSTP, all rental rates are for normal use of the Rented Item(s) on a single-event basis and otherwise in accordance with the terms of this Contract and the "Instructions" described in § 4. Additional Rent at our maximum periodic rate will be due for overuse and late returns. No cancellation(s) or reduction(s) of Rent will be allowed for act(s) of God, events of force majeure, time in transit or any other period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed in writing by TSTP, you: (i) will pay us: (A) the Estimated Rent, together with any deposit specified on P1 (or if not specified, 30% of the Estimated Rent) in advance (together, the "Prepayment"); and (B) all other amounts coming due hereunder upon demand; and (ii) acknowledge and agree that: (A) we may deduct any amount you owe us from any Prepayment; (B) no interest will accrue on any Prepayment; (C) no Prepayment will be deemed a limit of your liability to us; and (D) all Prepayments are NON-REFUNDABLE. Anything remaining with, in or on any Rented Item(s) upon return will be deemed abandoned.
3. You will ensure the Site is clean, safe, secure and fit for delivery and use of the Rented Item(s). If we agree to provide any services (including delivery, setup, installation and/or retrieval), you agree to: (a) pay our regular charge(s) for the same, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our personnel have full access to the Site at all times. We will not be responsible for mishaps or delay(s) caused by you, your agents or employees or any other parties, including providers of other goods or services ("Other Providers") for which you agree to indemnify, defend and hold harmless TSTP. If you are not present upon our delivery, setup, installation or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including the status, condition, quality and quantities of the Item(s) and the Site).
4. Upon the earlier of your receipt, or the delivery to the Site, of the Rented Item(s) unless you thereupon reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by us), carefully examined counted and tested by you or your agent(s); and (b) you: (i) have received, reviewed and understand all laws, rules, regulations, training,

instructions, user manuals, maintenance requirements, and other information, if any, including all applicable EPA, OSHA, ASME, IBC, IFC, IEEE, ASSP, ANSI and other applicable standards (collectively, "Instructions"); (ii) will fully comply therewith; (iii) have been made aware of the need to use all applicable safety equipment and devices; (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give all applicable notice(s) to, and obtain all applicable licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure that all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to disturb the ground surface. For this purpose, CALL 811, and in Kentucky, call 800-752-6007 and go to www.Kentucky811.org, at least 2, but not more than 10, full business days in advance (in Ohio, O.R.C. § 3781.25-32 requires that anyone penetrating the surface of the earth must have the utilities marked on their property before the "dig." The Ohio Utilities Protection Service (OUPS) will arrange to have any public

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(Enlarged Version)

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underground utilities marked on the Site. Please call them at 1-800-362-2764 up to 10 days prior to the installation date, but no later than 48 hours prior thereto. The Ohio Oil & Gas Producers Utilities Protection Service (OGPUPS) should also be called. They can be reached at 1-614-715-2984. You will need to know your county, township, and township section number for your event location. Both services are free. See ORC §§ 153.64, and 3781.25-32, and .261 for more information); (vi) will immediately cease using any Item that is damaged, breaks down, or proves defective (a "Malfunction"); and (vii) will ensure that all others comply with this Contract. You will notify us immediately if any of the foregoing shall prove incorrect or misleading at any time.

5. In the event of a Malfunction as defined in § 4, you agree to immediately notify and return the Malfunctioning Item to, TSTP, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of this Contract by, you or anyone you permit to use, occupy or otherwise deal with any Rented Item(s) (including your guests and invitees), we may, at our option: (a) repair the Malfunctioning item; (b) provide you with a comparable item; or (c) solely with respect to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. The foregoing remedies are EXCLUSIVE. We will have no other obligation(s) regarding Malfunctions, all of which you waive (including without limitation, all direct, indirect, incidental and consequential damages).
6. Except with respect to Items we rent from one or more third parties (each, a "TPO") and then re-rent to you ("Re-Rented Item(s)"), TSTP owns and will retain title to all Rented Items at all times. You will have exclusive control over the Rented Item(s) during the Term; subject however, to your obligation to fully and timely comply with this Contract at all times. You SHALL NOT: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any such Item; or (b) loan, transfer, sublease, repair, store, surrender or assign any Rented Item or this Contract without our prior written consent. If we consent to any such loan, transfer, sublease or assignment you will: (i) remain primarily responsible for the prompt payment and performance of all obligations of the Lessee arising under this Contract; and (ii) continue to ensure that each end-user of the Rented Item(s) fully and timely complies with each and every term of this Contract at all times as if such user were the named Lessee under this Contract. We may substitute, sell and/or assign any Rented Item(s) and/or all or any part of our interests therein and/or in this Contract at any time. You authorize and agree to the same, and further agree that, in the event of such assignment, you will attorn to the assignee, who will not be responsible for any pre-existing obligations or liabilities of TSTP or any TPO.
7. SAFETY WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS, AND MAY MOVE, SHIFT, TIP, SINK, OVERTURN, LEAK, OR COLLAPSE, PARTICULARLY DURING SEVERE WEATHER AND/OR ON STEEP TERRAIN. YOU AGREE TO: (A) EXERCISE, AND TO CAUSE ALL OTHERS TO EXERCISE, EXTREME CARE WHEN DEALING WITH SUCH ITEM(S); (B) PROVIDE ALL APPLICABLE FAMILIARIZATION, TRAINING, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S); (C) ensure that each Rented Item is used reasonably, safely and only: (i) for its intended purpose(s); (ii) within its rated capacity; (iii) at the Site; (iv) BY PROPERLY TRAINED, QUALIFIED, CERTIFIED, FAMILIARIZED AND/OR LICENSED (AS APPLICABLE) ADULTS; and (v) otherwise in full compliance with this Contract and all applicable laws, rules and regulations, at all times.
8. SAFETY PRECAUTIONS: You will not, nor will you permit anyone else to abuse, misuse, overuse, conceal, place in storage with any third party, repair, modify or damage any Rented Item. YOU ALSO AGREE TO: (A) ENSURE THAT ALL CHILDREN IN, ON, OR NEAR ANY RENTED ITEM(S) ARE SUPERVISED BY A COMPETENT ADULT AT LEAST 21 YEARS OF AGE AT ALL TIMES; AND (B) EVACUATE, AND PERMIT TSTP TO DELAY DELIVERY, INSTALLATION AND/OR USE OF, OR DISMANTLE AND/OR

RETRIEVE ANY OR ALL RENTED ITEM(S) (without obligating us to do so) IF ANY HAZARD (INCLUDING WITHOUT LIMITATION, SEVERE WEATHER) OCCURS OR THREATENS.

9. NO WARRANTIES: TSTP IS NOT THE MANUFACTURER OR DESIGNER OF ANY OF THE ITEM(S) REFERENCED IN THIS CONTRACT, ALL OF WHICH ARE PROVIDED "AS-IS". NEITHER TSTP NOR ANY TPO, MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS AND CONTAMINATION AND/OR GOOD AND

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WORKMANLIKE PERFORMANCE, AS WELL AS ANY WARRANTY(IES) ARISING FROM OR IN CONNECTION WITH ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE) REGARDING ANY ITEM(S) OR SERVICE(S) REFERENCED HEREIN, NOR DOES TSTP OR ANY TPO MAKE ANY WARRANTY(IES) AGAINST INTERFERENCE OR INFRINGEMENT, ALL OF WHICH YOU WAIVE. NO DESCRIPTIONS, SPECIFICATIONS, DEPICTIONS OR ADVERTISEMENTS CONSTITUTE REPRESENTATIONS OR WARRANTIES BY TSTP OR ANY TPO. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS CONTRACT.

10. INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISKS, INCLUDING WITHOUT LIMITATION, ALL RISK(S) OF PERSONAL AND BODILY INJURY, ILLNESS, LOSS, PROPERTY DAMAGE AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND SERVICE(S) REFERENCED IN THIS CONTRACT, AS WELL AS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, TRANSPORTATION, DELIVERY, SETUP, INSTALLATION, DEINSTALLATION, MALFUNCTION, COLLAPSE, STORAGE, CLEANING, SERVICING, MAINTENANCE, REPAIR, AND/OR RETRIEVAL THEREOF, WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, TRI STATE TENT & PARTY RENTALS LLC, EACH TPO, and their respective owners, shareholders, members, managers, officers, directors, partners, agents, affiliates, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee" and collectively, the "Indemnitees"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees) arising from and/or in connection with the Rented Item(s), this Contract and/or any breach hereof by you, your agents, employees, contractors, guests, invitees, sublessees, successors and/or assigns; and except only as provided in § 5, (C) WAIVE all rights and remedies available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.
11. You agree to protect, properly maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to us on time at the end of the Term, complete, clean, free of contamination, burns, cuts, stains, discoloration and debris, and in good condition, properly serviced and maintained, and if applicable, full of the appropriate fuel, fluids and lubricants. If you fail to do so, then in addition to your other obligations arising under this Contract, you will pay us: (a) Rent for each succeeding full rental period until all Rented Item(s) have been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure (including without limitation, all costs of cleaning, repairs, maintenance and/or replacement(s) of/to the Rented Item(s)). Certain Items may be delivered on pallets, or in crates, cartons or boxes, and may be stacked, bagged, racked, folded, rolled and/or strapped ("Packed"). Upon return, you will ensure that all Rented Items are properly Packed. YOU AGREE NOT TO PACK ANY RENTED ITEM UNLESS IT IS COMPLETELY DRY. IMPROPER PACKING, OR PACKING ITEMS THAT ARE WET OR DAMP, MAY RESULT IN MOLD, MILDEW OR OTHER DAMAGE, FOR WHICH YOU WILL BE LIABLE.
12. You agree to maintain all insurance TSTP may require, including: (a) public and host liquor liability insurance with minimum limits of \$1,000,000 per occurrence; (b) property damage/inland marine insurance covering all Rented Items for the full (new) replacement cost thereof; and (c) workers' compensation and employer's liability insurance. All such policies shall, to the maximum extent possible: (i) name Tri State Tent & Party Rentals LLC as an additional insured and loss payee; (ii) waive subrogation against TSTP; (iii) be primary and non-contributory; (iv) include a severability of interests clause and such other provisions as we may require. You irrevocably appoint Tri State Tent & Party Rentals LLC as your agent and attorney-in-fact for purposes of submitting and negotiating claims and payments on all such policies.

13. We may, without further notice or liability to you, inspect and/or monitor (in person or electronically, including via the use of GPS, Electronic Logging Devices and/or telematics) any Rented Item(s) at any time, and all information thereby obtained will be our property. You consent to such inspection(s) and monitoring and waive all claims with respect thereto. You hereby grant to Tri State Tent & Party Rentals LLC a perpetual,

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royalty free, worldwide right and license to create, edit, display and distribute one or more images of your event(s) that include one or more Rented Item(s). If any performance required of us is delayed or impaired as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God" or event of force majeure (any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive the benefits of all statutes of limitations regarding our rights and remedies. All amounts due hereunder but not timely paid will bear interest at the lesser of (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You authorize us to submit all amounts due and coming due hereunder to any debit or credit card(s) you provide. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid. Our maximum liability in connection with this Contract is limited to the Rent we actually receive from you hereunder for the Item(s) identified on P.1. You agree to pay all sales, use and other taxes, as well as all tolls, fines, fees, assessments and other charges related to the Rented Item(s) and/or this Contract. If any legal action is commenced in connection herewith, we will be entitled to recover from you our associated attorneys' fees, costs and expenses if we prevail. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies available under or in connection with this Contract will constitute an election of remedies or a waiver of any of our rights or remedies, all of which are cumulative.

14. Your duties hereunder are unconditional. If you or any guarantor shall: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent or bankrupt; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or damaged, you will be in default under this Contract, whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) cancel the Term and/or this Contract (and/or your rights to use and possess the Rented Item(s)); (ii) seek relief from stay; (iii) recover, empty, lock, disassemble and/or disable such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each Indemnitee); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the balance of the scheduled Term, overtime, loss of use, interest, attorneys' fees, retrieval/repossession costs, and collection costs); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which are cumulative.
15. This Contract, and any "Addenda" we provide (including our form of Damage Waiver Guide and Addendum), each of which is incorporated herein, constitute(s) the entire agreement between you and TSTP, superseding all other agreements and representations. The terms of this Contract are severable. If any provision hereof shall be deemed invalid or unenforceable by any court of competent jurisdiction, such provision will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot otherwise be modified without our written consent. Time is of the essence. These Terms and Conditions apply to all Item(s) identified on P.1, and to all other items you obtain from us at any time (unless we otherwise agree in writing). This Contract shall bind and be enforceable by and against you, Tri State Tent & Party Rentals LLC, the other Indemnitees and their respective permitted successors and assigns (there being no other third-party beneficiaries hereto). At the option of TSTP, dispute(s) with respect to this Contract and/or its subject matter shall be submitted to binding arbitration before a single arbitrator selected by TSTP at the offices of the American Arbitration Association located in or nearest to Erlanger, KY. This Contract shall be interpreted and enforced under the laws of Kentucky, and proper venue for all civil legal actions commenced in connection herewith and not submitted to arbitration as provided above shall lie solely in the federal, state and local courts located in or nearest to Kenton County, KY (unless waived by TSTP). You consent and submit thereto and waive all claims that such venue lies in an inconvenient forum. EACH PARTY HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY. Digital, electronic, photocopied and facsimiled signatures and initials hereon will be deemed originals.
16. WARNING: A person is guilty of theft of services when the person intentionally obtains services by deception, threat, false token or other means to avoid payment for the services which he knows are available only for compensation. Doing so may result in CIVIL LIABILITY AND/OR CRIMINAL PROSECUTION. See KRS § 514.060, et seq. and its/their successor provision(s) for details.

Tri-State Tent & Party Rentals serves the entire Tri-State Area including Cincinnati Ohio, Florence Kentucky and Greendale Indiana.

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Contact us

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