

Fayette County Public Schools Julius Marks Elementary School

Terms of Use

FACILITY USAGE CONTRACT

THIS CONTRACT (hereafter referred to as the District's standard Facility Usage Contract or simply as the "Contract") is made and entered into on the date indicated on Exhibit "B," by and between the Fayette County Board of Education (the "District") and the individual or organization (the "Applicant") indicated on the reservation.

WITNESSETH:

WHEREAS, Applicant has requested the use of District facilities, grounds, and/or equipment for non-commercial activities/ or approved commercial for-profit activities during non-instructional time either before the commencement or after the conclusion of the school day and

WHEREAS, the Principal or other supervisor of such facilities or grounds has, in his or her discretion, confirmed the availability and initially approved the use of designated portions of such facilities and grounds, and/or the use of designated equipment, all on specified date(s) and time(s) pursuant to the terms and conditions of this Contract; and WHEREAS, the District's Department of Operations and Support has determined usage fees relating to the use of the facility, grounds, and/or equipment approved by the Principal and has, in its discretion, additionally approved the use of such facilities, grounds, and/or equipment on specified date(s) and time(s) pursuant to the terms and conditions of this Contract; and

WHEREAS, Applicant has agreed to pay all applicable usage fees and to abide by and satisfy all other terms and conditions of this Contract as consideration for the use of the specified area(s) of the facility, grounds, and/or equipment on the specified date(s) and time(s),

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The document appended hereto as Exhibit "A" is incorporated by reference into and made a part of this Contract.
2. As consideration for Applicant's agreements to timely pay all usage fees set forth in Exhibit "A" and to abide by and satisfy all terms and conditions set forth in Paragraph 3 of this Contract, the District agrees to make available for Applicant's reasonable use, on the date(s) and time(s) specified in Exhibit "A," the area(s) of the facility and/or grounds ("Facility/Grounds") and/or the District equipment ("Equipment") specified in Exhibit "A."

3. The parties agree that the use by Applicant of the specified area(s) of the Facility/Grounds and/or the specified Equipment shall be subject to each of the following terms and conditions:

a. At least two (2) weeks prior to its proposed use of the Facility/Grounds,

Applicant shall:

i. Execute and return this Contract;

ii. Submit payment of the usage fee deposit listed in Exhibit "A;"

iii. If requested by the District, procure and maintain throughout the term of this Contract a general liability insurance policy with a reputable insurer having an A.M. Best financial strength rating of "A-" or better, in which: (a) the District is indemnified in an amount not less than \$1,000,000 for any and all claims whatsoever, including injury to persons and damage to property, arising out of the use of the Facilities/Grounds by Applicant, its agents, servants or invitees; and (b) the District is named as an additional insured under the policy. A certificate of insurance must be provided to the

District prior to the use of the Facilities/Grounds.

Applicant and the District agree that any insurance policy(ies) procured by Applicant that provides benefits or protection for the District shall be primary and that any insurance policy(ies) procured by the District that might happen to provide benefits or protection to the District arising out of Applicant's use of the

Facilities/Grounds shall be excess.

Applicant acknowledges and agrees that failure on its part to timely submit an executed Contract or payment of the full usage fee or a requested certificate of insurance shall be grounds for non-approval by the District of Applicant's facility usage application and immediate cancellation by the District of this Contract. In the event of non-approval and cancellation, the District shall refund any and all usage fee deposits or other payments received by the District as of the date of such non-approval or cancellation.

Applicant further acknowledges and agrees that any usage fees other than those set forth in Exhibit "A" (such as usage fees relating to catering, food services, and extra time) may, at the option of the District, be separately billed to the Applicant either before or after the Applicant's use of the Facility/Grounds.

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b. The District reserves the right to have one or more District employees ("Employee") present at all times the Facility/Grounds is used by Applicant. In the event Employee(s) is/are present, said Employee(s) shall in no way be responsible for the conduct of persons present at Applicant's activity(ies), nor shall such employee(s) perform duties other than those involving the care, safety, and security of the Facility/Grounds and/or

Equipment.

c. Access to Facilities/Grounds shall be strictly limited to those parts of the Facilities/Grounds specified in Exhibit A and the entrances to those Facilities/Grounds.

d. Applicant shall abide by all District policies, procedures, rules, and regulations in its use of the Facility/Grounds, and Equipment, and shall be legally responsible for any and all damage resulting from its use of the Facility/Grounds, and Equipment, whether caused by

negligence, recklessness, or willfulness on the part(s) of Applicant, its agents, servants, or invitees.

e. Applicant agrees to indemnify and hold harmless the District, all District elected and appointed officials, all District administrators, all District principals, all District teachers and other employees, all District volunteers and representatives, and all persons and bodies corporate acting for or on behalf of them:

i. Against all liability, claims, demands, actions, suits, damages, proceedings, costs and expenses (including reasonable attorneys fees) whatsoever, including injury to persons and damages to property, for which they may be or become liable directly or indirectly arising out of the use of the Facilities/Grounds by Applicant or by Applicant's agents, servants, or invitees; and

ii. For such further sums in excess of those contained in any insurance policy procured by Applicant relating to the use of the Facilities/Grounds or for such amounts as may not be payable under any such insurance policy.

f. Applicant shall observe all fire and safety regulations.

g. Applicant agrees that, except as specified in Exhibit "A," no hazardous materials (including, but not limited to, flammable materials or liquids, fireworks, pyrotechnic devices, explosives, poisonous materials or plants, or strong acids or caustics) and no dangerous animals will be brought onto the Facilities/Grounds or used in any way while occupying any portion of the Facilities/Grounds.

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h. Applicant agrees that, except as specified in Exhibit "A," no amusement rides or attractions (including, but not limited to, trampolines of any type, enclosed air support structures of any type, climbing walls, climbing ropes, firearms or shooting activities, bow and arrow shooting activities, or equipment or devices related thereto) will be brought onto the Facilities/Grounds or used in any way while occupying any portion of the Facilities/Grounds.

i. Applicant shall prohibit the use of tobacco products and alcoholic beverages in or on the Facility/Grounds, except that tobacco products may be used after school in such area(s) as may be designated by the Principal

j. Applicant shall not allow any immoral or illegal activity, including gambling, in or on the Facility/Grounds.

k. The Principal or other supervisor of the Facility/Grounds and/or the District's Department of Law Enforcement shall determine the need for security during the Applicant's use of the Facility/Grounds.

l. Applicant shall not make any alterations to the Facility/Grounds without prior approval of the District's Department of Operations and Support.

m. Applicant shall not sublease or reassign any portion of the Facility/Grounds or item of equipment covered by this Contract.

n. The use of equipment shall not be a part of this Contract unless such equipment is specifically listed in Exhibit "A". In the event equipment is listed in Exhibit "A," Applicant agrees that:

- i. Equipment may not be used by Applicant if it is needed for school activities;
- ii. Equipment shall not be removed from the Facility/Grounds; and
- iii. Applicant shall assume full responsibility for any and all expenses resulting from the transfer, repair, or replacement of Equipment necessitated by its use.

In case of damage to Equipment, the Facility Principal shall send a report to the District's Department of Financial Accounting & Benefits at 450 Park Place, Lexington, Kentucky 40511, and to Applicant at the address listed in Applicant's Facility Usage Application. Settlement agreeable to the District shall be a prerequisite to additional use by Applicant of any facility or grounds in the District.

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o. In the event Equipment assigned for Applicant's use is either unavailable or in unsatisfactory working condition on the date and at the time scheduled for its use, Applicant's sole remedy shall be a refund of any equipment usage fees paid by Applicant up to that point.

p. Applicant shall ensure that proper care is taken of the Facilities/Grounds during use and that the Facility/Grounds are left in as good a condition as before used. Applicant agrees that any furniture and equipment moved during the use of the Facilities/Grounds shall be restored to its original position and that the Facilities/Grounds shall be left in a clean and tidy condition.

q. Applicant shall not operate food or drink concessions unless approved by the Principal or other supervisor of the Facility/Grounds.

r. Applicant shall not sell or offer for sale any merchandise at any function conducted in or on the Facility/Grounds, other than approved food and drink concessions.

s. Applicant shall abide by all District and other administrative procedures relevant to conservation of energy.

t. Applicant shall be responsible for the conduct of individuals using the Facility/Grounds. Applicant shall not charge admission or solicit or accept donations for attendance at or participation in events held in or on the Facility/Grounds, except that civic, charitable government, non-profit, and religious groups may charge admission or accept donations when the net proceeds of such charges or donations are used exclusively for civic, charitable, government non-profit, and religious purposes

u. School facilities, grounds, and equipment shall not be used for commercial, for-profit activities unless otherwise authorized by the Superintendent/Designee (Chief Operating Officer, Facilities Manager or the Director of Maintenance), per board policy.

v. Unless otherwise provided in this Contract, Applicant's privilege of using the Facility/Grounds or Equipment shall terminate upon the earlier of either (1) the delivery by one party to the other of written notice of termination; (2) the last day of the Applicant's activity as specified on

Exhibit "A;" or (3) June 30 following the effective date of this Contract. Notice of termination shall be delivered by one party to the other at the address of the other party as set forth at the conclusion of this Contract. In the event Applicant terminates this Contract by delivering written notice of termination to the District at least forty-eight (48) hours prior to the earliest date and

time scheduled for the Facility's/Ground's use, Applicant shall not be charged any facility usage fees. In the event, Applicant terminates this Contract by delivering written notice of termination to the District within the forty-eight (48) hour period immediately prior to the earliest date and time scheduled for the Facility's/Ground's use, Applicant shall pay a minimum of one (1) hour worth of the Full Operational Fee. In the event this Contract terminates or is terminated at any other time, Applicant shall owe all facility usage fees associated with Applicant's use of the Facility/Grounds and/or Equipment.

w. In the event of inclement weather, Applicant shall be solely responsible for ensuring that it has adequate ingress to, parking at, and egress from the Facility/Grounds by removing snow, ice, and other impediments from established Facility driveways and parking lots. Applicant may contract with a qualified outside entity for the removal of snow, ice, and other impediments, provided the outside entity is able to demonstrate that it possesses at least as much general liability insurance as that demonstrated by Applicant.

x. In the event the Applicant's activity takes more time than that originally scheduled for the activity, or in the event District employees are required to work more time than originally scheduled to get the Facility/Grounds ready for District use the next business day, the Applicant agrees to pay any additional usage fees attributable to the extra time. The District shall invoice Applicant for such additional usage fees and Applicant agrees to pay such invoices within thirty (30) days after receipt.

y. Applicant agrees that if the Facility/Grounds, Employees, or Equipment become unavailable due to circumstances beyond the District's control, including but not limited to loss of electrical power, sickness, terrorism, war, or natural disaster (earthquake, fire, flood, ice storm, tornado, windstorm, etc.), Applicant's sole remedy shall be a refund of the applicable usage fee(s) paid by Applicant.

z. Applicant agrees that, before conducting any activities at or on the Facility/Grounds, Applicant will require its on-site personnel to review such materials as may be furnished by the District concerning procedures to be followed by the District during earthquakes, fires, severe weather, tornados, and other emergencies.

aa. Applicant agrees to give notice to the District, within 24 hours, of any incident resulting in bodily injury or property damage occurring on or in any way connected with the use of the Facilities/Grounds. Such notice shall include details of the time, place, and circumstances of the incident, as well as the names and addresses of any person(s) witnessing the incident.

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