

Lexington-Fayette Urban County Government
Division of Parks and Recreation
469 Parkway Drive
Lexington, Kentucky 40504

FACILITY USAGE AGREEMENT

This agreement is made and entered into between the Lexington-Fayette Urban County Government ("LFUCG"), an Urban County Government pursuant to KRS 67A, with an address of 200 East Main Street, Lexington, Kentucky 40507, and YMCA of Central Kentucky, or its successor ("the League"), a Kentucky non-profit corporation with an address of 381 W. Loudon Avenue, Lexington, KY 40508 for the **express purpose of providing the League with athletic facilities where they may host a youth sports program for the benefit of the youth of our community.** The term of this agreement shall be for an initial term of one year commencing on the date of execution. After the initial term, this agreement shall be deemed renewed automatically for three (3) successive one (1) year periods, unless this agreement is terminated in accordance with Section VIII below. Should the League derive any profits from activities conducted or donations received during the term of this Agreement, as defined in Section IV below, such profits must be designated in one of the following ways and used for such purpose: (1) as proceeds to be used for a future youth sports program in Lexington-Fayette County; (2) as proceeds to be used for the reduction of the League's existing debts; (3) as proceeds to be used for the improvement of facilities managed by LFUCG, Division of Parks and Recreation (Parks and Recreation); or (4) as proceeds to be donated to the Lexington-Fayette-Urban County Government and deposited in the General Fund.

The League shall not make any improvements, modifications, or alterations to premises owned by LFUCG without first submitting its proposed changes in writing to LFUCG and receiving written approval for the same. All communications to LFUCG shall be submitted to the Deputy Director of Enterprise, Division of Parks and Recreation at 469 Parkway Dr., or via electronic mail at cmitchell@lexingtonky.gov, or via telephone at (859) 288-2984. LFUCG shall submit all communications to the League President.

I. DUTIES OF THE LEAGUE—GENERAL

- a. The League shall not turn away or exclude any minor who wishes to participate in its youth sports program, except where such minor falls outside the age limitations or residential boundaries applicable to the League's youth sports program, or where such minor repeatedly and persistently violates the League's rules of conduct in such a manner as to interfere with the ability of other program participants to enjoy the benefits of the program. If the League believes that a situation warrants an exception to this rule, it may submit a brief, written statement explaining its position to LFUCG, which shall then issue a written decision as to whether an exception will be permitted.
- b. The League shall not discriminate, in any of its programs or activities, against any current or prospective participants, volunteers, employees, or agents on

the basis of financial ability to pay, race, color, national origin, age, sex, religion, or disability.

- c. The League shall promote the opportunity for LFUCG Scholarships for qualified players in accordance with its policy (attached hereto as Attachment F). The League shall be in good standing with the parent organization.
- d. The League shall be responsible for inspecting the field before each game and shall assume sole liability and responsibility for repairing any unsafe conditions it may discover, or that it might have discovered by reasonable diligence.
- e. The League shall not charge spectators an admission fee to attend games without prior, written approval from LFUCG. Should the League wish to charge an admission fee, it may submit a written request describing the amount to be charged and the method of collecting payment to LFUCG at least fifteen (15) days before the game at which the fee is to be charged.
- f. The League shall notify LFUCG of tournament play, outside of normal league play. Should the League wish to host tournament play, it may submit a written request describing the tournament, participants, and fees involved.
- g. The League shall not sublease or rent fields to outside organizations/teams. Fields are only to be used for sanctioned practice, games, and tournaments.
- h. The League shall submit its post-season schedule prior to the start of post-season.
- i. The League shall abide by all local, state, and federal laws and regulations.
- j. If the League wishes to install and maintain security cameras on the premises, it may submit to LFUCG a written request for permission to do so, to be accompanied by an accurate and precise depiction of the proposed location for each camera to be installed and the results of a recent criminal background check for any and all persons who would have access to footage recorded by the cameras. LFUCG may grant or deny, or conditionally grant or deny, the request in its sole discretion, with or without reason. Should LFUCG grant the League permission to install **SECURITY** cameras on the premises, the League shall be solely responsible for all expenses arising out of or in connection with the purchase, installation, and maintenance of the security cameras. Parks and Recreation must be granted access to security cameras if requested.
- k. The League shall serve and sell at its concession **only** those soft drink products that are provided by the authorized Parks and Recreation beverage supplier, **Pepsi-Cola Bottling Company of Lexington, Inc.** No competing beverage drink products may be stored or sold within parks property at any time. Violations of this policy shall constitute grounds to void this agreement.
- l. The League shall comply with all applicable health codes in the operation of its concession stand(s) and submit to random inspection by the Lexington Fayette County Health Department. It will be the responsibility of the League to make any and all adjustments necessary to comply with applicable health codes, other than those that would require structural changes to the facility. Should the League at any time believe that structural changes are necessary, it may submit a written request for such to LFUCG. Failure to comply with Health Department personnel or codes may result in the termination of the League's right to operate concession stands under this Agreement.

II. DUTIES OF THE LEAGUE—VOLUNTEERS, EMPLOYEES, AND OFFICIALS

- a. The League shall perform a criminal background check with the Kentucky State Police on every individual who volunteers to assist the League in its programs or activities or applies for employment with the League. No prospective volunteer or employee shall be permitted to work with or for the League who has been convicted of any of the following, or who has charges pending for any of the following, or who was indicted for any of the following, but whose charges were dismissed in exchange for a guilty plea:
 - i. Any crime or offense in which the victim was a minor;
 - ii. Any crime or offense of a sexual nature;
 - iii. Any crime or offense of a violent nature; *the definition of violent offender is "any person who has been convicted of or who has entered a plea of guilty to the commission of a capital offense, Class A felony, Class B felony involving the death of the victim or serious physical injury to the victim, or rape in the first degree, or sodomy in the first degree" KRS 194A.380(3).*
 - iv. Any crime or offense involving illegal drugs within the last five (5) years;
 - v. More than one offense involving alcohol or firearm within the last five (5) years.
- b. The League shall keep a current and accurate record containing the names, home addresses, and telephone numbers of all volunteers and/or paid staff. The League shall submit to LFUCG a written statement, signed by the President of the League, verifying that all volunteers and paid staff have passed their background checks in accordance with Section II.a. Above no later than two (2) weeks before the League holds its first practice. The League shall also keep a record containing the names, home addresses, and telephone numbers of all who have applied to volunteer or work with the League, but whose applications are still under review, and shall make such record available for inspection by LFUCG upon request.
- c. The League shall be responsible for securing all officials and scorekeepers necessary to officiate its games. The League shall provide a written statement to LFUCG containing the mailing address, primary telephone number, and primary email address, where applicable, of the organization providing the League with referees.
- d. The League shall also provide LFUCG with a copy of the organization's certificate of liability insurance.

III. DUTIES OF THE LEAGUE—REPORTING & COMPLIANCE

- a. In lieu of player fees, The League shall provide indoor pool access for Parks and Recreation Aquatics and Therapeutic Recreation.
 - i. Details included in Appendices C.
- b. The League shall complete and return the provided Division and Gender Report and League Financial Report, attached hereto as Appendices A and B, respectively. The Division and Gender Report shall be completed and returned no later than two (2) weeks after the League's first game of the season. The

League Financial Report shall be completed and returned no later than one (1) month after the end of each season.

- c. The League shall submit a copy of its completed IRS Form 990 to LFUCG within one (1) week of filing the form with the IRS, but no later than April 15 of the tax year covering the season.
- d. The League shall submit to LFUCG a roster identifying the gender, race, age, and address of all League participants no later than two (2) weeks after the League's first game of the season. Participants' names are not required.
- e. The League shall fully comply with the Division of Parks and Recreation's Altercation Policy, attached hereto as Appendix C, and shall distribute copies of such to all League participants and volunteers. In the event the League encounters unsportsmanlike conduct from players, fans, spectators, coaches, etc., the League shall report the incident on the next business day to LFUCG. The League shall be responsible for conducting an investigation of the incident in accordance with the Division of Parks and Recreation Altercation Policy and reporting the findings with outcome recommendations within two weeks to LFUCG for review. The League shall provide written statements from all individuals involved in the incident and from spectators who witnessed the incident(s). During the investigation the individual(s) accused will be suspended from all sporting activities and/or sports-related events that take place on property owned or managed by LFUCG.
- f. The League shall fully comply with the Division of Parks and Recreation's Participant Protection Policy, attached hereto as Appendix D, and shall distribute copies of such to all League participants and volunteers.
- g. The League shall fully comply with the Division of Parks and Recreation's Severe Weather Policy, attached hereto as Appendix E.

IV. DUTIES OF THE LEAGUE—INSURANCE AND INDEMNITY

- a. The League shall procure and maintain for the duration of this contract General Liability insurance with a limit of no less than \$1 million per occurrence, \$2 million aggregate, or \$2 million combined single limit in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the League's activities. The League shall name LFUCG as an additional insured in the General Liability Policy. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide, shall be deemed automatically acceptable. The League shall submit to LFUCG a certificate of insurance for its insurance policy, showing LFUCG as an additional insured.
- b. The League shall defend, indemnify, and hold harmless LFUCG from and against all liability, claims, losses, actions, costs, expenses, obligations, fines,

and assessments of whatever kind, including defense costs and attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) the League's negligent acts or intentional misconduct, or errors or omissions, in connection with its use of the Facilities, (b) the League's performance or breach of this Agreement provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by a negligent act or omission, or the willful misconduct of the LFUCG, or (c) the condition of any premises, equipment, or other property being used or operated by the League in connection with its use of the Facilities. In the event LFUCG is alleged to be liable based upon the actions or inactions of the League, the League shall defend such allegations and shall bear all costs, fees, and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this contract.

V. FACILITIES

- a. LFUCG hereby grants the League the right to use the following park(s) and field(s) at the times specified herein. Such park(s) and field(s) are collectively referred to herein as "the Facilities." Provided, however, that nothing shall prevent LFUCG from requiring the League to vacate or abstain from entering upon the facilities at any time.
- b. The League shall submit a schedule of its regular season games (to include make up days for rain outs, etc.) to LFUCG no later than two (2) weeks before the first game. Should the League change its schedule for any reason, it shall provide LFUCG with notice of the change as soon as possible, but under no circumstance shall the League provide LFUCG with less than twenty-four (24) hours advance notice of a schedule change.

Name of League: YMCA

Name of Park(s): MASTERSON STATION

Name/location of Field: MSP Soccer Fields

- c. The League shall submit a schedule of its regular team practice times and field locations to LFUCG no later than two (2) weeks before the first practice. Should the League, in LFUCG's opinion, exhibit a pattern of reserving but not using fields, LFUCG may cancel this agreement in part or in whole.
- d. The League shall not take any action that would prevent or interfere with the ability of the public to access the Facilities unless authorized to do so in writing by LFUCG. LFUCG may, in its sole discretion, grant the League permission to secure the Facilities or parts thereof between the hours of 9:00 p.m. and 8:00

- a.m. Where such permission is granted, the League must provide LFUCG with copies of the keys and/or codes necessary to enter the Facilities once secured.
- e. League must mandate one field to be open for public use during allotted times.
- f. LFUCG retains the right to schedule other events, including events hosted by or involving other youth sports programs, at the Facilities when the Facilities are not being used by the League.
- g. The League shall not permit its participants, employees, agents, or volunteers to drive or park on the grass or sidewalks at or surrounding the facilities, outside of designated areas.

VI. MAINTENANCE AND OPERATION OF FIELDS AND STRUCTURES

- a. LFUCG shall retain ownership of any and all improvements made to the Facilities.
- b. Insurance is provided for facilities and equipment owned by LFUCG. Any graffiti or vandalism on LFUCG facilities or equipment must be reported within one business day of discovery.
- c. Repairs due to graffiti or vandalism on LFUCG facilities or equipment will be managed through Parks and Recreation Maintenance Section.
- d. All Leagues must provide Parks and Recreation Maintenance 2 sets of keys (one of which must be an original, not a copy) to all facilities. If locks are changed by leagues at any time, P&R must be given the new keys. Parks and Recreation needs access to all facilities for emergency purposes or maintenance as defined in this agreement.
- e. Should the League wish to make any improvement, modification, or alteration to the Facilities, it must first present its proposed improvement, modification, or alteration to LFUCG, and must receive from LFUCG written permission to proceed with the proposed improvement, modification, or alteration. Should LFUCG choose to place any conditions upon its grant of permission, the League shall only be permitted to proceed with its improvement, modification, or alteration upon agreement to those conditions.
 - All proposed improvements, modifications, or alterations exceeding \$10,000.00 in value must be bonded (letter of credit acceptable) for the total value of the improvement.
 - Improvements or repairs must meet LFUCG Parks and Recreation specifications.
 - Repairs or alterations to parks infrastructure including plumbing, HVAC, electrical or structural shall be performed by a state and city licensed contractor.
- f. LFUCG reserves the right to make improvements, modifications, alterations, and repairs to the Facilities as it deems necessary, but shall have no duty to make such improvements, modifications, alterations, or repairs. Should LFUCG decide, in its sole discretion, to undertake such improvements, modifications, alterations, or repairs, it shall have no duty to provide the League with advance notice of or to seek the League's consent to such. Provided, however, that LFUCG shall make reasonable efforts to make improvements,

modifications, alterations, and repairs at such times and in such manner as to minimize disruption of the League's activities at the Facilities.

- g. The League may submit requests for pre-season repairs in writing to LFUCG prior to July 1st. Repairs will be completed as resources permit.
- h. The League's coaches, managers, players, and officials shall not use equipment or supplies owned by LFUCG, whether stored at the Facilities or otherwise unless specifically authorized to do so in writing by LFUCG.
- i. LFUCG shall provide the following equipment and maintenance services for the Facilities:
 - i. Refuse collection and grounds pick-up. **It is the responsibility of the League to have players and coaches pick up sidelines and dispose of trash in waste receptacles after practices and games;**
 - ii. Trash cans and picnic tables;
 - iii. Mowing outside game fields;
- j. The League shall provide the following maintenance services for the Facilities:
 - i. Marking game fields;
 - ii. Cutting, edging, and trimming grass within game fields/complexes;
 - iii. Supervising, coordinating and managing its member's use of the sports field. Please note that all sport facilities in LFUCG parks are the property of the Lexington-Fayette Urban County Government, and as such, are owned and maintained for the benefit of the general public. The League's right to exclusive use of the sports field indicated in Sec. V, above is limited to those times in which it is actively holding practice, games or tournaments. Regardless of any other language herein, when operating at a park or sports facility that includes more than one field, the League shall ensure that at least one (1) field is left open to the general public when not in use.

VII. VIOLATION OF USAGE AGREEMENT

- a. In the case of a suspected violation of this agreement, the parties agree as follows:
 - i. Suspected violations of this agreement will be communicated from LFUCG to the League in writing within ten (10) days of the suspected violation.
 - ii. Parks and Recreation staff will conduct an investigation of the suspected violation within thirty (30) days of the suspected violation. Once the investigation is completed, the League will receive a letter at its service address indicated herein via certified mail.
 - iii. If no violation is determined, the terms of this agreement shall continue without consequences.
 - iv. If a violation is determined to have occurred, the League will be notified specifically of which clauses under this agreement were violated with a summary of the investigation.
 - a. If the violation results in immediate termination of the agreement, then the agreement shall be terminated per Section VIII(b) of this agreement.

- b. If immediate termination is not required, the League shall submit to LFUCG in writing a plan of remediation. The written plan must be submitted within seven (7) days of the receipt of the notice.
 - i. Upon approval by LFUCG of the written remediation plan, the League shall take immediate action to correct the violation. To the extent technically and operationally feasible, remediation shall conclude within ten (10) days of the date of LFUCG's approval.
- v. Two (2) or more violations within the same year calendar year shall result in termination of this agreement under Section VIII(b). The League may reapply and execute a new "Facility Usage Agreement" upon acceptance.

VIII. MODIFICATION AND TERMINATION

- a. This agreement may only be modified by a written Letter signed by the League President, the Director of the Division of Parks and Recreation for LFUCG, and the Commissioner of General Services for LFUCG.
- b. Should the League breach any portion of this Agreement, LFUCG shall have the option, in its sole discretion, to declare the Agreement null and void in its entirety. Should the League breach this Agreement in any manner that damages the Facilities, the League shall be liable to LFUCG for the cost of having the damage repaired.

IX. MISCELLANEOUS

- a. This Agreement constitutes the entire agreement between parties, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them other than those herein set forth.
- b. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of the Agreement.
- c. All of the provisions of this Agreement are hereby made binding upon the personal representatives, heirs, successors, and assigns of both parties hereto.
- d. The League shall not sublet, assign, or otherwise transfer any interests or rights acquired under this contract without prior, written approval from LFUCG.
- e. Time is of the essence in this agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday, or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday, or legal holiday.
- f. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.
- g. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Kentucky.

h. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed by their respective authorized officers as of the last date when all signatories have signed below.

Linda Gorton
Linda Gorton, MAYOR
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

5/16/2024
DATE

Paula Anderson
LEAGUE PRESIDENT (Print or Type Name) & CEO
YMCA of CENTRAL KY
381 Loudon Ave
STREET ADDRESS
Lexington Ky 40508
CITY STATE ZIP CODE
859-367-7323 859-433-4848
WORK PHONE HOME PHONE
PAULANDERSON@YMCAKY.ORG
E-MAIL ADDRESS
Paula Anderson
LEAGUE PRESIDENT SIGNATURE

2/16/2024
DATE

APPENDICES C

- a. In lieu of player fees, The League shall provide the following:
 - i. Thirty-six (36) hours total of pool access for LFUCG Parks and Recreation employees to undergo training before each Pool Season.
 - 1. Includes three (3) separate 3-day sessions:
 - a. Day one – 4 hours of pool time
 - b. Day two – No pool time
 - c. Day three – 8 hours of pool time
 - 2. Parks and Recreation will submit requested dates by February 15th.
 - 3. Locations to be included:
 - a. Any YMCA facility within Fayette County that operates an indoor pool, at least 7 feet deep.
 - ii. Host 8-week Therapeutic Recreation program in Spring and Fall season.
 - 1. Access to indoor pools for 1.5 hours during the weekday.
 - a. Two lanes in cold pool.
 - b. Access to warm pool for select clients.
 - 2. Therapeutic Recreation will submit schedule to YMCA by December 1st.