RESOLUTION NO. R-14-23

A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM TO LEASE AGREEMENT BY AND BETWEEN THE CITY OF COFFEYVILLE, KANSAS AND THE COFFEYVILLE RECREATION COMMISSION.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and City Clerk be and are hereby authorized and directed to execute an Addendum to Lease Agreement by and between the City of Coffeyville, Kansas and the Coffeyville Recreation Commission, relating to the construction of batting cages in LeClere Park, and designating the term of the Lease to be January 1, 2014 until December 31, 2014, subject to annual renewals for up to ten (10) additional years.

Adopted this 25th day of March, 2014.

_____
David George, Mayor

ATTEST:

_____
Cindy Price, City Clerk

Approved as to Form:

_____
Paul Kritz, City Attorney

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM TO LEASE AGREEMENT, made this 25 day of March 2014, by and between the City of Coffeyville, Kansas, hereinafter referred to as "City" and the Joint Recreation Commission of Unified School District No. 445 and the City of Coffeyville, Kansas, hereinafter referred to as "Commission".

WHEREAS, the City and Commission are parties to a Lease Agreement dated as of August 25, 2009, whereby the Commission is authorized to use certain City-owned or City-leased property and facilities for recreation programs and activities sponsored by the Commission; and

WHEREAS, the parties desire to supplement the Lease Agreement to add certain additional City-owned or City-leased property thereto.

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, the City and the Commission covenant and agree as follows:

1. Article II of the Lease Agreement should be amended to add the following Articles II-C, as follows:

ARTICLE II-C – <u>LECLERE PARK BATTING CAGES</u>

2C.1 The Commission may utilize a portion of the parking lot adjacent to Doss, Wheeler and Aduddell Fields for the construction, use and maintenance of up to six (6) batting cages. The location of the batting cages shall be approximately as depicted on the aerial attached hereto.

2C.2 The Commission shall be entitled to all income generated from the operation and use of the batting cages during the term of this Lease.

2C.3 The Commission shall pay the cost to extend electric service to the batting cage equipment, and the cost of poles and lighting fixtures, if requested by the Commission. The City shall provide electricity at no additional charge to the Commission.

2C.4 The Commission shall, at all times, and at its sole cost and expense, repair, replace and maintain the batting cages in a good, safe and substantial condition, inclusive of all related amenities such as but not limited to all netting.

2C.5 The Commission shall not make any permanent alterations, additions or improvements to the batting cage area without the written consent of the City. All alterations, additions or

improvements to the area which shall be made by either party (except the Commission's equipment and supplies never attached or affixed to the realty) shall remain upon and be surrendered with the premises as part thereof, without disturbance, molestation, or injury.

2C.6 The Commission shall obtain and maintain, at its own expense, public liability insurance on the use of batting cages in an amount not less than $500,000 with an insurance company authorized to do business in the State of Kansas. The liability policy shall be in a form acceptable to the City and shall be for the protection of the City as well as the Commission. The City shall be named an additional insured on the liability policy.

2. Article V of the Lease Agreement should be amended, as follows::

ARTICLE V. <u>TERM OF LEASE AGREEMENT</u>

5.1 The term of this Lease Agreement shall be for a one (1) year, commencing as of January 1, 2014 and ending on December 31, 2014, regardless of the date executed. This Lease Agreement shall be automatically extended for up to ten (10) successive one (1) year terms unless either party gives written notice at least (30) days prior to its annual December 31st expiration date of their desire to terminate this Lease Agreement.

3. Except as amended or supplemented hereby, the parties reaffirm the provisions of the original Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum to Lease Agreement in Coffeyville, Montgomery County, Kansas, the day and year first above written.

CITY OF COFFEYVILLE

_____

David George, Mayor

ATTEST:

_____

Cindy Price, City Clerk

JOINT RECEATION COMMISSION
UNIFIED SCHOOL DISTRICT NO.445
AND CITY OF COFFEYVILLE, KANSAS

_____, Chairman

WITNESS:

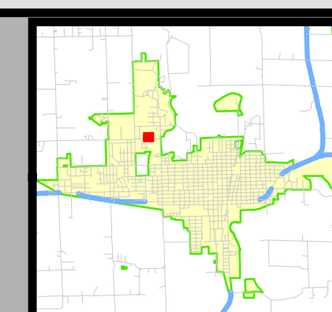
_____, Secretary

Coffeyville
KANSAS
Engineering Department
102 W 7th
COFFEYVILLE, KS 67337
VOICE: 620-252-6100
FAX: 620-252-6175
www.coffeyville.com

GIS System By: Midland GIS

1 in = 50 ft

Proposed Batting cages



CA 2757

08-11-09

RECREATION COMMISSION LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 25 day of August, 2009, by and between the City of Coffeyville, Kansas (the "City") and the Coffeyville Recreation Commission (the "Commission").

WHEREAS, the City desires to provide designated City-owned property and facilities to the Commission for Commission-sponsored recreation programs and activities and the Commission desires to use said property and facilities for said purposes, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, the City and the Commission agree as follows:

ARTICLE I. RECREATION ACTIVITIES CENTER BUILDING

1.1 Throughout the term of this Lease Agreement, the Commission and its staff shall house their offices on a rent-free basis at the City-owned Recreation Activities Center (the "Center"), located at 508 Park Street, in the City of Coffeyville, Kansas.

1.2 The Commission may utilize the Center without charge for Commission-sponsored recreation programs and activities. The Commission shall not rent, lease, sublease, or allow the use of the Center, or any portion thereof, to or by any third party, whether it is for a recreation program or activity or other intended use, for a period longer than one week in duration without the prior written approval of the City. Further, the Commission shall not rent, lease, sublease, or allow the use of the Center, or any portion thereof, to or by any third party that intends to use the space for a commercial enterprise activity, such as but not limited to the retail sale of goods to the general public, without the prior written approval of the City. Further, the Commission shall not rent or provide display-advertising space for fees or in trade for goods or services at the Center, or any portion thereof, to any third party, whether it is for a recreation program or activity or other intended use, for a period longer than one week in duration without the prior written approval of the City. The above provision on display-advertising space does not apply to informational items placed on the bulletin board in the Center, where no fees or trade for goods or services is involved.

1.3 The City reserves the right to use the Center, or portions thereof, rent-free, for City-sponsored events, except for Commission office space, and subject to availability of space not previously reserved by the Commission for its sponsored programs or activities, per a schedule calendar to be provided to the City upon request. The Commission and its staff shall make a good faith effort to work with the City when it desires to use the facility for City-sponsored events. In the event the City elects to lease the facility to a third party, the City will execute a written use agreement with the third party, which will contain similar provisions regarding liability for damage to the premises as the Commission employs in such situations. In addition, the City and the Commission will confer in order to ensure the third party use is properly supervised and staffed.

1.4 The Commission shall be entitled to all income generated from the operation and use of the Center for Commission-sponsored recreation programs or activities and any income derived from subleasing or renting the Center to a third party. The amount of income generated from the use of the Center shall be reported to the City semi-annually.

1.5 The Commission shall pay any and all costs for telephone, trash, cleaning, water, sewer, gas, and electric utility service at the Center. The utility rates for electric, water, and sewer service shall be at a rate to be set by the City.

1.6 The Commission shall, at all times and at its own cost and expense up to $1,000.00, repair, replace and maintain in a good, safe and substantial condition the Center and any improvements, additions and alterations thereto, and shall use all reasonable precaution to prevent waste, damage, or injury to the Center. The Commission shall consult with the City regarding any maintenance, repairs or improvements to the Center that exceed the sum of $1,000.00, the cost of which shall be shared as mutually agreed by the parties; provided, however, the Commission shall always pay at least the first $1,000.00 of the cost for any such maintenance, repairs or improvements to the Center, provided, further, that nothing in this Agreement shall be construed to obligate the City to participate in the cost thereof whatsoever.

1.7 The Commission shall not make any permanent alterations, additions or improvements to the Center without the written consent of the City. All alterations, additions or improvements to the Center which shall be made by either party (except the Commission's furniture, equipment and supplies never attached or affixed to the realty) shall be the property of the City and, upon expiration or termination of this Lease Agreement, shall remain upon and be surrendered with the premises as part thereof, without disturbance, molestation, or injury.

1.8 The City will provide all property casualty insurance coverage for the Center.

1.9 The Commission shall obtain and maintain, at its own expense, public liability insurance on the use of the Center in an amount not less than $500,000 with an insurance company authorized to do business in the State of Kansas. The liability policy shall be in a form acceptable to the City and shall be for the protection of the City as well as the Commission. The City shall be named an additional insured on the liability policy.

ARTICLE II. **<u>BALL FIELDS</u>**

- **DOSS, WHEELER AND ADUDDELL FIELDS IN LECLERE PARK**
- **THREE BALL DIAMONDS IN LIONS CLUB PARK**
- **SHERWIN-WILLIAMS FIELDS**

2.1 The Commission may utilize Doss, Wheeler and Aduddell Fields in LeClere Park; the three ball diamonds in Lions Club Park on Exner Street; and Sherwin-Williams Fields (collectively referred to hereinafter as the "Ball Fields") for Commission sponsored

recreation leagues and activities, which shall be open to the public. However, the City reserves the right to require the Commission to schedule their use of the Ball Fields through the City if scheduling conflicts develop between the Commission and any third party Ball Field user such as USD 445 or Coffeyville Community College that can not be amicably worked out between the Commission and the third party user.

2.2 The Commission may utilize the Ball Fields without charge for any Commission-sponsored recreation program or activity. The Commission shall not rent, lease, sublease, or allow the use of the Ball Fields, or any portion thereof, to any third party, whether it is for a recreation league or activity or other intended use, without prior written approval of the City. Further, the Commission shall not rent or provide display advertising space for fees or in trade for goods and services at the Ball Fields or any portion thereof to any third party for a period longer than one week in duration, whether it is for a recreation program or activity or other intended use, without the prior written approval of the City.

2.3 The City reserves the right to use the Ball Fields, rent-free, for City-sponsored purposes, and may rent the Ball Fields, or a portion thereof, to any third party, subject to availability, per a schedule calendar of Commission-sponsored events to be provided to the City upon request. The Commission and its staff shall make a good faith effort to work with the City when it desires to use the facility for City-sponsored or third party events. The Commission shall be responsible for field preparation in exchange for any rental fee(s), if any, for said purposes.

2.4 The Commission shall be entitled to all income generated from the operation and use of the Ball Fields for Commission-sponsored recreation leagues or activities and any field rental income derived from subleasing or renting the Ball Fields to a third party. The amount of income generated from the use of the Ball Fields shall be reported to the City of semi-annually.

2.5 The Commission shall pay any and all costs for telephone, trash, cleaning, and gas utility service at the Ball Fields. The City shall pay any and all costs for water, sewer or electric utility service at the Ball Fields.

2.6 The Commission shall, at all times and at its own cost and expense up to $1,000.00, repair, replace and maintain in a good, safe and substantial condition the Ball Fields, inclusive of all related amenities such as but not limited to the backstops, fencing, bleachers, announcer booths, dugouts, concession stands and any improvements, additions and alterations thereto, and shall use all reasonable precaution to prevent waste, damage, or injury to the Ball Fields. The Commission shall consult with the City regarding any maintenance, repairs or improvements to the Ball Fields that exceed the sum of $1,000.00, the cost of which shall be shared as mutually agreed by the parties; provided, however, that the Commission shall always pay the first $1,000.00 of the cost of any such maintenance, repairs or improvements to the Ball Fields; provided, further, that nothing in this Agreement shall be construed to obligate the City to participate in the cost thereof whatsoever.

2.7 The Commission shall not make any permanent alterations, additions or improvements to the Ball Fields without the written consent of the City. All alterations, additions or improvements to the Ball Fields which shall be made by either party (except the Commission's equipment and supplies never attached or affixed to the realty) shall be the property of the City and shall remain upon and be surrendered with the premises as part thereof, without disturbance, molestation, or injury.

2.8 The City will provide all property casualty insurance coverage for the Ball Fields.

2.9 The Commission shall obtain and maintain, at its own expense, public liability insurance on the use of the Ball Fields in an amount not less than $500,000 with an insurance company authorized to do business in the State of Kansas. The liability policy shall be in a form acceptable to the City and shall be for the protection of the City as well as the Commission. The City shall be named an additional insured on the liability policy.

2.10 The use of Sherwin-Williams Fields shall at all times be subject to the provisions of that certain Lease Agreement by and between the Sherwin-Williams Company, an Ohio corporation, and the City of Coffeyville, Kansas. The Commission acknowledges receipt of a copy of said Agreement and agrees to abide by its terms and conditions at all times.

ARTICLE III. OTHER FACILITIES

3.1 The Commission shall be responsible for the replacement of nets at the city-owned tennis courts and basketball courts, located in the City of Coffeyville, Kansas, unless otherwise mutually agreed upon by both parties in writing.

3.2 The City shall be responsible for other repairs and maintenance, including the replacement of lights, at city-owned tennis courts and basketball courts, unless otherwise mutually agreed upon by both parties in writing.

3.3 All electric utility bills at the city-owned tennis courts and basketball courts shall be the sole responsibility of the City.

3.4 The maintenance and upkeep of all other city-owned parks and recreation facilities not described in this agreement shall be the responsibility of the City unless otherwise mutually agreed upon by both parties in writing.

ARTICLE IV. TERM OF LEASE AGREEMENT

4.1 The term of this Lease Agreement shall be for a one (1) year, commencing as of January 1, 2009 and ending on December 31, 2009, regardless of the date executed. This Lease Agreement shall be automatically extended for up to five (5) successive one (1) year terms unless either party gives written notice at least (30) days prior to its annual December 31st expiration date of their desire to terminate this Lease Agreement.

ARTICLE V. ASSIGNMENT

5.1 The rights and privileges of the Commission under this Lease Agreement are non-assignable, without the written consent of the City as approved by the City's Governing Body.

5.2 If a sublease or assignment is made following approval by the City as provided in this Article, the provisions of this Article shall continue in full force and effect and no further such sublease or assignment shall be made except in compliance with the provisions of this Article.

ARTICLE VI. MISCELLANEOUS AND GENERAL TERMS

6.1 If any leased building or premises is destroyed in whole or in part and the City elects not to restore, repair, or reconstruct the damaged premises or property, the portion of this Lease Agreement pertaining to such premises or property, or parts thereof, shall automatically terminate; provided, however, to the extent the loss is covered by insurance, the Commission shall be reimbursed for the value of any capital improvements paid for by the Commission, less reasonable depreciation, as determined by the insurance carrier, and less a proportionate share of any deductible, subject to the following conditions: (a) the original cost of the capital improvement exceeded $5,000.00; and (b) the Commission must provide proper documentation of the cost of the improvement (e.g., paid receipts). Nothing in this section shall be construed to obligate the City to insure or reimburse the Commission for the loss any of the Commission's personal property, wherever located.

6.2 The Commission shall carry insurance on its personal property, including but not limited to the contents of any building(s), and all of the Commission's equipment and furnishings. The amount of the insurance shall be determined by the Commission. The Commission agrees that of its all personal property, equipment and furnishing shall be at the sole risk of the Commission and that the City shall not be liable for any damage thereto or theft thereof.

6.3 This Lease Agreement is the entire and final expression of the Lease Agreement and it may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or negotiations of the parties.

6.4 All other lease agreements dealing with the same facilities or subject matter are hereby mutually rescinded.

6.5 This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Kansas, in Kansas Courts.

6.6 All persons working for and under the Commission shall be employees of the Commission and shall not be considered as employees of the City. In this connection, should any liability arise under the Workers; Compensation Act of the State of Kansas due to injury of an employee of the Commission, the same shall be the sole responsibility of the Commission.

6.7 The Commission shall indemnify and hold the City harmless of and from any liability created by acts of the Commission, its officers or employees, pursuant to this agreement.

6.8 No officer or employee of the Commission shall utilize any City-owned facilities, equipment or utilities for personal use, nor shall they permit any other individual or entity to do so without written authorization from the City.

6.9 This Lease Agreement may only be amended by a written amendment executed by both the City and the Commission.

6.10 The covenants, terms and conditions of this Lease Agreement shall extend to and be binding upon the successors, assigns, trustees, and/or receivers of the respective parties thereto.

6.11 The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease Agreement or as affecting the true meaning of the provisions herein.

6.12 This Lease Agreement may be executed simultaneously in multiple counterparts, ach of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

6.13 This Agreement has been prepared from negotiations of all parties and no party shall be charged with having prepared this document in the event an ambiguity exists.

6.14 Should any paragraph be declared unconstitutional or unenforceable, the validity of the remaining provisions shall be given full force and effect.

6.15 Any waiver by the parties hereto of any breach of any parties' obligations under this Agreement shall not be deemed a continuing waiver and shall not prevent the parties hereto from exercising any remedy they may have for any succeeding breach of the same or other obligation.

6.16 Notwithstanding anything herein to the contrary, it is expressly agreed between the parties that the City has not waived any rights it may be entitled to under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., as amended, and any agreements made by the City found to be inconsistent with the provisions of such Act are hereby declared to be null and void.

6.17 Notices and communications required to be in writing pursuant to this Agreement shall be effective only if delivered personally, or sent by facsimile or certified mail, or by overnight delivery service to the following:

Coffeyville Recreation Commission
Attn: Director
P. O. Box 301/508 Park St.

Coffeyville, KS 67337
(620) 251-1603

City of Coffeyville, Kansas
Attn: City Manager
P. O. Box 1629/7th & Walnut
Coffeyville, KS 67337
(620) 252-6175

IN WITNESS WHEREOF, the parties have executed this Lease Agreement in Coffeyville, Montgomery County, Kansas, the day and year first above written.

CITY OF COFFEYVILLE

Richard L. Gonzales, Mayor

CITY OF COFFEYVILLE SEAL MONTGOMERY COUNTY, KANSAS

ATTEST:

Cindy Price, City Clerk

COFFEYVILLE RECEATION COMMISSION

_____, Chairman

ATTEST:

_____, Secretary

CA 2757

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM TO LEASE AGREEMENT, made this 13 day of September 2011, by and between the City of Coffeyville, Kansas, hereinafter referred to as "City" and the Joint Recreation Commission of Unified School District No. 445 and the City of Coffeyville, Kansas, hereinafter referred to as "Commission".

WHEREAS, the City and Commission are parties to a Lease Agreement dated as of August 25, 2009, whereby the Commission is authorized to use certain City-owned or City-leased property and facilities for recreation programs and activities sponsored by the Commission; and

WHEREAS, the parties desire to supplement the Lease Agreement to add certain additional City-owned or City-leased property thereto.

NOW THEREFORE, in consideration of the premises and mutual covenants set forth herein, the City and the Commission covenant and agree as follows:

1. Article II of the Lease Agreement should be amended to add the following Articles II-B, as follows:

ARTICLE II-B - <u>SHERWIN-WILLIAMS SKATE PARK</u>

2B.1 The Commission may utilize Sherwin-William Skate Park for Commission sponsored activities, which shall be open to the public. However, the City reserves the right to require the Commission to schedule their use of Sherwin-Williams Skate Park through the City if scheduling conflicts develop between the Commission and any third party user(s) that cannot be amicably worked out between the Commission and the third party user(s).

2B.2 The Commission shall be entitled to all income generated from the operation and use of Sherwin-Williams Skate Park for Commission sponsored recreation leagues or activities.

2B.3 The Commission shall pay any and all costs for trash removal and cleaning service at Sherwin-Williams Skate Park. The City shall pay any and all costs for electric utility services.

2B.4 The Commission shall, at all times, and at its sole cost and expense, repair, replace and maintain in a good, safe and substantial condition the Sherwin-Williams Skate Park, inclusive of all related amenities such as but not limited to skating surfaces and apparatuses.

2B.5 The Commission shall use all reasonable precaution to prevent waste, damage, or injury to the Skate Park. The Commission shall consult with the City regarding any maintenance, repairs or improvements to the Skate Park that exceed the sum of $750.00; provided, that nothing in this Agreement shall be construed to obligate the City to participate in the cost thereof whatsoever.

2B.6 The Commission shall not make any permanent alterations, additions or improvements to Sherwin-Williams Skate Park without the written consent of the City. All alterations, additions or improvements to the Skate Park which shall be made by either party (except the Commission's equipment and supplies never attached or affixed to the realty) shall remain upon and be surrendered with the premises as part thereof, without disturbance, molestation, or injury.

2B.7 The City will provide all property casualty insurance coverage for Sherwin-Williams Skate Park. However, if the Skate Park is destroyed in whole or in part and the City elects not to restore, repair, or reconstruct the Skate Park, the portion of this Lease Agreement pertaining to the Skate Park or parts thereof shall automatically terminate; provided, however, if the City makes such an election to not restore, repair or reconstruct the Skate Park, the City will provide reasonable notice to the Commission regarding the City's determination and reasons there for.

2B.8 The Commission shall obtain and maintain, at its own expense, public liability insurance on the use of Sherwin-Williams Skate Park in an amount not less than $500,000 with an insurance company authorized to do business in the State of Kansas. The liability policy shall be in a form acceptable to the City and shall be for the protection of the City as well as the Commission. The City shall be named an additional insured on the liability policy.

2B.9 **The use of Sherwin-Williams Skate Park shall at all times be subject to the provisions of that certain Lease Agreement by and between the Sherwin-Williams Company, an Ohio corporation, and the City of Coffeyville, Kansas, dated August 10, 2004, as amended. The Commission acknowledges receipt of a copy of said Agreement and agrees to abide by its terms and conditions at all times.**

2. Except as amended or supplemented hereby, the parties reaffirm the provisions of the original Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum to Lease Agreement in Coffeyville, Montgomery County, Kansas, the day and year first above written.

CITY OF COFFEYVILLE SEAL MONTGOMERY COUNTY, KANSAS

CITY OF COFFEYVILLE

Pam Jones, Mayor

ATTEST:

Cindy Price, City Clerk

JOINT RECEATION COMMISSION
UNIFIED SCHOOL DISTRICT NO.445
AND CITY OF COFFEYVILLE, KANSAS

_____, Chairman

WITNESS:

_____, Secretary