

To: Board of Education

From: Kathy Johnson, executive director, finance
Kyle Hayden, chief operations officer
Tony Barron, executive director facilities and operations

Re: Resolution to Finance Lease Purchase Agreement – High School Athletic Turf Renovations

Date: April 5, 2018

Background:

As part of the 2018 Capital Improvement plan, and the February 12, 2018 board meeting, the board approved moving ahead with a contract with Hellas Construction for high school athletic complex improvements in the amount of \$4,353,476, plus a 5% contingency, for a total of \$4,571,150 contingent upon the district securing lease financing for the project.

Rationale:

The District is ready to submit request for proposals from various financial institutions, on the lease financing of this approved project.

Recommendation:

Administration recommends the board approve the attached resolution giving staff the permission to seek proposals for lease financing of the project, refinancing of certain improvements within the district, amending an existing lease purchase contract, and executing certain documents in connection with all of the above. Final board approval of the new lease will be at the May 12, 2018 board meeting.

Motion:

"I move the board of education approve resolution 2018-04-09, that determines advisability of financing the acquisition, construction, installation and improvement of district athletic facilities by the execution and delivery of an equipment lease purchase agreement; authorizing the refinancing of certain improvements within the district, amending a prior equipment lease agreement and approving the execution of certain documents in connection therewith."

RESOLUTION 2018-04-09

A RESOLUTION OF THE GOVERNING BODY OF UNIFIED SCHOOL DISTRICT NO. 497, DOUGLAS COUNTY, KANSAS (LAWRENCE) DETERMINING THE ADVISABILITY OF FINANCING THE ACQUISITION, CONSTRUCTION, INSTALLATION, AND IMPROVEMENT OF DISTRICT ATHLETIC FACILITIES BY THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE PURCHASE AGREEMENT; AUTHORIZING THE REFINANCING OF CERTAIN IMPROVEMENTS WITHIN THE DISTRICT; AMENDING A PRIOR EQUIPMENT LEASE PURCHASE AGREEMENT; AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the governing body of Unified School District No. 497, Douglas County, Kansas (Lawrence) (the “District”) has considered the need of the District and its residents for certain athletic facility improvements, including the installation of new artificial turf for athletic fields at both District high schools (the “2018 Improvements”), and has found and determined that the acquisition of the Improvements is in the public interest; and

WHEREAS, the governing body has considered various means of financing the acquisition of the Improvements, and has found and determined that it would be in the public interest to acquire the Improvements through the execution and delivery of an equipment lease purchase agreement; and

WHEREAS, pursuant to K.S.A. 72-1149, the District has legal authority to authorize the acquisition of the Improvements and the financing of such acquisition through the execution and delivery of an equipment lease purchase agreement; and

WHEREAS, the District has previously entered into an Equipment Lease Purchase Agreement dated July 15, 2014, with Capital One Public Funding, LLC, (the “2014 Lease Agreement”), to obtain funds to pay the costs of acquiring and installing certain improvements and equipment for use at the District’s high school athletic facilities (the “2014 Improvements”); and

WHEREAS, the District has determined that it is in the best interests of the District to refinance the 2014 Lease Agreement, and in order to facilitate such refinancing, it is necessary and desirable for the District to exercise its option to purchase the 2014 Improvements pursuant to Article X of the 2014 Lease Agreement; and

WHEREAS, the District has selected the firm of George K. Baum & Company, Kansas City, Missouri, (“Financial Advisor”) to act as financial advisor and to assist the District in selecting a leasing company (the “Lessor”), to enter into an equipment lease purchase agreement with the District for the purpose of financing the 2018 Improvements and refinancing the 2014 Improvements; and

WHEREAS, the District has previously entered into an Equipment Lease Purchase Agreement dated April 1, 2009, with Deutsche Bank National Trust Company (the “2009 Agreement”), to obtain funds to pay the costs of acquiring and installing certain improvements and equipment for use at the District’s high school facilities; and

WHEREAS, the District has determined that it is in the best financial interests of the District to amend certain provisions of the 2009 Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE DISTRICT;

Section 1. The Executive Director of Finance, in conjunction with the Financial Advisor, is hereby authorized to proceed with seeking proposals from various financial institutions to serve as Lessor pursuant to an equipment lease purchase agreement (the “2018 Lease Agreement”), pursuant to which the Lessor will provide financing for (a) the costs of the 2018 Improvements in the amount of approximately \$5,200,000 and (b) the costs of refinancing the 2014 Improvements and the 2014 Lease Agreement.

Section 2. Upon receipt of such proposals, the District, in conjunction with the Financial Advisor and Gilmore & Bell, P.C., special tax counsel to the District, shall commence negotiations to enter into the 2018 Lease Agreement to provide financing for the acquisition, construction and installation of the 2018 Improvements and the 2014 Improvements. The execution and delivery of the 2018 Lease Agreement is subject to the governing body’s adoption of a resolution approving the form of and authorizing the execution of the 2018 Lease Agreement, and execution and delivery of such legal documents as may be necessary in connection with it, the terms of which shall be satisfactory to the governing body and to the Lessor named therein.

Section 3. In order to permit and expedite the acquisition, construction and installation of the 2018 Improvements and realization of the public benefits to be derived from it, the District may expend lawfully available funds prior to execution and delivery of the Lease, to be reimbursed upon execution and delivery of the Lease. This Resolution shall constitute a declaration of official intent under Treasury Regulation Section 1.150-2.

Section 4. The Amendment to the 2009 Agreement (the “2009 Amendment”), is hereby approved in substantially the form presented to the governing body on this date. The President of the Board of Education and Clerk are hereby authorized to execute the 2009 Amendment.

Section 5. The governing body of the District hereby elects to omit the mandatory contract provisions presented by the department of administration in form DA-146a, as amended, from the 2009 Amendment and the 2018 Lease Agreement.

Section 6. The President, Clerk, Superintendent, Executive Director Finance, and other officials of the District, the Financial Advisor, Special Tax Counsel and other consultants are authorized to are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution.

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ADOPTED BY the governing body of District this 9th day of April, 2018.

President

(Seal)

ATTEST:

Clerk

**AMENDMENT TO
TO EQUIPMENT LEASE PURCHASE AGREEMENT**

THIS AMENDMENT TO EQUIPMENT LEASE PURCHASE AGREEMENT (the “Amendment”) dated as of April 9, 2018, is made and entered into by and between **DEUTSCHE BANK NATIONAL TRUST COMPANY**, a national banking association, acting as lessor (the “Lessor”), and **UNIFIED SCHOOL DISTRICT NO. 497, DOUGLAS COUNTY, KANSAS (LAWRENCE)**, as Lessee (the “Lessee”).

WHEREAS, Lessor and Lessee previously entered into that certain Equipment Lease Purchase Agreement dated as of April 1, 2009 (the “Lease”) whereby the Lessee leased the Equipment from Lessor subject to the terms and conditions of and for the purposes set forth in the Lease; and

WHEREAS, Lessee has requested that Lessor release certain equipment listed in **Exhibit A** to the Lease from the security interest granted pursuant to **Section 6.02** of the Lease; and

WHEREAS, Lessee represents that the value of the remaining equipment subject to the Lease will exceed the total amount of all remaining Rental Payments under the Lease; and

WHEREAS, pursuant to **Section 13.05** of the Lease, Lessor and Lessee desire to amend **Exhibit A** to the Lease; and

WHEREAS, pursuant to Section 8.01(b)(v) of the Declaration of Trust dated as of April 1, 2009, and based on the representations of Lessee contained in this Agreement, Deutsche Bank National Trust Company, acting as Trustee, pursuant to the Declaration of Trust, consents to this Amendment.

NOW, THEREFORE, the parties agree as follows:

Section 1. Defined Terms. All terms used herein have the meanings ascribed to them in the Agreement.

Section 2. Amendments. **Exhibit A** to the Lease is hereby amended to read as set forth in **Exhibit A** to this Amendment.

Section 3. Lessee’s Additional Representations and Warranties. Lessee represents and warrants that as of the date of execution and delivery of this Agreement, the Equipment listed on **Exhibit A**, as amended, has a value in excess of the remaining Rental Payments as shown on **Exhibit B**.

Section 4. Execution in Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be regarded as an original, and all of which, taken together, will constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS LESSOR**

By: _____
Name:
Title:

**UNIFIED SCHOOL DISTRICT NO. 497, DOUGLAS
COUNTY, KANSAS (LAWRENCE), AS LESSEE**

By: _____
Name:
Title:

The Trustee hereby consents to this Amendment pursuant to Section 8.01(b)(v) of the Declaration of Trust dated as of April 1, 2009.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE**

By: _____
Name:
Title:

EXHIBIT A TO EQUIPMENT LEASE PURCHASE AGREEMENT

EQUIPMENT SCHEDULE

The following Equipment to be located at (a) Lawrence High School (Lawrence High), 1901 Louisiana Street, Lawrence, Kansas (b) Lawrence Free State High School (Free State High), 4700 Overland Drive, Lawrence, Kansas and (c) Lawrence Virtual School (LVS), 2145 Louisiana Street, Lawrence, Kansas.

Free State High	6' Fencing
Lawrence High	6' Fencing
LVS	Aux Site Fencing
Lawrence High	Dugouts Baseball
Lawrence High	Fencing 8'
Lawrence High	Foul Poles/ Base Anchor, etc. – Baseball
Lawrence High	Dugouts – Softball
Lawrence High	Foul Poles/ Base Anchor, etc. – Softball
Lawrence High	Turf Soccer – Retaining Wall
Free State High	Lights Football
Free State High	Lights Soccer
Lawrence High	Lights Football
Lawrence High	Lights Baseball
Lawrence High	Lights Softball
Lawrence High	Lights Soccer
Lawrence High	Lights Parking Lots
Lawrence High	Bleachers (Baseball, Softball, Soccer, Football/ Track)
Free State High	Bleachers (Baseball, Softball, Soccer, Football/ Track)
Lawrence High	Scoreboards (Baseball, Softball, Soccer)

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