

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between SEDGWICK COUNTY, KANSAS, ("County") and The Young Men's Christian Association of Wichita, Kansas, Inc. ("Promoter").

WITNESSETH:

WHEREAS, the Promoter has requested controlled access to certain portions of County roadways for the purpose of sponsoring a Triathlon on Sunday, June 3, 2012; and

WHEREAS, County finds that such request serves the public purpose of supporting a community event open to all citizens; and

WHEREAS, the parties hereto desire to document the understanding that has been reached between them for the provision of such controlled access to County roadways.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree to be bound by this Agreement as follows:

SECTION 1. USE GRANTED. County does hereby grant to Promoter controlled access to the following roadways controlled and maintained by County for the purpose of hosting a Triathlon on Sunday, June 3, 2012 from 7:00 a.m. to 10:00 a.m. as necessary for the triathlon activities:

- a. 21st St. North between 215th St. West and 135th St. West;
- b. 215th St. West between 21st St. North and 29th St. North;
- c. 29th St. North between 215th St. West and 167th St. West;
- d. 167th St. West between 29th St. North and 21st St. North;
- e. 135th St. West between 29th St. North and 21st St. North.

Said triathlon route is also set forth on the map which is attached hereto and incorporated herein as Exhibit A.

For purposes of this agreement, 'controlled access' is defined as the non-exclusive use of public roadways to the extent that the use does not conflict with public safety as determined by the Sedgwick County Sheriff. Promoter agrees to coordinate with the Sheriff's Office with regard to traffic control upon the County roadways used for such purpose.

SECTION 2. DAMAGES/INDEMNIFICATION. Subject to the limitations of the Kansas Tort Claims Act, Promoter agrees to indemnify and hold harmless County, its agents, servants, employees or invitees, from and against any and all claims of every kind or character (including, but not limited to, attorneys' fees) for injuries to persons and/or property damage arising out of or in connection with the use and occupancy of said land, and not caused by County negligence.

SECTION 3. NOTICE OF CLAIM. Each party shall give the other party notice of any claim made or litigation instituted which directly or indirectly contingently or otherwise in any way affects or might affect them or either of them. Promoter shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

SECTION 4. INSURANCE. Promoter shall carry and maintain general liability insurance against damage caused by its members, agents, servants, employees, guests, invitees and participants in the event throughout the term of this agreement in the amount of not less than \$500,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Promoter shall provide a Certificate of Insurance naming "Board of County Commissioners of Sedgwick County, Kansas, and its officers, employees and agents" as additional insureds and shall submit such certificate to the Park Superintendent no later than thirty (30) days prior to the first date of use authorized by this Agreement. It is an affirmative obligation on Licensee to advise County's Risk Manager via fax (316/383-7674) or email (mmcbride@sedgwick.gov) within ten (10) calendar days of the cancellation or substantive change of any insurance policy required herein. Failure to give such notice shall be construed to be a breach of this Agreement. Further, failure to maintain insurance coverage in the minimum amount specified above and/or failure to provide a certificate evidencing such coverage shall each be considered a breach of this Agreement. **Breach of this Agreement as set out in this section will result in cancellation of Licensee's event.**

SECTION 5. RESTORATION OF PREMISES. Promoter shall be responsible for the removal of all equipment, trash, debris, or other material of any kind or nature whatsoever that is discarded on County roadways by any of its members, agents, servants, employees, guests, invitees, and participants.

SECTION 6. DISCRIMINATION PROHIBITED. Promoter will not on the grounds of race, color, sex, religion, physical handicap, national origin or ancestry discriminate or permit discrimination against any person or group of persons in any manner prohibited by law.

SECTION 7. NOTICE. For purposes of this agreement, written notice shall be sent to:

Promoter: Dennis Schoenebeck, General Executive
The Young Men's Christian Association of Wichita, Kansas, Inc.
3330 N. Woodlawn
Wichita, KS 67220

County: Sedgwick County Counselor
525 N. Main, Suite 359
Wichita, KS 67203

SECTION 8. CANCELLATION. This agreement may be canceled and terminated at any time by mutual agreement, or by either party upon giving thirty (30) days notice of the cancellation to the other party.

SECTION 9. MODIFICATION. This agreement may be modified, changed, or amended only as may be mutually agreed in writing between County and Promoter.

SECTION 10. AUTHORITY TO CONTRACT. The parties each represent to the other that they have the right, power, legal capacity, and authority to enter into, and perform their respective obligations under this agreement, and no approvals or consents of any persons other than the parties hereto are necessary in connection with it. The execution and delivery of this agreement by the parties have been duly authorized by their respective boards of directors or commissioners.

SECTION 11. ASSIGNMENT. It is understood and agreed that Promoter shall not sell, assign or transfer any of its rights or privileges granted hereunder without the prior written consent of County.

SECTION 12. TERMINATION. In addition to the provisions outlined in paragraph 13 below, this Agreement may be terminated in whole or in part by either party without cause, upon thirty (30) days written notice, stating the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto.

SECTION 13. DEFAULT. In the event that Promoter shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Promoter shall violate any of the terms, covenants, conditions or stipulations of this Agreement or any appendices, exhibits or amendments hereto, if any, County shall thereupon have the right, at its option, to declare the existence of an event of default and terminate this Agreement by promptly giving written notice to Promoter, specifying the reasons for the termination and the effective date thereof.

Notwithstanding the above, Promoter shall not be relieved of liability to County by virtue of any breach of this Agreement by Promoter.

SECTION 14. WAIVER OF BREACH. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach by any party.

SECTION 15. BINDING EFFECT. The terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective successors in interest, legal representatives, heirs, executors and administrators, except as otherwise herein expressly provided.

SECTION 16. INVALIDITY OF PART. The invalidity, unenforceability, or illegality of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS. Promoter shall comply with all applicable federal, state and local laws and regulations in fulfilling this Agreement, regardless of whether those laws and regulations are referenced herein.

SECTION 18. CONTROLLING LAW. This Agreement and the terms thereof shall be construed according to the laws of the State of Kansas.

SECTION 19. ENTIRE AGREEMENT. It is understood that this agreement supersedes and cancels any and all prior existing arrangements between the parties hereto and their predecessors concerning the uses provided for herein.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this agreement by signature of their duly authorized officers the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

KELLY B. ARNOLD
County Clerk


TIM R. NORTON, Chairman
Commissioner, Second District

APPROVED AS TO FORM:

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF WICHITA, INC.



KAREN L. POWELL 4-12-12
Assistant County Counselor



DENNIS SCHOENBECK
General Executive

YMCA TRIATHLON

Sedgwick County, Kansas

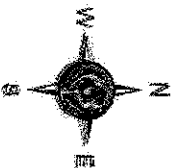


Exhibit A

DATE: 6-3-2012

It is understood that the Sedgwick County GIS Division of Information and Operations has no indication or reason to believe that there are inaccuracies in information incorporated in the base map. The GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or the data displayed.

DESCRIPTIONS (Continued from Page 1)

included as Additional Insureds on the General Liability and Automobile Liability policies if required by written contract, agreement or permit in accordance with all of the terms, conditions and limitations of the policy.