

AGREEMENT
PARK USE AND CONTROLLED ACCESS
SEDGWICK COUNTY PARK

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the Sedgwick County, Kansas ("County") and Newman University ("Licensee").

WITNESSETH:

WHEREAS, County controls, manages and operates Sedgwick County Park, hereinafter referred to as "Park";

WHEREAS, Licensee has requested use of a portion of Park for the purpose of sponsoring and hosting the "**Wichita Gladiator Dash**";

WHEREAS, Licensee has requested controlled access to certain portions of County roadways for the purpose of sponsoring this event; and

WHEREAS, County finds that such requests serve the public purpose of supporting a non-profit, community event open to all citizens.

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

SECTION 1. USE GRANTED. County does hereby grant to Licensee exclusive use of a portion of the Park for the purpose of sponsoring and holding the "**Wichita Gladiator Dash**" event and related activities, subject to reasonable inspections and access by County personnel, on June 7, 2014. The use granted shall be limited to the portion of the Park shown highlighted on the attached Map, Exhibit A ("Licensed Premises"). Said attachment is incorporated herein as if set out in full. All other areas will remain under the exclusive control of County and access thereto shall not be impaired by Licensee.

County does hereby grant to Licensee, as necessary for this event, controlled access to North Shore Blvd, a roadway controlled and maintained by County. '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 County roads.

Licensee agrees to coordinate with Park Superintendent, or his designee, concerning any conditions he may have for the use of any property under his management and control. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 2. TERM; FEES AND DEPOSITS. The term of this Agreement shall commence upon the date and time of the event and shall end upon the conclusion of the event, allowing for reasonable time for Licensee's move-in and move-out. The parties intend that Licensee will have exclusive use on June 7, 2014 at 11:00 a.m. and said exclusive use will

terminate at 6:00 p.m. on the day the event concludes. Move-in for the purpose of setting up obstacles for the event will begin no earlier than **June 6, 2014** and move-out for the purpose of breaking down of obstacles will be completed no later than 48 hours after the event. Set-up and break-down of obstacles will not distract either traffic flow or use of the park paths. It is agreed between the parties that as consideration for use of the Sedgwick County Park, Licensee agrees to pay Licensor the following:

Large event fee:	\$ 250.00
Shelter fee #1:	\$ 40.00
Shelter fee #2:	\$ 40.00
Shelter fee #4:	\$ 60.00
Shelter fee #5:	\$ 25.00

If shelter houses are to be used by Licensee or public access to shelter house(s) is restricted by Licensee, fees and deposits for said shelter house(s) shall be made in accordance with the currently applicable Sedgwick County Code.

All other fees and deposits will be paid in accordance with the currently applicable Sedgwick County Code. Licensee shall be responsible for and shall pay all costs of operating its events.

SECTION 3. DAMAGES. To the degree such indemnification is allowed by law, Licensee 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 for injuries and/or damages to persons and/or property arising out of or in connection with the use and occupancy of said County owned land, and not caused by County negligence.

SECTION 4. NOTICE OF CLAIM. County shall give to Licensee notice of any claim made or litigation instituted which directly or indirectly contingently or otherwise in any way affects or might affect it. Licensee shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

SECTION 5. INSURANCE. Licensee shall carry and maintain general liability insurance against damage caused by Licensee 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. **Licensee shall provide a Certificate of Insurance naming "Board of County Commissioners of Sedgwick County, Kansas, Sedgwick County Park, and their 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 is a material 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 material breach of this Agreement. **Breach of this Agreement as set out in this section will result in cancellation of Licensee's event.**

SECTION 6. DEFACEMENT OF PARK. Unless prior written approval has been given by the Park Superintendent, Licensee shall not injure, mar, nor in any manner deface said premises or any equipment contained therein, and shall not cause or permit anything to be done whereby the said premises or equipment therein shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks, or screws into any part of said building or equipment contained therein, and will not make nor allow to be made any alterations of any kind to said building or equipment contained therein. Reasonable wear and tear is excluded.

SECTION 7. PREPARATION AND RESTORATION OF PREMISES. Licensee shall be responsible for preparation of the area for the above-stated events and shall also be responsible for the removal of all equipment, trash, debris, or other material of any kind or nature whatsoever that is brought in or left by any of its members, agents, servants, employees, guests, invitees, and participants.

SECTION 8. DISCRIMINATION PROHIBITED. Licensee 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 9. ADDITIONAL EVENTS. Licensee shall not hold, provide or sponsor any events in addition to the use granted at Section 1 hereof which require the exclusive use of a designated area of Park without first having entered into a written agreement with County for such use.

SECTION 10. NOTICE. For purposes of this Agreement, notices shall be made in writing, sent by first class mail to:

Licensee: Newman University
Dan Giroux, Event Coordinator
3100 McCormick Avenue
Wichita, Kansas 67213

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

SECTION 11. COMPLIANCE WITH LAWS AND REGULATIONS. Licensee agrees to comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies. Licensee agrees to abide by all rules and regulations of Park and by any and all resolutions of the Board of County Commissioners governing said Park. Park Superintendent or his designee has final authority as representative of County to interpret compliance with Park rules pursuant to the provisions of Sec. 20-106 through 20-121 of the *Sedgwick County Code* and any subsequent amendments thereto.

SECTION 12. TAXES, EXCISE AND LICENSE FEES; PERMITS. Licensee agrees to promptly pay all applicable taxes, excise or license fees and to take out all licenses or permits for use of Licensed Premises as required by federal, state or local laws and ordinances; and Licensee agrees to provide evidence of same to the Park Superintendent. Licensee also agrees to advise all exhibitors offering goods for sale (if any) that applicable sales tax returns must be filed, designating that sales were made in Sedgwick County, Kansas.

SECTION 13. CONCESSIONS. If Licensee operates or contracts for operation of a concession facility on the Park premises, Licensee shall operate and maintain such facility in a manner which sustains the highest rating issued by the local health department.

SECTION 14. UNAVOIDABLE HAPPENING. If, for any reason, an unforeseen event occurs, including, but not limited to fire, casualty, labor strike, or other unforeseen occurrence, which renders impossible the fulfillment of any term of this Agreement, the Licensee shall have no right to nor claim for damages against County.

SECTION 15. TERMINATION. This Agreement may be terminated at any time by mutual Agreement, or by either party upon giving thirty (30) days written notice to the other party as set forth in Section 10. This Agreement may be immediately terminated upon breach of any material term. Should Licenser exercise said right to terminate this Agreement, Licensee agrees to forego any and all claims for damages against Licenser and further agrees to waive any and all rights which might arise by reason of the terms of this license; and Licensee shall have no recourse of any kind against Licenser. Upon termination, Licensee, its agents and employees shall immediately vacate the premises.

SECTION 16. MODIFICATION. This Agreement may be modified, changed, or amended only as may be mutually agreed in writing between County and Licensee.

SECTION 17. ENTIRE AGREEMENT. It is understood that this Agreement supersedes and cancels any and all prior existing arrangement between the parties hereto and their predecessors concerning the uses provided for herein. Any matters not expressly provided for in this Agreement will be at the sole discretion of County.

SECTION 18. ASSIGNMENT. It is understood and agreed that Licensee shall not sell, assign or transfer any of its rights or privileges granted hereunder without the prior written consent of County.

SECTION 19. PUBLIC SAFETY. Licensee agrees that at all times, activities conducted will be with full regard to public safety, and Licensee will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with County to assure such safety.

All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities on the premises shall be kept unobstructed by Licensee (unless clearly demarcated pursuant to Section 20) and shall not be used for any purpose other than ingress or egress to and from the premises by the Licensee.

Licensee agrees not to bring onto the premises any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person on the

premises or which is likely to constitute a hazard to property thereon without the prior approval of the County. County shall have the right to refuse to allow any such material, substances, equipment or object to be brought onto the premises and the further right to require its immediate removal if found on the premises.

County shall retain the right to cause the interruption of any performance in the interest of public safety, and to likewise cause the termination of such performance when in the sole judgment of County, exercised in good faith, such act is necessary in the interest of public safety.

If the Sedgwick County Fire Marshal determines that the number of persons admitted to the Licensed Premises exceeds that allowed by the County Fire Code, the Park Superintendent or Fire Marshal may interrupt or terminate occupancy by Licensee and take such other reasonable action to reduce the population to the proper levels.

SECTION 20. PUBLIC FORUM. Licensee acknowledges and agrees that the park premises (including the Licensed Premises) is a traditional public forum and that County will make no efforts to exclude or prohibit activities allowed by the First Amendment. Should Licensee wish to exclude persons from the Licensed Premises, Licensee shall: 1) clearly fence off, outline, partition or otherwise demarcate Licensee's area of exclusive use; 2) post readily apparent notice to the public that occupancy of the particular demarcated area is prohibited unless authorized by Licensee; and 3) post a legible copy of this Agreement in a conspicuous place near the Licensed Premises.

SECTION 21. COPYRIGHTS. Licensee shall assume all costs arising from the use of patented, trademarked, franchised, or copyrighted music, materials, devices, processes or dramatic rights used on or incorporated in the events that are the subject matter of this Agreement. Licensee specifically warrants that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives. Further, Licensee agrees to indemnify and hold harmless the Board of County Commissioners of Sedgwick County, Kansas, their agents, employees and servants from any and all claims, losses or expenses incurred with regard to the above recited costs, charges, authorization or license fees to the extent such indemnification is allowed by law.

SECTION 22. LICENSOR RIGHT OF ENTRY. Duly authorized representatives of Licensor may enter the premises to be used, and all of the Licensed Premises, at any time and on any occasion for any lawful purpose. All facilities, including the area which is the subject of this Agreement, and all parking areas shall at all times be under the charge and control of Licensor.

SECTION 23. OBJECTIONABLE PERSONS. Licensor reserves the right to eject or cause to be ejected from the premises, any objectionable person or persons; and neither Licensor nor any of its officers, agents or employees shall be liable to Licensee for any damages that may be sustained by Licensee through the lawful exercise by Licensor of such right.

SECTION 24. OCCUPANCY INTERRUPTION. That in case the Sedgwick County Park facilities described herein or any part thereof shall be destroyed or damaged by fire, vandalism, labor strike, act of God or any other cause, or if any other casualty shall render the fulfillment of this Agreement by Licensor impossible, including without limitation thereto, the requisitioning of the Licensed Premises by the United States Government or any arm or instrumentality thereof, then and thereupon this Agreement shall terminate and the Licensee shall

pay rental for said premises only up to the time of such termination, prorated at the rates herein specified. Licensee may, with the approval of the Park Superintendent, leave exhibits, equipment or show materials in the premises, but Licensee assumes full responsibility in doing so in accordance with the above. Licensee shall have no right to nor claim for damages against Licensor for the interruption of occupancy.

SECTION 25. SUIT TO ENFORCE. Should Licensor believe that Licensee has failed to comply with any of the material terms in this Agreement, Licensor shall give Licensee written notice and Licensee shall have 3 days in which to comply with said stated material term of this Agreement. If Licensee fails to remedy or correct, then Licensor may institute suit or other action against Licensee as a result of Licensee's failure to comply with any material term of this Agreement, and Licensor may recover damages as provided by law, costs and disbursements as provided by statute, and any court costs actually incurred, including reasonable attorney's fees.

SECTION 26. LICENSOR COVENANTS. Licensor warrants and represents that: (i) it has full and complete authority to enter into this Agreement under all of the terms, conditions and provisions set forth herein and the person who signs this Agreement on behalf of Licensor is authorized to do so; (ii) except as herein provided, no other person shall have any right or claim to use the Licensed Premises herein on the use dates set forth in section 1 and for the space and time otherwise reserved to Licensee hereunder and so long as Licensee keeps and substantially performs the terms, provisions and conditions herein contained, on the part of Licensee to be kept and performed, Licensee shall peacefully and quietly enjoy all the Licensed Premises without interference or molestation by Licensor or by any other person claiming by, through or under Licensor; (iii) the Licensed Premises and all improvements therein (except those which may be installed by Licensee) do conform to all applicable statutes, ordinances, rules and regulations of federal, state and municipal governments and all other applicable authorities; (iv) the Licensed Premises are free and clear of all claims, liens or encumbrances which may affect the rights granted to Licensee hereunder.

SECTION 27. DEFAULT. Should the Licensee default in the performance of any of the terms and conditions of this Agreement, the Park Superintendent, at his option, may terminate the same. Licensee shall be liable for the full amount of the fees provided for herein, less rent charges received from others for use of the premises at the time, or times, specified in this Agreement. Any deposit made by Licensee to Licensor shall be retained by Licensor and considered as liquidated damages.

SECTION 28. LIEN. Licensor shall have the first lien against ticket office receipts and all property of Licensee upon the premises of Licensor for all unpaid rental fees, reimbursable expenses and appropriate taxes due of the event(s) covered by this Agreement. If such funds are not available at the conclusion of the event, Licensor is empowered to impound Licensee's property. Should such unpaid charges remain unpaid ten days after the termination of this Agreement, Licensor shall have the power to sell such property at public auction, and to apply cash proceeds from such auction to the retirement of these unpaid charges.

SECTION 29. PERFORMANCE APPROVAL. Licensor retains approval right of performance, exhibition or entertainment to be offered under this Agreement, and Licensee

agrees that no such activity or part thereof shall be given or held if Licensor files written objection on the grounds of character offensive to public morals, failure to uphold event advertising claims or violations of event content restrictions agreed to by both parties at the time of completion of this Agreement.

SECTION 30. RETENTION OF LICENSOR PRIVILEGES. Waiver or failure of Licensor to insist upon strict and prompt performance of the covenants and Agreements hereunder, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of Licensor's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of Licensee.

SECTION 31. CAPTIONS AND COUNTERPARTS. The captions of this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of the paragraph involved or the intent of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 32. APPROVAL OF AGREEMENT. This Agreement will not be in force until both parties have signed it and the Board of County Commissioners of Sedgwick County has given approval.

SECTION 33. APPLICABLE LAW. This Agreement shall be governed by the laws of the state of Kansas.

SECTION 34. CONTRACT DOCUMENTS. The contract documents consist of this Agreement and all attachments thereto, including exhibits, schedules and other documents however denominated and all executed modifications issued subsequent thereto.

SECTION 35. CONSENTS. All consents or approvals required pursuant to this Agreement shall not be unreasonably or arbitrarily withheld or delayed.

SECTION 36. LOST ARTICLES. The Licensor shall have the sole right to collect and have the custody of articles left in the premises by persons attending any performance, exhibition or entertainment given or held in the Licensed Premises, and the Licensee or any person in Licensee's employ shall not collect nor interfere with the collection or custody of such articles.

SECTION 37. REPRESENTATIONS. The parties to this Agreement represent and warrant that each has the full right, power and authority to enter into, and perform its obligations under this Agreement and that the terms and conditions of this Agreement shall not violate, interfere with or infringe upon the rights of any third parties pursuant to written agreement or otherwise. Each party further represents that it has obtained all of the necessary approvals and has complied with all laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

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

DAVID M. UNRUH Chairman
Commissioner, First District

APPROVED AS TO FORM:



MICHAEL D. PEPOON
Assistant County Counselor

NEWMAN UNIVERSITY



JENNIFER GANTZ
Vice President for Finance and Administration

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