

PARK USE AND CONTROLLED ACCESS AGREEMENT

by and between
SEDGWICK COUNTY, KANSAS
and
LICENSEE

This Agreement entered into as of this _____ day of _____, 2016, by and between Sedgwick County, Kansas ("Licensor") and **Licensee** ("Licensee").

WITNESSETH:

WHEREAS, Licensee desires to contract with Licensor for the use of **Sedgwick County Park/Lake Afton Park** (the "Park") for the **Name of Event** (the "Event"); and

WHEREAS, Licensee has requested controlled access to certain portions of County roadways for purposes of sponsoring the Event; and

WHEREAS, Licensor desires to contract with Licensee for appropriate proceeds and other valuable consideration in allowing Licensee to have exclusive use of portions of the Sedgwick County Park pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto do mutually agree as follows:

1. **Use Granted.** County does hereby grant to Licensee exclusive use of a portion of the Park, highlighted on the attached map, incorporated herein as Exhibit A, for the purpose of sponsoring and holding the **Name of Event** and related activities ("Licensed Premises"). Said exclusive use shall be for **Date(s) of Use**. All other areas not specifically delineated in Exhibit A shall remain under the exclusive control of Licensor and Licensee shall not impair in any way the use thereof.

For purposes of the Event, Licensee will also have access to **List any other building/facilities that Licensee will have access to. If none, delete this sentence.**

Licensee shall coordinate with the Park Superintendent, or his/her designee, regarding any use, exclusive or otherwise, above that granted in this Section. The Park Superintendent, or his/her designee, has sole and final authority to interpret compliance with park rules pursuant to the provisions of Sedgwick County Code Sections 20-106 through 20-121, and any amendments thereto.

2. **Controlled Access Granted.** Licensor does hereby grant to Licensee, as necessary for the Event, controlled access to **Name of road(s)**, a roadway otherwise controlled and maintained by Licensor. For purposes of this Agreement, "controlled access" shall be defined as the non-exclusive use of public roadways to the extent that the use does not conflict with public safety, as public safety is defined and determined by the Sedgwick County Sheriff. Licensee will coordinate with the Sedgwick County Sheriff's Office with regard to Licensee's use of Licensor's roads for purposes of the Event.

3. **Term.** The term of this Agreement shall be only for the duration of the Event, specifically from **Date(s)/Duration of Event**. Licensee acknowledges and agrees that it shall not have access to the

Licensed Premises outside of this term for purposes of this Agreement. During set-up and break-down, Licensee will not distract or disrupt the flow of traffic and/or use of park paths.

4. **Fees and Deposits.** As consideration for use of the Licensed Premises, Licensee agrees to pay Licensor as follows:

Deposit	\$800.00, payable by either certified or cashier's check, and which must be submitted to Licensor at least ninety (90) days prior to the first day of each event. This fee guarantees the requested dates and is non-refundable. The deposit shall be applied in full against any payments due hereunder. If at any time the Sedgwick County Park Superintendent believes the sum deposited is inadequate to cover Licensee's obligations hereunder, the Sedgwick County Park Superintendent may require additional sums as may be reasonably necessary to adequately secure Licensor for costs it may incur for services, equipment and personnel provided to Licensee as described herein. If Licensee fails to pay such sums upon demand, the Sedgwick County Park Superintendent may cancel this license and collect the deposit as a cancellation fee.
Large Event Fee:	\$250.00 per day
Shelter Fee	As provided in Sedgwick County Code § 20-109
Cereal Malt Beverage	Fifteen percent (15%) of the gross receipts from the sale of all cereal malt beverages on the Licensed Premises. Gross receipts are defined as the total receipts from the sale of cereal malt beverages after deduction of federal, state and local taxes.
Gross receipts	Fifteen percent (15) of the gross receipts from the sale of admission tickets. Gross receipts are defined as the total receipts from the sale of admission tickets after deduction of federal, state and local taxes.
Concessions	Fifteen percent (15%) of the gross receipts from the sale of all food and beverage novelties as are approved in advance by Licensor. Gross receipts are defined as the total receipts from the sale of all food and beverage novelties after deduction of federal, state and local taxes.
Move Out Fee	\$200.00 per day, which will only be assessed if move-out is not completed by the date and time specified in Section 3 hereof. Licensor may elect to eject Licensee from the Licensed premises, whereupon Licensee will pay the actual and necessary costs incurred by Licensor for such move-out.
Other	Any amounts which may be due to Licensor or its designees for additional services, accommodations, equipment or materials, or personnel furnished or loaned by Licensor hereunder which may have been specifically agreed to by the Sedgwick County Park Superintendent and are included herein. Such additional fees will be paid by cash, certified check, or cashier's check and include the following: List of Additional Fees

In accordance with Sedgwick County Code § 20-109, all fees and deposits, for shelters or otherwise, shall be paid to the Park Superintendent at least thirty (30) days in advance of the use date. Failure to pay said deposits and fees at least thirty (30) days in advance will result in a forfeiture of the use date. Absent

the exceptions listed in Sedgwick County Code § 20-109, all shelter fees are non-refundable. Licensee shall be responsible for and shall pay all costs associated with the Event.

5. **Preparation and Restoration of Licensed Premises.** Licensee shall be responsible for preparation of the Licensed Premises 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 Licensee's members, agents, servants, employees, guests, invitees and participants. Licensee shall also be responsible for re-painting, back to their original condition, any paths that it painted on and/or over.

6. **Concessions.** If Licensee operates or contracts for the operation of a concession facility on Park premises, Licensee shall operate and maintain such facility in a manner consistent with the highest rating issued by the local health department.

7. **Additional Events.** Licensee shall not hold, provide or sponsor any events in addition to the use granted in Section 1 hereof for the Event without having first entered into a written agreement with Licensor for such use.

8. **Insurance.** Licensee shall carry and maintain commercial general liability insurance that provides coverage for Licensee, its members, agents, servants, employees, guests, invitees, event participants and ticket holders throughout the term of this Agreement in the amount of not less than \$500,000.00 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/Lake Afton Park, and their officers, employees and agents" as additional insureds and shall submit such certificate to the Sedgwick County Park Superintendent and the County Risk Management Office no later than fourteen (14) days prior to the first date of use authorized by this Agreement.** It is an affirmative obligation upon 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 hereunder. Failure to give such notice shall be construed as 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 prior to each event shall each be considered a breach of this Agreement and will result in cancellation of Licensee's event.

9. **Indemnity.** To the degree such indemnification is allowed by law, Licensee agrees to indemnify, defend and hold harmless Licensor from all demands, claims, suits, actions or liabilities resulting from injuries or death to any persons or property damage or loss by Licensee, Licensor, or any persons, howsoever caused, during the term of this Agreement for use of the Licensed Premises, or occurring as a result of the use of such space during the agreed period.

10. **Licenses and Permits.** Licensee will pay promptly all taxes, excise or license fees and will take out all licenses or permits for use of the Licensed Premises as required by federal, state or local laws and ordinances. Licensee will provide evidence of same to the Park Superintendent upon request. Licensee also agrees to advise all exhibitors offering goods for sale that applicable sales tax returns must be filed and designated as sales made in Sedgwick County, Kansas.

Licensee certifies and attests that it has (or will have within sixty (60) days of each event) a valid, properly executed, and compatible contract with the performers, exhibitors and promoters whose services form the basis for the desire to license the Licensed Premises. Upon request, Licensee shall deliver written

evidence that it is the agent for, or has a contract with, the performers, exhibitors and promoters of said activities.

Licensee shall provide the Sedgwick County Park Superintendent with all consents, copyrights, trademarks, patents, etc., deemed necessary by the Sedgwick County Park Superintendent to authorize the use of pictures and names of the performers and of the event by Sedgwick County Park and its assignees in the promotion and advertising of the event and the performers.

11. 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 event. 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, its 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.

12. Public Safety. Licensee agrees that at all times it and its employees, agents and servants shall conduct its activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and shall cooperate with Licensor to secure 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 and shall not be used for any purpose other than ingress or egress to and from the Licensed Premises by the Licensee.

Licensee will not bring onto the Licensed Premises any material, substances, equipment or object which is likely to endanger the life of, or 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 Licensor. Licensor shall have the right to refuse to allow any such material, substances, equipment or object to be brought onto the Licensed Premises and, further, Licensor reserves the right to require its immediate removal from the Licensed Premises if found thereon, without consequence to Licensor.

Licensor shall retain the right to secure the Licensed Premises and surrounding areas and/or to cause the interruption of any performance in the interest of public safety. Licensor may likewise cause the termination of such performance when, in the sole and exclusive judgment of Licensor exercised in good faith, such termination is necessary in the interest of public safety without consequence.

Licensor will have the right to determine when the maximum number of persons has been admitted to the Licensed Premises in accord with free and safe movement.

13. Compliance with Laws and Regulations. Licensee, its agents and employees, shall comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies, and shall also comply with all reasonable facility rules and regulations as provided by Licensor, including but not limited to Sedgwick County Code, Chapter 20, Art. IV. If pyrotechnics are a part of the event, a permit **must** be obtained from the Sedgwick County Fire Marshal.

14. **Agreement to Quit Premises.** Licensee agrees to quit the Licensed Premises no later than 10:00 p.m. on the day the Event concludes and further agrees to leave the Licensed Premises in a condition equal to that of the state of the Licensed Premises at the commencement of the Event, excepting ordinary wear and use thereof.

15. **Licensor Right of Entry.** In permitting the use of the Licensed Premises, Licensor does not relinquish and does hereby retain the right to enforce all necessary and proper rules for the management and operation of said premises. Duly authorized representatives of Licensor may enter the premises to be used, and all of the premises, including structures thereupon, 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 and access thereto shall not be impaired by Licensee.

16. **Objectionable Persons.** Licensor reserves the right to eject or cause to be ejected from the Licensed 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.

17. **Public Forum.** Licensee acknowledges and agrees that the Park, including the Licensed Premises, is a traditional public forum and that Licensor will make no efforts to exclude or prohibit First Amendment activities. 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.

18. **Defacement of Premises.** Reasonable wear and tear excluded, Licensee shall not injure, mar, nor in any manner deface the Licensed Premises (or any property that is part of the Park) or any equipment contained therein, and shall not cause or permit anything to be done whereby the Licensed Premises (or any property that is part of the Park) 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 buildings or equipment contained thereon, and will not make nor allow to be made any material alternations of any kind to said buildings or equipment contained thereon. Permanent markings on bike paths are prohibited. Temporary markings on bike paths are permitted but must be removed immediately after the event.

19. **Occupancy Interruption.** Should the premises and facilities described herein or any part thereof be destroyed or damaged by fire, 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, 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 on the Licensed Premises, but Licensee assumes full responsibility in so doing in accordance with the above. Licensee shall have no right to nor claim for damages against Licensor for the interruption of occupancy.

20. **Licensor Covenants.** Licensor warrants and represents that: (1) 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; and (2) no other person shall have any right or claim to use the Licensed Premises on the agreed upon use dates, and for the space and time otherwise reserved to Licensee hereunder, and so long as Licensee keeps and performs the required terms, provisions and conditions herein contained, Licensee shall peacefully and quietly enjoy the Licensed Premises without interference or molestation by Licensor or by any other person claiming by, through or under Licensor except as herein provided.

21. Right to Terminate. This Agreement may be terminated at any time by either party upon thirty (30) days' written notice to the other, in accordance with the information provided in Section 28 hereof. This Agreement may be immediately terminated by Licensor upon breach of any material term. Should Licensor exercise its right to terminate, either for or without cause, Licensee agrees to forego any and all claims for damages against Licensor and further agrees to waive any and all right which might arise by reason of the terms of this license; and Licensee shall have no recourse of any kind against Licensor. Upon termination, Licensee, its agents and employees shall immediately vacate the Licensed Premises.

22. Default. Upon termination for breach of any material term of this Agreement, 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.

Licensor may institute suit or other action against Licensee as a result of Licensee's breach 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. Any deposit made by Licensee to Licensor shall be retained by Licensor and considered liquidated damages.

23. Lien. Licensor shall have the first and paramount lien on ticket sales and all property of Licensee upon the premises of Licensor for all unpaid 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(s), Licensor is empowered to impound Licensee's property. Should such unpaid charges remain unpaid ten (10) days after the termination or expiration 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.

24. 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.

25. Removal of Property/Storage. Licensee agrees that all materials utilized in the event(s) which are not possessed by Licensor will be immediately removed upon the termination or expiration of this Agreement, whichever is earlier. Licensor is authorized to remove at the expense of Licensee all materials remaining in Licensee's space after such time. Licensee shall be responsible for payment of storage costs for such material and Licensee agrees Licensor shall in no way be responsible for loss, damages or claims against material removed or stored under this provision. Licensee agrees that Licensor will have a first lien on such materials for payment of costs accrued for removal and storage. Licensee assumes all responsibility for goods or materials which may be placed in storage on the Park premises before, during or after its event(s).

26. **Payment for Damages.** Licensee agrees to pay costs of repair or replacement for any and all damages of whatever origin or nature which may have occurred during the term of this Agreement in order to restore the Licensed Premises or other parts of the Licensor's premises affected by the Event to condition equal to that of the state of the Licensed Premises at the commencement of the Event. Licensor will provide detailed billing and accounting to Licensee when such restoration is completed.

27. **Broadcast Rights.** Licensor reserves all rights and privileges for outgoing radio and television broadcast originating from Licensor's facility during the term of this Agreement. Should Licensor grant to Licensee such privilege, Licensor has the right to require advance payment of any estimated related costs to Licensor and may also require payment for said privilege in addition to the rental fee. Such permission must be obtained in writing in advance of the broadcast date.

28. **Notices.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

Licensor: Park Superintendent
Lake Afton Park
24600 W. 39th Street
Goddard, KS 67052

and

Sedgwick County Counselors Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

Licensee: Name
Attn: Contact
Address
City, State Zip

29. **Consents.** No consents or approvals required pursuant to this Agreement shall be unreasonably or arbitrarily withheld or delayed.

30. **Governing Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

31. **Cash Basis and Budget Laws.** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

32. **Equal Opportunity and Affirmative Action.** In carrying out this Agreement, Licensee

shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq.*

- a) Licensee shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, or ancestry.
- b) In all solicitations or advertisements for employees, Licensee shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- c) If Licensee fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Licensee shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by County, without penalty.
- d) If Licensee is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Licensee shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part by County, without penalty.
- e) Licensee shall include the provisions of paragraphs (a) through (d) inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to an agreement entered into by a licensee who: (1) employs fewer than four employees during the term of this Agreement; or (2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

33. Assignment. Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

34. Amendment. Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

35. Entire Agreement. This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect. All terms and conditions of this written Agreement shall be binding upon the parties, their heirs or representatives, and assignees, and cannot be waived by any oral representation or promise of any agent or other signed by the duly authorized agent or agents who executed this Agreement. Such written document must be incorporated by specific reference herein as part of this Agreement. Licensee shall not announce,

disclose, or advertise through publication or otherwise, information pertaining to each event until this License has been executed by the parties and the deposit specified in Section 4 has been paid.

36. Retention of Privileges. Neither the waiver or failure of Licensor to insist upon strict and prompt performance of the covenants and agreements hereunder nor the acceptance of such performance thereafter shall 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.

37. Discretion of Licensor. It is agreed that any matters not expressly provided for in this Agreement will be at the sole discretion of Licensor.

38. Lost Articles. Licensor shall have the sole right to collect and retain custody of articles left on the Licensed Premises by persons attending any performance, exhibition or entertainment given or held in the defined 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.

39. Severability Clause. In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

40. Incorporation of Documents. Exhibit A (Licensed Premises Map) is attached hereto and made a part hereof as if fully set forth herein.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SEDGWICK COUNTY, KANSAS:

LICENSEE

Park Superintendent

Licensee Authorized Representative Name

Assistant County Manager, Public Services

APPROVED AS TO FORM ONLY:

Assistant County Counselor