

CONTROLLED ACCESS AGREEMENT
by and between
SEDGWICK COUNTY, KANSAS
and
O-K CHISHOLM TRAIL DROVERS ASSOCIATION

This Agreement made and entered into this ____ day of September, 2017, by and between Sedgwick County, Kansas ("County") and O-K Chisholm Trail Drovers Association, a not-for-profit organization ("Promoter").

WITNESSETH:

WHEREAS, Promoter has requested controlled access to certain portions of County roadways for the purpose of hosting a **"Cattle Drive,"** which is anticipated to arrive in Sedgwick County on or about September 22 and 23, 2017;

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

WHEREAS, County and Promoter desire to state the terms and conditions under which County will provide such controlled access to County roadways.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. Use Granted. County does hereby grant to Promoter the authority to have controlled access, under the terms and conditions specified herein, to the roadways set forth below for the purpose of holding a Cattle Drive on or about September 22 and 23, 2017. Promoter understands and agrees that this grant of controlled access is only applicable to those portions of said roadways that are in the unincorporated areas of Sedgwick County, Kansas.

From the Sedgwick County line at West 119th South, north on 183rd Street West;
Turn east on 111th Street South to 175th Street West;
Turn north on 175th Street West to 103rd Street South;
Turn east on 103rd Street South past 151st Street West to the Clearwater, KS city limits;
From Clearwater, KS city limits north on Tracy Avenue (east half of road) to 95th Street South;
Turn west on 95th Street South (north part of road) to West 167th Street;
Turn north on 167th Street to 79th Street South;
Turn east on 79th Street South to Maize Road;
Turn north on Maize Road to 55th Street South;
Turn east on 55th Street South to Tyler Road;
Turn north on Tyler Road to 47th Street South;
Turn east on 47th Street South to South Ridge Road;
At South Ridge Road, north to West MacArthur Road; and
At MacArthur Road, east to campsite ½ mile east of Ridge Road on south side of MacArthur.

Said areas are generally 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 must coordinate with the Sedgwick County Sheriff with regard to traffic control upon the roadways set forth above. Promoter must coordinate with the Sedgwick County Sheriff's designee to maintain limited hours of said controlled access so as to minimize the hours of use of said roadways by Promoter for the event.

2. Hold Harmless. Promoter shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage, including, but not limited to, attorneys fees, to the extent such loss and/or damage arises out of Promoter's negligence and/or willful, wanton or reckless conduct pursuant to the controlled access granted herein. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

3. 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 Office of the County Counselor no later than thirty (30) days prior to the first date of use authorized by this Agreement.** In the event that this Agreement is entered into within thirty (30) days of the scheduled controlled access, Promoter must submit such certificate at the time of signing. It is Promoter's affirmative obligation to advise County's Risk Manager via fax (316/660-9682) 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 Promoter's event.**

4. Restoration of Premises. Promoter is responsible for removal of any and 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.

5. Termination for Convenience. This Agreement may be terminated by mutual agreement of the parties, set forth in writing, or by either party alone, upon thirty (30) days' written notice to the other.

6. Termination for Cause. If 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 set forth hereunder (or in any amendments, appendices or exhibits attached hereto and incorporated herein), County shall thereupon have the right, at its sole option, to declare the existence of an event of default and immediately terminate this Agreement. County shall promptly give Promoter written notice of any termination issued under this provision and shall include in that writing the effective date of termination.

7. **Authority to Contract.** Promoter assures it possesses legal authority to enter into, and perform its respective obligations under this Agreement; that resolution, motion or similar action has been duly adopted or passed as an official act of Promoter's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Promoter to act in connection with the application and to provide such additional information as may be required.

8. **Notification.** 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.

County: Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, Kansas 67203-3790

Promoter: O-K Chisholm Trail Cattle Drovers Association
Carmen Schultz, Chairman/President
1181 West Blvd.
Medford, OK 73759
1-580-741-1080

9. **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.

10. **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.

11. **Amendments.** 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.

12. **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.

13. **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.

14. Waiver. Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. Force Majeure. Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

16. Choice of 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.

17. Arbitration, Damages, Jury Trial and Warranties: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Promoter waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

18. Anti-Discrimination Clause. Promoter agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Promoter is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Promoter has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 18 (with the exception of those provisions relating to the ADA) are not applicable to a promoter who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

19. Nondiscrimination and Workplace Safety. Promoter agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

20. Compliance with Law. Promoter shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced herein.

21. Notice of Claim. Each party shall give to 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. Each party shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

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

SEDGWICK COUNTY, KANSAS

O-K CHISHOLM TRAIL DRIVERS ASSOC.


DAVID M. UNRUH, Chairman
Commissioner, First District



E. W. "Bill" Shaw

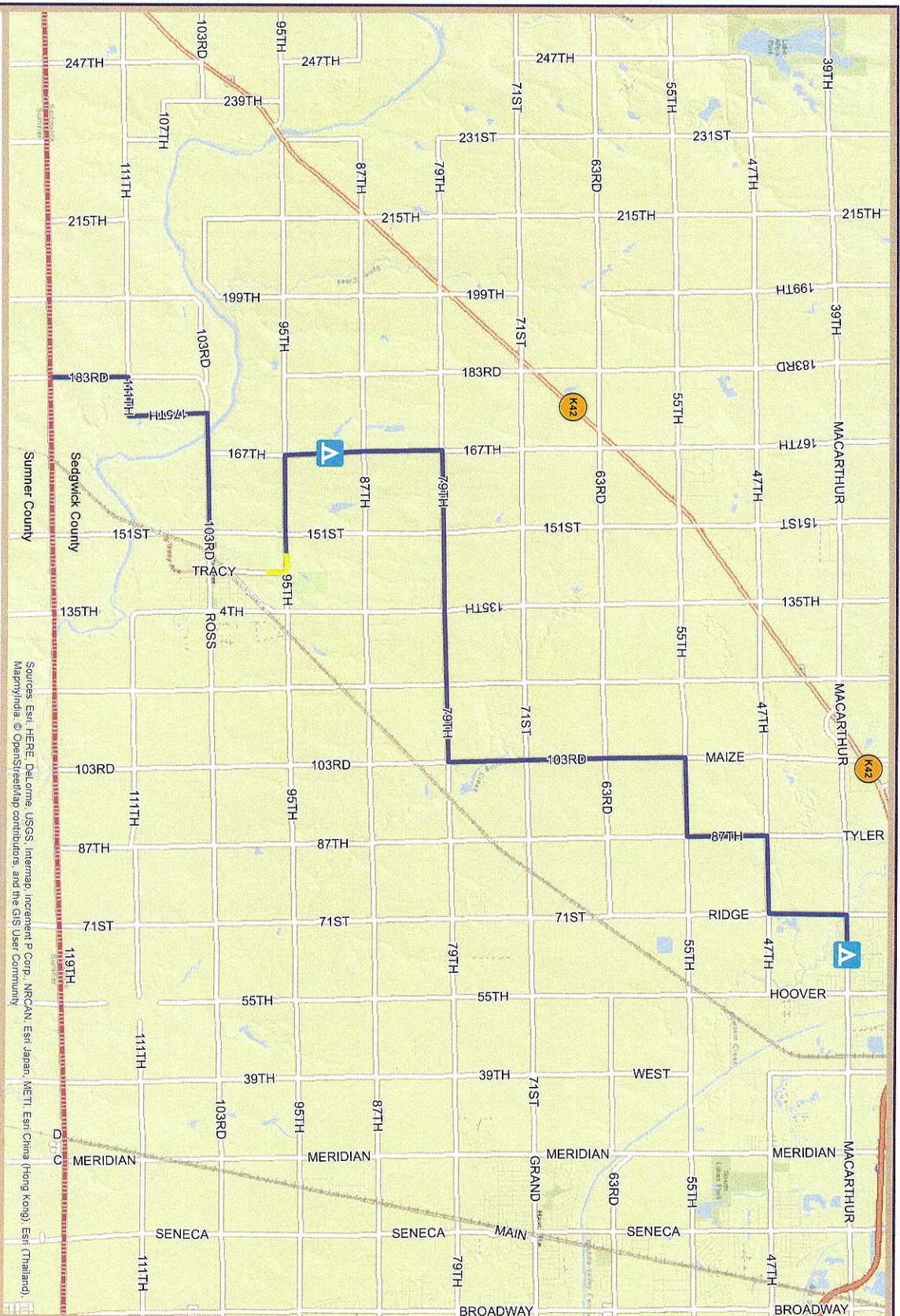
APPROVED AS TO FORM:

ATTESTED TO:



Karen L. Powell
Deputy County Counselor

Kelly B. Arnold
County Clerk



Sedgwick County, Kansas



Legend

- Camps
- See Notes
- Chisholm Trail (2 Days)

Roads






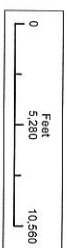
-  Major Highways
 Highways
 Ramp
 Arterial
 County Boundary

EXHIBIT A



Date: 9/6/2017

It is understood that the Sedgewick 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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/05/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Baker Harris Hopkins Insurance P.O. Box 3766 Enid OK 73702		CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Nautilus Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
INSURED O-K Chisholm Trail Cattle Drivers Assn PO Box 192 Medford OK 73759		NAIC # 17370	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	NN842052	09/11/2017	09/25/2017	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000					
	MED EXP (Any one person) \$ 5,000					
	PERSONAL & ADV INJURY \$ 1,000,000					
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-ECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ Included
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					BODILY INJURY (Per person) \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A			BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
						EACH OCCURRENCE \$
						AGGREGATE \$
						\$
						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
						E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The Board of County Commissioners of Sedgwick County, Kansas and it's officers, employees and agents are named as Additional Insured

CERTIFICATE HOLDER**CANCELLATION**

Sedgwick County 525 N. Main Wichita KS 67203	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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