

JOHNSON COUNTY PARK & RECREATION DAYCARE PROGRAM  
FACILITY USAGE AGREEMENT

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the City of Overland Park, Kansas, a municipal corporation, hereinafter referred to as the "City," and the Johnson County Park and Recreation District, hereinafter referred to as the "District," each party having been organized and now existing under the laws of the State of Kansas.

WITNESSETH:

WHEREAS, the District has established a Daycare Program for children; and

WHEREAS, the District desires to operate a Daycare Center in the City of Overland Park;

WHEREAS, the City has determined that the aforesaid Daycare Center provides a valuable service to the community and wishes to aid the District by supplying a facility in which daycare service can be provided; and

WHEREAS, The Governing Body of the City did authorize its Mayor to execute this Agreement by official vote of said body on this \_\_\_\_\_ day of \_\_\_\_\_, 2004; and

WHEREAS, the Governing Body of the District did authorize its Chairman to execute this Agreement by official vote of said body on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the parties hereto agree as follows:

1. The District shall have exclusive use of Room 201 of the Overland Park Community Center, hereinafter referred to as OPCC, as outlined in this Agreement. The District shall have use

of room 001, if requested in writing, and approved by the Overland Park Community Center front office.

2. The space provided for in Section #1 shall be available to the District between the hours of 6:30 a.m. and 6 p.m. Monday through Friday of each week. Daycare staff shall be on duty from 6:30 a.m. until all children have been picked up. No child shall be left at the daycare site prior to 6:30 a.m. Children being left or picked up must be escorted to or from the daycare site by a responsible adult.

Children participating in the Daycare Program shall be between three and six years of age.

3. The District shall pay the City Five Hundred Dollars (\$500) per month for the use of space described in section #1. Payment is due the first day of each month beginning September 1, 2004.
4. The District shall provide a program manager to oversee the day-to-day operation of the center.
5. The District shall submit a projected budget for the Daycare Center for the period of this Agreement. The District shall also provide a quarterly financial report on the income and disbursements of the Center. The funds collected for daycare service at OPCC will be used exclusively to pay for the expenses, processing fees, licenses, and enhancements associated with said Daycare Center.
6. Representative(s) of the District and the City shall meet at least semi-annually to review the operation of the Daycare Center. Either party may request a meeting with the other party at any time, providing proper notice is given.
7. The City agrees to provide heat, light, electricity, and maintenance to include janitorial service for the facility. Maintenance shall include ordinary repair or replacement of

structural, mechanical, and related components of the facility, excluding District owned equipment. Damage to the patio door by the occupants shall be paid for by the District. Any maintenance requested shall be in written form. City will respond in written form indicating what action will be taken and approximate amount of time needed to comply.

8. All rules for use of OPCC established by the City will be enforced in relation to the District's Daycare Center. The City shall provide the District with a copy of said rules upon execution of the Agreement.
9. All fund-raising activities by the District, for the purpose of this program, shall be restricted to the Daycare Center location in Room 201. Buyers of fund-raising merchandise shall be limited to the responsible adults of the children using the Center. Notification of any fund-raising activities must be made to the City at least forty-eight hours in advance.
10. OPCC shall remain the property of the City. The District may not install any fixtures or make any physical changes to the premises and facilities of the OPCC without the express written consent of the City.
11. Any equipment used by the District will either be owned by the City or the District. No equipment is to be jointly owned. In the event that this Agreement is terminated, all property shall be returned to the owner agency. All equipment and/or furnishings of over a Two Hundred Dollar (\$200) value shall have their ownership designated on them. The maintenance, repair, replacement, and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided in this Agreement.
12. The City shall have the right to inspect the premises and facilities occupied by the District at all reasonable times.
13. This Agreement shall not be assigned, transferred, or sold, nor the premises and facilities

herein leased or sublet to any other party, agency, or corporation, in whole or part, except with the express written consent of the City.

14. Insurance - the District shall secure and maintain, or have maintained, throughout the duration of this contract, insurance of such types and in such amounts as may be necessary to protect the District and the City against all hazards or risks of loss as hereinafter specified, whether such hazards or risks be generated by the District or any of its agents. The District shall offer to the City other evidence of such insurance coverage, and any and all renewals thereof, in the form of a Certificate of Insurance.

(a) Owner's Protective Liability - The District shall take out, pay for, and deliver to the City, and maintain during the life of this contract, Owners' Protective Liability insurance naming the City of Overland Park as the insured in amounts as specified hereinafter for General Liability.

(b) General Liability - This insurance shall protect the District against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the District or its agents or employees. In addition, this policy shall specifically insure the contractual liability assumed by the contractor under the paragraph entitled "Indemnification." The policy shall include Products/Completed Operations, Contractual Liability, Broad Form Property Damage, Personal Injury, Independent Contractor's Coverage, and "Hired" and "Nonowned" Automobile Liability coverage's. Following are the minimum amounts of coverage required:

Bodily Injury and Property Damage \$500,000 Each Occurrence

Combined Single Limit \$2,000,000 Aggregate

(c) Workers' Compensation and Employers' Liability

This insurance shall be constituted of an insurance program filed with and approved by the Kansas Department of Insurance. District shall provide Worker's Compensation and Employers Liability as required by Kansas Law. This insurance program shall protect against claims for injury, disease, or death of any employees, which, for any reason, may not fall within the provisions of Worker's Compensation law. The excess insurer, as well as Third Party Administrator, is to be identified in the Certificate of Insurance provided to the City. The liability limits shall not be less than the following:

Workers' Compensation	Statutory
Employers' Liability:	
Bodily Injury by Accident	\$100,000 Each Accident
Bodily Injury by Disease	100,000 Each Employee
Bodily Injury by Disease	500,000 Policy Limit

Notice of Claim

The District, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City with full details thereof, including an estimate of the amount of loss of liability. The District shall promptly notify the City of any impairment or reduction of primary or umbrella coverage in excess of \$10,000, whether or not such impairment of liability came about in connection with the Agreement.

In the event, after notice of loss, the City shall determine that the District's aggregate limits of liability coverage have been impaired or reduced to such an extent that the City shall determine such limits inadequate, the District shall, upon written notice

from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City in a form satisfactory to the City.

#### Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policyholder rating of A or better; and
- (3) Carries at least a Class X financial rating; or is company mutually agreed upon by the City and the District. A copy of said Certificate of Insurance shall be filed with the City Clerk and the Manager of Leisure Services. The premium shall be paid by the District.

15. The City shall not be liable or obligated to the District for damage incurred by said organization as a result of this Agreement. The District does hereby agree to comply with all laws of the United States of America and the State of Kansas; all ordinances of the City of Overland Park, Kansas; and all other laws, ordinances, or regulations governing the District's operation of the Daycare Center and to hold the City harmless from any loss or damage occasioned by The District's violation thereof. The District further agrees to obtain all required licenses and permits and maintain such for the term of this Agreement.
16. In case any action in court is brought against the City or City's representative, or any officer or agent of either of them, for the failure, omission, or neglect of The District to perform any of the covenants, acts, matter, or things by this Agreement undertaken; or for injury or damage caused by the alleged negligence of the District, the District shall indemnify and save harmless the City and City's representative and its officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The City shall

not be liable or obligated to the District for damage incurred to the District upon premises by fire, theft, casualty, acts of God, civil disaster, and such other occurrences and events beyond the control of the City.

17. It is the intent of the parties hereto in the preparation and execution of this Agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas; and if any provision herein is found to be in conflict with any state law or regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the Agreement shall be valid as though such conflicting provision had not been written or made a part hereof.
18. It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, this written Agreement. This Agreement shall not be altered, amended, changed, or otherwise modified except in writing signed by all parties to this Agreement.
19. This Agreement shall commence on September 1, 2004, at 12:01 a.m. and terminate at midnight August 31, 2006, unless either party elects to terminate the same by giving to the other party written notice of such election 60 days prior to the date upon which said party desires to terminate this Agreement.
20. Each party hereto shall receive a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the parties hereto have executed this above and foregoing

Agreement on the day, month, and year first above written.

CITY OF OVERLAND PARK

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Ed Eilert, Mayor

ATTEST:

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Marian Cook, City Clerk

APPROVED AS TO FORM:

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J. Bart Budetti  
Sr. Assistant City Attorney



JOHNSON COUNTY PARK AND RECREATION DISTRICT

ATTEST:

\_\_\_\_\_  
Dr. Mike Jurkovich, Chair

\_\_\_\_\_  
Jack M. Epps, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
District Legal Counsel

ACKNOWLEDGEMENT

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF KANSAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by Dr. Mike Jurkovich, Chair of the Johnson County Park and Recreation District Board of Commissioners.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_