

JCPRD 50 PLUS FACILITY USAGE AGREEMENT

THIS Agreement is made and entered into this ____ day of _____, ~~2010~~2012, by and between the City of Overland Park, Kansas, 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.

WHEREAS, K.S.A. 19-2862 authorizes the District to enter into agreements; and the City is authorized to enter into agreements by virtue of Article 12, Section 5, of the Kansas Constitution and K.S.A. 12-101; and

WHEREAS, the District has established and conducts a program to provide for the recreational, cultural, educational, and social needs of the 50 Plus population; and

WHEREAS, the City owns and operates the Matt Ross Community Center and Tomahawk Ridge Community Center, hereinafter referred to individually as the "Center" or together as the "Centers;" and

WHEREAS, a coordinated approach to the provision of recreational and social services to the 50 Plus population is most effective and efficient; and

WHEREAS, co-sponsorship of 50 Plus programs held at the Centers would ensure a coordinated approach to the provision of the needed services; and

WHEREAS, the Governing Body of the City did approve and authorize its Mayor to execute this Agreement by official vote of said body on the ____ day of _____, ~~2010~~2012; and

WHEREAS, the Governing Body of the District did authorize its chairperson to execute this Agreement by official vote of said body on the ____ day of _____, ~~2010~~2012.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties agree as follows:

1. Duration of Agreement and Termination - This Agreement shall be in effect from October 1, ~~2010~~2012 through the period ending September 30, ~~2012~~2014; provided that this Agreement may be terminated by either party, giving at least 90 days' prior written notice to the other party of its intention to terminate this Agreement; further provided that if the City or District shall fail or refuse to perform or comply with any of the obligations or provisions herein agreed, the affected party shall have the right to notify the other party in writing of such default; and if the party so notified shall remain in default for 30 days thereafter, the affected party may elect to cancel this Agreement immediately thereafter.

2. No Legal Entity Created - There will be no separate legal entity created under this Agreement.
3. Purpose of the Agreement - The purpose of this Agreement is to facilitate cooperation in the establishment and operation of the Overland Park 50 Plus Program and to define responsibilities for the operation, finances, publicity, building maintenance, and other matters pertaining to the Overland Park 50 Plus Program.
4. Financing - Except as may be otherwise provided herein, the District shall provide all funding and personnel necessary to manage the 50 Plus Program, conduct and supervise programs, coordinate activities, and operate the 50 Plus Program office.

The District shall have use and access for 50 Plus Program needs to the City's copy and fax equipment at the Center. In consideration of such access, the District shall make payment to the City monthly, said payment to be a sum equal to the District's percentage of the total monthly cost for rental, repairs, paper, and related supplies. Payment shall be made upon billing by the City.

5. Maintenance, Heat, and Light - The City agrees to provide heat, light, electricity, and maintenance to include janitorial service for the Center. Maintenance shall include repair or replacement of structural, mechanical, and related components of the Center.
6. Acquisition Holding, and Disposal of Property - The Centers 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 Center without the express written consent of the City.

Any equipment used in the 50 Plus Program will be owned by either 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 show owner designation. The maintenance, repair, replacement, and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided in this Agreement.

7. Request for Use of Meeting Rooms - Requests by the Districts 50 Plus Program for meeting rooms or other facilities at the Centers shall receive priority in accordance with City policy. Leisure Services or City-sponsored programs have first priority for room request. Requests by the District for revenue producing special events, (i.e. Bingo events, Veteran's Day Breakfast, dance events, etc.) at the Centers must be co-planned and co-sponsored with the Leisure Services Division approved by the Centers manager before sending to Leisure Services staff for booking and separate from other regular ongoing room requests. Requests by the District's associated/cosponsored groups for use of the Center must be listed and approved by the City on a yearly-quarterly basis by the City and before being listed in the JCPRD Activities catalog. These listed and pre-approved groups must comply with City's guidelines and regulations. Requests must be

submitted in advance on a ~~yearly~~ quarterly basis except for an emergency situation. All use of classrooms, meeting rooms and facilities of the Center shall be subject to approval by the City. The 50 Plus Program may make special request for use of the Center after contracted hours. Said request must be made 30 days in advance, and is subject to City approval and fees established by the City. All events after normal open hours must have a full-time District staff member present. To avoid duplication of services, the JCPRD 50 Plus program shall not [SH1] schedule fitness classes at the Centers. Some specialized exercise programs may be allowed if approved by Center manager and does not compete with current fitness offerings by the City.

8. Administration of Agreement - The 50 Plus Program at the Matt Ross Community Center and the Tomahawk Ridge Community Center shall be known as a cosponsored 50 Plus Program between the District and City. A representative from the District and City shall meet at least quarterly to review the operation and discuss the future direction of the 50 Plus Program. Daily program administration shall be provided by the District.

9. Responsibilities

The District:

- (a) Shall provide a minimum of one full-time staff person to manage the 50 Plus Program.
- (b) Shall provide all support supplies needed to maintain the 50 Plus Program office to include telephones, computers, office supplies, printing, etc., the cost to be the responsibility of the District.
- (c) Shall provide an annual report to include the number of programs, the number of people served, an inventory of equipment, the class fee structure, an evaluation report, and other information as may be requested by the City.
- (d) Shall provide, prior to their effective date, for review by the City, all written guidelines, rules, or regulations governing activities conducted in the Center by the District.
- (e) Shall submit in writing requests for audio visual equipment use.
- (f) Shall provide cleanup services in the rooms which activities are taking place.
- (g) Shall provide adequate supervision of all programs while taking place in the Centers.

The City:

- (a) Shall provide office space for the 50 Plus Program.

- (b) Shall provide classroom and meeting space including setup for programs, activities, and special events. Any room usage outside this schedule will be charged to the District at the regular room rental rate. The room charge will be waived if the room is available and the request for usage is made less than 24 hours before the room is to be used. These times are the general guidelines for availability of classrooms and meeting spaces. The City reserves the right to alter the availability with advance notice to the District.
1. Matt Ross Community Center Classrooms: Cottonwood, Sunflower, and Meadowlark - Will be available for use 8 a.m. to 10:30 a.m., and 1:30 p.m. to 5 p.m. Monday through Friday.
 2. Matt Ross Community Center Hearth Room - Game tables may be used for small card groups for drop-in play between the hours of 8 a.m. to ~~5 p.m.~~4:30 p.m. Monday through Friday. The room must be scheduled in advance.
 3. Matt Ross Community Center Tiki and Cabana rooms - May be used between the hours of 8 a.m. to ~~5 p.m.~~4 p.m. Monday through Friday between the months of September through May on a space available basis. Request for use of the Tiki and Cabana rooms between the months of June through August will be granted on an individual basis. The room must be scheduled in advance.
 4. Matt Ross Community Center Studio 2 - May be used between the hours of 2 p.m. to 4 p.m. Monday through Thursday and 1 p.m. to 4 p.m. on Fridays. Studio 2 can also be used upon request one night a week, after 7 p.m. Matt Ross Community Center will still have priority when scheduling this room.
 5. Matt Ross Community Center South Gym - May be used between the hours of 8 a.m. to ~~12 p.m.~~1 p.m. Monday through Friday between the months of September through May when school is in session on a space available basis. Request for use of the Matt Ross Community Center south gym between the months of June through August will be granted on an individual basis. The court must be scheduled in advance.
 6. Matt Ross Community Center Executive Room - May be available by special request between the hours of 8 a.m. to 2 p.m. Monday through Friday on a space available basis. Activities that take place in the executive room must be of a meeting variety. The room must be scheduled in advance.
 7. Tomahawk Ridge Community Center Classroom - May be available between the hours of 8 a.m. to 3 p.m. Monday through Friday between the months of September to May when school is in session on a space available basis. Request for use of the Tomahawk Ridge Community Center classroom

between the months of June through August will be granted on an individual basis. The room must be scheduled in advance.

8. Tomahawk Ridge Community Center Conference Room - May be available by special request between the hours of 8 a.m. to 3 p.m. Monday through Friday on a space available basis. The room must be scheduled in advance.
 9. Tomahawk Ridge Community Center Studio 2 - May be used between the hours of 2 p.m. to 4 p.m. Monday through Thursday and 1 p.m. to 4 p.m. on Fridays.
 10. Tomahawk Ridge Community Center North Gym - May be used between the hours of 8 a.m. to 1 p.m. Monday through Friday between the months of September through May when school is in session on a space available basis. The court must be scheduled in advance. Request for use of the Tomahawk Ridge Community Center north gym between the months of June through August will be granted on an individual basis. The room must be scheduled in advance.
 11. Matt Ross Community Center and Tomahawk Ridge Multipurpose Room - Will be available for Senior Dance or a pre-approved special event type program on Friday afternoons from 2 p.m. to 4 p.m. The dance will be scheduled at the location that best suits the Leisure Services Division.
 12. Matt Ross Community Center and Tomahawk Ridge Multipurpose Room Will be available for AARP Driving classes six (6) times per year. These classes must be scheduled in advance.
 13. The Matt Ross Community Center will close for its annual maintenance once a year during the month of August. The exact date will be given to the 50 Plus Program as soon as it has been determined. During this time there will not be any available meeting spaces for the 50 Plus Program.
- (c) Shall furnish tables and chairs for use in meeting rooms.
 - (d) Shall provide access to the Matt Ross Community Center kitchen area or the Tomahawk Ridge Community Center Caterer's Staging area by special request for special events, said access to be during non-lunch hours. The District shall be responsible for any and all permits and/or licenses as may be required for such use.
 - (e) Shall provide a key and access card to the office and storage room for the District's 50 Plus staff person housed at the Matt Ross Community Center.
 - (f) Shall provide audio visual equipment within the center for District programs at no

charge. Equipment will be limited to what is available within the Center.

10. Indemnification – In case any action in court is brought against the City or City’s representative, or any officer or agent, for the failure, omission, or neglect of the District or its officers, agents or employees to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused, in whole or in part, by the alleged negligence or other actionable fault of the District, its officers, agents and employees, 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, or portions thereof, arising out of such action and which arise from and are proximately caused by the negligent or other actionable fault of the District, its officers, agents or employees, provided, however that nothing in this Agreement shall constitute a waiver by the District of any defense the District may have against a third party under the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. and amendments thereto.
11. Disclaimer of Liability – 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.
12. Insurance – The District shall secure and maintain, or have maintained, throughout the duration of this Agreement, insurance of such types and in such amounts as may be necessary to protect the District 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 Agreement, 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 "Non-owned" 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 protect the District against all claims under applicable state Workers' Compensation laws. The District shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include other states' insurance.

The liability limits shall not be less than the following:

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

- 13. By the terms of this Agreement, the 50 Plus Program shall be known as a cosponsored project; and all written and verbal publicity should reflect the cosponsorship. Every effort shall be made by both agencies to inform the participants and public of the cosponsorship arrangement. The 50 Plus Program shall be known as the 50 Plus Program-Overland Park.
- 14. Verbal Statements Not Binding - 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 representatives of the City and District, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any way whatsoever, the written Agreement.
- 15. Inspection of Premises by City - The City shall have the right to inspect the premises and facilities occupied by the District at all reasonable times.
- 16. Provisions Separable - It is the intent of the parties hereto in the preparation and execution of the 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 the State Cash Basis or Budget Law, or any other 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.
- 17. Nonassignability of Agreement - This Agreement shall not be assigned, transferred, or sold, nor the premises and facilities herein leased or sublet to any other person, agency, or corporation, in whole or part, except with the express written consent of the City.

IN WITNESS WHEREOF, four copies of the above and foregoing Agreement have been executed by each of the parties on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

ATTEST:

Carl Gerlach, Mayor

Marian Cook, City Clerk

APPROVED AS TO FORM:

~~J. Bart Budetti~~ Stephen B. Horner
Sr. Assistant City Attorney

JOHNSON COUNTY PARK AND RECREATION DISTRICT

ATTEST:

Anthony L. Adams, Chair

Nancy Wallerstein, Secretary

APPROVED AS TO FORM:

District Legal Counsel

CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this _____ day of _____, ~~2010-2012~~ by Anthony L. Adams, Chairperson of the Johnson County Park and Recreation District.

Notary Public

My appointment expires: _____