

NUTRITION PROGRAM FACILITY USAGE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, ~~2012~~2014, by and between the City of Overland Park, Kansas, a municipal corporation (the "City") and the Board of County Commissioners of Johnson County, Kansas (the "County").

WITNESSETH:

WHEREAS, the County has established and conducts a Nutrition Program for the elderly;
and

WHEREAS, the purpose of the Nutrition Program is to provide nutritionally balanced meals, socialization, stimulation and activities that might not otherwise be a part of an older person's life;
and

WHEREAS, the County desires to operate a Congregate Nutrition Center in the City; and

WHEREAS, the City has determined that the aforesaid Nutrition Program provides a valuable service to the community and wishes to aid the County by supplying a facility in which meals and entertainment can be provided to senior citizens; and

WHEREAS, The Governing Body of the City did authorize its Mayor to execute this Agreement by official vote of said body on the ____ day of _____, ~~2012~~2014; and

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 County shall have the use of the Cottonwood and Sunflower Classrooms, and Caterer's Kitchen of the Matt Ross Community Center (hereafter "MRCC"), as outlined in this Agreement. Use of the Cottonwood and Sunflower Classrooms is to include use of the following:
 - (a) Tables and chairs, with seating for ~~64~~48 people maximum.
 - (b) Use of additional room(s) for serving meals if the Cottonwood Classroom and Sunflower Classroom are at capacity--provided space is available and twenty-four (24) hours' advance notice is given.
 - (c) Access use of nearby restrooms.
 - (d) Storage space adjacent to the kitchen area to keep the Nutrition Program's pre-packaged meal carrying equipment, coffee urns, paper goods, and other small equipment. The County is to provide shelves for storage in an area agreed on by both parties.
 - (e) Use of kitchen and all equipment from 8 a.m. to 1 p.m. The maintenance of

equipment used by the County Nutrition Program to keep it in proper working order shall be the responsibility of the County Nutrition Program. The maintenance of said kitchen for cleanliness to adhere to health requirements and equipment in proper working order used by the County Nutrition Program shall be the responsibility of the County Nutrition Program.

2. The kitchen and storage space provided for in Section #1 shall be available to the County between the hours of 8 a.m. and 1 p.m., and the Cottonwood and Sunflower Classroom spaces shall be available between the hours of 11:00 a.m. and 12:30 p.m. Monday through Friday of each week, excluding holidays observed by the City as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, ~~-Veteran's~~ Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.
3. ~~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 Nutrition as soon as it has been determined. During this time there will not be any available meeting spaces for the Nutrition Program. The kitchen and storage area will still be available for use with the meal distribution program.
3. The County shall provide a site Nutrition Center/Food Assistant to oversee the day-to-day operation of the site.
4. The Nutrition Program provided by the County shall include a noon meal delivered to MRCC as pre-packaged meals and an educational or entertaining program to follow. Programs offered shall not be a duplication of programs offered or cosponsored by the City. The Community Center Manager shall make judgement as to whether a conflict exists. Meals will be served to a minimum of thirty (30) people per day, with an anticipated average of one hundred ten (110) meals per day. A County employee will be provided with access to the building in order to receive the catered food at 8 a.m. each weekday.
5. The County shall provide a report on numbers of people served during the term of this Agreement on a quarterly basis of each year.
6. Representative(s) of the County and the City 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 janitorial service at MRCC including refuse pickup and periodic floor maintenance with the following exceptions: (a) County employees shall provide cleanup service in the kitchen, Cottonwood Classroom and Sunflower Classroom daily after use, and (b) ~~the~~ County shall supply all trash bags used by its Program.
8. All rules for use of MRCC established by the City will be enforced in relation to the County's Nutrition Program. The City shall provide the County with a copy of said rules upon execution of this Agreement.
9. MRCC shall remain the property of the City. The County may not install any fixtures or

make any physical changes to the premises and facilities of MRCC without the express written consent of the City, which consent shall not be unreasonably withheld.

10. Any equipment used by the County will either be owned by the City or the County. No equipment is to be jointly owned. In the event that this Agreement is terminated, all property shall be returned to the respective owner. All equipment and/or furnishings of over Two Hundred Dollars (\$200) in value shall show owner designation. The maintenance, repair, replacement, and general upkeep of equipment shall be the responsibility of the respective owner except as otherwise provided in this Agreement.
11. The City shall have the right to inspect the premises and facilities occupied by the County at all reasonable times.
12. 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, which consent shall not be unreasonably withheld.
13. The County agrees to secure a Commercial General Liability Insurance Policy, written by an insurance company authorized to do business in the State of Kansas and approved by the City, naming the "City of Overland Park" as an additional insured in regard to any claim or suit of any kind or nature arising from the MRCC nutrition site. The County shall further insure the City against liability for claims arising from a person's or patron's use of services. The insurance policy shall be kept in full force and effect during the period of this Agreement, and a Certificate of Insurance furnished by the City shall be submitted providing the following:

(a) Commercial General Liability

Commercial General Liability including Products/Completed Operation, Broad Form Contractual Liability, Board Form Property Damage, Personal Injury, and Independent Contractors Coverage.

Limits

Bodily Injury Liability and Property Damage Liability-\$500,000 CSL (combined single limit).

(b) Workers' Compensation and Employer's Liability

This insurance shall be constituted of a self-funded insurance program filed with and approved by the Kansas Department of Insurance. This self-insured program shall protect the County against all claims under applicable state Worker's Compensation law. The County shall also be protected 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
Employer's Liability:

Statutory

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 County, 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 County shall promptly notify the City of any impairment or reduction of liability insurance protection 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 County's liability insurance protection shall have been impaired or reduced to such an extent that the City shall determine such limits inadequate, the County 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 B plus or better, and (3) carries at least a Class VIII financial rating or is a company mutually agreed upon by the City and County. A copy of said Certificate of Insurance shall be filed with the City Clerk and the Community Center Manager. The premium shall be paid by the County.

14. The City shall not be liable or obligated to the County for damage incurred by the County as a result of this Agreement unless such damage is the result of the willful or negligent act(s) of the City, its officers, employees, or agents. The County 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 County's operation of the Nutrition Site and to hold the City harmless from any loss or damage occasioned by The County's violation thereof. The County further agrees to obtain all required licenses and permits and maintain such for the term of this Agreement.
15. 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 County 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 County, the County 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 County for damage incurred to the County upon the premises by fire, theft, casualty, acts of God, civil disaster, and such other occurrences and events beyond the control of the City, unless such damage is the result of the willful or negligent act(s) of the City, its officers, employees or agents.
16. 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.

17. 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, 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.

18. The term of the agreement shall be October 1, ~~2012~~2014, through September 30, ~~2014~~2016, unless either party elects to sooner terminate the same by giving the other party written notice of such election 60 days prior to the date upon which said party desires to terminate this Agreement.

19. Each party hereto shall receive a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF ~~three~~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

Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Sr. Assistant City Attorney

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

Hannes Zacharias, County Manager

APPROVED AS TO FORM:

Nicholas Saldan
Deputy County Counselor

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this _____ day of
| _____, ~~2012-2014~~ by Hannes Zacharias, County Manager of the Board of County
Commissioners of Johnson County, Kansas.

Notary Public

My appointment expires: _____