

FACILITY USE LEASE

THIS LEASE is made this [redacted] day of [redacted], 20__ (Effective Date), between the City of Tonganoxie (City), a constitutionally chartered municipal corporation in the state of Kansas, and [redacted] (Lessee), whereby Lessee shall lease the Tonganoxie Water Park (Premises) under the terms and conditions contained in this Lease.

In consideration of the covenants and agreements hereinafter set forth, it is hereby agreed as follows:

PART I SPECIAL TERMS AND CONDITIONS

Sec. 1 Leased Space

The City grants to Lessee permission to use the Premises upon the terms and conditions specified in this Lease and will otherwise close the Premises to the public. "Premises" is further defined as the Tonganoxie Water Park, which is bounded by 2nd Street on the north, Main Street on the west, Pleasant Street on the east, and 3rd Street on the south, including the buildings, swimming pool, furnishings, parking spaces, green spaces, and appurtenances.

Sec. 2 Lease Schedule

The event of the Lessee (Event) under the terms of this Lease on the Premises shall only take place upon the dates and specified times as defined in Addendum A.

Sec. 3 Payment

- A. The Lessee agrees to pay as and for rental of the Premises the rate(s) as defined in Addendum A. Lessee shall pay for any City staff time that is required beyond the time limits of this Lease at a rate of time and one half per half-hour increment due to any cause or act by Lessee or Lessee's guests.
- B. Rental includes the time that City staff open the Premises for the leased purposes until the Event is completed.
- C. Lessee will make payments in accordance with the terms of Addendum A.
- D. At 12:01 AM seven days prior to the first date of occupancy under the terms of this Lease, Lessee shall have no right to any refund of rent payments due to cancellation by Lessee. However, the City may refund the cleaning and damage deposit to the extent that Lessee or Lessee's guests made no use of the Premises.

Sec. 4 Cancellation

Lessee agrees and understands that the City has the right to cancel and terminate this Lease if the payment schedule or all other obligations of Lessee hereunder are not strictly performed. In the event of any cancellation or termination by the City or Lessee, the City has the right to retain the non-refundable deposit, not as liquidated damages but as payment for administrative costs associated with negotiation and preparation of this Lease. Otherwise, the deposit shall be applied against funds due the City under this Lease. Should Lessee cancel or fail to hold scheduled event, or if Lessee fails to make the necessary payments as provided herein, without prior written approval from the City Manager, all payments

previously received from Lessee as a deposit or rental shall become the property of the City and shall not be refunded or transferred.

Sec. 5 Notices

All notices required by this Lease shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the following:

To City:

Tonganoxie Water Park Manager
P.O. Box 326
Tonganoxie, Kansas 66086
Phone: (913) 845-2620 Facsimile: (913) 845-9760

To Lessee:

[name, title]
[organization]
[mailing address]
[telephone]
[e-mail]

All notices are effective on the date mailed or deposited with courier.

Sec. 5 Merger

This Lease consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Lease, including any Attachments and incorporated documents, constitutes the entire Lease between the City and Lessee with respect to this subject matter.

Sec. 6 Conflict between Lease Parts

In the event of any conflict or ambiguity between the Special Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Lease, Part I will be controlling.

Sec. 7 Term of Lease

This Lease shall begin on the Effective Date and shall terminate at the end of the day [redacted], 2025. The term of this Lease may be extended by mutual, written consent of the City and Lessee for a time not to exceed the 2025 season.

Sec. 8 Responsibilities of City

- A. The City will provide sufficient staff, as determined by the Pool Manager or Pool Manager's superior, to ensure the safety of guests of the Event.
- B. The City will provide for proper and adequate functionality of the Premises as is customary for general public use, including, but not limited to, water chemistry, showers and restrooms, utilities, and secure access.

Sec. 9 Attorney Services Certification

Lessee certifies that at the time of the issuance of the Lease, either in an individual or firm capacity, Lessee does not represent any part in litigation against the City, exclusive of representation in municipal court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal part, where the litigation has been filed with the Lease of the City and the party represented by the attorney, or where the council has otherwise waived this requirement.

**PART II
STANDARD TERMS AND CONDITIONS**

Sec. 1. Indemnification: Definitions

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

- i. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
- ii. **Lessee's Agents** means Lessee's officers, employees, sub-consultants, sublessees, successors, assigns, invitees, and other agents.
- iii. **City** means City of Tonganoxie and its agents, officials, officers and employees.

B. Lessee's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of the City, shall be limited to the coverage and limits of insurance that Lessee is required to procure and maintain under this Lease. Lessee affirms that it has had the opportunity to recover the costs of the liability insurance required in this Lease in its contract price.

C. Lessee shall defend, indemnify and hold harmless the City from and against all claims arising out of or resulting from all acts or omissions in connection with this Lease caused in whole or in part by Lessee or Lessee's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of the City. Lessee is not obligated under this Section to indemnify the City for the sole negligence of the City.

D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Lease.

Sec. 2. Independent Agency.

Lessee is an independent agent and is not the City's agent. Lessee has no authority to take any action or execute any documents on behalf of the City.

Sec. 3. Insurance.

A. Unless otherwise waived by the City in writing, Lessee shall procure and maintain in effect throughout the duration of this Lease insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Lease, Lessee shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to the City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds

- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.
2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:
\$500,000 disease-policy limit
\$100,000 disease-each employee

3. If applicable, Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Lease, by Lessee.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

A. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to the City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Lease. Lessee shall provide to the City at execution of this Lease a certificate of insurance showing all required endorsements and additional insureds.

B. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Kansas to do business in Kansas.

C. Regardless of any approval by the City, liability is the responsibility of Lessee and should maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Lessee's failure to maintain the required insurance in effect, the City may order Lessee to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Lease as provided for herein and by law.

Sec. 4. Governing Law.

This Lease shall be construed and governed in accordance with the law of the State of Kansas. The parties submit to the jurisdiction of the courts of Leavenworth County and the State of Kansas and waive venue.

Sec. 5. Compliance with Laws.

Lessee shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Lease.

Sec. 6. Default and Remedies.

If Lessee shall be in default or breach of any provision of this Lease, the City may terminate this contract, suspend the City's performance, withhold payment or invoke any other legal or equitable remedy after giving Lessee notice and opportunity to correct such default or breach.

Sec. 7. Waiver.

Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Lease can be waived except by written consent of the City, and forbearance or

indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by Lessee to which the same may apply and, until complete performance by Lessee of the term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Lease or by law despite any such forbearance or indulgence.

Sec. 8. Modification.

Unless stated otherwise in this Lease, no provision of this Lease may be waived, modified or amended except in writing signed by the City.

Sec. 9. Headings; Construction of Lease.

The headings of each section of this Lease are for reference only. Unless the context of this Lease clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 10. Severability of Provisions.

Except as specifically provided in this Lease, all of the provisions of this Lease shall be severable. In the event that any provision of this Lease is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Lease shall be valid unless the court finds that the valid provisions of this Lease are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Lease could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 11. Audit.

- A. The City Manager or designee shall have the right to audit this Lease and all books, documents and records relating thereto.
- B. Lessee shall maintain all its books, documents and records relating to this Lease during the contract period and for three (3) years after the date of final payment.
- C. The books, documents and records of Lessee in connection with this Lease shall be made available to the City Manager or designee within ten (10) days after the written request is made.

Sec. 12. Assignability or Subcontracting

Lessee shall not subcontract, assign or transfer any part or all of Lessee's obligations or interests without the City's prior approval. If Lessee shall subcontract, assign, or transfer any part of Lessee's interests or obligations under this Lease without the prior approval of the City, it shall constitute a material breach of this Lease.

Sec. 13. Conflicts of Interest.

Lessee certifies that no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Lease, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Lessee in this Lease.

THIS LEASE CONTAINS INDEMNIFICATION PROVISIONS

IN WITNESS WHEREOF, Lessee and the City have caused this Facility Use Lease to be duly executed as set forth below.

Lessee

I hereby certify that I have authority to execute this document

By: _____

Printed: _____

Title: _____

City of Tonganoxie, Kansas

a constitutionally chartered municipal corporation

By: _____

Darren Shupe

Title: Water Park Manager

Addendum A

Sect. 1 Usage Schedule

Lessee will reserve and use the Premises the following date(s) and hour(s):

[date, hour]

Sect. 2 Fee Rate

The fee for reserving the Premises will be \$ [redacted].

2026 Pricing Schedule

1.5 hour rental	\$250
2.0 hour rental	\$325

Sect. 3 Payment Schedule

Payment will be made in full prior to the start time of the first day of the event.

Sect. 4 Rain Provision

If the City Manager or Pool Manager determines that inclement weather or an act of God would unduly hinder or pose unreasonable risk to holding the Event or part of the Event, the City will reduce the total amount of rent due by Lessee in applicable hourly increments for such determined time. However, if the Lessee schedules, with City approval, an alternate day and time in lieu of the missed time, the Lessee will not be entitled to reduced rent.

If the Lessee believes that this Rain Provision applies to the Event, the Lessee must call by telephone or e-mail, with reasonable expediency, the Pool Manager (dshupe@tonganoxie.org) and either the Assistant City Manager (dporter@tonganoxie.org) or the City Manager (gbrajkovic@tonganoxie.org) to request a cancellation pursuant to Section 4 herein. The City will make the final determination of the applicability of this Rain Provision and respond to Lessee as promptly practicable.

Sect. 5 Water Park Rules

A. The following are **prohibited on the Premises**:

- | | |
|--------------------------------------|----------------------------------|
| 1. Fighting | 8. "Chicken" fighting |
| 2. Stealing | 9. Dunking |
| 3. Inappropriate language | 10. Over sized rafts |
| 4. Skate boarding | 11. Running on the pool deck |
| 5. Throwing people into the pool | 12. Drinking alcoholic beverages |
| 6. Disobeying lifeguards | 13. Smoking |
| 7. Flotation devices in the deep end | |

B. The following are **required on the Premises**:

1. Following all diving rules
2. Following all slide rules
3. Respect for all staff and visitors

Addendum A

C. Lifeguards are authorized to expel any Event participant (swimming or not swimming) to leave the Premises for not obeying the Water Park Rules. Likewise, lifeguards may also expel an entire party if the participants cause sufficient risk that law enforcement has to be notified. Cancellation due to behavior is not eligible for any refund.

D. The Pool Manager and Pool Manager's superiors have the final authority of enforcement of the Water Park Rules.

E. Absolutely no alcoholic beverages are permitted on the Premises, and any individuals found under the influence of alcohol or other controlled substances will be required to immediately leave the Premises and may be subject to applicable law enforcement.