

**USD 367 LICENSE AGREEMENT WITH THE CITY OF OSAWATOMIE
(For Flint Hills Trail access across School Property)**

This LICENSE AGREEMENT is made March 1, 2021 between the City of Osawatomie, a City of the Second Class of the State of Kansas, whose address is c/o City Manager, 439 Main Street, PO Box 37, Osawatomie, KS 66064 (Grantee) and the Osawatomie Unified School District (USD) 367, whose address is 1200 Trojan Drive, Osawatomie, KS 66064 (Grantor).

RECITALS

1. Grantor is the owner of property known as the Trojan Elementary School located at 1901 Parker Ave, Osawatomie, KS 66064.
2. Grantee is the owner of property known as the Flint Hills Trail, as depicted in Exhibit B. A portion of the existing trail is located or planned to be located on land that's part of the Trojan Elementary Parcel Shown on Exhibit C.
3. Grantor has agreed to grant a temporary construction license and minimum 10-year license, with automatic extensions on a portion of the Grantor's Property for the benefit of Grantee and subject to the terms and conditions herein. The purpose of this License Agreement is to permit Grantee to construct, maintain, repair, and replace railbed that currently cuts through the property and turn it into a multi-use trail.

AGREEMENT

1. Grant of Temporary Construction License. Grantor hereby licenses to Grantee a temporary construction license over and across the lands shown in Exhibit "C" attached hereto and made a part hereof within the Trojan School Property ("Temporary Construction License").
2. Grant of Licenses. For an annual license fee of one dollar (\$1.00) due on the annual anniversary of this Agreement, Grantor hereby grants to Grantee a license over and across the lands shown in Exhibit "C" attached hereto and made a part hereof within the Trojan School Property (License Area) until March 31, 2041. Subject to termination by either party as provided in Section 4 below. The License shall be used by the Grantee for public access to the trail and for the maintenance of the trail for pedestrian use. Pedestrian use shall be broadly defined to include foot traffic, horses, bicycle, e-bicycle, wheelchair, manually-powered mobility aids and other power-driven mobility devices used by individuals with disabilities. No other motorized access shall be permitted except for vehicles operation by the City of Osawatomie (and their contractors) and Kanza Rail-Trail Conservancy for maintenance and repair. The Grantee shall pay

all costs associated with construction of the trail and trail appurtenances. The Grantee shall be responsible for and shall pay costs for all maintenance and repair of the License Area and shall keep the trail in good repair and condition.

3. Indemnification. The Grantee agrees to protect, indemnify and hold harmless Grantor, its Board members, employees and agents, from and against any loss, damage or claims, including reasonable attorneys' fees and costs, arising out of: (i) the use, including the initial construction, of the License Area by the Grantee or its guests or invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (ii) any mechanic lien claims for unpaid labor services or materials affecting any of the License Area; and (iii) any an all costs associated with removal of improvements located in the License Area upon termination of this License Agreement as further outlined in Section 5. The Grantee shall obtain, at its expense, and keep in full force and effect through the term of this License Agreement, with a reputable insurer, general public liability insurance of the License Area with a limit of not less than \$ _____ per individual and \$ _____ per occurrence and, during times of construction of any improvements, repairs or replacements, shall maintain (or cause its contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to Grantor: and all said policies shall name Grantor as an additional insured and the Grantee shall provide Grantor with proof of such insurance. Grantor shall have the right to request the Grantee to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.
4. Termination for Convenience. This License does not constitute a permanent easement. This License Agreement may be terminated by either party at any time by providing the other with ninety (90) day written notice ("Notice of Termination"). After delivery of the Notice of Termination, the Grantee shall remove the Trail Improvements and then restore the land back to the condition that existed prior to the construction activities at Grantee's sole cost.
5. Default, Right to Cure; Termination for Cause. In the event of any default under the provisions of this Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy, give the party alleged to be in default written notice of such default together with right for a period of 10 days after receipt of such notice to cure said default. If an alleged default by its nature is not capable of being cured within the time provided, the party alleged to be in default shall, provided such party is proceeding with all due diligence, have up to an additional twenty days to cure said default unless there are weather conditions that prevent the cure. If the Grantee fails to repair, replace and maintain the trail within the cure period, or any extension thereof, the Grantor may undertake such work and the Grantee agrees to repay the Grantor for such costs, or the Grantor may immediately terminate this agreement and pursue any right or remedy allowed by this Agreement or otherwise by law. If the Grantor terminates the Agreement the Grantee shall remove the trail improvements and restore the land to the condition that existed prior to the construction activities at Grantee's sole cost within thirty (30) days of date of termination.

6. Notices. Any notice, demand, or document which either party is required or may desire to give, deliver or make to the other party shall be in writing and may be personally delivered or given by facsimile transmission or given by United States certified mail, return receipt requested, addressed as follows:

To Grantor: USD - 367
Superintendent
1200 Trojan Drive
Osawatomie, KS 66064

To Grantee: City of Osawatomie
City Manager
439 Main St., P.O. Box 37
Osawatomie, KS 66064

7. Miscellaneous.

7.1 Remedies. Either party shall have the right and power to bring suit in its own name for any legal or equitable relief due to lack of compliance with any provisions of this Agreement. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Agreement, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

7.2 No Waiver. The failure of either party to insist upon the strict performance of any provisions of this Agreement or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision.

7.3 Amendments in Writing. This Agreement may not be amended nor may any rights hereunder be waived, except by an instrument in writing executed by the parties hereto and duly recorded in the real estate records of Miami County, Kansas.

7.4 Kansas Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Kansas. This agreement is subject to the laws of the State of Kansas, jurisdiction shall be in the District Court of Miami County, in the event of any legal proceedings arising from the transaction described herein.

7.5 Correction Documents. In the event any clerical or other errors are found in this Agreement or any other descriptions or other exhibits hereto, or in the event any exhibit shall be missing, the parties agree to promptly execute, acknowledge, initial and/or deliver as necessary any documentation in order to correct the erroneous document, description, exhibit or to provide any missing exhibit.

7.6 Changes to Plans. Any changes to the design and use of the trail require the written consent of the Grantor, which consent shall not be unreasonably withheld.

7.7 The Grantee shall not erect any signage within the Licenses Area without the prior written agreement of the Grantor, which consent shall not be unreasonably withheld.

7.8 Binding Effect. All provisions of this Agreement inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns and personal representatives.

7.9 Non-waiver. The Parties hereto understand and agree that each is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations and any other rights, immunities and protections provided by the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. as amended from time to time or otherwise available to the Parties.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first written above.

ATTEST:

By: _____
Tammy Seamands, City Clerk

GRANTEE:

CITY OF OSAWATOMIE

By: _____
L. Mark Govea, Mayor

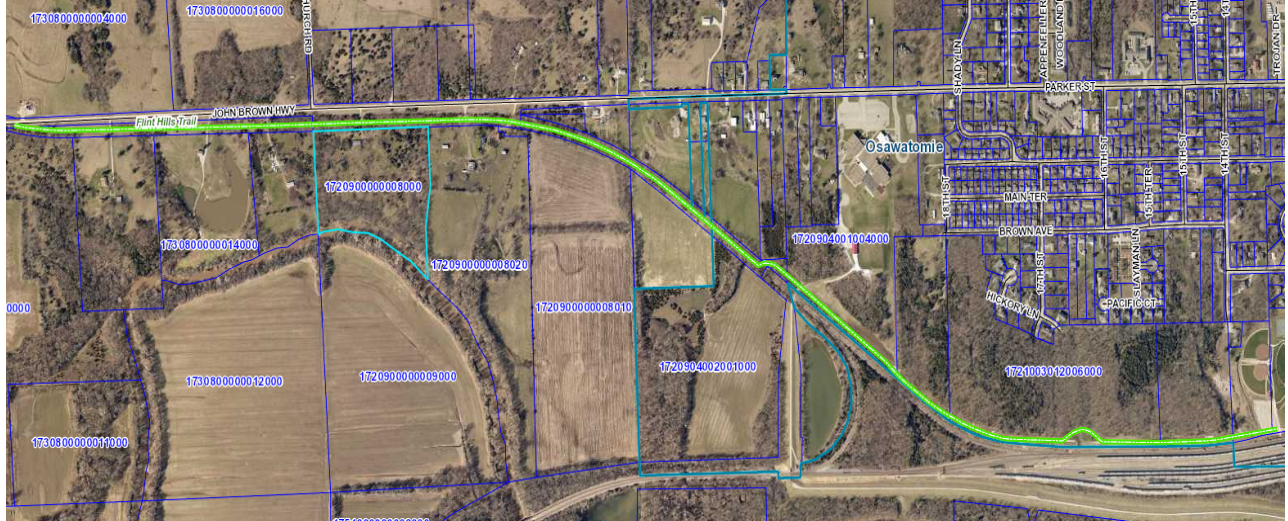
GRANTOR:

USD-367

By: _____
DJ Needham , President

EXHIBIT B

FLINT HILLS TRAIL – CITY OF OSAWATOMIE PORTION



 **Flint Hills Trail**

EXHIBIT C

FLINT HILLS TRAIL – CITY OF OSAWATOMIE PORTION



	Trail Location
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