

**28E Agreement for Joint Use
Between
University of Northern Iowa
City of Cedar Falls, Iowa
Cedar Falls Community School District**

Recitals

This agreement (hereinafter the “Joint Use Agreement” or “Agreement”) is entered into this _____ day of _____, 2017__, by and between the City of Cedar Falls, Iowa (hereinafter “City”), the Cedar Falls Community School District (hereinafter “School District”) and the University of Northern Iowa (hereinafter “UNI”).

WHEREAS, The City is an Iowa local government existing under the provisions of Iowa Code Chapter 372;

WHEREAS, The School District is located in Black Hawk County, Cedar Falls, Iowa, governed by the School Board of Directors, and pursuant to Iowa Code Chapter 297, specifically Section 297.22, the board of directors of any school district is provided with the power to sell, lease, exchange, give or grant or accept any interest in real property to, with or from any municipal corporation if the real property is within the jurisdiction of both the grantor and the grantee;

WHEREAS, UNI is an institution governed by the Board of Regents, State of Iowa, under the provisions of Iowa Code Chapter 262, and is a state university with its campus located in Cedar Falls, Iowa, under the provisions of Iowa Code Chapter 268;

WHEREAS, the City is responsible for providing recreational and athletic services to the Cedar Falls general public as part of its comprehensive recreational and leisure activities programs;

WHEREAS, UNI is responsible for providing recreational and athletic services to students as part of its educational program.

WHEREAS, the School District, the City and UNI wish to share the use of facilities, including a newly created Tennis Complex that will be located on the UNI campus, and to be used by the School District, the City and UNI; and

WHEREAS, pursuant to a Memorandum of Understanding dated October 14, 2016(hereinafter “the Memorandum of Understanding”) entered into by the School District, the City, and UNI related to the design, construction and management of a shared-use outdoor Tennis Complex to be located on land owned by UNI ; and

WHEREAS, the School District, the City and UNI will benefit from the joint use and administration of the Tennis Complex to meet the needs of their respective constituencies, and are prepared to proceed with the construction of the Tennis Complex.

NOW, THEREFORE, it is hereby agreed to by and between the School District, the City and UNI as follows:

1. Purpose. The purpose of this Agreement is for UNI to construct a Tennis Complex as more particularly described on Exhibit "A" attached hereto, and depicted on the site plan marked Exhibit "B" attached hereto; for the School District, the City, and UNI to share in the cost of constructing and maintaining the Tennis Complex with the respective contributions of each entity toward construction cost and maintenance cost as approved by the governing body of each entity and as set forth in this Agreement; and for the School District, the City and UNI to jointly utilize the UNI Tennis Complex, to meet the athletic, recreational and other needs of the students and patrons of the School District and UNI and of the citizens of the City.
2. Duration. This Joint Use Agreement shall begin upon execution of this Agreement by all parties hereto and shall terminate as provided for in Paragraph 11, unless modified or extended by mutual agreement of all parties or terminated earlier as provided for in Paragraph 17.
3. Governance. No separate legal entity shall be created for the governance or administration of the terms or subject matter of this Agreement. This Agreement will be administered by a joint governing committee (hereinafter the "Governing Committee") consisting of a designee appointed by the School District, a designee appointed by the City and a designee appointed by UNI.
4. Description of Shared Facilities. The shared facilities which are subject to this Agreement shall include a newly constructed eight (8) court tennis court complex, identified and described on Exhibit "A." The Tennis Complex shall be owned by UNI, and the School District and City shall possess the right of usage as set forth in this Agreement. Two of the eight courts will also be painted with pickle ball lines to meet funding requirements of a grant from the Blackhawk County Gaming Association. Due to economies of construction, a ninth court will be designed and bid within the project scope and, if affordable, will be shared as described above.
5. Financing and Construction.
 - a. UNI shall be responsible for management of the design, bidding and construction of the Tennis Complex, and shall use its internal processes in securing the services of design professionals, publicly bidding the project, and managing the construction of the facilities. A project advisory committee shall be established with representatives from each of the parties to advise UNI on programmatic and design parameters and to approve changes to the budget or scope of work.
 - b. Phase 1 – Base Construction. Base Construction (Phase 1) as described on Exhibit "A" shall begin as soon as possible. Every effort will be made to complete construction of the tennis courts on or before August 21, 2017, with total completion of the Base Construction (Phase 1) on or before September 21, 2017. Exhibit "A" attached hereto shows the financial commitment of each party to the total project costs for Base Construction (Phase 1) after the receipt of grants. Any grants received shall be applied to the total project cost. Each party

may solicit donations for the Tennis Complex. When such donations are solicited jointly, the donations shall reduce the financial commitment of all three parties equally. When such donations are solicited and given to one of the parties, the donation shall offset the financial responsibility of that party.

- c. A ninth court also will be designed and bid within the scope of Base Construction (Phase 1), and if construction of the ninth court can be completed within the total project costs as set forth on Exhibit "A" attached, the ninth court shall be constructed and shall be considered part of Base Construction (Phase 1) of the Tennis Complex.
 - d. Phase 2. By executing this Agreement, none of the parties is making a financial commitment to what has been identified and described as Phase 2 on Exhibit "A". A party shall not be financially committed to Phase 2 unless funding approval has been obtained from the governing body of each party to this Agreement.
 - e. Upon completion of all projects outlined in this Agreement, UNI shall provide the City and School District with written documentation of the actual costs for all of the improvements.
6. Approvals. This Agreement is subject to each party obtaining approval for its participation in the project as defined herein by the governing body for each party. Each party shall seek to obtain the necessary governing body approval as soon as possible after the execution of this Agreement. UNI approval shall be obtained from the Board of Regents, State of Iowa. School District approval shall be obtained from the Cedar Falls Community Schools Board of Education. The City of Cedar Falls approval shall be obtained from the City Council of the City of Cedar Falls.

7. Scheduling. The intent of mutual usage of the Tennis Complex is to work cooperatively to maximize usage for the School District, the City, and UNI. The Tennis Complex master schedule will be maintained by the UNI Recreation Services' Facilities Coordinator. It will be shared with the UNI Athletics Assistant Director of Facilities and Operations, City of Cedar Falls Recreation and Community Programs Manager, and the Cedar Falls Schools Athletics Director on a regular basis. Priority usage as described below may be adjusted upon mutual agreement of the School District, the City and UNI.

- a. The University of Northern Iowa will have priority scheduling during the academic months of August – May from 6:00am- 3:00pm and after 7:00pm. UNI will also have priority scheduling for two weekend tournaments each academic semester. If these times are not used by UNI programs, drop-in community recreational use will be permitted.
- b. The Cedar Falls School District will have priority scheduling March 1 through June 15 between 3:00pm-7:00pm. The School District will also have priority scheduling for three weekend tournaments during these months. If these times are not used by the School District programs, drop- in community recreational use will be permitted.

- c. The City of Cedar Falls Recreation and Community Programs Division will have priority scheduling in June and July between 8:00am-noon. If these times are not used by City programs, drop- in community recreational use will be permitted.
- d. When the courts are not being used by UNI, city or school programs, as provided for in paragraphs (a) – (c) above, they are available for drop- in community recreation use.
- e. The Governing Committee shall meet at least annually to agree upon priority scheduling.

8. Management of the Facilities. UNI shall be responsible for the day-to-day staffing and management of the tennis courts and associated grounds at UNI's sole cost. Such staffing and management shall include, but not necessarily be limited to, scheduling of events and open playing times; lighting schedule; parking management; arranging for maintenance; and other actions that relate to the day to day operation of the courts. The courts will close daily at 10:00pm.

9. Supervision of Programs Using the Tennis Complex. Any clarification that needs to be made or conflicts that need resolution regarding this Agreement or any relevant review of programming, supervision or other aspects of court usage under this Agreement shall be determined on a case by case basis by the Governing Committee. See Paragraphs 3 and 18.

10. Public Parking when Using the Tennis Complex. Parking will be provided free of charge to the general public in areas designated by UNI for City and School District events and activities. Designated parking areas will be managed, maintained and controlled by UNI and in no event will parking be permitted in any area other than parking lots or legal street parking. UNI reserves the right to ticket and/or tow improperly parked vehicles on UNI property. The City reserves the right to ticket and/or tow improperly parked vehicles on any City street.

11. Term of Use of the Tennis Complex. The City's and School District's use of the Tennis Complex, pursuant to the provisions of this Agreement shall continue for a term of five (5) years commencing _____, 2017, unless this Agreement is terminated in accordance with Paragraph 17. Unless earlier terminated in accordance with Paragraph 17, after the initial five (5) year term, this Agreement shall automatically renew for successive one (1) year terms unless any party gives written notice of its intention to terminate this Agreement to the other two parties no less than six (6) months prior to the end of the original term or any extension term.

12. Additional Cooperative Ventures. The School District, the City and UNI agree to meet and confer from time to time to mutually review and to consider entering into written agreements on such terms and conditions as are mutually agreed upon by the School District, the City and UNI with respect to such additional cooperative ventures utilizing and managing other public facilities and properties owned by the School District, the City or UNI that shall benefit the parties.

13. Maintenance. Except as set forth in Paragraph 8 above, operation and maintenance costs, including utility costs, shall be paid by the parties on an equal basis, payable when billed by UNI. UNI shall submit to the School District and the City on an annual basis a proposed budget for the operation and maintenance of the Tennis Complex. However, notwithstanding the foregoing, the cost of electricity for lighting the Tennis Complex during use other than for Cedar Falls School District priority scheduling as set forth in Paragraph 7(b) above, shall be paid by the City and by UNI on an equal basis, and not paid by the School District.

14. Insurance and Hold Harmless. By August 1 of each year during the term of this Agreement, the parties hereto shall furnish to each other any applicable written evidence of their respective self-insurance programs including their state license therefor and certificates of the stop-loss insurance coverages, covering the use of the Tennis Complex. Upon request, UNI shall furnish to the School District and City similar written evidence of the UNI's self-insurance program.

To the extent authorized by the Constitution and Code of Iowa, each party (indemnifying party) hereto shall indemnify, defend and hold harmless the other parties and their elected and appointed officials, employees and volunteers, all boards and commissions and/or authorities and their board members, employees and volunteers, and contractors, agents, assigns and insurers and administrators working on behalf of the other parties for all claims, damages or causes of action whatsoever arising out of the negligence of the indemnifying party and the indemnifying party's elected and appointed officials, employees and volunteers, boards and commissions and/or authorities and their board members, employees and volunteers, and contractors and agents, and students, and invitees arising out of or in any way connected with the use of the Tennis Complex as well as the construction, maintenance and repair of the Tennis Complex as contemplated in this Agreement. Each party hereby releases the other parties and their elected and appointed officials, employees and volunteers, all boards and commissions and/or authorities and their board members, employees and volunteers, and contractors, agents, assigns and insurers and administrators working on behalf of the other parties, from and against any and all liability or responsibility to each party by way of subrogation or otherwise for loss or expense related to liability, property, and/or workers compensation insurance, unless such loss or expense is due to the negligence or intentional misconduct of the other party or parties, but then only to the extent that the other party or parties and their elected and appointed officials, employees and volunteers, all boards and commissions and/or authorities and their board members, employees and volunteers do not have governmental immunity from such loss or expense.

15. Revenues and Fees. All revenues generated from program fees or program concessions during a scheduled event shall be retained by the party responsible for operating the program or concessions. If the program is operated jointly or is operated for an event or activity which is jointly sponsored, then the revenues shall be divided by mutual agreement of the parties.

Fees and deposits shall be determined, collected and retained or disbursed by the party that is responsible for scheduling the facility or space for which the fee or deposit is collected, unless otherwise agreed by the parties.

16. Amendments. This Agreement may be amended by written amendment approved by the parties to this Agreement.

17. Termination.

- a. By a Party for Cause: Prior to its expiration, a party may terminate this Agreement upon a material breach by another party or parties of any substantive provision of this Agreement. Prior to said termination, a non-breaching party must provide written notice of the material breach to the breaching party or parties and afford the breaching party or parties sixty (60) days to cure said breach, unless the breach may not reasonably be cured within sixty (60) days, in which case the breach shall be cured within a reasonable time. If after sixty (60) days or other reasonable time necessary to cure the breach, the breaching party or parties fail to cure the breach, the non-breaching party may immediately terminate this Agreement by written notice to the breaching party or parties.
- b. By Mutual Agreement: Termination of this Agreement may also be made by mutual written agreement of the parties to this Agreement. In the event of mutual termination, the written agreement shall specify the date that the termination shall be effective and any other matters mutually agreed upon by the parties.

18. Dispute Resolution. Any dispute regarding the interpretation, implementation or administration of this Agreement shall be resolved by a majority vote of the Governing Committee established in Paragraph 3 of this Agreement. If the Governing Committee is unable to agree upon a resolution, a neutral member shall be added to the Committee. The additional member shall be a neutral party provided by the Iowa Mediation Services.

19. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective successors and assigns, to the fullest extent provided by applicable law. Each party acknowledges that this Agreement is binding upon the party, has been approved by the party in the appropriate manner and has been executed by an appropriate person with authority to enter into this Agreement.

In WITNESS WHEREOF, the parties have executed this agreement on the date set forth next to their signatures below.

CITY OF CEDAR FALLS, IOWA

CEDAR FALLS COMMUNITY
SCHOOL DISTRICT

By: _____

By: _____

Date: _____

Date: _____

James P. Brown, Mayor

Joyce E. Coil, President

By: _____

Date: _____

Date: _____

Attest: Jacqueline Danielsen, City Clerk

Douglas J. Nefzger, Secretary

BOARD OF REGENTS,
STATE OF IOWA,
FOR THE BENEFIT AND USE OF
THE UNIVERSITY OF NORTHERN IOWA

By: _____

By: _____

Date: _____

Date: _____

Michael Hager, SVP, Finance and Operations
University of Northern Iowa

Dr. Robert Donley,
Executive Director