

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SOUTH BEND
AND THE TRUSTEES OF INDIANA UNIVERSITY**

THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is made and executed between the City of South Bend, Indiana, and its Venues Parks and Arts Department (hereinafter, “the City”), acting through its Board of Park Commissioners, and The Trustees of Indiana University, on behalf of its Indiana University South Bend campus in South Bend, Indiana (hereinafter, “IU”).

WHEREAS, the City is the owner of the property located at 837 N. Lafayette Blvd, South Bend, IN 46616, commonly known as Leeper Park Tennis Center (“Facility”) as depicted in Exhibit A attached hereto;

WHEREAS, IU desires to use tennis courts at the Facility for use by its Indiana University South Bend campus; and

WHEREAS, the City and IU wish to negotiate and come to agreement as to the terms and conditions of IU’s use of tennis courts at the Facility.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to the following terms and conditions concerning IU’s use of the tennis courts at the Facility:

I. TERM

This term of this Agreement (the “Term”) shall commence on August 1, 2018, and continue until July 31, 2019. This Agreement may be extended for successive one (1) year terms by mutual written agreement of the Parties.

IU may terminate this Agreement for or without cause at any time by delivering not less than thirty (30) days’ advance written notice to City.

If either Party fails to keep, observe or perform any material term or provision of this Agreement, such failure shall be considered a Default. If such Default shall continue for a period of thirty (30) days after written notice of breach is given, the non-breaching Party may, in addition to any other remedy available to it at law or in equity, terminate this Agreement by providing written notice to the non-breaching Party. The termination shall be effective ten (10) days from the date of notice of termination.

II. GENERAL TERMS

- a) Selection of Block of Tennis Court: IU shall select to use either the north eight (8) courts or the south six (6) courts at the Facility. Whichever block of courts that are not used by IU shall remain open to use by the public.
- b) Consideration: IU agrees to pay to the City Twenty Dollars and Zero Cents (\$20.00) per court per scheduled hour of use, plus Thirteen Dollars and Zero Cents (\$13.00) per hour for a City staff person to open and close the Facility and to be present during scheduled hours of IU use. The City will invoice IU upon commencement of this Agreement for the

entire Term. If this Agreement is renewed, City shall invoice IU by or before each renewal Term.

- c) Schedule of Use: The City and IU will work together to develop a schedule of the dates and times of use of the Facility by IU (hereinafter, the Schedule), attached hereto as Exhibit B. The Schedule shall be developed based upon Facility operating hours of 8 am to 8 pm, Monday through Friday. In case of inclement weather, IU will have the option to schedule make-up dates and times.
- d) Right to Shared Use of Parking Lot: IU shall have use of the parking lot at the Facility during times of its scheduled use of the Facility. During times of IU scheduled use, the Facility parking lot shall remain open and available for parking by the City and the public.
- e) Insurance: IU shall have in place, at all times during the term of this Agreement, insurance coverage, including commercial general liability coverage in the minimum amount of \$1,000,000 per occurrence or \$2,000,000 in the aggregate; workers compensation coverage for employees of IU engaged in activities at the Facility during IU use; auto liability insurance coverage; and fire, casualty and property damage insurance coverage. Coverage under all such policies shall name the City of South Bend, Indiana as an additional insured party and a certificate evidencing such coverage shall be provided to the City, upon request.

III. RESPONSIBILITIES OF IU

- a) IU understands and agrees that the Facility is to be used only for the purpose of conducting IU tennis matches, tournaments, and practices and for no other purpose, without the prior written consent of the City.
- b) IU shall be responsible for any special preparation of the Facility desired by IU prior to scheduled IU use, and shall reasonably clean the Facility following each IU use; and repair any damaged caused by IU during its use, normal wear and tear excepted.
- c) Participating IU students shall be supervised by IU employees at all times during IU use of the Facility.
- d) IU shall remove all trash and debris after each use and place all trash and debris in Facility trash receptacles or dumpsters provided by City.
- e) IU agrees to obey all posted rules and regulations of the Facility and all applicable local, state and federal laws and regulations.

IV. RESPONSIBILITIES OF THE CITY

- a) The City shall be responsible for the removal of trash and debris located in the trash receptacles and dumpster located at the Facility as customary and necessary.

- b) The City shall be responsible for the cost of electricity usage at the Facility, including lighting of the Facility parking lot. City will not be liable for any injury or damage to person or property occurring in the parking lot and associated drives to the lot at the property located at 211 South St. Peter Street, South Bend, IN 46617 from its snow removal efforts unless such injury or damage to person or property is caused by or resulting from the negligence or willful misconduct of the City.
- c) The City shall be responsible for and promptly repair and damage that is not caused by IU's use of the Facility.

V. ASSIGNMENT

IU or its individual members may not assign the rights granted in the Agreement without first obtaining written consent from the City.

VI. ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

VII. INDEMNIFICATION

IU agrees and undertakes to indemnify and hold the City and its respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the City may suffer or incur as a result of any claims or actions related to the activities performed or supervised by IU under this Agreement. If any such action is brought against the City or its respective agents, employees, successors, or assigns, in connection with this Agreement, IU agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. The City, however, shall indemnify and hold harmless IU, its respective agents, employees, successors, and assigns from any liability, loss, costs, damages or expenses, including attorneys' fees, arising out of or resulting from the negligent acts or misconduct of the City, its employees, elected or appointed officials, contractors or other lawful representatives and agents, in connection with this Agreement.

VIII. ENTIRE AGREEMENT

This document contains all of the agreements between the parties regarding IU's use of the Facilities and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

IX. LAW GOVERNING AGREEMENT

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

(Remainder of page intentionally left blank)

THE TRUSTEES OF INDIANA UNIVERSITY

Signature

Printed Name and Title

Street Address

P.O. Box

City, State Zip

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARKS COMMISSIONERS**

Mark Neal, President

Aimee Buccellato, Member

Consuella Hopkins, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk

EXHIBIT A
Leeper Park Tennis Center

EXHIBIT B
Calendar of IU Scheduled Use