



Roll Call Number

Agenda Item Number

27

Date January 28, 2013

APPROVAL OF DRAKE UNIVERSITY LEASE AGREEMENT FOR THE USE OF THE ROGER KNAPP TENNIS CENTER

WHEREAS, the City of Des Moines Wellness Committee is offering to City employees and their immediate family members the opportunity to participate in an indoor tennis league at the Drake University Roger Knapp Tennis Center, which program is being administered by the City's Park and Recreation Department; and

WHEREAS, Drake University has presented a lease agreement whereby the City will have use of the Roger Knapp Tennis Center for \$100 per date for one night per week for a period of up to ten weeks beginning February 12, 2013; and

WHEREAS, the lease agreement includes, among other provisions, the requirement that the City of Des Moines as lessee indemnify and protect Drake University from costs or damages resulting from the City's use of the leased property, and the requirement that the City will pay Drake University for any damage to the leased premises, equipment, or other Drake University property caused by City employees relating directly to the lease.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Drake University Lease Agreement, described above and on file in the City Clerk's Office, is hereby approved and the Mayor is directed and authorized to sign the lease agreement on behalf of the City.

BE IT FURTHER RESOLVED that the City's Wellness Committee and Park and Recreation Department Director or designee(s) are directed to administer the Lease Agreement, and the City's Finance Department is directed and authorized to make payment in accordance with the terms of the Lease Agreement as requested by the Wellness Committee and/or Park and Recreation Department.

(Council Communication No. 13- **031**)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

DRAKE UNIVERSITY LEASE AGREEMENT

This Lease Agreement (hereinafter "Agreement") made and entered into this 16th day of January, 2013 by and between Drake University (hereinafter "Lessor") and:

Organization: Des Moines Parks & Recreation
Address: 3226 University Ave.
Des Moines, IA 50309

Contact Person: Brian Becker
Phone: 515-208-0430
Email: bhbecker@dmgov.org

(hereinafter "Lessee").

WITNESSETH THAT:

- 1. Lessor hereby leases to Lessee the Roger Knapp Tennis Center (hereinafter "Leased Premises") for the exclusive purpose of Employee Tennis during the dates and times outlined in paragraph #24. Lessor does not warrant the fitness of the Leased Premises for the Lessee's particular purpose. Parking in the Drake owned Tennis Lot is available on a first come basis.
2. Lessee agrees to pay the Lessor as usage fees for the Leased Premises the sum of \$100/day or 0 percent (%) of gross receipts, whichever is greater, payable as follows:

Total amount due thirty(30) days after last date of use.

- 3. As additional fees, Lessee agrees to pay Lessor a sum equal to salary and costs plus 0 percent (%) for the following services and equipment usage:

- Checkboxes for Laborers, Ushers, Custodians, Paramedics, Sound Controller, Cleaning, Traffic Controller, Event Administrator, Security, Monitors, Ticket Handling, and Other.

Lessee further agrees to secure from and pay Lessor for tickets if an admissions-type event is held. Lessee further agrees to pay Lessor the sum of actual costs for each hour used in preparation for or dismantling of an event. Additional payments and other charges reflected in this Agreement besides the fees due under paragraph #2 are due to the Lessor on or before April 30, 2013. All sums due under this Agreement shall be payable to Drake University at the following address:

Matt Miller
Drake Athletics and Recreation
2507 University Ave.
Des Moines, IA 50311-4505

- 4. Should Lessor be unable to give possession of the Leased Premises on the date specified in paragraph #24 above, Lessee's only damages shall be a rebate of the pro rata usage fee.
5. Lessor may require Lessee to furnish such police protection deemed necessary by Lessor at Lessee's expense, through prior notification.
6. Lessee shall not sublet, sell or assign any portion of this Agreement without prior written consent of Lessor.
7. All structural alterations, decorations or attachments to the Leased Premises shall require prior approval by Lessor.
8. Lessee agrees to obey all laws ordinances, regulations and policies applicable to Lessor and the Leased Premises.

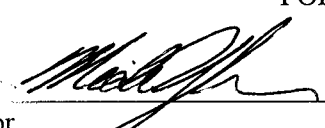
9. Unless indicated otherwise in writing, Lessor reserves the right and exclusive control to all concessions including, but not limited to parking, hat and coat checking, sale of soft drinks, food, candy, beer, liquor and any refreshments and merchandise.
10. Lessor and its employees and agents shall have the right to enter any portion of the Leased Premises at any time with or without prior notification.
11. Lessee retains all radio and television rights unless indicated otherwise in writing.
12. Lessee will protect, indemnify and save harmless the Lessor from or against any and all loss, costs, damages and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about the Leased Premises or the parking lot associated therewith, due directly to the tenancy, use or occupancy thereof, of any part thereof by the Lessee or any person claiming through or under the Lessee.
13. Lessee shall self-insure and/or obtain a comprehensive general liability insurance policy, at its sole expense, which affords Lessor and its employees coverage for all matters for which paragraph #12 requires Lessee to indemnify and protect Lessor. If applicable, the policy shall be written on an "occurrence" basis and shall include a Broad Form general liability or equivalent and coverage for partial or total destruction of the Leased Premises by fire. The policy shall be in effect during the time period(s) relating to Lessee's use of said Leased Premises under this Agreement. If applicable, the policy must be obtained by a Lessor approved Insurer and shall have the following coverages, limits and conditions which may be altered by the Lessor:
 - a. Minimum combined single limit of \$1,000,000 for bodily injury and/or property damage with no exclusion for sexual abuse or molestation and \$2,000,000 aggregate;
 - b. Automobile coverage with \$1,000,000 limit;
 - c. Workers Compensation coverage with \$100,000 per accident per employee and \$500,000 limit.
 - d. Drake University and its employees and agents shall be named as Additional Insured.

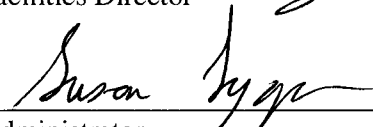
Lessee shall submit to Lessor a letter of self-insurance and/or a certificate of insurance with the above conditions satisfied no later than 10 (ten) business days prior to the commencement of the agreement as specified in paragraph #1 above. If applicable, certificate shall also include the following language: "Drake University and its Board of Trustees, officers, employees, agents, and volunteers added as additional insured with regard to general liability of the Lessee for the employee tennis from January through April 2013".

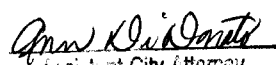
14. Lessee agrees to pay Lessor for any damage to the Leased Premises and equipment and any damage to other Drake University property caused by Lessee employees, patrons, or guests which damage relates directly to this agreement and occurs during the period covered by this Agreement.
15. Lessor reserves the right to eject any objectionable person or persons from Drake University property including the Leased Premises.
16. Lessor shall not be responsible for any damage or injury that relates directly to this agreement and may happen to Lessee or Lessee's employees or property during the period covered by this Agreement.
17. If Lessor handles, controls or keeps receipts of funds whether received through box office or otherwise, Lessor is acting for the accommodation and sole benefit of Lessee and is responsible only for gross neglect or bad faith.
18. Lessor or Lessee has the right to terminate this Agreement at any time and at its sole discretion, with a one week notice. If Lessor terminates the Agreement, Lessor's sole liability, if any, shall be for actual costs incurred up to the date of Lessee's receipt of notice of termination; no loss of profit or other damages shall be recovered against Lessor.

- 19. If any part of this Agreement is held invalid or unenforceable, the remaining portions shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties with respect to subject matter herein; it may not be amended except in writing and signed by both parties. This Agreement is not in effect until approved and signed by Lessor.
- 20. Neither the Lessee nor anyone claiming by, through or under the Lessee shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever, upon said Leased Premises or upon any building or improvement thereon, or upon the leasehold interest of the Lessee therein, and notice is hereby given that no contractor, sub-contractor or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of the Lessor, the Lessee covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.
- 21. Lessor shall have in addition to the lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa, upon all personal property and all substitutions therefore, kept and used on said Leased Premises by Lessee to the extent authorized by law. Lessor may proceed at law or in equity with any remedy provided by law or by this Lease Agreement for the recovery of any fees, or for termination of this Agreement.
- 22. This Agreement shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto; except that if any part of this Agreement is held in joint tenancy, the successor in interest shall be the surviving joint tenant.
- 23. Adherence to Smoke-Free Campus Requirements: Pursuant to the Iowa Smokefree Air Act, smoking is prohibited on all Drake University grounds, including outdoor spaces and parking lots. Smoking inside vehicles parked on Drake property is also prohibited. Lessee agrees to comply with Drake's no smoking policy and ensure compliance with Iowa law and Drake policy in the use of Drake facilities hereby leased in this Agreement.
- 24. Additional terms and conditions: Street shoes are not permitted on the playing surface of the Tennis Center. Lessee shall ensure that all participants will wear appropriate footwear during usage. Three (3) courts are reserved for 2013 during the following dates and times: Tuesday nights from 6:00pm to 10:00pm starting in February 2013 and continue for up to 10 weeks. Lessee is required to provide an on-site supervisor to help enforce policies and assist with facility monitoring. Signed waivers are required by all participants prior to using the Roger Knapp Tennis Center.

FOR THE LESSOR: _____ FOR THE LESSEE: T.M. Franklin Cownie, Mayor
(Printed Name of Authorized Signer)

By:  By: _____
 Facilities Director Lessee Representative

By: 
 Administrator

APPROVED AS TO FORM:

 Assistant City Attorney