28E AGREEMENT FOR JOINT USE
BETWEEN
UNIVERSITY OF NORTHERN IOWA
CITY OF CEDAR FALLS, IOWA
BOARD OF REGENTS, STATE OF IOWA

I. Recitals

This agreement (hereinafter the "Joint Use Agreement" or "this Agreement") is entered into this 4th day of November, 2006, by and between the City of Cedar Falls, Iowa (hereinafter "City"), the University of Northern Iowa (hereinafter "UNI"), and the Board of Regents, State of Iowa (hereinafter "Board").

WHEREAS, The City is an Iowa local government existing under the provisions of Iowa Code Chapter 372 and is a public agency as defined by Iowa Code Chapter 28E;

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 Board is charged with the responsibility for overseeing and directing the operations of state institutions under its jurisdiction as provided in Chapter 262, Code of Iowa, and is a public agency as defined by Iowa Code Chapter 28E;

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, the City is responsible for providing certain storm water detention basins in order to reduce flood damage to privately and publicly owned downstream properties;

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

WHEREAS, pursuant to paragraph II-I of the joint use 28E Agreement executed by the parties on September 15, 2004, relating to the use of the McLeod Center, UNI and City officials agreed to meet and confer from time to time to mutually review and to enter into written agreements with respect to such additional cooperative ventures utilizing and managing other public facilities and properties owned by UNI or the City that shall benefit both parties;

WHEREAS, UNI and the City wish to share the use of certain open space recreational fields to be upgraded and/or constructed by the City and owned by the Board on behalf of UNI, and to be used by both UNI and the City; and

WHEREAS, UNI and the City will benefit from the joint use and administration of certain open space recreational fields to meet the needs of their respective constituencies.
NOW, THEREFORE, it is hereby agreed to by and between UNI, the Board, and the City as follows:

1. **Purpose.** The purpose of this Agreement is for UNI and the City to jointly utilize certain open space recreational fields, including the existing UNI Baseball and Intercollegiate Softball fields, that will be upgraded and/or constructed by the City and are owned by UNI, and to jointly utilize the Wetland Demonstration Park (see paragraph 5 below), to meet the athletic, recreational, and other needs of the students and patrons of UNI and of the citizens of the City. UNI and the Board acknowledge and agree this Joint Use Agreement is in consideration of the City's investment in upgrading certain existing open space recreational fields and constructing other new open space recreational fields.

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 12, unless modified or extended by mutual agreement of all parties or terminated earlier as provided for in paragraph 18.

3. **Governance.** No separate legal or administrative 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 three (3) members appointed by UNI and three (3) members appointed by the City. See also paragraphs 9 and 19 below.

4. **Description of the Open Space Recreational Fields.** The open space recreational fields which are subject to this Agreement shall include the existing UNI Baseball and Intercollegiate Softball Fields, other open field areas located on the eighty (80) acres west of Hudson Road as shown in the attached diagram, identified as Exhibit "A", and such other facilities to be constructed as shall be mutually agreed upon in writing by the parties to this Agreement (hereinafter collectively referred to as the "UNI Fields").

5. **Wetland Demonstration Park.**
   a. The City will design, publicly bid and construct a four acre permanent pond within the existing storm water detention basin located on the property currently owned by the City north of the PEC/Wellness Center parking lot, as shown on Exhibit "B".
   b. The pond shall be created utilizing construction plans accepted by the City and UNI. The purpose of this Wetland Demonstration Park will be to retain and detain storm water in order to alleviate flooding on downstream properties.
   c. In order to construct the permanent pond, the City will need to excavate and remove material down to the elevation point of the pond water surface. This will require that the City remove and haul the fill material from the detention basin to another location.
   d. The Board and UNI agree that the City may haul the fill material collected in the creation of the detention basin and pond to a site designated by UNI north of 27th Street and east of the existing UNI Soccer Complex parking lot.
e. To facilitate this process, and subject to Board approval, a temporary construction easement will be granted to the City over approximately 80 acres located west of Hudson Road as shown in the attached diagram, identified as Exhibit "A". The specific path or road for hauling the fill material and the specific deposit site for the fill material will be agreed upon by the City and UNI after construction plans are completed and agreed upon by UNI and the City. It is specifically contemplated by the parties that the path or road utilized for hauling the borrow fill material shall be “cross country” on UNI property in order to reduce transportation expenses in creating the pond. The parties understand and agree that reference herein to UNI property or property owned by UNI shall include property owned by the State of Iowa and/or Board for the use and benefit of UNI and/or on the UNI campus in Cedar Falls, Iowa.

f. Subject to Board approval, a temporary construction easement on UNI property along Dry Run Creek will be granted to the City for the purpose of constructing wetlands and other water quality improvement structures that are of interest to the City and UNI. The construction will be in accordance with construction plans approved by the City and UNI.

g. The fill material that is hauled from the detention basin will be used to create open field recreational areas. These open field recreational areas shall be constructed in accordance with construction plans approved and accepted by UNI and the City. The City shall design a grading plan for the deposit site that removes topsoil, deposits the borrow fill material and replaces the topsoil. The deposit site will be designated by UNI at a location north of 27th Street and east of the existing UNI Soccer Complex parking lot.

h. The Wetland Demonstration Park will be a permanent water feature within the existing detention basin that will serve as a visually appealing and recreational feature for UNI and general public use. UNI may also use the Wetland Demonstration Park for educational and research purposes as provided herein.

i. Upon completion of the Wetland Demonstration Park, which is approximately 7.39 acres as shown in Exhibit "B", the City shall grant an easement to the city-owned property to UNI, subject to Board approval, as necessary. The City shall retain permanent storm water control on the property, including the on-going protection and maintenance of the detention basin capabilities and capacity. In general, UNI shall not impede public access to the entire 7.39 acres of the Wetland Demonstration Park, which shall specifically include the pond, the surrounding berm and the designated walking paths. UNI shall dedicate a minimum of ten parking spaces for visitor parking in a parking lot immediately south of the Wetland Demonstration Park. The management, control, and location of the parking spaces, including any time limitations for such parking, shall be at the discretion of UNI. UNI reserves the right to ticket and/or tow improperly parked vehicles.

j. UNI may utilize the Wetland Demonstration Park at reasonable times and in accordance with the easement granted by the City for recreational,
educational and research purposes, including the placement of structures on the site. Any improvements or structures added to the site may not impede the detention capacity of the pond, in particular the one hundred year storm storage area around the pond as shown in Exhibit "B. The City shall approve all improvements or structures to ensure that the detention capacity and flow stream is not impeded, obstructed or reduced in capacity.

6. **Construction of open field recreational areas:** The City shall construct open field recreational areas southwest of the existing UNI Baseball Field on the property identified in the attached Exhibit "A."

   a. At the deposit site designated by UNI north of 27th Street and east of the existing UNI Soccer Complex parking lot, the City will strip the topsoil and the hauled borrow fill material shall be placed and compacted as necessary to create a stable 2% grade and replace the top soil to create a recreational surface as prescribed by UNI. The City shall develop the design for placement of the soil. The fill area surfaces shall be fine graded to accommodate quality athletic field development. The City shall seed the field surfaces with approved athletic turf bluegrasses. The City shall install any tiling necessary during the construction process to properly drain the recreational fields. UNI shall thereafter be responsible for mowing, fertilization, and aeration necessary to develop a quality turf area. The City shall re-grade access road(s) as necessary upon completion of the soil hauling to create usable dirt pedestrian trails.

   b. The following improvements shall be made by the City:

      i. One 300 feet by 320 feet area for baseball programs:
         1. The City shall design and utilize city employees or contractors to re-grade to a 1 1/2 to 2 percent slope, to install ag-lime infield surfaces, and to seed all field area(s).
         2. The City shall install new backstop, wing and dugout fencing.
         3. The City shall install permanent fencing.
         4. The City shall tile the fields, if necessary, for drainage purposes.
         5. The City shall install bleachers in a design and manner to be determined by the City.

      ii. One 360 feet by 225 feet soccer field for which the City shall design and utilize city employees or contractors to grade the field area for appropriate drainage slope.

   c. At its discretion and during the Term of this Joint Use Agreement, the City may choose to construct an additional 300 feet by 320 feet area for baseball programs under the same terms as outlined above in paragraph 6(b)(i)(1) through (5), after consultation with and agreement by UNI.

   d. In consideration for the City’s construction of the additional open recreational fields, UNI shall allow the City to utilize the fields for city programs and general public use as further outlined in paragraph 8 below.
7. Development of Existing UNI Baseball Field and UNI Intercollegiate Softball Field: The City shall upgrade the existing UNI Baseball Field and UNI Intercollegiate Softball Field located on the property identified in the attached Exhibit “A”.

   a. The City, after consultation with and agreement by UNI, shall upgrade the UNI Baseball Field in the following manner:
      i. Installation of new outfield and wing fencing;
      ii. Installation of a new backstop;
      iii. Renovation of the natural turf surface;
      iv. Re-grade the base paths and infield/outfield lip;
      v. Replace foul poles;
      vi. Upgrade dugouts;
      vii. Re-grade and resurface warning paths;
      viii. Upgrade bleachers, if necessary, as determined by City;
      ix. Upgrade the maintenance road, if necessary, as determined by City;
      x. Tile for drainage purposes, if necessary, as determined by City.

   b. The City shall upgrade the facilities located at the UNI Intercollegiate Softball Field as needed for functional use and safety purposes, as determined by and at the discretion of the City, after consultation with and agreement by UNI.

   c. In consideration for the City’s upgrade of the UNI Baseball Field and UNI Intercollegiate Softball Field, UNI shall allow the City to utilize the fields for city programs and general public use as further outlined in paragraph 8 below.

   d. UNI shall allow the City to use the batting cage for practice, warm-up and instructional purposes. This joint use shall be addressed by the joint use schedule referenced in paragraph 8. Use of the batting cage does not include any use of UNI equipment such as pitching machines, unless specifically authorized by UNI.

   e. UNI shall allow the City to share and utilize the existing storage building located at the UNI Baseball Field; in the alternative, the City may construct a building on UNI property, provided however that prior to the construction of any such building on UNI property, a separate agreement shall be executed which shall provide relevant details including but not limited to design, location, and usage of the building.

8. UNI Fields Scheduling. The scheduling of City-sponsored activities on the UNI Fields shall be during mutually agreed upon time periods, as described below. The intent of mutual usage of facilities is to work cooperatively to maximize usage for University and community activities. The master recreational field schedule is maintained by UNI’s Wellness Recreation Services. It will be shared with the Cedar Falls Recreation department and the Cedar Falls High School Athletic Director on a regular basis. Priority usage as described below may be adjusted upon mutual agreement of UNI and City.

   a. New Baseball Fields:
i. UNI shall have priority usage of these new baseball field(s) from the beginning of the Fall semester to the end of the Spring semester, as determined annually by the official UNI academic calendar except as set forth in paragraph (a)(ii) below.

ii. The City shall have priority usage of these new baseball field(s) during the weekends (Saturday and Sunday) during the same time period, i.e., the Fall and Spring semesters.

iii. The City shall have priority usage of these new baseball field(s) from the end of the Spring semester to the beginning of the Fall semester, as determined annually by the official UNI academic calendar.

b. New Soccer Field:

i. The City shall have priority usage of the soccer field from March 1 through June 10 annually during the hours of 3:00 p.m. to 7 p.m. weekdays, and all day on Saturdays.

ii. UNI shall have priority usage of the soccer field at all other times.

iii. The City shall have the right to use all other UNI soccer fields upon request of and approval by UNI, which shall be at UNI’s sole and reasonable discretion.

c. Existing UNI Baseball Field:

i. UNI shall have priority usage of the existing UNI Baseball Field from the beginning of the Fall semester to the end of the Spring semester, as determined annually by the official UNI academic calendar.

ii. Northern University High School (hereinafter “NU High School”) shall have priority usage of the UNI Baseball Field for its varsity baseball program as follows:

1. For up to fifteen (15) evenings (after 3:00 p.m.) for home games during the varsity high school baseball season. These dates shall be determined by April 1 annually and forwarded by NU High School to UNI and the City.

2. For daytime practices for up to four hours daily after school until the end of the NU High School spring semester, and prior to 4:00 p.m. on weekends and from the end of the NU High School spring semester through August 19. The practice schedule shall be determined by April 1 annually and forwarded by NU High School to UNI and the City.

iii. The City shall have priority usage of the UNI Baseball Field from the end of the Spring semester to the beginning of the Fall semester, as
d. UNI Intercollegiate Softball Field

i. UNI shall have priority usage of the UNI Intercollegiate Softball Field from the beginning of the Fall semester to the end of the Spring semester, as determined annually by the official UNI academic calendar.

ii. NU High School shall have priority usage of the UNI Intercollegiate Softball Field for its varsity softball program as follows:

   1. For up to fifteen (15) evenings (after 3:00 p.m.) for home games during the varsity high school softball season. These dates shall be determined by April 1 annually and forwarded by NU High School to UNI and the City.

   2. For daytime practices for up to four hours daily after school until the end of the NU High School spring semester, and prior to 4:00 p.m. on weekends and from the end of the NU High School spring semester through August 19. The practice schedule shall be determined by April 1 annually and forwarded by NU High School to UNI and the City.

iii. The City shall have priority usage of the UNI Intercollegiate Softball Field from the end of the Spring semester to the beginning of the Fall semester, as determined by the official UNI academic calendar, annually, except for those dates and times reserved by NU High School no later than April 1 annually, as set forth in paragraph 8(d)(ii) above.

iv. The City shall have priority usage of the UNI Intercollegiate Softball Field during the weekends (Saturday and Sunday) from March 15 through May 10 annually, except for any dates and times reserved by NU High School no later than April 1 annually, as set forth in paragraph 8(d)(ii) above.

9. Supervision of Programs Using UNI Fields. 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 field usage under this Agreement, shall be determined on a case by case basis by the Governing Committee, or, if delegated by action of the Governing Committee, by mutual agreement between the Director of the City Human and Leisure Services Department (or his or her designee) and the Director of University Health Services (or his or her designee).

10. Public Parking Provisions when Using UNI Fields. Parking will be provided free of charge to the general public for City sponsored events and activities in areas designated by UNI. Designated parking areas will be managed 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.

11. **Water and Electrical Services.** UNI shall allow the City to utilize water and electrical services present at the site(s) at no charge, for maintenance of the fields and those activities directly related to the usage of the fields.

12. **Term of Use of UNI Fields.** The City's use of the UNI Fields, pursuant to the provisions of this Agreement, shall continue for a term of twenty (20) years, unless the parties mutually agree to extend such term or this Agreement is terminated in accordance with paragraph 18. Upon completion of all projects outlined in this Agreement, the City shall provide UNI with written documentation of the actual costs for all of the improvements.

   a. **City Improvements Made to Existing UNI Baseball Field and UNI Intercollegiate Softball Field:** As consideration for the improvements made to existing UNI Baseball Field and UNI Intercollegiate Softball Field, UNI shall allow the City to jointly share the use of the fields, according to the terms and conditions of this agreement, for a period of 20 years. If UNI terminates the joint usage of the existing UNI Baseball Field and/or UNI Intercollegiate Softball Field prior to the expiration of 20 years, the City shall be reimbursed on a depreciated value basis for its investment in the UNI Baseball and/or Intercollegiate Softball Field(s), as applicable, less the land rental value equivalent for the time period used. In the alternative, UNI may provide the City with comparable alternative baseball and/or softball fields for the remaining time period.

   b. **Additional Open Space Recreational Fields Created by City:** As consideration for the City's creation of additional open space recreational fields, UNI shall allow the City to jointly share the use of these fields, according to the terms and conditions of this agreement for a period of 20 years. If UNI terminates the joint usage of the open space recreational fields prior to the expiration of 20 years, the City shall be reimbursed on a depreciated value basis for its investment in the open space recreational fields, less the land rental value equivalent for the time period used. In the alternative, UNI may provide the City with comparable alternative open recreational fields for the remaining time period.

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

14. **Maintenance.** UNI and the City shall reach an agreement on a coordinated maintenance system for the UNI Baseball and Intercollegiate Softball Fields, as well as the newly created open field recreational areas. The maintenance staffs for UNI and the City shall reach an agreement that defines maintenance boundaries and establishes responsibility for mowing, grooming and the schedule for such maintenance which shall be dependant upon the usage and season. To facilitate this maintenance, UNI shall allow City staff reasonable access to the UNI Fields.
15. **Insurance and Hold Harmless.** By August 1 of each year during the term of this Agreement, the City shall furnish to UNI written evidence of the City's self-insurance program, including its state license therefor, and certificates of the City's stop-loss insurance coverages, covering use of the UNI Fields. Upon request, the Board/UNI shall furnish to City similar written evidence of UNI's self-insurance program.

To the extent authorized by Chapter 670 of the Code of Iowa, the City will indemnify, defend and hold harmless UNI for all claims, damages or causes of action arising out of the negligence of its employees, students, agents, contractors and invitees during their use of any of the facilities or property contemplated in this Agreement. To the extent authorized by Article VII, Section 1, of the Iowa Constitution and Chapter 669 of the Code of Iowa, UNI will indemnify, defend and hold harmless the City for all claims, damages or causes of action arising out of the negligence of its employees and agents caused by or during use of any of the facilities or property contemplated in this Agreement.

16. **Revenue and Fees.** All revenues generated from program fees or program concession during a scheduled event, shall be retained by the party responsible for operating the program or concession. 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.

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

18. **Termination.**

   a. **By A Party for Cause.** Prior to its expiration, a party may terminate this Agreement upon a material breach by another party of any substantive provision of this Agreement. Prior to said termination, the non-breaching party must provide written notice of the material breach to the breaching party and afford the breaching party 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 fails to cure the breach, the non-breaching party may immediately terminate the Agreement by written notice to the breaching party.

   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.

   c. **By UNI.** UNI may terminate this entire Agreement, or the joint usage of the existing UNI Baseball Field, UNI Intercollegiate Softball Field, open space recreational fields, and/or Wetland Demonstration Park, prior to the expiration of the Agreement, by giving at least twelve (12) months advance written notice to
the City. If any termination by UNI under this paragraph 18(c) relates to the existing UNI Baseball Field, UNI Intercollegiate Softball Field, and/or open space recreational fields, then the provisions of paragraphs 12(a) and 12(b) apply, as appropriate.

19. 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 seventh neutral member shall be added to the Committee. The seventh member shall be a neutral party provided by the Iowa Mediation Services.

20. 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.

The City of Cedar Falls, Iowa

Date: 7/26/06

By: [Signature]

Jon T. Crews, Mayor

ATTEST:

Gary L. Hesse, CMC, City Clerk

University of Northern Iowa

Date: 8/18/06

By: [Signature]

Thomas G. Schellhardt
Vice President for Administration & Finance

Board of Regents, State of Iowa, Acting for and on Behalf of University of Northern Iowa

Date: 11/21/06

By: [Signature]

Gary Steinke
Executive Director

STATE OF IOWA, COUNTY OF BLACK HAWK, ss.

On this 26th day of July, 2006, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jon T. Crews and Gary L. Hesse, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the City of Cedar Falls, Iowa; that the seal affixed to the foregoing
instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. 15-174, adopted by the City Council on the 24th day of July, 2006, and that Jon T. Crews and Gary L. Hesse acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

\[Signature\]
Notary Public in and for State of Iowa

STATE OF IOWA, COUNTY OF BLACK HAWK, ss.

On this 18th day of August, 2006, before me a Notary Public in and for the State of Iowa appeared Thomas G. Schellhardt who stated that he is the Vice President for Administration & Finance of the University of Northern Iowa and that the foregoing instrument was executed in his capacity as Vice President for Administration & Finance of the University of Northern Iowa by direction of the University of Northern Iowa and that it is the voluntary act and deed of the University of Northern Iowa.

\[Signature\]
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF POLK, ss

On this 21st day of November, 2006, before me a Notary Public in and for the said state, personally appeared Gary Steinke, to me personally known, who being by me duly sworn did say that he is Executive Director of the Board of Regents, State of Iowa and who was authorized to execute the foregoing instrument to which this acknowledgment is attached by vote of the Board of Regents, State of Iowa and acknowledged the execution of said instrument to be his voluntary act and deed and the voluntary act and deed of the Board of Regents, State of Iowa.

\[Signature\]
Notary Public in and for the State of Iowa