

Memorandum

To: City Council

Subject: Lincoln Park – Augustana Partnership

Date: February 15th, 2023



Background Information:

The Parks & Recreation Department has been working with Augustana College on a shared use agreement for the construction of 6 tennis courts at Lincoln Park and refurbishment of a nearby bathroom facility. The new facility will be located where the current tennis and basketball courts are located in Lincoln Park.

Augustana has completed construction on a new natatorium on their campus that has created a need for additional parking. The additional parking will be located where their current tennis courts are located, causing Augustana to relocate their tennis courts. Lincoln Park is adjacent to Augustana College and is an ideal location for new tennis courts that can be utilized by the college during their tennis seasons, and open to public use during the summer months. Augustana College will pay for the construction and maintenance of the tennis courts and bathrooms. The Parks Department will continue to maintain the park, parking lots, roads, landscaping, plumbing, electrical and sewer systems within the park.

We are proposing a 10-year agreement for this project. Augustana College will pay the City \$1 a year for 10 years. Augustana will have priority use during their tennis seasons from March 1st to May 20th and August 10th to October 31st. The facility will be open to the public from May 21st to August 9th. Note: The Parks Department will coordinate practice times with Augustana for Alleman High School tennis practice during Augustana's priority use times. This will be minimal.

This agreement will allow Augustana College to have a new tennis facility for their tennis seasons, and the community will be able to enjoy a great facility during the summer months at no cost to the City.

Agreement:

**SHARED USE AGREEMENT
AUGUSTANA COLLEGE AND THE CITY OF ROCK ISLAND**

THIS AGREEMENT is made and entered into as of _____, 2023, (the "Agreement") by and between AUGUSTANA COLLEGE ("Augustana") and the CITY OF ROCK ISLAND ("City");

WHEREAS, Augustana is a non-profit higher education institution located in Rock Island, Illinois;

WHEREAS, the City is a municipal corporation organized and existing under the laws of the State of Illinois;

WHEREAS, the City owns Lincoln Park, a 22.75 acre public park area located between 38th and 42nd Street and 9th and 11th Avenue in Rock Island ("Park");

WHEREAS, Augustana desires to construct in the Park, as its sole cost and expense, six tennis courts and renovate existing Park restroom facilities adjacent to the tennis courts as outlined in Exhibit A ("Tennis Facility");

WHEREAS, Augustana will maintain the Tennis Facility during the term of this Agreement, with such maintenance including the provision, upkeep and repair of the tennis courts within the Tennis Facility, and maintenance of the restroom facilities that are included in the Tennis Facility during any period that Augustana has exclusive use of the Tennis Facility;

WHEREAS, in exchange for the construction and maintenance of the Tennis Facility, Augustana would receive exclusive use of the Tennis Facility during certain time periods, and priority use during other time periods, as outlined in this Agreement;

WHEREAS, Augustana is aware that Alleman High School's tennis teams also desire to use the Tennis Facility and Augustana is agreeable to such use, provided the use is coordinated with Augustana's use of the Tennis Facility in accordance with the terms of this Agreement;

WHEREAS, the Tennis Facility would allow the City to offer recreational options and programming not currently available at the Park;

WHEREAS, the Tennis Facility would improve the overall appeal of the Park;

NOW, THEREFORE, Augustana and the City agree as follows:

1. **Tennis Facility**. Augustana shall, at its own cost and expense, construct six tennis courts and renovate existing bathrooms in the Park as outlined in Exhibit A. The Tennis Facility shall include six tennis courts, a parking area, light fixtures, and renovation of existing restroom facilities within the Tennis Facility.

2. **Exclusive & Priority Use.** The City shall provide Augustana with exclusive use of the Tennis Facility from March 1 – May 20, and August 10 to October 31 each year (collectively the “Exclusive Use Period”). During any Exclusive Use Period, Augustana shall:
- A. Have sole and exclusive access and use of the Tennis Facility during all regular Park hours.
 - B. Control and secure access to the Tennis Facility on a daily basis.
 - C. Include the Tennis Facility in the College’s general security surveillance area.

The restrooms contained within the Tennis Facility (“Facility Restrooms”) will be used exclusively by Augustana for the term of this Agreement. Augustana shall, during the Term of this Agreement, be solely responsible for securing and controlling access to the Facility Restrooms.

When outside of an Exclusive Use Period, the City shall provide Augustana with second priority use of the Tennis Facility, with City programming to have first priority use (“Second Priority Use Period”). During any Second Priority Use Period, Augustana shall inform the City of any desired use of the Tennis Facility to confirm its availability. During any Second Priority Use Period, the City shall control and secure access to the Tennis Facility on a daily basis, with the exception of the Facility Restroom. The City may request access to the Facility Restrooms for various events or programs offered by the City. During any such approved use of the Facility Restrooms, the City would be responsible for cleaning and maintaining the Facility Restroom.

During an Exclusive Use Period, the City may request the use of the Tennis Facility, and approval of any such request will be determined solely by Augustana. Augustana and the City expressly acknowledge and agree that the City will, from time to time, present proposed schedules to Augustana regarding use of the Tennis Facility by Alleman High School’s tennis teams, and Augustana agrees that its consent to such use shall not be unreasonably withheld, provided the proposed use does not conflict with Augustana’s planned use of the Tennis Facility during an Exclusive Use Period. Any request to lease the Tennis Facility to a third party during an Exclusive Use Period must be negotiated and approved by Augustana, with revenue for any such approved lease arrangement to be allocated to Augustana based on the extent to which the lease includes use during an Exclusive Use Period.

3. **Rent.** Augustana shall pay to the City an annual rental amount of One Dollar (\$1.00) per year for ten (ten) years for its use of the Tennis Facility, and during any Renewal Term. Other than this rent, the City shall not charge Augustana for its use of the Tennis Facility during the term of this Agreement, regardless of whether such use is exclusive or priority based.

4. **Term.** The initial term (“Term”) of this Agreement shall commence upon the date it is signed by both parties, and, unless terminated earlier as provided herein, shall expire ten (10) years from the date that the Tennis Facility is completed and available for use.

Augustana shall have the right to renew and extend this Agreement on an annual basis, for a total of ten (10) additional years from the expiration of the Term, by providing written notice of its intention to renew the Agreement to the City no later than 6 months prior to the end of the Term (“Renewal Term”).

In any Renewal Term, Augustana must provide written notice of its intention to renew the Agreement to the City no later than 3 months prior to the end of the Renewal Term.

5. **Maintenance of the Tennis Facility.** During the Term of this Agreement and any Renewal Terms, Augustana shall maintain the tennis courts within the Tennis Facility. This maintenance shall include providing, installing, maintaining, and removing nets and windscreens, annual cleaning of tennis court surface and court area, keeping the tennis courts in good order and repair, including maintaining the playing surfaces, fencing, and striping, and all other routine or normal maintenance and repair.

During the Term of this Agreement, Augustana shall provide all custodial and janitorial services and supplies for Facility Restrooms. The Facility Restrooms will be closed for public access outside of any Exclusive Use Period.

The City shall maintain all parking and driving areas in the Park, including those in the Tennis Facility.

6. **Operating Costs.** The City shall be responsible for the payment of the following operating costs of the Tennis Facility:

- A. Repair and keep in good working order all plumbing, electrical, and sewer systems in the Tennis Facility;
- B. All utilities including, without limitation, electricity and sewer services;
- C. All personnel costs deemed necessary or appropriate by the City when the Tennis Facility is used for City programming or open to the public;
- D. Landscaping services within the Tennis Facility and in the Park;
- E. Maintain all parking areas and driving surfaces within the Tennis Facility and in the Park;
- F. All insurance premiums specified in this Agreement.

7. **Insurance.**

- A. Augustana shall insure the Tennis Facility for full replacement cost (but not including Augustana's personal property).
- B. Augustana and the City shall each carry liability insurance to cover any claims arising out of any accident or other occurrence causing any injury and/or damage to any person or property on or about the Tennis Facility. Liability policies shall have limits of not less than \$5,000,000 for bodily injury per person and \$5,000,000 per occurrence. Each party shall name the other party as additional insureds on its liability policy.

8. **Indemnification.** Augustana agrees to defend, indemnify, and hold harmless the City from any and all claims, liabilities, damages, settlements, judgments, costs, and expenses, including reasonable attorney fees, arising from Augustana's use or maintenance of the Tennis Facility, or other acts which do not arise out of the City's activities or use of the Tennis Facility.

The City agrees to defend, indemnify, and hold harmless Augustana from any and all claims, liabilities, damages, settlements, judgments, costs, and expenses, including reasonable attorney fees, arising from

the City's use or maintenance of the Tennis Facility, or other acts which do not arise out of Augustana's activities or use of the Tennis Facility.

9. **Signage.** Augustana and the City will cooperate in the naming of the Tennis Facility. Augustana shall have the right to install signs bearing Augustana identification and logos in the Park, the exterior of the Tennis Facility, and within the Tennis Facility. Such signage shall reference the City and Augustana in a manner agreed upon by the parties. Augustana shall have the right to install signs within the Tennis Facility honoring donors to Augustana who have supported the Tennis Facility.

10. **Restrictions on Use.** The parties shall not use or permit the use of, the Tennis Facility for any purpose which would adversely affect the value or structure of the Tennis Facility. No party shall, at any time or times during the Agreement, conduct or permit any activities, programs, or practices on the premises which shall violate any federal or state constitutional, regulatory or statutory provisions, or which would change, jeopardize, or result in the loss of Augustana's status as a charitable organization under state or federal law.

11. **Several Obligations.** The obligations of Augustana and the City under this Agreement are separate obligations and are not joint obligations. This Agreement does not create a separate legal entity, joint venture, or partnership.

12. **Termination.** This Agreement may be terminated prior to the expiration of the Term as follows:

(a) By written mutual agreement of the parties;

(b) By the City in the event of Augustana's material breach of this Agreement. Termination shall be accomplished by giving Augustana written notice specifying the breach and stating that the Agreement will be terminated if the breach is not cured within thirty (30) days; provided, however, that for so long as a good faith effort is being made to cure any such material breach, the thirty (30) day time period in which to cure shall be extended. Failure to cure the breach within such time period shall result in termination of this Agreement.

(c) By Augustana in the event of the City's material breach of this Agreement. Termination shall be accomplished by giving the City written notice specifying the breach and stating that the Agreement will be terminated if the breach is not cured within thirty (30) days; provided, however, that for so long as a good faith effort is being made to cure any such material breach, the thirty (30) day time period in which to cure shall be extended. Failure to cure the breach within such time period shall result in termination of this Agreement.

In the event of termination, all parties shall be relieved of obligations or duties after the date of termination, but no party shall be relieved of its duties and obligations under this Agreement arising through the date of termination. Any additions or improvements made by Augustana and affixed to the Tennis Facility shall remain with the Tennis Facility.

In the event that the City unilaterally terminates this Agreement other than pursuant to Paragraph 12.b (an ultra vires action), the City shall pay Augustana College a percentage of the administrative and

construction costs incurred by Augustana (Costs Incurred) in constructing the Tennis Facility. In the event of a unilateral termination by the City in the first two years of this Agreement, the City shall pay Augustana 100% of Costs Incurred; a termination in the third year of this Agreement would require a payment by the City to Augustana of 95% of Costs Incurred, and a termination in each subsequent year would reduce Costs Incurred by ten (10) percent for each year. For example, a unilateral termination in the fifth year of this Agreement would require the City to pay Augustana 75% of Costs Incurred. A unilateral termination by the City in the ninth year or beyond of this Agreement would require a payment by the City to Augustana of 35% of Costs Incurred.

13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.
14. **Entire Agreement.** This Agreement contains the entire understanding between the parties and cannot be changed or terminated orally but only by an agreement in writing signed by all parties.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
16. **Severability.** If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
17. **Notices.** Any and all notices hereunder shall be in writing and shall be directed to the persons set forth below:

If to Augustana:

Kirk Anderson
Chief Financial Officer
Augustana College
639-38th Street
Rock Island, IL 61201
Email: Kirkanderson@augustana.edu

If to City:

John Gripp
Director of Parks & Recreation
4303 24th Street
Rock Island, IL 61201
309.732.7283
Email: gripp.john@rigov.org

Notices may be personally delivered or delivered by e-mail. Notice may also be given by mailing certified U.S. mail, return receipt requested, with postage prepaid. If notice is delivered personally or electronically, delivery date is date of receipt.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective officers, pursuant to authority granted and given as of the day and year first above written.

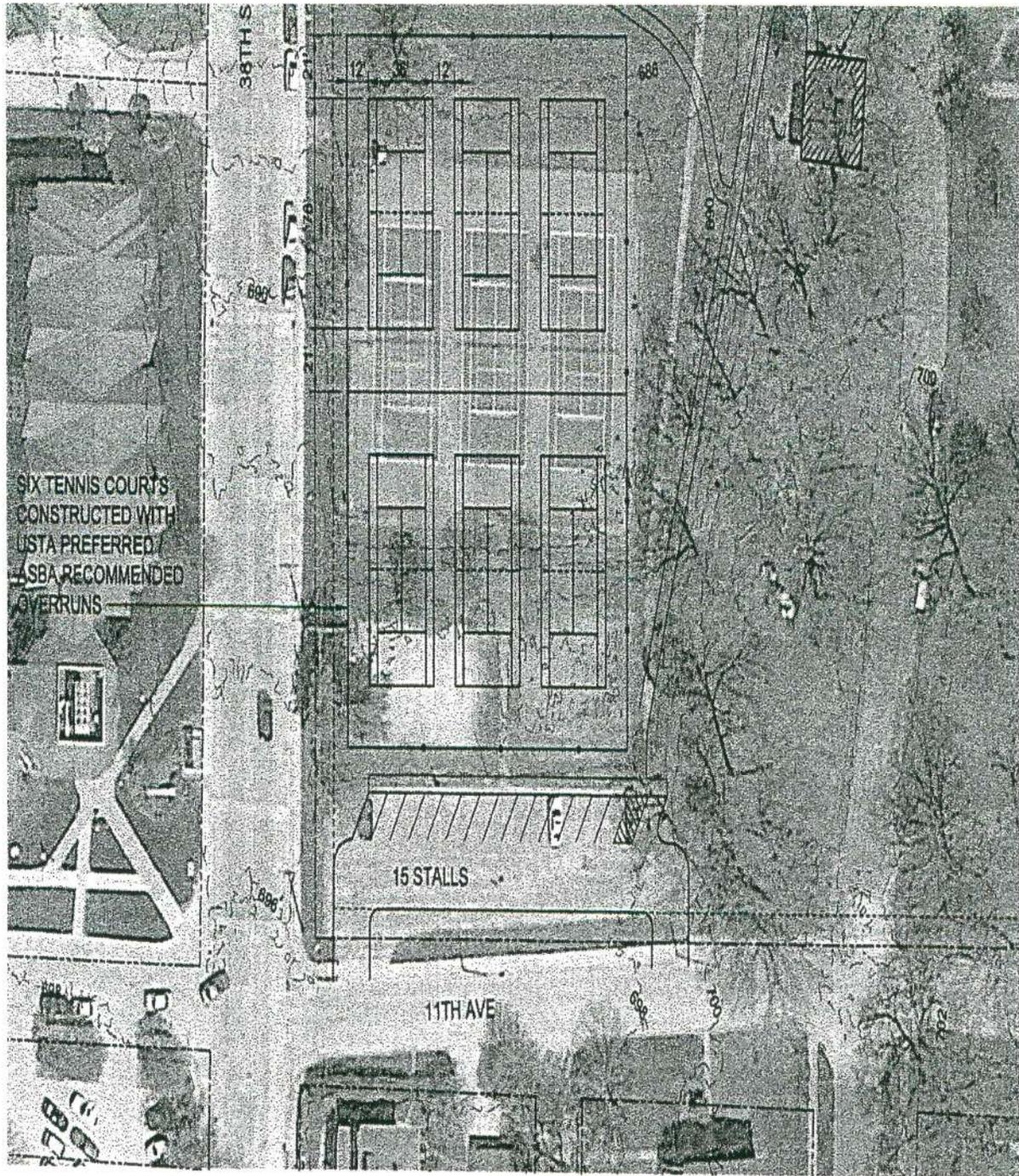
AUGUSTANA COLLEGE

CITY OF ROCK ISLAND, ILLINOIS

By: _____
Andrea K. Talentino, President

By: _____
John Gripp, Director of Parks & Recreation

EXHIBIT A
Depiction of Tennis Facility



Recommendation:

City Council approve the Shared Use Agreement with Augustana College for the construction of a tennis court facility and bathroom remodel in Lincoln Park.

Submitted by: John Gripp