

OLD CAF

ITEM # 33
DATE: 03-27-12**COUNCIL ACTION FORM**

SUBJECT: IOWA STATE UNIVERSITY REQUEST TO LEASE CITY LAND AND LOCATE GOLF MAINTENANCE FACILITY ON THE SOUTHWEST PORTION OF MOORE MEMORIAL PARK

BACKGROUND:

In **March 2011** Iowa State University officials submitted a request to locate an approximate 5,000 square foot golf maintenance facility at the southwest corner of Moore Memorial Park. This location is immediately adjacent to a tree planting memorial that serves to honor victims of 911 and is approximately 50 feet west of a fenced natural gas restricted area (See Lease Agreement, Exhibit 1).

ISU staff explained that the existing golf maintenance facility is located in the floodplain, and that excessive damage has occurred to their building multiple times over the past several years. Long-term, the University is considering construction of a new clubhouse and practice green on the south side of their driveway west of their existing clubhouse. A lack of available land outside the floodplain would make it difficult to also construct a golf maintenance building on ISU property.

In **April 2011** members of the Parks and Recreation Commission met at the site to assess the impact this building would have upon Moore Memorial Park. At that time, the Commission supported ISU's proposal, but directed staff to host a public meeting and to meet with members of Trees Forever (who had planted the 911 Tree Memorial) to gain reaction to ISU's proposal.

In **October 2011** approximately **350 letters** were mailed to property owners that live in the Northridge and The Green subdivisions. Additionally, a press release was sent to the media inviting the general public to attend this informational meeting.

In **November 2011** staff, in conjunction with ISU Facilities Planning and Management staff, hosted a public meeting that was attended by approximately **23 residents**.

Staff also met with members of Trees Forever. In their formal written response (Attachment A), they requested that ideally the building should be located on the University's golf course property. However, they acknowledge that if construction on ISU land is not possible, the 911 Memorial should be relocated to another location at Moore Memorial Park or at another City park.

In addition to the comments received at the November public meeting (Attachment B), staff received a dozen e-mail comments and one phone call (Attachment C). Of the 350

letters that were mailed out, this is a feedback response rate of approximately 10%. **As you will glean from these comments, there is support for the City to enter into an agreement with ISU. However, you will also see that a few residents are adamantly opposed to park land at Moore Memorial being used for this purpose.**

At their February 2012 meeting, the Parks and Recreation Commission unanimously voted:

- 1) To recommend the City to enter into a 50 year, no fee lease agreement with ISU to locate a building at this City location at Moore Memorial Park,
- 2) To direct the City staff to work with members of Trees Forever to re-develop new 911 Memorial plantings, at ISU's expense, at another acceptable location within the park system, and
- 3) To ask University officials to return to the Parks and Recreation Commission to afford them the opportunity to "review and react" to the building contextually and aesthetically. Members of the Commission expressed concern that the building needs to "honor the feel of the park". This step would occur during the schematic design phase of the project.

It should be noted that **prior** to the City accepting the Moore bequest it contained only the following two conditions:

- 1) Improvements to include roadways, vehicle parking, and recreational facilities with special emphasis on playground equipment for young children.
- 2) The park to be named "Moore Memorial Park" with permanent entrance signage to include that the "land was donated by Fern and Bertha Moore".

However, in order to enhance the City's ability to carry out the purposes expressed in the Moore bequest, and prior its acceptance, the City asked that the following conditions also be included. These conditions were legally agreed upon by the Moore's estate attorney and were included in the approved Resolution in 1987 as follows:

- 1) The City may **sell** a portion of the land and use the proceeds to develop the remaining land for park purposes.
- 2) The City may **exchange** a portion of the land for other land for park purposes.
- 3) The City may **lease** a portion of the land to another party for development and / or operation for park purposes.

- 4) The City may **develop, use and manage** said real estate with the same authority and discretion it has with regard to the development, use and management of park land in general.

This third condition was relied upon in 1988 when the City and ISU entered into a lease agreement for 40 acres of land at Moore Memorial Park, west of Squaw Creek. The University uses this parcel for research plots, paying the City \$3,000 annually in rent. Those funds are deposited into the “Moore Memorial Park Fund” and are periodically used to enhance this park.

ALTERNATIVES:

1. The City Council can accept the recommendations of the Park and Recreation Commission, thereby:
 - a. Approving the provisions reflected in the attached 50 year, no fee lease agreement with Iowa State University allowing ISU to construct an approximate 5,000 square foot golf maintenance facility on the southwest edge of Moore Memorial Park;
 - b. Directing staff to work with members of Trees Forever to re-develop, at ISU’s expense, the 911 Memorial Planting to an acceptable location within the park system;
 - c. Asking University officials to return to the Commission to afford them the opportunity to “review and react” to the building contextually and aesthetically; and
 - d. Setting April 10, 2012 as the date of the public hearing to consider the lease of a portion of Moore Memorial Park property to ISU.
2. The City Council can accept the three recommendations from the Parks and Recreation Commission reflected in Alternative #1, with the exception that an annual fee should be charged to ISU for the lease of a portion of Moore Memorial Park.

Rather than move ahead to set a public hearing date for this lease arrangement at this time, the next step associated with this alternative would be for the staff to meet with ISU staff, and then to return to Council with a recommended annual lease fee.

3. The City Council can decide to sell to the University a portion of Moore Memorial Park to the southwest, and use the proceeds to further develop the park.

Rather than move ahead to set a public hearing date at this time, the next step associated with this alternative would be for the staff to return to Council with a recommended sale price based on the Council's current policy for disposing of City property.

4. The City Council can deny the request to lease a portion of Moore Memorial Park to ISU.

MANAGER'S RECOMMENDED ACTION:

The City and Iowa State University have a long tradition of partnering for the community's benefit. The most recent example is ISU's granting to the City the right to lease a 50 acre parcel of land for the Furman Aquatic Center at no cost. Additionally, Brookside, Stuart Smith, and Franklin Parks are located on land leased free-of-charge from ISU to the City. Other examples of this cooperative spirit include sharing the responsibility to operate and fund capital investments at the Ames/ISU Ice Arena and for CyRide.

The approval of this request will represent yet another partnership with the University that will enhance the quality of life for Ames residents. **Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1, thereby accepting the three recommendations from the Parks and Recreation Commission, approving the provisions of the proposed lease agreement, and setting April 10, 2012 as the date of hearing for the proposed lease of land to ISU.**

The City Council, however, should also remember that a relevant condition included in the Council resolution when the park property was accepted in 1987 allows the City to lease a portion of the land to another party for development and/or operation for park purposes. Staff believes that this condition is being satisfied because the proposed contract affords the City the opportunity to store large equipment and supplies on the leased land. The equipment stored at this site could be used to mow the turf and remove snow on the trails at Moore Memorial Park and numerous other parks located in central and west Ames. This is advantageous as it would significantly reduce travel time and fuel usage for staff going to and from the existing Park Maintenance Shop, which is located on East 13th Street. Although the likelihood of a legal challenge to this proposed no-cost lease to ISU is small, one could arise and, therefore, the City Council should be made aware of that possible risk if an agreement is approved.

The City Council should also take note that the proposed agreement mirrors the contractual provisions currently in place with ISU for the lease of the land on which the Furman Aquatics Center is situated.

Attachment A

TREES FOREVER RESPONSE

“Our first option, which is strongly preferred, is that the building be built elsewhere. It appears that the building could be built directly east of the cart storage building. This site would not affect the ATF memorial planting or the view from Moore Memorial Park of the golf course.

“Our second option is that the building be built as proposed and then we would work with the city and ISU and a landscape architect to either replant the existing trees in a different location in a city park or plant new trees in the different location. We recognize the importance of the City of Ames and ISU working together and we want to continue to foster this amicable relationship.”

Sincerely, Members of Ames Trees Forever
Dave Brotherson
Dianne Brotherson
Pam Helfer
Ginny Huntington
Bill LaGrange
Bob Schumer
Jan Thompson

ATTACHMENT B

Public Meeting Comments / Questions and Staff Responses November 2, 2011

(Approximately 23 people attended. The public's input is in bold with staff responses indented)

- **Can you hide the building with additional trees being planted?**
--Yes, this is only a conceptual drawing, additional trees can be planted
- **What other alternate locations did ISU consider?**
--Around the perimeter, but the goal was to stay away from private property owners and to stay out of the floodplain
- **What are you going to do about the 911 Memorial? It appears that two trees are very close to the proposed building.**
--Meet with members of Trees Forever to gain their reaction and input
- **What buildings would be removed at the existing maintenance site?**
--The trailers and building would be removed
--Employee parking would remain
- **What University vehicles will be at this site?**
--Only golf course vehicles and equipment on the south side of the building
--No additional Facilities Planning and Management vehicles would be allowed
- **The building would obstruct the open view from the walking trail to the golf course**
--It would also obstruct the view if it was located on the south, versus north side of the driveway
- **The 911 Memorial trees will eventually obstruct this view too**
- **Does the building include an office and restroom? If so, could park users use the restroom?**
--Yes, it will include an office and restroom
--No, the general public will not be allowed to use it
- **Will any equipment, supplies be left outside the building?**
--During the work day, equipment and vehicles will be allowed on the south side of the proposed building
--Nothing, at anytime, can be on the west, north, or east sides. This will be assured by being included in the Agreement between the City and ISU
- **What type of activities will go on inside the building?**
--Materials, supplies, equipment storage and repair
--Staff meetings and training
- **Where will golf course employee's park?**
--At the existing location

- **Aesthetically this looks good, but you must consider the impact on the 911 Memorial....it is going to be a problem?**
 - We agree and that is why we will be meeting with members of Trees Forever following this meeting
- **Would anyone stay overnight at this building?**
 - No
- **Will anything be stored outside the building?**
 - Only during the day on the south side. The Agreement will assure nothing is ever on the other three sides
- **You talked about the City and ISU cooperation over the years. I think partnering only works when the implication to the other party is “neutral”. This is totally negative to the park.**
- **We (golf course patron) felt that way when the City put 13th Street through the golf course too in the mid-1980s**
- **What does the 911 Memorial actually consist of?**
 - Trees Forever responded 2 trees, a plaque and we believe the 5 pine trees but we need to check
- **People need to remember that the pine trees will eventually screen the view from the trail to the south looking into the golf course**
- **I can see the golf course from my house and I’ll be able to see this building too...yet, I strongly support it at this location. If it is possible to slide it a bit to the south to help out the 911 Memorial planting that would be good.**
- **I bet the Moore family would have hoped this area could stay a park**
- **I totally support this proposal**
- **I want to present a great idea....ISU has land on the west side of the golf course....the Ames Lab....the Y grounds are over there too. You can locate this building over there**
 - We will review this suggestion
- **Who owns the land west of Squaw Creek?**
 - ISU
 - YMCA
 - City owns 40 acres of land that has been leased to ISU since 1988
- **Concern was expressed that the building would obstruct the view from the trail to the golf course and recommended locating it more to east (within the park) or on the south side of ISU’s driveway. The building should look more like the other buildings in the park “farm like” and that the north side of the facility could have more landscaping so it would be more attractive to walkers.**
 - It would be difficult to move the structure to the east due to underground utilities
 - Moving it on the south side to ISU land would be a challenge due to a lack of space outside the floodplain
 - Additional landscaping will be considered, and we will be meeting with Trees Forever

Attachment C

Public Comments

(13 e-mails and 1 phone call were received)

Tom Barta:

My townhouse property at 2882 Greensboro Circle backs up to Moore Park and I walk my dog every day past the proposed site of the new golf course maintenance building. My initial reaction to the proposed site is that the golf course has plenty of ground above the flood plain so why is it necessary to borrow land from the city? I don't think they should even ask. The presence of an ugly maintenance building at the proposed location would spoil a nice view from the park. Thanks.

Janet Brimeyer:

Rick and I walk through Moore Memorial Park on a regular basis. We have seen the location of the stakes for the golf maintenance facility. We have no problem with ISU building the maintenance facility in the proposed location. One concern is for the evergreens located just to the north of the stakes - we hope that they can be preserved. This location is also a prime location for cross country skiers to access the golf course. It looks like there will be still be room on either side of the building for access to the course. Other than those concerns we are in favor of the proposal. We will not be attending the meeting and wanted you to know our thoughts since we are frequent users of the Moore park paths.

Richard Honzatko:

I am a frequent user of Moore Memorial Park. The proposed structure does not interfere with my use of the park, nor do I have objections to the proposal on grounds of aesthetics. Has anyone considered a façade for the new structure that matches the nearby barn/silo?

Bruce Janke:

As a 20-yr resident of Northridge subdivision who walks in Moore Park daily, sometimes twice a day, an ISU faculty member and an avid though not particularly skilled golfer, I am firmly opposed to this proposal. I doubt that providing a space for the golf course maintenance equipment was on the list of desired uses of that land when the donors decided to donate it to the city. Moore Park is a beautiful place, one of the best natural open-space parks in the city. When we first moved in, we had young children and I could not understand why some of the space was not used for creating ball fields or soccer fields. I was told that the donors of the land intended that it always be kept as a natural space. Now I appreciate the openness of the grassland as well as the trees. It was bad enough when the natural gas facility was put in place on the lower flat area several years ago (couldn't we at least screen it off with bushes or at least prairie grass between the fence and the walkway). The location for this shed further adds to an unsightly southern edge to the park, encroaches on the open area and blocks the best vista toward the golf course.

I believe ISU could come up with a different plan using the property already incorporated into the course. Having seen the flooding at close hand, I understand the need, but I think that they just looked at that nice flat open space next door and decided to ask if they could use it. My response would be: "No, you can't. You have plenty of space. Figure it out" To be sure, the land drops away from the road, but the facility could probably be placed next to the golf cart shed, maybe even attached at right angles to the west end, by either building up or digging out the foundation soil. Shorten the 1st tee box or move it south a bit. Granted, it would be more expensive than building a pole barn on a flat space. The course itself is well-maintained, but the university never seems to have put much into the buildings on the course. The clubhouse is an embarrassment for such a quality golf course. There is never money for upkeep (operations and maintenance) for any university buildings, and the golf course will likely continue to be at the bottom of the list. The fact that this is to be a maintenance building is a concern. Such buildings attract assorted paraphernalia and vehicles that get left outside, either for convenience or because there

is no room inside. Look at all the assorted pieces of equipment and vehicles in the current maintenance yard and ask if it is desirable to have that moving into the park.

Moore Park is a heavily used but well-maintained park. It affords people an unusually accessible and close-at-hand opportunity to take a deep breath and appreciate fairly wide-open spaces. This facility will detract from that status and condition. Thank you for listening to my lament.

Ann Rudi:

Norman and I were very pleased to be notified of the proposed leasing of land in Moore Park for the construction of a golf maintenance facility for Veenker. As residents of the Green 5th Homeowners Association, located at the southwest corner of Moore Park, we were particularly happy to be apprised of the impending changes, as we were never notified prior to ISU's construction of the "Cyclone Golf Performance Facility," built just south of our property a few years ago.

Almost all of our Association members avail themselves of the Park facilities on a regular basis, particularly as a walking environment. We were sorry not to have attended the meeting last evening, but probably the rainy, cool weather led to our forgetfulness!! After having studied the maps online, and seeing the markers on the property, we feel the construction is in no way detrimental to Moore Park. The current structures just to the south have already been absorbed into the Park's landscape, and it is likely the new construction will do so as well, particularly since it is an interior project.

We certainly empathize with the rationale of the move, after seeing the recurring flooding and damage to Veenker through our 31 years of proximity to the course. I can so well remember John Newton commenting after another of our "500-year-floods" that he would be sending out his resume but he had lost it in the floods!

Again, many thanks for the update, and we look forward to hearing the sighs of relief from Veenker when all is done.

George Servoy (telephone call):

ISU is not looking toward the future; this is a "terrible idea". The structure would block a lovely view of the golf course from the walking trail.

Ron Smith, 2209 Pinehurst Drive

I was present at the November 2, 2011 explanation of Veenker's suggestion of annexing part of Moore Park for a maintenance facility. I commend you for your very informative and pleasant presentation. I understand ISU's reasoning - to move their facility out of the flood plain, and also the convenience of locating it near the course "command center". My chief objection to this plan is that I do not think the Moore sisters wished to have any annexation of the parkland - this is not in the spirit of their gift.

Please examine the legal document that deeded the land to the city of Ames, and I would surmise (I haven't seen the document...) that their gift was stipulated for use as a park for the enjoyment of the people of Ames. And many, many people (and lots of dogs) do enjoy the park. I also believe that the Veenker plan encroaches much too close to the 9/11 tree memorial. I believe that ISU has architects and land use planners that can find a solution that places their proposed facility on Veenker property.

Steve Sornsen:

I support the efforts to move the Veenker golf maintenance shed to the city owned park. Thank you.

Don Sprague, Ames resident and Veenker golfer:

I think it's a good idea to let Veenker put its facility on the space indicated. I like to see cooperation between the City of Ames and the University. I'm in favor of this. I do not think it necessary for the City to be compensated.

Virginia Stafford, 2872 Greensboro Circle

I was not able to attend your meeting at Veenker to discuss a proposed lease of Moore Park land to Veenker for construction of a maintenance facility. I am opposed to leasing Moore Park land to Veenker. I have lived in the neighborhood since Moore Park was first developed, first in the Green Fifth addition, and

for the past 15 years in the Arbor on the Green addition. Moore Park is a treasure in the Ames Park system. It has developed with a clear site plan involving a subtle farm theme which would have pleased the Moore's. Except for the tower which was not kindly used (but is now demolished) each addition has contributed to a park with year round use, thanks to the fully paved loop trail. It is used by "walkers, strollers, dog walkers, runners, and cyclists" and bird watchers, deer spotters, and many groups. There are memorial trees, including the grove close to the southern path. It would be nice to NOT have the utility area on park land, but with plantings it can become less visible.

Moore Park has a view over the golf course to the rooftops of ISU. Veenker currently has a maintenance facility which includes a building, with outdoor storage of materials and maintenance machines during the season, and parking for maintenance staff members. This is obviously needed by a golf course, and is subject to flooding. One plan which might be considered by Veenker would be raising the ground level of the present facility site. Rebuilding would be possible, perhaps with storage and parking in an area less visible from the Veenker Center and golfers. If that happens, I would hope Veenker would use a dark colored roof, and replace the roof on the golf cart storage shed. Dark colored roofs improve the long range view.

Karen Thompson:

I think the proposal is practical and the Moore Park site looks well-designed.

Jan Walter, 2860 Greensboro Circle:

After looking at the website and the drawings of the project, I would see no problem with it. It appears from the drawings that it is placed in an area that should not be a problem for people. I will walk over and look at the posts indicating the site. Avoiding the flooding seems very important.

Linda and Bernie White:

I just looked at the sketches of the new building for the maintenance facility on line. The renderings and the maps are very good. The location seems very reasonable. However, the building will seem quite large I am sure. And so to fit with the ambience of this magnificent park, let's see if the design can be more in keeping with the surrounding buildings of the Moore farm. The barn and silo should be a great reference for the architects to work with. Since the building proposed is about the shape and size of a barn, I bet we can achieve a structure that will complement those salvaged from the farm and with the great barn like shelter at the top of the hill. I have surveyed other Moore park users and they agree with the need to have the structure be contextual with the existing structures. We are very sorry that we will be on our way to Milwaukee for a meeting at the very time of the meeting. I hope you will represent our views. Any questions, we are here until Wed morning. Thanks for having the meeting and know we support moving the facility to the new location.

Firth K. Whitehouse

I was unable to make it to the meeting last week about the proposed relocation of the Maintenance Facility at Veenker; I hope the meeting went well. It is a good idea to get that building out of low ground and to a new location. But I do have a question/concern:

When you look at Image 4 (aerial view), you can see that the existing building and proposed building are roughly the same size. But the existing Storage Yard appears to be much larger than the proposed yard size. How are they going to be able to park all of those vehicles and keep the site neat and tidy (i.e. put away all their toys)? I am not against this move at all; I just want to make sure that it does not become an eyesore for our beautiful park facility. Thanks.

LEASE AGREEMENT

CITY OF AMES TO THE BOARD OF REGENTS, STATE OF IOWA ACTING FOR IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY (Veenker Golf Course Maintenance Building in Moore Memorial Park)

THIS LEASE AGREEMENT made this ____ day of _____, 2012, between the City of Ames, Iowa, hereinafter called "City", and the Board of Regents, State of Iowa acting for the Iowa State University of Science and Technology, hereinafter called "University",

WITNESSETH THAT:

WHEREAS, the University owns and operates a eighteen-hole golf course adjacent to the City's Moore Memorial Park; and,

WHEREAS, this golf course is utilized by the citizens of Ames as well as the students, faculty, and staff of the University; and,

WHEREAS, the current location of the maintenance building for this golf course is in an area of the flood plain that continually floods thus causing the closure of the course and the discontinuation of play for Ames residents; and,

WHEREAS, relocating the golf maintenance building to higher ground on Moore Memorial Park may result in more playable hours for Ames residents; and

WHEREAS, the relocated golf maintenance building will house City equipment and supplies that serve the operational needs of Moore Memorial Park;

NOW, THEREFORE, in consideration of the premises, the City does hereby agree to lease to the University a site consisting of approximately 17,000 square feet (land area) which includes a building of approximately 5,000 square feet located generally in the southwest corner

of Moore Memorial Park in Story County, Iowa, and more particularly described in the attached Exhibit I.

1. The term of this lease agreement shall be fifty (50) years, commencing on the 1st day of May, 2012, and ending at midnight on the 31st day of April, 2062, unless earlier terminated by mutual agreement of the parties or as set forth in Paragraph 10 of this Lease Agreement. In recognition that the University might want to make additional improvements on the leased site in the future that will require time to depreciate, it is agreed that the University may request, and the City may grant, extensions to this Lease Agreement term at any time.

2. There shall be no money payments due or owing the City under this Lease Agreement. The full, complete, and satisfactory consideration for this Lease Agreement shall be and is the promise hereby made by the University to:

a. Maintain the leased premises at the University's expense in at least the same condition as the surrounding park property.

b. If a basement is constructed as part of the golf maintenance building, the public will be allowed access to this portion of the building as a shelter during City of Ames-declared severe weather warnings.

c. Assist with Moore Memorial Park operations by allowing the Ames Parks and Recreation Department to store park maintenance equipment and supplies in the golf maintenance building.

3. Said premises shall be used by the University solely as a golf maintenance building for Veenker Golf Course equipment and vehicles, and storage for tools, equipment, and other items necessary for the operation of Veenker Golf Course and the maintenance of its grounds. However, the outdoor storage of equipment, vehicles, tools, and other items associated with the above use shall not be permitted on the leased area, unless agreed upon in advance by the City and the University in writing.

4. The University is authorized to make all of the improvements, at its expense, on the leased site as generally shown on the conceptual plan attached as Exhibit II.

5. Following the completion of the initial construction project as described in Paragraph 4, the University may also make other improvements on the site that are consistent with the purposes set forth in Paragraph 3 of this lease agreement after obtaining the City's approval. The approval of the City for additional improvements shall not be unreasonably withheld.

6. The University may grade said real estate and install, at its expense, telephone lines and utilities necessary for the development of the golf maintenance building. In addition, the University shall pay all charges for the use of utilities, telephone lines, and services furnished to the leased premises.

7. The University shall, after taking possession of said premises and until the termination of this Lease Agreement, care for and maintain said premises in a reasonably safe and serviceable condition consistent with other University facilities. The University will not

knowingly permit or allow the leased site to be damaged or depreciated in value by any dumping of refuse, discharge of hazardous waste or any act of the University, its agents or employees. The University shall do what is reasonably necessary to control soil erosion resulting from the University's use of the leased site, including maintenance and preservation of existing watercourses and waterways. The University agrees to comply with all applicable laws, regulations, and ordinances. The University agrees that it will pay for or cause to be paid all costs for work done by it or caused to be done by it on the leased premises, and the University will keep the leased premises free and clear of all mechanic's liens or claims relating to the University's public improvements and other liens on account of work done for the University. The University agrees that it shall be primarily responsible for providing emergency services on the leased site. However, nothing herein shall contravene any existing 28E Agreements between the parties.

8. The University does hereby covenant and agree to indemnify and hold harmless the City, its officers and employees, against any loss or liability whatsoever, including reasonable attorney's fees, pertaining to any and all claims by any and all persons, resulting from or arising out of the University's construction, location, operation and maintenance of said leased area.

9. At the end of the term of the Lease Agreement, the University will remove all facilities, equipment, improvements, and personal property from the leased premises and return the leased premises to a safe, open green space, unless otherwise agreed to in writing by the parties. The Parties agree to meet and determine a reasonable schedule for the removal of facilities and return of the premises to open green space. However, if the University makes a request in writing to extend the term of the Lease Agreement for purposes consistent with Paragraph 3, and such request is made in the period beginning three years prior and ending no later than one year prior to the end of the fifty year term of the Lease Agreement (or any mutually agreed modification of the term), and the City denies the request, then the obligation to remove all improvements will be based on mutually satisfactory terms agreed to by the parties in writing.

Upon termination of the lease the University agrees to remove any hazardous materials that are deposited by the University or deposited as a result of University sponsored activities on the site during the term of the agreement.

10. This Lease Agreement is granted and all rights hereunder shall endure except that if one or more of the following events occurs the City may terminate the Lease Agreement following the procedures indicated in this Paragraph:

a. The University fails to begin construction of the improvements described in Paragraph 4 within two years from the commencement of this Lease Agreement.

b. The University uses the leased premises for purposes other than stated in Paragraph 3.

c. The University breaches a material term of this Lease Agreement and such breach is serious and goes to the essence of the transaction. A breach is serious and goes against the essence of the transaction only in the following cases:

i. The University has breached a term of this Lease Agreement and such breach has caused or is reasonably expected to cause damages in excess of

\$500,000, such amount to be adjusted annually each July 1 for inflation using the Department of Labor's Consumer Price Index-Urban [CPI-U, All Items, All City Average, 1982-84-100] issued in the preceding month;

ii. The University has repeatedly breached a material term of this Lease Agreement within any two-year period, or the University has engaged in a pattern of material breaches of this Lease Agreement; provided, however, this clause may only apply where the University's breaches indicate deliberate indifference to the terms of this Lease Agreement.

For termination pursuant to Subparagraph 10(a), the City shall give at least 60 days advance written notice, and termination shall be automatic at the end of the 60 day notice period. For termination pursuant to Subparagraphs 10(b) and 10(c), the City shall notify the University in writing of its intent to terminate and the nature of the event or breach the City believes has occurred and shall provide the University with a reasonable period commensurate with the nature of the event or breach to cure such event or breach. If the University fails to cure such event or breach by the end of the cure period, the City shall give at least 30 days advance written notice, and termination shall be automatic at the end of the 30 day notice period.

11. This Lease Agreement may not be assigned by the University without the advance, written consent of the City of Ames.

IN WITNESS THEREOF the parties hereto have caused this lease to be signed by their duly authorized representatives as of the date first above written.

**IOWA STATE UNIVERSITY OF
SCIENCE AND TECHNOLOGY**

By: _____
Warren Madden
Vice President for Business and Finance

BOARD OF REGENTS, STATE OF IOWA

By: _____
Robert Donley
Executive Director

CITY OF AMES, IOWA

By: _____
Ann H. Campbell
Mayor

By: _____
Diane R. Voss
City Clerk

Exhibit I



Exhibit IIA



Exhibit IIB

