

COUNCIL ACTION FORM

**SUBJECT: LEASE AGREEMENT FOR VEENKER GOLF COURSE MAINTENANCE
BUILDING IN MOORE MEMORIAL PARK**

BACKGROUND:

The Board of Regents of Iowa State University entered into a lease agreement with the City of Ames to allow for the construction of a maintenance building on City of Ames property in Moore Memorial Park. The lease does not specify the permitting process that is required for this site, but it generally states that the *University agrees to comply with all applicable laws, regulations, and ordinances*, please see the attached lease that was recorded on July 19, 2012.

The City staff understands that Iowa State University construction projects which occur on land owned by the State are not subject to the requirements of the City of Ames Municipal Code, however the Veenker Golf Course maintenance building is located on City of Ames land that is leased to Iowa State University. The City Attorney was asked to clarify who is responsible for reviewing the project and determining compliance with applicable codes, as well as the responsibility for inspection of the building. The Ames City Attorney responded that the maintenance building would not be subject to the City of Ames building codes and inspections, rather the State of Iowa would conduct the review and issue the applicable permits.

As the Ames City Attorney researched the applicable party responsible for code review and inspections, it was noticed that the lease fully described the approved uses that were to occur within the maintenance building, as follows:

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...

During the review process the Ames City Attorney determined that there are uses within the maintenance building that are not specified within the lease. The two offices and break room which are identified on the attached main level floor plan, are not included in the lease agreement. Although these rooms do not change the occupancy of the building, the City Attorney has stated that she would not advise the inclusion of the office and break room spaces because they are clearly outside of the terms of the lease.

Ames City staff has been in contact with Iowa State University to discuss options to accurately represent the uses that are proposed for the maintenance building and future uses that may occur.

ALTERNATIVES:

1. Direct staff to draft an amended lease document to clarify the proposed uses within the maintenance building and future ancillary uses.
2. Direct staff to allow the uses as proposed without amending the existing lease.
3. Terminate the lease and do not allow office and/or break room uses within the maintenance building.

MANAGER'S RECOMMENDED ACTION:

The office and break room uses are secondary to the primary maintenance usage of this building. The oversight of not including these uses within the lease document can be remedied, therefore it is the recommendation of the City Manager that the City Council adopt Alternative No. 1.

This alternative will direct the City Attorney to draft an amended lease agreement to clarify the proposed uses within the maintenance building and future ancillary uses, thereby allowing continued construction of the maintenance building as proposed.

July 18, 2013

The Honorable Ann Campbell
Mayor, City of Ames

City Council Members

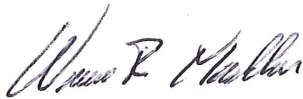
515 Clark Avenue
Ames, IA 50010

**RE: Proposed Amendment - Veenker Golf Course Maintenance Building
Lease Agreement**

Dear Mayor Campbell and City Council Members:

The University supports the proposed amendment to the Veenker Golf Course Maintenance Building lease agreement. The new maintenance facility will replace existing facilities currently located in the flood plain. Activities at the facility will not differ from current activities. The new building will include offices, break room space, bathrooms and a shower, all of which existed in the old building at one point prior to flood damages.

Very truly yours,



Warren R. Madden
Senior Vice President for Business and Finance

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Instrument: 2012- 00007970
Date: Jul 19, 2012 10:47:55A
Rec Fee: 40.00 E-Com Fee: 1.00
Aud Fee: .00 Trans Tax: .00
Rec Management Fee: 1.00
Non-Standard Page Fee: .00
Filed for record in Story County, Iowa
Susan L. Vande Kamp, County Recorder

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER
Prepared by: Steven L. Schainker, City Manager, 515 Clark, Ames, Iowa 50010 (Phone: 515-239-5101)
Return to: Ames City Clerk, P. O. Box 811, Ames, Iowa 50010-0811

(enu)

**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 6 day of June, 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 March, 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 R. Madden
Warren Madden
Vice President for Business and Finance

BOARD OF REGENTS, STATE OF IOWA

By: Robert Donley
Robert Donley
Executive Director

CITY OF AMES, IOWA

By: Ann H. Campbell
Ann H. Campbell
Mayor

By: Diane R. Voss
Diane R. Voss
City Clerk

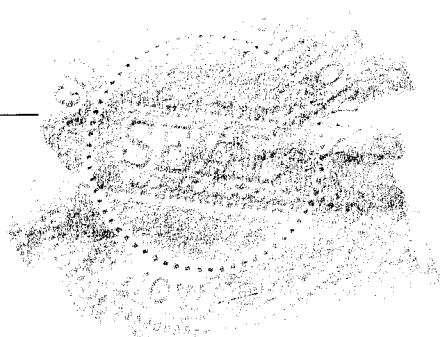


Exhibit I

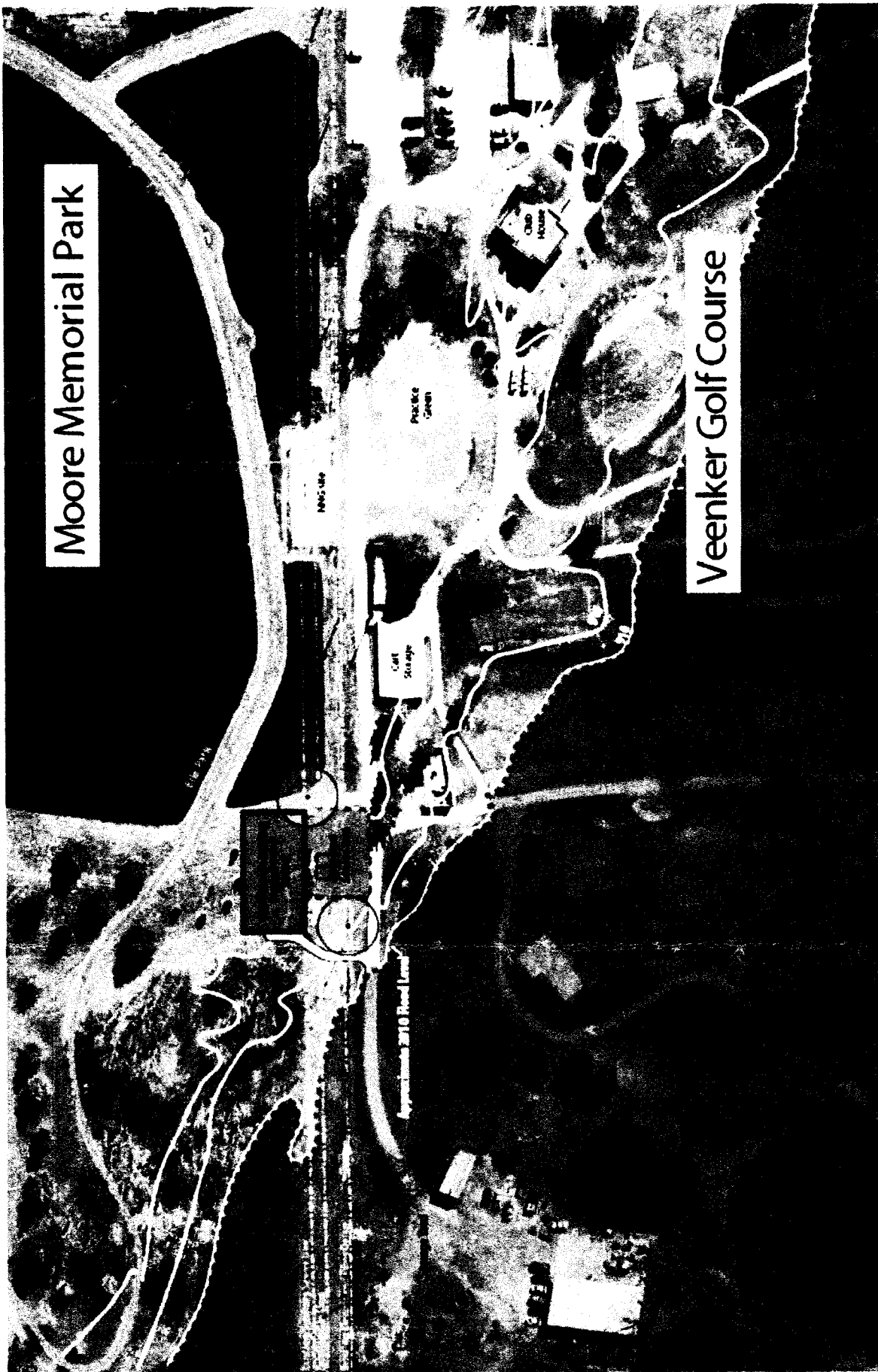


Exhibit II





Exhibit IIB



