

**COUNCIL ACTION FORM**

**SUBJECT: PURCHASE OF 201 S. FRANKLIN AVENUE (AKA) FRANKLIN PARK  
IN CONNECTION WITH THE CITY'S CDBG STATE AVENUE  
NEIGHBORHOOD REVITALIZATION STRATEGY AREA (NRSA).**

**BACKGROUND:**

As part of City's recently approved Community Development Block Grant (CDBG) State Avenue Neighborhood Revitalization Strategy Area (NRSA) Program, an Acquisition of Land for Public Facilities and Improvements program was created. The goal of this program is to acquire existing land in the area to maintain or relocate a neighborhood park for recreational and open green space purposes.

This past year several city park leases with Iowa State University were due for renewal. As part the renewal negotiations, Franklin Park located at 201 S. Franklin Avenue was only given a five-year lease with an option to purchase the the land prior to the end of the lease period or the University would dispose of the land as surplus property.

An important element of the NRSA is access to recreational and open green spaces for families and households in the neighborhood. The timing of the park lease renewal and the approval of the NRSA designation was ideal to be able to take advantage of acquiring the site to further the goal of the NRSA.

City and University staff have been working together to determine a fair price for the purchase of the park. Both the City and the University had independent appraisals conducted that determined the fair market value to be between \$160,000 (University) and \$172,000 (City of Ames) and, therefore, the agreed upon purchase price is \$166,000. The funding will come from the CDBG 2016-17 State Avenue NRSA budget.

Attached for your review and approval is a copy of the proposed real estate purchase and sales contract with Iowa State University that outlines the terms and conditions for the purchase and sale of the property. The anticipated closing date would occur after the Board of Regent's approval at their February meeting.

**ALTERNATIVES:**

1. The City Council can approve a resolution authorizing the Mayor to sign the real estate purchase and sales contract with Iowa State University to purchase the property located at 201 S. Franklin Avenue (aka) Franklin Park in connection with the City's 2016-17 CDBG State Avenue NRSA Program.

2. The City Council can deny approval authorizing the Mayor to sign the real estate purchase and sales contract with Iowa State University to purchase the property located at 201 S. Franklin Avenue (aka) Franklin Park in connection with the City's 2016-17 CDBG State Avenue NRSA Program.

**CITY MANAGER'S RECOMMENDED ACTION:**

The purchase of 201 S. Franklin Avenue (aka) Franklin Park will accomplish the following two major goals for the City: 1) taking advantage of a lease renewal option to keep a neighborhood park that been in the area for over 50 years; 2) meet one of the priority goals outlined in our recently approved State Avenue Neighborhood Revitalization Strategy Area (NRSA) of acquiring existing land in the area to maintain or relocate a neighborhood park for recreational and open green space purposes.

**Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.** This alternative will approve a resolution authorizing the Mayor to sign the real estate purchase and sales contract with Iowa State University to purchase the property located at 201 S. Franklin Avenue (aka) Franklin Park in connection with the City's 2016-17 CDBG State Avenue NRSA Program. Once the purchase and sales contract is signed, the University will then be required to submit the agreement to the counsel for the Board of Regents and Attorney General's Office for their review and then to the Board of Regents for their approval in late February.

## **REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Real Estate Purchase and Sale Agreement (the "Agreement") is entered into as of the 23rd day of February, 2017 (the "Effective Date") by and between The Board of Regents, State of Iowa acting for and on behalf of Iowa State University of Science and Technology ("Seller") and the City of Ames, Iowa ("Buyer").

### **PRELIMINARY STATEMENT**

Seller is the legal owner for the use and benefit of Iowa State University of Science and Technology of approximately four acres of real property located in Story County, Iowa including, without limitation, all improvements, fixtures, easements, and licenses benefiting such real property ("the Property"), the legal description for which is set forth in Exhibit A to this Agreement. Seller desires to sell the Property to Buyer, and Buyer desires to buy the Property from Seller.

### **TERMS AND CONDITIONS**

#### **1. Sale and Conveyance of Property**

(a) **Sale of Property.** Seller shall on the Closing Date (as defined in Section 4 of this Agreement) sell to Buyer, and Buyer shall buy from Seller, the Property upon the terms and conditions set forth in this Agreement.

(b) **Purchase Price.** The price for the Property is \$166,000.00, subject to adjustment for prorations, debits, and credits provided in this Agreement ("the Purchase Price"). At closing, Buyer shall pay the Purchase Price to Seller by check.

(c) **Conveyance.** At closing, Seller shall obtain and deliver to Buyer a State Land Office Patent with an attached Certificate in Support of Patent Request, substantially in the form set forth in Exhibit B, conveying fee simple title to the Property, free and clear of all liens, restrictions, encumbrances, and easements, except for any covenants, reservations, restrictions, and easements of record that have been waived or not objected to by Buyer pursuant to Section 2(b) of this Agreement (the "Permitted Encumbrances").

#### **2. Abstract of Title**

(a) **Abstract.** Seller shall obtain and deliver to Buyer, at Seller's sole cost and expense, an abstract of title to the Property for Buyer's examination. The abstract shall become the property of Buyer at closing.

(b) **Buyer's Objections to Title.** Buyer shall have thirty days after receipt of the abstract within which to notify Seller of any conditions disclosed in the abstract that are objectionable to Buyer. Following such notice, Seller shall: (i) promptly and

diligently undertake such steps as are reasonably necessary to cure, satisfy, or remove such conditions; or (ii) refuse to cure any or all of such objectionable conditions by written notice to Buyer within fourteen days after receipt of Buyer's objections. In the event Seller shall fail to correct, satisfy, or resolve any condition to the reasonable satisfaction of Buyer within thirty days from the date of Buyer's delivery of written objections to Seller or refuse to cure such objectionable conditions, Buyer shall have the right to terminate this Agreement within fifteen days of the expiration of Seller's cure period or within fifteen days after receipt of written notice from Seller of its refusal to cure such objectionable conditions.

(c) **New Liens or Conditions.** So long as this Agreement is in effect, Seller shall not transfer, convey, or otherwise dispose of any right, title, or interest in the Property without the prior written consent of Buyer and shall not consent to, or allow to exist, any new lien, encumbrance, condition, reservation, easement, lease, restriction, or covenant against the Property, other than special assessments which are due but not yet delinquent and ordinances of controlling governmental authorities.

### 3. **Inspections**

(a) **Termination for Unsuitability.** If Buyer, in Buyer's sole discretion, determines the Property is unsuitable, Buyer may terminate this Agreement by giving written notice to Seller within the Inspection Period.

### 4. **Closing**

(a) **Closing Date.** Closing of the sale and exchange contemplated by this Agreement shall occur as soon as possible after the February 22-23, 2017 meeting of the Board of Regents on a date mutually agreeable to the parties ("Closing Date"). Possession of the Property shall be delivered to Buyer at closing. Closing shall take place at a location that is mutually agreeable to the parties.

(b) **Closing Costs and Apportionments.**

(i) **Real Estate Taxes.** The Property is exempt from liability for real estate taxes because it is owned by a governmental entity. At Closing there will be no credit given by Seller to Buyer for future real estate taxes.

(ii) **Special Assessments.** Seller shall pay all special assessments that are levied or assessed and payable prior to the Closing Date. All subsequent special assessments shall be paid by Buyer.

(iii) **Closing Costs.** Closing and other costs shall be paid as follows:

By Seller:

- a. The abstract of title;
- b. Expenses of placing title in marketable condition;
- c. Preparation of the State Land Office Patent;
- d. All taxes and special assessments as set forth above;
- e. Seller's attorneys' fees;
- f. All other costs required to be paid by Seller as set forth in this Agreement.

By Buyer:

- a. Recording fees;
- b. Any survey desired by Buyer;
- c. Inspections conducted by Buyer;
- d. Buyer's attorneys' fees; and
- e. All other costs required to be paid by Buyer as set forth in this Agreement.

5. **Conditions Precedent**

(a) **Buyer's Conditions Precedent.** Buyer's obligation to close is expressly conditioned upon each of the following:

(i) The abstract of title provided by Seller showing marketable title consistent with Section 2;

(ii) Buyer satisfying itself with respect to all Tests;

(iii) Seller conveying the Property to Buyer by a State Patent as is appropriate for conveying fee simple marketable title to the Property, free of all liens, encumbrances, covenants, and restrictions, except the Permitted Encumbrances; and

(iv) Seller's warranties and representations contained in Section 6 being true and correct as of the Closing Date.

If all of the above conditions have not been satisfied or waived by Buyer as of the Closing Date, this Agreement shall terminate as of the Closing Date.

(b) **Seller's Conditions Precedent.** Seller's obligations under this Agreement are conditioned upon each of the following:

- (i) Buyer's delivery to Seller of all payments required under this Agreement; and
- (ii) Execution of the State Land Office Patent by the Governor of the State of Iowa.

6. **Representations and Warranties**

(a) **Representations and Warranties of Seller.** By acceptance of this Agreement, Seller represents and warrants to Buyer both as of the date of this Agreement and as of Closing Date that to the best of Seller's knowledge the following:

(i) Seller has full right and authority to enter into and fully perform its obligations under this Agreement and all agreements to be executed by it in relation to this Agreement.

(ii) Except for the lease executed by the Seller and Buyer on January 1, 2017, the Property is not subject to any purchase contracts, options, rights of first refusal, leases, subleases, licenses, tenancies, or other agreements of any kind or nature, written or oral, by which anyone could claim or assert any right, title or interest in the Property or any portion of the Property.

(iii) No action in condemnation, eminent domain, or public taking proceedings is pending against the Property.

(iv) No ordinance or hearing is before any local government body that either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Property.

(v) There are no notices, orders, suits, judgments, or other proceedings relating to fire, building, zoning, air pollution, or health violations with regard to the Property that have not been corrected.

(vi) The Property shall, as of the Closing Date, be free and clear of all liens, security interests, encumbrances, or other restrictions, except the Permitted Encumbrances.

(vii) No known wells, solid waste disposal sites, hazardous wastes, aboveground and underground storage tanks, or private burial sites exist upon, in, or under the Property.

Buyer may, but is not required to, waive any of the foregoing conditions by delivering a written waiver of condition(s) to Seller.

The representations and warranties set forth in this Section 6 shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time. Such representations and warranties shall be deemed to have been reaffirmed and restated by Seller as of the Closing Date unless expressly disclosed otherwise in writing at any time and from time to time prior to closing (each a "Disclosure" and collectively, the "Disclosures"). Any Disclosure made to Buyer subsequent to the Inspection Period that could be reasonably determined to adversely impact Buyer's decision to buy, shall create an option to terminate by Buyer by delivering notice of such by 5:00 p.m. Central Standard Time within five (5) business days after the date of the Disclosure.

(b) **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller, both as of the date of this Agreement and as of the Closing Date, the following:

(i) Buyer has full right and authority to enter into and fully perform its obligations under this Agreement and any agreements and instruments to be executed by it.

(ii) Neither the execution nor delivery of this Agreement by Buyer nor the fulfillment of or compliance with the terms and provisions of this Agreement will result in a breach or constitute a default under applicable law or any agreement, indenture, or instrument to which Buyer is a party or by which it is bound.

(iii) All parties required to approve the purchase of the Property by Buyer have given such approval and Buyer has adequate funds to purchase the Property.

(c) **Representation and Warranty Concerning Broker Fees.** Each party represents and warrants to the other party that it has not dealt with any broker in connection with this transaction.

## 7. **Miscellaneous**

(a) **Notices.** All notices and demands given or required to be given by any party to this Agreement to any other party shall be deemed to have been properly given if and when delivered in person or by recognized overnight courier service (with verification of receipt), addressed as follows (or sent to such other address as any party shall specify in writing to the other party pursuant to the provisions of this Section):

SELLER: Robert Donley  
Executive Director  
Board of Regents, State of Iowa  
11260 Aurora Avenue  
Urbandale, Iowa 50322

With copy to: Katherine L. Gregory  
Senior Vice President for University Services  
Iowa State University  
2750 Beardshear Hall  
Ames, Iowa 50011

and

University Counsel  
Iowa State University  
3550 Beardshear Hall  
Ames, Iowa 50011

BUYER: City of Ames  
Ann H. Campbell, Mayor  
515 Clark Avenue  
Ames, Iowa 50010

(b) **Survival.** The terms of this Agreement shall remain in full force and effect and survive the closing and shall be binding on the parties and their heirs, successors, personal representatives, and assigns.

(c) **Interpretation.** All provisions in this Agreement shall be construed in all cases as a whole according to its fair meaning, neither strictly for nor against either Buyer or Seller and without regard for the identity of the party initially preparing this Agreement. Titles and captions are inserted for convenience only and shall not define, limit, or construe in any way the scope or intent of this Agreement.

(d) **Governing Law.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Iowa but without regard to provisions thereof relating to conflicts of law. Buyer and Seller agree to submit to the jurisdiction of any court of competent jurisdiction in the State of Iowa.

(e) **No Waiver.** A waiver by either party of a breach of any of the covenants, conditions, or agreements to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions, or agreements. Any alteration, change, or modification of or to this



Agreement, in order to become effective, must be made in writing and in each instance signed on behalf of each party to be charged.

(f) **Time of Essence.** Time is of the essence of this Agreement.

(g) **Merger of Prior Agreements.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, whether direct or indirect, oral or written, are merged into and superseded by this Agreement, and shall be of no further force or effect.

(h) **Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other party.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date and year set forth below:

**Board of Regents, State of Iowa**

**City of Ames, Iowa**

By: \_\_\_\_\_  
Robert Donley  
Executive Director

By: \_\_\_\_\_  
Ann H. Campbell  
Mayor

Attest: \_\_\_\_\_

Diane R. Voss, City Clerk

**Iowa State University of Science  
and Technology**

**City of Ames, Iowa**

By: \_\_\_\_\_  
Katherine L. Gregory  
Senior Vice President for University Services

By: \_\_\_\_\_  
Vanessa Baker-Latimer  
Housing Coordinator

## **EXHIBIT A**

### **Legal Description of Property**

A tract of land in the Northwest Quarter of the Northeast Quarter of Section 8, Township 83 North, Range 24 West of the 5th P.M. Iowa, described as follows: Beginning at the Southeast corner of Lot 12, Block 2 of West Ames, now known as West Ames Addition to the City of Ames, Iowa; thence west along the south line of said Lot 12 and said south line extended for a distance of 604.9 feet; thence south parallel with the west line of South Franklin Avenue in Ames, Iowa 294.22 feet; thence east 604.9 feet to the west line of said South Franklin Avenue; thence north along the west line of South Franklin Avenue 294.22 feet to the place of beginning.

**EXHIBIT B**

Preparer: David L. Dorff, Assistant Attorney General, TEL: 515-281-6710; FAX: 515-242-6072  
Iowa Department of Justice, Lucas Bldg., Room 018, 321 E. 12<sup>th</sup> ST., Des Moines, IA 50319  
Address tax statement to: City of Ames, Attention Finance Department, P.O. Box 811, Ames, Iowa 50010-0811

# State of Iowa

## OFFICE OF THE SECRETARY OF STATE

Patent No.

### STATE LAND OFFICE

The **STATE OF IOWA** hereby conveys to **City of Ames, Iowa**, real estate in Story County, Iowa, described as:

A tract of land in the Northwest Quarter of the Northeast Quarter of Section 8, Township 83 North, Range 24 West of the 5th P.M. Iowa, described as follows: Beginning at the Southeast corner of Lot 12, Block 2 of West Ames, now known as West Ames Addition to the City of Ames, Iowa; thence west along the south line of said Lot 12 and said south line extended for a distance of 604.9 feet; thence south parallel with the west line of South Franklin Avenue in Ames, Iowa 294.22 feet; thence east 604.9 feet to the west line of said South Franklin Avenue; thence north along the west line of South Franklin Avenue 294.22 feet to the place of beginning.

**AUTHORITY/CONSIDERATION:** Authority and consideration for issuance of this patent are stated in the certificate of Robert Donley, Executive Director of the Board of Regents, State of Iowa, a copy of which is attached to this Patent and filed with the State Land Office as provided in Iowa Code section 9G.6 (2017).

**RECITAL:** This conveyance is exempt from real estate transfer tax and declaration of value pursuant to Iowa Code section 428A.2 (6) (2017).

I, **Terry Branstad**, Governor of the State of Iowa, have caused this instrument to issue and the Great Seal of the State of Iowa to be affixed to it at Des Moines, on this day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
**Terry Branstad**, Governor

\_\_\_\_\_  
**Paul D. Pate**, Secretary of State

I hereby certify that the foregoing Patent is recorded in  
Vol. \_\_\_\_ Page \_\_\_\_ in the State Land Office.

***Paul D. Pate***, Secretary of State

Preparer: David L. Dorff, Assistant Attorney General, TEL: 515-281-6710; FAX: 515-242-6072  
Iowa Department of Justice, Lucas Bldg., Room 018, 321 E. 12<sup>th</sup> ST., Des Moines, IA 50319

***CERTIFICATE AND EXHIBIT A IN SUPPORT OF PATENT REQUEST***

**TO: THE GOVERNOR AND SECRETARY OF STATE OF THE STATE OF IOWA**

**SUBJECT: SALE OF ISU PROPERTY TO CITY OF AMES, IOWA**

Pursuant to Iowa Code section 9G.6 (2017) the **Board of Regents, State of Iowa**, requests a patent conveying to the **CITY OF AMES, IOWA** real estate described as:

A tract of land in the Northwest Quarter of the Northeast Quarter of Section 8, Township 83 North, Range 24 West of the 5th P.M. Iowa, described as follows: Beginning at the Southeast corner of Lot 12, Block 2 of West Ames, now known as West Ames Addition to the City of Ames, Iowa; thence west along the south line of said Lot 12 and said south line extended for a distance of 604.9 feet; thence south parallel with the west line of South Franklin Avenue in Ames, Iowa 294.22 feet; thence east 604.9 feet to the west line of said South Franklin Avenue; thence north along the west line of South Franklin Avenue 294.22 feet to the place of beginning.

Conveyance of fee title to the subject property by State Patent is pursuant to a real estate purchase agreement entered between the Board of Regents, State of Iowa, and the City of Ames, Iowa. The purchase agreement was approved by the Board of Regents at its meeting on February 22-23, 2017. The purchase price for the real estate is \$166,000, which is approximately \$41,500 per acre. The average appraised value of the real estate is \$166,000, which is approximately \$41,500 per acre. The executed original of this certificate will be referenced in the State Patent as Exhibit A, attached to the State Patent, and delivered to the buyer with the State Patent at closing.

BOARD OF REGENTS, STATE OF IOWA

By: \_\_\_\_\_  
Robert Donley, Executive Director

STATE OF IOWA, POLK COUNTY: This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Robert Donley, Executive Director of the Board of Regents, State of Iowa.

\_\_\_\_\_  
NOTARY PUBLIC for the State of Iowa