

COUNCIL ACTION FORM

SUBJECT: INTERMODAL FACILITY LEASE AGREEMENT WITH IOWA STATE UNIVERSITY

BACKGROUND:

In February 2010, the U.S. Department of Transportation awarded \$8.463 million to the Ames community for a Transportation Investment Generating Economic Recovery (TIGER) grant to construct an Intermodal Facility. The **site** selected for this facility is located at Hayward and Chamberlain Streets near the Campustown area and is **owned by Iowa State University**. Since the new **facility will be owned by the Ames Transit Agency** (CyRide), a lease agreement has been developed to allow construction of the facility at this site. The draft agreement is attached and contains the following basic assumptions:

- The facility will be owned by the Ames Transit Agency (as required by the Federal Transit Administration) with no rental cost (paragraphs 2 & 4)
- Term of the lease will be for 41 years (paragraph 1)
- Iowa State University reserves the right to approve modifications to the use of the site and subletting of the facility (paragraph 4)
- The Ames Transit Agency will hold the University harmless for liability claims (paragraph 11)
- Construction must begin within three years; and if the facility is destroyed due to a natural disaster or criminal act, must be reconstructed within two years (paragraph 5)
- Termination and expiration conditions are included that require negotiations among the Ames Transit Agency, ISU and Federal Transit Administration to reach an agreement regarding the disposition of any building and improvements on the site. (paragraph 8)

Under the terms of the grant agreement, CyRide must begin construction of the facility no later than March 15, 2011. In order to accomplish this deadline, the land lease and construction contract must be approved prior to this date. The first step in this process is agreement on the land lease. To date, the Ames Transit Agency Board of Trustees and Federal Transit Administration have reviewed the lease and approved its provisions. The State Board of Regents will review the draft lease at their February 3, 2011 meeting.

ALTERNATIVES:

1. Approve the land lease with Iowa State University as drafted for the Intermodal Facility site, contingent upon approval by the State Board of Regents.

2. Direct staff to renegotiate terms of the land lease.
3. Do not approve a land lease for the Intermodal Facility.

MANAGER'S RECOMMENDED ACTION:

Approval of this agreement will allow the community to meet the tight federal timelines that have been placed upon this project. It will begin the process to ease parking constraints in the Campustown area, as well as improve transportation coordination within the entire Ames community.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1. This alternative will approve the land lease with Iowa State University, thereby allowing for construction of the Intermodal Facility at the Hayward and Chamberlain site.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER
Prepared by: Douglas R. Marek, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa 50010 (Phone: 515-239-5146)
Return to: Ames City Clerk, 515 Clark Avenue, Ames, Iowa 50010

LEASE AGREEMENT

BOARD OF REGENTS, STATE OF IOWA ACTING FOR IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY TO THE CITY OF AMES (Ames Intermodal Site on Hayward and Chamberlain)

THIS LEASE AGREEMENT made this ____ day of _____, 2011, between the Ames Transit Agency, an administrative agency of the City of Ames, Iowa, hereinafter called "ATA", and the Board of Regents, State of Iowa acting for and on behalf of Iowa State University of Science and Technology, hereinafter called the "University",

WITNESSETH THAT:

WHEREAS, ATA is engaged in the operation, management, governance and control of a city transit system as an administrative agency of the City of Ames; and,

WHEREAS, ATA is funded pursuant to an Agreement for Joint Action in Support of Transit Services in the City of Ames between the City of Ames, Iowa State University and the Government of the Student Body of Iowa State University dated July 1, 2006 ("Transit Services Agreement"); and,

WHEREAS, it is now deemed necessary that in connection with the aforesaid transit system a site be acquired and provided for the construction of an Intermodal Facility as described in the Memorandum of Understanding entered into by the City of Ames and the United States Government dated May 17, 2010 ("MOU") and funded in a grant agreement with the Federal Transit Administration (FTA), Project Number IA-78-0001-00 ("Grant"); and,

WHEREAS, the University desires to aid and assist with regard to the said Intermodal Facility in view of the many benefits such a facility will afford to Iowa State University, its students, staff, faculty and programs;

NOW, THEREFORE, the University leases to ATA, and ATA leases from the University, all of that land located in the City of Ames, Story County, Iowa as described in EXHIBIT A, which is incorporated into and made part of this Agreement (“Premises”) in accordance with the following terms and conditions:

1. **Term of Lease.** The term of this lease shall be forty-one years, commencing on the first day following the award of the construction contract by the City of Ames, as provided in Iowa Code §26.9 (2009), unless earlier terminated by operation of provisions of this lease as set out below. In recognition that the ATA might want to make additional improvements to the leased site in the future that will require additional time to depreciate, it is agreed that the ATA may request, with the City’s prior approval, and the University may grant, extensions to this Lease Agreement term at any time.
2. **Rental.** There shall be no money payments made, due or owing under this lease. The full, complete and satisfactory consideration for this lease shall be and is the promise of the ATA, herein and hereby made, to seek and administer a grant of funds through the Federal Transit Administration of the United States Department of Transportation for the design and construction of an Intermodal Facility on the Premises; to design, construct, and operate said facility; and to maintain said facility and the Premises. ATA shall design, construct, operate and maintain the Intermodal Facility and the Premises in compliance with all applicable laws and regulations, the terms and conditions of the MOU, the Grant, and the Operational Agreement entered into by the parties this same date and attached as Exhibit B.
3. **Use Of Premises.** ATA shall use the Premises for providing an Intermodal Facility for transit purposes as described in the Grant and Operational Agreement. Upon mutual written agreement of the parties, and in conformity with FTA requirements, ATA may use the Premises for other or additional incidental purposes so long as such use is reasonably related to usage of the Intermodal Facility and so long as such incidental uses do not interfere with its continuous public transportation use.
4. **Plan Approval.** Plans for the Intermodal Facility and any other improvements on the Premises must be submitted to FTA and to the University for consideration and approval. The approval by the University for additional improvements shall not be unreasonably withheld. Plans must be submitted by ATA to FTA and to the University for initial construction, as well as for any subsequent modifications or additional improvements. All construction shall be in conformance with such mutually approved plans which shall conform to the scope of the approved Grant.

ATA shall keep the Premises free and clear of all mechanics' or other liens or claims on account of work done for the ATA on the Premises. It is expressly understood and agreed by the parties hereto that the ATA shall be the owner of and shall retain title to all structures, buildings, and other improvements placed upon the Premises by the ATA, subject to the interest of the FTA.

5. **Failure to Construct.** In the event that ATA does not begin construction of the Intermodal Facility within three years following the date of execution of this lease by both the University and ATA, or if ATA fails to continue such construction with reasonable diligence, University shall provide 30 days written notice of intent to terminate to both ATA and FTA, after which this lease shall terminate. Notwithstanding the foregoing, the University shall grant to ATA additional time to begin construction if termination of the lease under the provisions of this paragraph will jeopardize ATA's receipt of the federal funding designated to ATA in the Grant for the Intermodal Facility.
6. **Destruction of Building.** In the event that the Intermodal Facility to be constructed on the Premises is wholly or partially destroyed or damaged by wind, fire, flood or other naturally occurring events, or by tortious or criminal act, to the extent that ATA cannot perform the promise contained in Paragraph 2 above, the lease shall terminate if the ATA does not commence making repairs or rebuilding the Intermodal Facility within two years from said occurrence and continue to do so with reasonable diligence. The University may, upon request of ATA, grant additional time to begin making repairs and rebuilding and such request shall not be unreasonably denied.
7. **Utility and Other Services.** Utilities and services such as snow removal, garbage removal, and grounds care shall be provided by the ATA unless the parties agree otherwise in writing.
8. **Expiration or Termination of Provisions.** Upon expiration or termination of the lease the land shall revert to the University; provided however, that there shall be no such reversion of possession until the parties have reached agreement on the disposition of any buildings or improvements on the Premises, said disposition being subject to prior written authorization from FTA. The parties agree to negotiate in good faith to resolve issues related to the disposition of buildings or improvements. To the extent practicable and applicable, the terms and conditions of this Lease Agreement shall remain in effect until the disposition has been completed.

If ATA, the University and the FTA determine that all or any part of a structure or building will be offered for sale, ATA will abide by FTA's Circular 5010.1D regarding the sale of real property, if applicable at the time of the proposed sale, which requires an appraisal and review appraisal of real property by qualified appraisers.

9. **Lease Valuable.** The value of the University's contribution of the Premises leased hereunder shall receive an appropriate recognition in any future discussions, reports, and presentations pertaining to the operations of the Intermodal Facility. However, it is also understood and agreed that the value of this leased Premises shall not constitute a contribution by the University to the CyRide budget under Paragraph 2 of the Transit Services Agreement or to any financial obligation owed to the City under a separate Operating Agreement for the Intermodal Facility.
10. **Outdoor Activity.** The storage of transit vehicles or parts of transit vehicles outside of a building will not be permitted on the Premises, unless agreed upon, in writing, by the ATA and the University. However, the temporary parking of over-the-road buses, paratransit vehicles, vans participating in van pools, and other public transportation vehicles in order to allow for riders to initiate or terminate a trip or transfer during a trip is not storage of transit vehicles.
11. **Liability and Indemnification.** ATA does hereby covenant and agree to indemnify and hold harmless the State of Iowa, the Board of Regents – State of Iowa, and Iowa State University of Science and Technology, and their 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 ATA's construction, location, operation, and maintenance of the Intermodal Facility and Premises.
12. **The University's Reservation of Rights.**

The University reserves to itself and to Iowa State University the right to transit the Premises with, and to install and to maintain, any and all utility cables or pipelines, whether above ground or underground, necessary to accommodate the supply of utilities or other services to property owned or controlled by the University, said installation and maintenance to be conducted in a manner reasonably calculated to minimize interference with the public transportation operations and activities of ATA on the property.
13. **Subletting, Assignment.** There shall be no assignment of the lease or subletting of the Premises without the express written consent of the University and the express written consent of the FTA, except that such consent is not necessary for leasing of office space in the Intermodal Facility to transportation carriers and an Intermodal Facility management firm.
14. **Real Estate Taxes and Assessments.** The parties anticipate that there will be no real estate taxes or assessments assessed against the Premises or ATA's improvements. Should such taxes or assessments be assessed, ATA shall be responsible for the payment of such taxes or assessments.

15. **Notice.** Notice to the City and ATA shall be accomplished by delivery in writing to the office of the City Clerk for the City of Ames. Notice to the University shall be accomplished by delivery in writing to the office of the Vice President for Business and Finance at Iowa State University. Notice of termination, subletting, or assignment shall be accomplished by delivery in writing to FTA Region VII at 901 Locust Street, Suite 404, Kansas City, MO 64106.

Neither party shall be deemed or declared in default, breach or violation of this agreement without written notice and a reasonable opportunity to cure or correct any alleged breach, default or violation.

16. **Interpretation.** Words or phrases in this lease shall be interpreted and understood according to the context in which they are used. This lease, including any addendum attached hereto, constitutes the entire agreement between the parties with respect to the subject matters addressed in it; and no statement, representation or promise with reference to this lease, the Premises, or any repairs, alterations, improvements, or any purported change in the terms of this lease, shall be binding upon either of the parties unless in writing and signed by authorized representatives of both. Provisions of this lease that by their nature apply after the termination or expiration of this lease shall survive the termination or expiration of this lease.

17. All improvement to the land during the term of this lease shall comply with the Americans with Disabilities Act, as provided in 49 CFR Part 37, and the ADAAG standards promulgated by USDOJ.

18. FTA is a third-party beneficiary of this lease agreement, and all notices required of either party under this lease shall also be given to FTA.

IN WITNESS WHEREOF 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

AMES TRANSIT AGENCY

BY _____
Warren R. Madden, Vice President
for Business and Finance, Iowa State
University of Science and Technology

BY _____
Sheri Kyras, Transit Director

BY _____
Robert Donley, Executive Director,
Board of Regents, State of Iowa

BY _____
Ann H. Campbell, Mayor
City of Ames, Iowa

Attest: _____
Diane Voss, City Clerk

PLAT OF SURVEY

PARCEL "H" DESCRIPTION

PARCEL F AS SHOWN ON THE PLAT OF SURVEY RECORDED IN INSTRUMENT 2006-9492 BEING A PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 83 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF AMES, STORY COUNTY IOWA.

AND

PARCEL G AS SHOWN ON THE PLAT OF SURVEY RECORDED IN INSTRUMENT 2006-9493 BEING A PART OF LOT 2 OF THE AUDITOR'S PLAT OF BLOCKS 3, 4, AND 5 OF BEARDSHEAR'S ADDITION AND WALTERS SUBDIVISION OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 83 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF AMES, STORY COUNTY, IOWA.

AND

A PART OF OUTLOT 1 AND VACATED ALLEYS ADJACENT THERETO AND ALL OF STORY'S LOT, ALL BEING A PART OF RESLER & MILLER ADDITION TO AMES, IOWA, AN OFFICIAL PLAT IN THE CITY OF AMES, STORY COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL F, SAID CORNER ALSO BEING ON THE NORTH LINE OF SAID OUTLOT 1; THENCE NORTH 00° 18' 59" WEST ALONG THE WEST LINE OF SAID PARCEL F, 157.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL F; THENCE NORTH 89° 54' 23" EAST ALONG THE NORTH LINE OF SAID PARCEL F, 120.00 FEET; THENCE NORTH 76° 30' 05" EAST CONTINUING ALONG SAID NORTH LINE, 122.03 FEET TO THE NORTHEAST CORNER OF SAID PARCEL F AND THE NORTHWEST CORNER OF SAID PARCEL G; THENCE NORTH 67° 43' 19" EAST ALONG THE NORTH LINE OF SAID PARCEL G, 254.60 FEET; THENCE NORTH 30° 00' 28" EAST CONTINUING ALONG SAID NORTH LINE, 31.04 FEET; THENCE NORTH 64° 04' 12" EAST CONTINUING ALONG SAID NORTH LINE, 152.87 FEET TO THE NORTHEAST CORNER OF SAID PARCEL G; THENCE SOUTH 00° 21' 55" EAST ALONG THE EAST LINE OF SAID PARCEL G, 151.96 FEET; THENCE NORTH 89° 48' 06" WEST CONTINUING ALONG SAID EAST LINE, 23.00 FEET; THENCE SOUTH 00° 22' 50" EAST CONTINUING ALONG SAID EAST LINE, 225.86 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL G AND THE NORTHEAST CORNER OF SAID STORY'S LOT; THENCE CONTINUING SOUTH 00° 22' 50" EAST ALONG THE EAST LINE OF SAID STORY'S LOT, 110.01 FEET TO THE SOUTHEAST CORNER OF SAID STORY'S LOT; THENCE NORTH 89° 49' 44" WEST ALONG THE SOUTH LINE OF SAID STORY'S LOT, 396.40 FEET TO THE SOUTHEAST CORNER OF SAID OUTLOT 1; THENCE SOUTH 00° 18' 59" EAST ALONG THE EASTERLY EXTENSION OF THE EAST LINE OF SAID OUTLOT 1, A DISTANCE OF 8.00 FEET TO THE CENTERLINE OF SAID VACATED ALLEY; THENCE NORTH 89° 49' 44" WEST ALONG SAID CENTERLINE, 121.44 FEET; THENCE SOUTH 00° 18' 59" EAST CONTINUING ALONG SAID CENTERLINE, 84.00 FEET TO A CORNER ON THE WESTERLY LINE OF THE PROPERTY DESCRIBED IN THE WARRANTY DEED RECORDED IN BOOK 147, PAGE 398 IN THE OFFICE OF THE STORY COUNTY RECORDER'S; THENCE NORTH 89° 49' 43" WEST ALONG SAID WESTERLY LINE, 88.15 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTH SHELDON AVENUE NORTH; THENCE NORTH 00° 18' 59" WEST ALONG SAID EAST RIGHT-OF-WAY LINE , 202.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.99 ACRES (217,502 S.F.).

PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

LEGEND

Survey

Section Corner
1/2" Rebar, Yellow Cap # 17161
1/2" Rebar, Orange Cap # 19515
ROW Marker
ROW Rail
Control Point
Bench Mark
Plotted Distance
Measured Bearing & Distance
Recorded As
Deed Distance
Calculated Distance
Minimum Protection Elevation
Centerline
Section Line
1/4 Section Line
1/4 1/4 Section Line
Easement Line

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REQUESTED BY

IOWA STATE UNIVERSITY

DATE OF SURVEY

01-14-11

OWNER

STATE OF IOWA
BUSINESS OFFICE
1350 BEARDSHEAR HALL
AMES, IA 50011

THE AMES CITY COUNCIL APPROVED THIS PLAT OF SURVEY ON _____, 2011, WITH RESOLUTION NUMBER _____. I CERTIFY THAT IT CONFORMS TO ALL CONDITIONS OF APPROVAL.

PLANNING & HOUSING DIRECTOR

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

Eric J. Miller, PLS Date

License Number 19515

My License Renewal Date is December 31, 2012

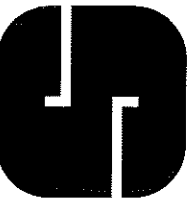
Pages or sheets covered by this seal:

Sheets 1 and 2

PARCEL "H" PLAT OF SURVEY

REQUESTED BY IOWA STATE UNIVERSITY

SNYDER & ASSOCIATES



1101011

Sheet 1 of 2

2727 S.W. SNYDER BLVD.
ANKENY, IOWA 50023
515-964-2020

ATLANTIC, IA
712-243-6555
CEDAR RAPIDS, IA
319-362-9364

MARYVILLE, MO
880-582-8888
ST. JOSEPH, MO
816-364-5222

Sheet 1 of 2

PREPARED BY: ERIC MILLER, SNYDER & ASSOCIATES, INC., 2727 SW SNYDER BLVD, ANKENY, IA 50023 (515)964-2020
RETURN TO: ERIC MILLER, SNYDER & ASSOCIATES, INC., 2727 SW SNYDER BLVD, ANKENY, IA 50023 (515)964-2020
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COUNCIL ACTION FORM

SUBJECT: AMES INTERMODAL FACILITY – REPORT OF BIDS

BACKGROUND:

This project is for construction of the Intermodal Facility to build the following elements on land owned by Iowa State University in Campus Town:

- Surface and structured parking
- Bus terminal including public restrooms and roadway
- Bike path

This facility will be located at the intersection of Hayward and Chamberlain Streets. Construction funding available for this project is \$7,204,210 under a combination of state and federal grants.

On December 14, 2011, the City Council approved plans and specifications for the Intermodal Facility and authorized January 18, 2011 as the bid due date. On January 18, 2009, Intermodal Facility bids were opened for this project, with six bids received as follows:

<u>Bidder</u>	<u>Base Bid</u>	Alternates		
		<u>#1 - Additional Parking Deck</u>	<u>#2 - Bike Path</u>	<u>#3 - Foundation System *</u>
Weitz Company	\$7,187,000	\$1,050,000	\$285,000	(\$72,000)
Woodruff Construction	\$7,379,200	\$1,180,000	\$213,000	(\$20,000)
Henkel Construction	\$7,618,000	\$1,156,000	\$243,000	(\$83,000)
Knutson Construction Services, Inc.	\$7,750,000	\$1,176,000	\$226,000	(\$40,000)
Larson & Larson Construction, LLC	\$8,080,000	\$1,300,000	\$260,000	(\$75,000)
Dean Snyder Construction	\$8,544,000	\$1,138,000	\$252,000	(\$49,000)

* This is a deduct alternate.

Since this project is funded with federal dollars, CyRide is required to follow federal procurement regulations, which require that awards be made to the “lowest **responsible and responsive**” bidder. Therefore, over the next week staff will be determining each bid’s compliance with the “responsive and responsible” requirements. These include such items as involvement of disadvantaged businesses in the project and compliance with Davis-Bacon wage requirements, as well as the acceptance or rejection of bid alternates. Due to this additional work, staff is recommending delay of

award until the February 8, 2011 Council meeting to determine compliance in these additional areas and to maximize construction within budget constraints.

ALTERNATIVES:

1. Accept the Intermodal Facility report of bids with delay of contract award until the February 8, 2011 City Council meeting.
2. Delay or do not proceed with this project.

MANAGER'S RECOMMENDED ACTION:

It is the community's desire to construct an Intermodal Facility to increase parking options within the Campustown area and to create a transportation hub within the community. Since this must be completed within federal regulations, staff will need additional time to determine the lowest responsible and responsive bidder and to develop a recommendation on the bid alternates.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby accepting the bid report for the Intermodal Facility and delaying action until the February 8, 2011 Council meeting.

It is important to emphasize that the Ames Transit Agency does not have the capability to operate the intermodal facility. Therefore, it is contemplated that Iowa State University will agree, through a yet to be finalized operating contract, to manage this facility. It is critical that this operating agreement be approved by the Council prior to awarding the construction contract. This agreement will specify the management responsibilities for ISU and the financial participation, if any, by the City.