

COUNCIL ACTION FORM

**SUBJECT: APPROVAL OF INTERMODAL FACILITY OPERATING AGREEMENT
WITH IOWA STATE UNIVERSITY**

BACKGROUND:

Prior to authorizing construction of the new Intermodal Facility, it is important that an agreement be finalized that outlines the responsibilities for operating this new venture. These responsibilities could be assumed by the City's Public Works Department, the Parking Division of the Department of Safety at ISU, or a private entity engaged in the management of such facilities. Because of their experience operating the Memorial Union parking ramp and the East Campus parking deck, as well as their familiarity with the CyRide system, it was determined that ISU would be the most appropriate operator of this new facility. **Consequently, the Ames Transit Authority (ATA), through this agreement, is contracting with ISU to assume all of the day-to-day responsibilities to maintain and operate this facility and its associated site.**

The finalization of this agreement was quite challenging due to the fact that the Federal Transit Administration (FTA) is requiring that the applicant for the TIGER Grant, the ATA, be named as the contracting authority with the University, even though CyRide is an agency of the City. Normally, the City of Ames would be named in a contract and would own all assets and liabilities related to the performance of the agreement. A review of this contract reflects a unique approach to these issues.

Major highlights of this agreement include:

-Section II. Term

The agreement will be for one year, but will automatically renew if neither party gives a twelve month notice by June 30 of the preceding fiscal year.

-Section III. Operational Responsibilities

The University will assume all responsibilities for operating the facility as outlined in this section.

-Section IV. Facility Management

While the daily operational decisions will be made by the Manager of the Parking Division of the Department of Public Safety, policy direction and management decisions will be made by the City Manager and ISU Vice President for Business and Finance. Decisions under this section would include the establishment of rates/fees, hours of operation, etc.

-Section V. Financing

All revenues and expenditures related to the operation of the Intermodal Facility will be handled by the University and reflected in a separate University fund. Therefore, although it is an ATA/City facility, none of the financing for this operation (revenues or expenditures) will be shown on the City's accounting system.

The University will provide a recommended budget to the City Manager by January 1 for the next fiscal year. The City Manager will have an opportunity to review the recommended budget and suggest changes if desired.

It is clear from Section I. and Section V.A. that the intent of the parties is to assure that revenues from this operation equal expenditures. However, Section V.D. specifies that should revenues in the fund not be sufficient to cover operational and capital improvement expenditures, the University and the City will share equally in the subsidies necessary to maintain a positive balance.

Section V.F. specifies that if the contract is terminated or not renewed or if it is determined by the City Manager or ISU Vice President for Business and Finance that there are excess monies in the University fund, these revenues are required to be transferred to the ATA to support public transportation needs as determined by the CyRide Board. This provision causes some concern for City and University administrators since excess revenue, if ever available, would be transferred to the ATA without ever reimbursing either party for any subsidies provided. However, it was pointed out that the City and University can, in this instance, reduce its share of funding support for CyRide to offset any monies received from the operating fund.

-Section VIII. Financial Accounting and Administration

Because the City will be responsible to maintain the financial viability of this operation through subsidies if needed, it is imperative that access be given to all records and documents to verify that expenditures and revenues have been accounted for appropriately. The agreement assures this type of transparency.

-Section IX. Insurance and Indemnification

Just like any other third party service provider, the University is being required in this agreement to provide an appropriate amount of insurance and indemnification protection.

ALTERNATIVES:

1. The City Council can approve the attached agreement with Iowa State University to assume operational responsibilities for the new Intermodal Facility and site.

Under this option, the City of Ames is assuming a contingent liability to subsidize this operation if warranted, the amount of which is unknown at this time.

2. The City Council can decline to approve the proposed operating agreement with Iowa State University at this time, and instruct staff to renegotiate any provisions that the Council finds unacceptable.

In order to not jeopardize the TIGER grant, staff would recommend proceeding with the approval of the construction project at this time with the understanding that the details of a modified operating agreement can be worked out prior to the opening of the facility.

3. The City Council can decline to approve the proposed operating agreement with Iowa State University, and instruct staff to negotiate a contract with some other entity.

MANAGER'S RECOMMENDED ACTION:

This new facility will not only provide a multi-modal transportation hub for our city, but will also positively impact our Campustown commercial area with a much needed increase in parking capacity. Because of their parking ramp expertise, proximity to the facility, and knowledge of the CyRide system, ISU appears to be the logical choice to operate this new facility.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 and approve the attached Intermodal Facility operating agreement with ISU.

In taking this action, however, the City Council must understand that it is assuming a contingent liability to subsidize this operation, if needed. The initial years of operation will most likely be the most difficult ones. Like the University, staff believes the financing of this operation should come from the Parking Fund. Therefore, future subsidies for this facility could potentially impact parking fees and fines throughout the entire city.

INTERMODAL FACILITY OPERATING AGREEMENT**IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY
AND THE AMES TRANSIT AGENCY**

THIS AGREEMENT made this ____ day of _____, 2011, between the Ames Transit Agency, an administrative agency of the City of Ames, Iowa, hereinafter called "ATA", and Iowa State University of Science and Technology, hereinafter called "UNIVERSITY;"

WITNESSETH THAT:

WHEREAS, ATA is engaged in the operation, management, governance and control of a city transit system, d/b/a "CyRide"; and,

WHEREAS, ATA is funded pursuant to an Agreement for Joint Action in Support of Transit Services in the City of Ames among 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, funding has been secured for the construction of an Intermodal Facility (Facility) as described in the Memorandum of Understanding entered into by 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 has entered into an agreement with ATA to lease its land at the intersection of Chamberlain and Hayward to the ATA as the site for the Facility, as described more fully in attached Attachment 1 ("Site"); and,

WHEREAS, in acknowledgement of the many benefits such a Facility will afford to Iowa State University, its students, staff, faculty, and programs, the UNIVERSITY desires to aid and assist with regard to the operations of said Facility for ATA; and,

WHEREAS, the UNIVERSITY has significant experience operating and managing the East Campus Parking Deck and the Memorial Union Parking Ramp; and,

WHEREAS, the City of Ames, as the governmental entity and political subdivision responsible for administering the budget of ATA, is a third party beneficiary of this Agreement between the UNIVERSITY and ATA;

NOW, THEREFORE, ATA and the UNIVERSITY agree that as between these parties the UNIVERSITY will assume operational responsibility for the Facility and leased Site by providing the services specified in this Agreement in accordance with the provisions herein:

I. PURPOSE

It is understood that the Facility will be owned by ATA and situated on land leased to ATA by the UNIVERSITY, as depicted on the map of the leased site, Attachment I (Site). The purpose of this Agreement is to assign to the UNIVERSITY all operational responsibilities at the Facility after the construction at the Site is complete. It is the intention and understanding of ATA and the UNIVERSITY that Facility revenues will offset expenses for operation of . Facility

II. TERM

The initial term of this Agreement shall commence thirty days after the UNIVERSITY receives ATA's written notice of completion of construction of Facility and shall extend through June 30, 2013. The Agreement shall automatically renew each June 30 for successive one year terms unless either party has provided written notice of intent to terminate on or before June 30 of the preceding year, in which case the Agreement shall extend for one additional one year term, it being the intention of the ATA and the UNIVERSITY that termination of the Agreement will occur only after the parties have had at least twelve months' notice.

III. OPERATIONAL RESPONSIBILITIES

The UNIVERSITY agrees to perform all of the operational services necessary to operate and maintain the Facility and the Site. Said services and responsibilities shall include, but are not limited to, the following:

- A. Collection of and accounting for parking fees in accordance with UNIVERSITY policies and FTA regulations;
- B. Performance of law enforcement functions, including security, patrol, investigations, ticketing, and towing, all in conformity with state and local law;
- C. Preparation and presentation of recommended annual operating budget, including projected expenditures for operations, repair and replacement, and capital improvements, and projected revenues from short-term hourly parking fees, monthly parking space rental fees, and office space rental fees from passenger carriers;
- D. Cooperation with ATA in the preparation of reports required by conditions of the FTA Grant with ATA;
- E. Assistance to ATA with negotiation of third party passenger carrier leases for office space and Facility use;
- F. Operation of the Facility in compliance with FTA requirements as directed by ATA;
- G. Administration of an eligibility process for vanpool/carpool parking program;

H. Removal of snow from parking areas, driveways, and sidewalks (including sidewalks abutting Site) at Facility and on Site; removal of trash and debris from sidewalks, bike path, and grounds; cutting of grass and general maintenance of landscaping and sidewalks on the Site;

I. Performance of all general maintenance and repair functions, including interior and exterior improvements of the Facility, and general grounds care on the Site, in accordance with a Facility maintenance plan that is approved by the ATA and that includes periodic maintenance checklists and an inventory of assets and equipment maintained and inspected.

J. Payment of all utilities.

K. General maintenance and upkeep of the College Creek channel on and adjacent to the Site, as depicted on the attached Exhibit A, including inspections at least annually and after significant rainfall events, and slope protection measures as needed to maintain unimpeded flows.

IV. FACILITY MANAGEMENT

The UNIVERSITY'S Manager of the Parking Division will provide daily operational direction and supervision for the Facility. ATA will provide policy direction and make management decisions concerning the Facility and Site. For purposes of Facility management as provided in this section, ATA designates the two permanent members of the ATA Board of Directors as managers. The two permanent members of the ATA Board of Directors are the City Manager of the City of Ames and the Vice President for Business and Finance at Iowa State University.

V. FINANCING

A. Because construction of the FACILITY and Site are funded by the Federal Transit Administration monies, the revenues and expenditures for the Facility and leased site will be accounted for by the UNIVERSITY in a separate fund (the FUND). Each year by January 1, the UNIVERSITY will present to the City Manager for the City of Ames a recommended operational budget, which will include all anticipated expenditures for operations (including any taxes, insurance, management fee, and other expenses associated with Facility and Site), capital items, minor maintenance, and major capital improvements for the next fiscal year beginning July 1. The City Manager shall review and within 45 days either approve the recommended budget or provide a suggested alternative budget for consideration by the UNIVERSITY. UNIVERSITY will consider the City Manager's recommendations and present a final operational budget to ATA and the Ames City Manager by February 28. The final operational budget each year is subject to final approval by both the Ames City Council and the Iowa Board of Regents. ATA and UNIVERSITY acknowledge and agree that modifications in the parking rates charged may be necessary during the course of the budget year.

B. In terms of revenues, the UNIVERSITY will also supply by the same date specified above a recommended fee schedule for hourly parking fees, long-term parking space rental fees, other rental fees, and any other revenue generated by Facility and Site

sufficient to cover the expected expenditures of that fiscal year, as well as accumulate needed funds for major capital improvements.

C. Law enforcement expenses and revenues are excluded from the operational budget. Neither revenues received in satisfaction of citations, criminal penalties, surcharges, etc., nor expenses attributable to law enforcement functions, are considered revenues or expenses within the operational budget for the Facility.

D. While it is expected that revenue generated from the Facility users will be sufficient to cover all of the expenditures for the Facility and site, it is agreed and understood that it is possible from time to time that negative balances in the FUND (as described in Section V.A, supra) might occur. Should the revenues in the fund not cover the operations and capital improvement expenditures, UNIVERSITY and City of Ames will each provide equal supplemental operational support in the form of subsidies as necessary to maintain a positive balance.

E. It is further understood and agreed that any monies paid into the FUND by the City of Ames and UNIVERSITY shall not constitute a contribution to the budget for Transit Services under Paragraph 2 of Transit Services Agreement.

F. Balances in the FUND are for ATA purposes only. If, during the term of this Agreement, the City Manager of the City of Ames and the Vice President for Business and Finance at Iowa State University, acting as managers as provided in Section IV, determine that balances exceed the amounts reasonably necessary for all anticipated expenditures for operations (including any taxes, insurance, management fees, and other expenses associated with Facility and Site), capital items, minor maintenance, and major capital improvements, any excess amounts may be transferred to ATA for use in support of capital or operating expenses of providing public transportation as determined by the ATA Board of Directors. Upon termination of this Agreement, the entire balance of the Fund shall be transferred to ATA for use in support of capital or operating expenses of providing public transportation as determined by the ATA Board of Directors.

VI. REVENUE COLLECTED BY THE UNIVERSITY

In accordance with the responsibilities specified in Section III, Operational Responsibilities, supra, the University will collect all fees and other revenues associated with the Facility and Site. It is agreed that this revenue will be deposited by the University each month into the Fund.

VII. PAYMENT TO THE UNIVERSITY FOR SERVICES PROVIDED

Each month, the University shall be entitled to withdraw from the Fund one twelfth (1/12) of the agreed upon annual management fee reflected in the fiscal year budget as payment for management and operational services specified in Section III. It is also understood that the University will pay from the Fund those expenses of operation and maintenance incurred for services described in Section III. The University shall maintain documentation for the expenses paid from the Fund in accordance with Section VIII below.

VIII. FINANCIAL ACCOUNTING AND ADMINISTRATION

- A. At such time and in such form as ATA and the City of Ames may require, there shall be furnished to the City of Ames such statements, records, reports, data, and information as ATA and the City may require with respect to revenues received and the use made of monies disbursed hereunder.
- B. At any time during normal business hours, and as often as the City of Ames may deem necessary, there shall be made available to the City of Ames for examination all records with respect to all matters covered by this Agreement and UNIVERSITY will permit the City of Ames to audit, examine, and make excerpts or transcripts from such records.
- C. The UNIVERSITY, in cooperation and coordination with the ATA, will comply with the procurement and third-party contracting requirements contained in Circular 5010.1D and 4220.1F.

IX. INSURANCE AND INDEMNIFICATION

The UNIVERSITY does hereby covenant and agree to defend, indemnify, and hold harmless, to the extent permitted by law, ATA and the City of Ames, and their officers and employees, against any claims, 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 acts or omissions of UNIVERSITY's performance of operational services and other requirements of this Agreement. The UNIVERSITY shall provide liability and property casualty insurance coverage of the types, limits, and deductibles specified by ATA and the City of Ames, with ATA and the City of Ames listed as named insureds. Premium payments shall be included in the annual operating budget.

X. GENERAL TERMS

- A. Entire Agreement. This Agreement constitutes the entire understanding of the parties. The headings in this Agreement are for convenience only and will not affect the interpretation of any provisions.
- B. Amendment. None of this Agreement may be modified or waived except by a written instrument signed by the parties.
- C. Severability and Survival. If any term or provision of this Agreement is invalid or unenforceable, then the remaining terms and provisions will not be affected.
- E. Non-assignment. Neither party shall assign this Agreement without the written consent of the other party.
- F. Applicable Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Iowa and when applicable, federal law.

G. Federal Clauses. The UNIVERSITY agrees to abide by all applicable federal clauses as outlined in Attachment A.

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

IOWA STATE UNIVERSITY

By: _____
Warren Madden, Vice President

AMES TRANSIT AGENCY

By: _____
Robert Anders, President

CITY OF AMES, IOWA

By: _____
Ann H. Campbell, Mayor

ATTEST:

By: _____
Diane Voss, City Clerk

ATTACHMENT A

NO OBLIGATION BY THE FEDERAL GOVERNMENT -

1. The UNIVERSITY acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the UNIVERSITY or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.
2. The UNIVERSITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS -

1. The UNIVERSITY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the UNIVERSITY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the UNIVERSITY further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the UNIVERSITY to the extent the Federal Government deems appropriate.
2. The UNIVERSITY also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. §5307(n)(1) on the UNIVERSITY, to the extent the Federal Government deems appropriate.
3. The UNIVERSITY agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS - The following access to records requirements apply to this Agreement:

1. Where the ATA is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the UNIVERSITY agrees to provide the ATA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the UNIVERSITY which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. UNIVERSITY also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the UNIVERSITY's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. The UNIVERSITY agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The UNIVERSITY agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case UNIVERSITY agrees to maintain same until the ATA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
4. FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES - UNIVERSITY shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (17) dated October, 2010) between ATA and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. UNIVERSITY's failure to so comply shall constitute a material breach of this Agreement.

CIVIL RIGHTS - The following requirements apply to the underlying Agreement:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the UNIVERSITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the UNIVERSITY agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the UNIVERSITY agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The UNIVERSITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the UNIVERSITY agrees to comply with any implementing requirements FTA may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the UNIVERSITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the UNIVERSITY agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the UNIVERSITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the UNIVERSITY agrees to comply with any implementing requirements FTA may issue.
3. The UNIVERSITY also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

TERMINATION -

- a. Termination for Convenience (General Provision)** The ATA may terminate this Agreement, in whole or in part, at any time by written notice to the UNIVERSITY when it is in the Government's best interest. The UNIVERSITY shall be paid its costs, including Agreement closeout costs, and profit on work performed up to the time of termination. The UNIVERSITY shall promptly submit its termination claim to ATA to be paid. If the UNIVERSITY has any property in its possession belonging to the ATA, the UNIVERSITY will account for the same, and dispose of it in the manner the ATA directs.
- b. Termination for Default [Breach or Cause] (General Provision)** If the UNIVERSITY does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the UNIVERSITY fails to perform in the manner called for in the Agreement, or if the UNIVERSITY fails to comply with any other provisions of the Agreement, the ATA may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the UNIVERSITY setting forth the manner in which the UNIVERSITY is in default. The UNIVERSITY will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the ATA that the UNIVERSITY had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the UNIVERSITY, the ATA, after setting up a new delivery of performance schedule, may allow the UNIVERSITY to continue work, or treat the termination as a termination for convenience.

- c. Opportunity to Cure (General Provision)** The ATA in its sole discretion may, in the case of a termination for breach or default, allow the UNIVERSITY fourteen (14) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If UNIVERSITY fails to remedy to ATA's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by UNIVERSITY or written notice from ATA setting forth the nature of said breach or default, ATA shall have the right to terminate the Agreement without any further obligation to UNIVERSITY. Any such termination for default shall not in any way operate to preclude ATA from also pursuing all available remedies against UNIVERSITY and its sureties for said breach or default.

- d. Waiver of Remedies for any Breach** In the event that ATA elects to waive its remedies for any breach by UNIVERSITY of any covenant, term or condition of this Agreement, such waiver by ATA shall not limit ATA

remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

BREACHES AND DISPUTE RESOLUTION -

Disputes - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of ATA's Transit Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the UNIVERSITY mails or otherwise furnishes a written appeal to the Transit Director. In connection with any such appeal, the UNIVERSITY shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit Director shall be binding upon the UNIVERSITY and the UNIVERSITY shall abide by the decision.

Performance During Dispute - Unless otherwise directed by ATA, the UNIVERSITY shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the ATA and the UNIVERSITY arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the ATA is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the ATA and UNIVERSITY shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

LOBBYING -

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the ATA.

CLEAN AIR

1. The UNIVERSITY agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The UNIVERSITY agrees to report each violation to the ATA and understands and agrees that the ATA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The UNIVERSITY also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER

1. The UNIVERSITY agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The UNIVERSITY agrees to report each violation to the ATA and understands and agrees that the ATA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The UNIVERSITY also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)

TERMS - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Agreement provisions. All Agreement provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The UNIVERSITY shall not perform any act, fail to perform any act, or refuse to comply with any ATA requests, which would cause ATA to be in violation of the FTA terms and conditions.

DEBARMENT AND SUSPENSION – This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the UNIVERSITY is required to verify that none of the UNIVERSITY, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The UNIVERSITY is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

The UNIVERSITY certifies as follows:

The certification in this clause is a material representation of fact relied upon by **ATA**. If it is later determined that the UNIVERSITY knowingly rendered an erroneous certification, in addition to remedies available to ATA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The UNIVERSITY agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Agreement that may arise from this offer. The UNIVERSITY further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BUY AMERICA - The UNIVERSITY agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include microcomputer equipment and software.

The UNIVERSITY must submit to the ATA the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy

America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

TRANSIT PROTECTIVE SERVICES PROTECTION

1. The UNIVERSITY agrees to the comply with applicable transit employee protective requirements as follows:
 - (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the UNIVERSITY agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The UNIVERSITY agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311.
2. The UNIVERSITY also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

ENERGY CONSERVATION - The UNIVERSITY agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

COUNCIL ACTION FORM

SUBJECT: AWARD OF CONSTRUCTION BID/CONTRACT FOR INTERMODAL FACILITY TO WEITZ COMPANY

BACKGROUND:

At the January 25, 2011, City Council meeting, staff reported the results of the Intermodal Facility construction bids. Six bids were received (see attached bid summary). Since receipt of construction bids, staff representatives from CyRide and ISU have been addressing two issues related to bid award.

First, there was a question regarding the federally-mandated Disadvantaged Business Enterprise (DBE) participation on this project. All six bids included 0% DBE participation. After working with the low base bidder (Weitz Company), Neumann Monson (the architect on the project), and the Federal Transit Administration, the issues raised regarding this requirement have been resolved. This allows the Weitz bid to be considered responsible and responsive per federal regulations.

The actions that will be taken as a result of these discussions are that the low bidder will be dividing larger pieces of the work into smaller tasks that will allow a DBE firm to participate in the project. That contractor will be aggressively seeking additional opportunities for DBE firms in the project, such as landscaping.

Second, staff has reviewed the bid alternates. The following briefly details the results of this analysis:

- **Bid Alternate #1 (Additional Parking Deck)** – After discussions with Iowa State University and the City of Ames staff, it has been determined that a local funding mechanism can not be identified at this time to allow for this alternate to be accepted.
- **Bid Alternate #2 (Bike Path Extension)** – The difference between the low bid and the Intermodal Facility construction budget is \$65,999. Additionally, if alternate #3 is accepted (a deduct alternate), available funding will increase by \$72,000 for a total available of \$137,999. Bid Alternate #2 for the bike path extension is \$285,000, which leaves a budget shortfall of \$147,001 for this alternate. After project team and FTA discussions on this issue, it is recommended that the possibility of adding this alternate be readdressed midway through construction to determine if contingency funding can be added to the currently available funding to construct this alternate.

- **Bid Alternate #3 (Foundation System)** – The project team has determined that an Aggregate Pier Soil Reinforcement foundation system included as the alternate system, as opposed to a Auger Cast Grout Pile system included in the base bid, would **not** have a detrimental impact on the facility and would save the project \$72,000 in expenses, reducing the construction contract with the low bidder to \$7,115,000.

As this award is lower than the budgeted amount for construction of \$7,204,210, the project architect for the Intermodal project has reviewed the bids and recommended award of construction to the Weitz Company and acceptance of bid alternate #3 for the lower cost foundation system (see attached letter).

The Ames Transit Agency Board of Trustees approved award of the Intermodal Facility Construction Contract to Weitz Company for \$7,115,000 accepting bid alternate #3 on February 4, 2011.

ALTERNATIVES:

1. Approve award of contract to Weitz Company as the lowest responsible and responsive bidder for construction of the Ames Intermodal Facility in the amount of \$7,115,000, accepting the base bid and the deduct for alternative #3.
2. Approve award of contract to Weitz Company as the lowest responsible and responsive bidder for construction of the Ames Intermodal Facility in the amount of \$7,187,000, accepting the base bid only.
3. Do not award a contract at this time and reject all bids.

MANAGER'S RECOMMENDED ACTION:

Since all issues regarding bidder responsiveness and responsibility have been satisfactorily resolved, the Weitz Company bid represents the lowest, qualified bid received for the Intermodal Facility construction. It is also within the construction budget of \$7,204,210. By beginning construction of the Intermodal Facility, this work will aid redevelopment in the Campustown area and connect transportation functions within the City of Ames.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, and award a construction contract for the Intermodal Facility to the Weitz Company, Des Moines, Iowa, in the amount of \$7,115,000.

PROJECT: Ames Intermodal Facility
LOCATION: Conf. Rm. 235, City Hall, Ames, IA
NM 09.166 C3

Bid Opening: Jan. 18, 2011
Time: 2:00 PM

SUBMITTED BY:	Received Addendums 1,2,3,4	Bid Security	Non-Collusion Bidding Certification: IDOT Form	Statement of DBE Commitments: IDOT Form	Buy America Requirements: FTA Certification Form	Lobbying Certification: FTA Form	Base Bid	Alternate #1	Alternate #2	Alternate #3
DEAN SNYDER CONSTRUCTION	x	x	x	x	x	x	\$8,544,000.00	\$1,138,000.00	\$252,000.00	\$49,000.00
HENKEL CONSTRUCTION	x	x	x	x	x	x	\$7,618,000.00	\$1,156,000.00	\$243,000.00	\$83,000.00
KNUTSON CONSTRUCTION SERVICES, INC	x	x	x	x	x	x	\$7,750,000.00	\$1,176,000.00	\$226,000.00	\$40,000.00
LARSON & LARSON CONSTRUCTION, LLC	x	x	x	x	x	x	\$8,080,000.00	\$1,300,000.00	\$260,000.00	\$75,000.00
WEITZ COMPANY	x	x	x	x	x	x	\$7,187,000.00	\$1,050,000.00	\$285,000.00	\$72,000.00
WOODRUFF CONSTRUCTION	x	x	x		x	x	\$7,379,200.00	\$1,180,000.00	\$213,000.00	\$20,000.00
ESTIMATE							\$7,252,999.00	\$1,255,000.00	\$287,000.00	(\$40,000.00)

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ARCHITECTS

February, 01 2011

Sheri Kyras
CyRide, Director of Transit
1700 University Blvd.
Ames, IA, 50010

Re: Ames Intermodal Facility - Bid Evaluation
NM # 09.166

Dear Ms. Kyras:

On January 18th, 2011 CyRide received bids from six bidders for the Ames Intermodal Facility. They were Dean Snyder Construction, Henkel Construction, Knutson Construction Services, Larson and Larson Construction LLC, Weitz Company, and Woodruff Construction.

The Weitz Company submitted the low bid of \$7,187,000 and an ADD for Alternate #1 of \$1,050,000, an ADD for Alternate #2 of \$285,000.00 and a DEDUCT for Alternate #3 for \$72,000.

The base bid and Alternate bids were under the construction estimate.

We have reviewed the bid with the Weitz Company and find them to be the lowest and responsible bidder. We recommend that CyRide award the Contract to the Weitz Company for the base bid and Alternate #3 for a total contract amount of \$7,115,000.

Sincerely,

Brian Warthen, AIA, LEED AP
Neumann Monson Architects