

COUNCIL ACTION FORM

SUBJECT: INTERMODAL FACILITY TENANT LEASE WITH LOGHOUSE ENTERPRISES, INC. D/B/A EXECUTIVE EXPRESS

BACKGROUND: Under the Council approved Intermodal Facility operating agreement between the City of Ames and Iowa State University, CyRide staff is to negotiate tenant leases for the terminal area of the building. Over the last six months, staff has worked with the Federal Transit Administration, city legal staff and the transportation carriers to develop these agreements.

Currently, Executive Express' Ames office is located in east Ames. With the completion of the facility, they have indicated an interest in relocating their office to the new facility. In preparing for this location transfer, an Intermodal Facility lease agreement was developed to document the terms of Executive Express' use of the new facility. The arrangement with Executive Express is generally described below.

1. Basic Provisions –

- Official designation of the parties to the agreement
- Definition of exclusive and common areas as well as the address and suite number
- Facility is available 24/7
- Lease starts on July 1, 2012 and expires June 30, 2013 with the renewal option of two additional years (Discussions about the renewal would start in January of each year.)
- \$1,000.00 per month lease rate plus utilities with Producer's Price Index used to calculate the increase if renewals are desired. Rent would be paid to ISU's Parking Division Manager.

2. Premises – That the estimated square footage determines the rent, that the tenant is responsible for furnishings and that alterations must be approved by ISU' Parking Division Manager.

3. Term - Original year plus two extensions are possible. If extensions are taken, all original terms of the agreement still are in force.

4. Representations and Warranties -

- CyRide/City is the sole owner of the facility and has the right to enter into the agreement
- That there are no planned widening of streets in the vicinity
- That there is no condemnation, eminent domain issues, lawsuits or mechanical problems with the facility and that there are no other agreements that would impact their business.

5. **Use –**

- That they will use the facility for its intended purpose
- That there are no hazardous materials, asbestos or environmental issues that would impact their business
- That it will comply with any future laws that impact use of the space
- That it will provide documents as requested within 10 days after receipt
- That it will notify CyRide if there is any pending legal action against their Company
- It will enter the facility from Sheldon Ave. and exit on Hayward Ave. to Lincolnway

6. **Maintenance and Repairs: Improvements, Additions and Alterations –**

Executive Express will keep the facility clean and orderly, that it will repair, at its cost, any damage created by its employees or customers.

7. **Insurance and Indemnity –**

- CyRide/City of Ames is insured again all risk for full replacement cost
- Executive Express will have a comprehensive general liability policy for its premises of single limit liability of \$1 million per occurrence, provide a certificate of insurance to CyRide and a new one upon its expiration, and that, not maintaining this insurance is a material default of the contract
- Each party indemnifies the other for actions of negligence or wrongful acts of its employees and that Executive Express/CyRide will provide their own legal counsel to defend again a claim filed against their firm/agency.
- Each party agrees to discharge the other from claims, losses and liabilities covered under third party insurance. This provision delineates the situations under which this could occur.
- Executive Express can self-insure for auto and general liability, workers compensation, and property damage. The agreement lists the amounts required for a self-insurance retention.

8. **Damage or Destruction –** If the facility is damage or destroyed, Executive Express will repair or restore the premises with reasonable promptness and diligence. Rent will be abated during this time period. If CyRide does not start repairs within 30 days or is not completed within 90 days, the lease can be terminated.

9. **Real Property Taxes –** CyRide will pay any real estate taxes due.

10. **Assignment and Subletting –** Executive Express may not sublease the space without written approval from CyRide and can only be subleased to an Over-The Road carrier.

11. **Default; Breach; Remedies –**

- Lists events that would constitute a default: Non-payment of rent, not abiding by lease agreement, subleasing space without approval, receivership, seizure of assets, liens.
- CyRide has the right to remove Executive Express's property; control the leased space and can re-rent the space.
- CyRide defaults if, upon notify by the Executive Express, it fails to meet any terms of the contract within 30 days unless the remedy would take longer than 30 days.

The contract lists the remedies for the tenant – cure the default itself and deduct cost from rent or terminate the lease.

12. **Severability** – The invalidity of a lease provision does not affect the remainder of the contract.
13. **Conditions Precedent** – Contract obligations do not start until CyRide receives a certificate of occupancy. If this is not received by August 1, 2012, Executive Express can terminate the contract.
14. **Time of Essence** – Contract obligations must be addressed as quickly as possible.
15. **Rent Defined** – All monetary obligations in the contract are defined as rent.
16. **No Prior or Other Agreements** – The contract is the entire agreement.
17. **Notices** – All notices to either party must be in writing and delivered to the individuals identified in the agreement.
18. **Waivers** – If CyRide waives a default of the contract, this does not mean other defaults are waived. Also, acceptance of rent does not waive the default.
19. **Holdover** – If the contract expires and tenant remains, a month-to-month rent can be charged.
20. **Cumulative Remedies** – Remedies can be cumulative.
21. **Covenants and Conditions** – All contract provisions are both covenant and conditions.
22. **Binding Effect; Choice of Law** – Binding on all successors or representatives and any possible litigation will be in Story County.
23. **Attorney's Fees** – If litigation occurs, the prevailing party is entitled to reasonable attorney's fees.
24. **Landlord's Access; Repairs** – CyRide or ISU Parking Division can enter Executive Express's space for reasons listed.
25. **Signs** – Executive Express can put signs in the facility with permission of CyRide.
26. **Quiet Possession** – If Executive Express abides by the terms of the contract, CyRide will not interfere with its business.
27. **Performance Under Protest** – Executive Express can pay rent under protest and file suit to recover the full amount.
28. **Authority** – Executive Express confirms that its representative is authorized to sign the lease.
29. **Conflict** – Handwritten/typewritten changes prevail over the printed version of the contract.
30. **Offer** – The contract is not binding until all parties have signed the agreement.
31. **Amendments** – Requires written amendments with all parties signing.
32. **Multiple Parties** – If more than one contact is identified for a party, the actions of one bind the other.
33. **No Interpretation Against Drafter** – It is a legally binding document and each party has consulted with legal counsel; however, CyRide's crafting of the contract provisions does not mean that it is binding and an attorney has drafted its terms.

The agreement has been reviewed and approved by the City of Ames legal counsel and Risk Manager, and Executive Express's owner and legal counsel. It has been sent to

the Federal Transit Administration's (FTA) legal counsel for review and approval; however, no significant changes are expected as previous drafts have been reviewed by their staff.

The 2012-2013 operating budget for the facility includes \$900/month in revenue from leased space in the terminal building. The lease rate contained in this agreement is based upon market rates for office/garage space within Ames and, for the square footage that will be occupied by Executive Express, totals \$1,000 per month.

With the facility scheduled to be substantially completed on June 1, 2012 with landscaping, punch list items and LEED commissioning to be completed after that date, a July 1, 2012 lease date was established for tenants.

ALTERNATIVES:

1. Approve the Ames Intermodal Facility Commercial Tenant Lease with Loghouse Enterprises d/b/a Executive Express, contingent upon approval by the Federal Transit Administration.
2. Direct staff to renegotiate a lease with Loghouse Enterprises d/b/a Executive Express with Council direction on items to be renegotiated.
3. Do not approve a lease with Loghouse Enterprises d/b/a Executive Express for space within the Ames Intermodal Facility.

MANAGER'S RECOMMENDED ACTION:

The lease with Executive Express will allow for this important transportation service to be housed with other transportation services provided within the Ames community. This co-location will allow for coordinated transportation services for residents and visitors to the community.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approved a lease with Loghouse Enterprises d/b/a Executive Express for use of the Ames Intermodal Facility's bus terminal.