

COUNCIL ACTION FORM

SUBJECT: AGREEMENT TO PURCHASE SOIL FROM AIRPORT PROPERTY

BACKGROUND:

On January 24, 2014, City Council referred a letter from FOX Engineering requesting permission to purchase soil from airport farm property on the north side of Airport Road, west of Sam's Club, for transport to a property owned by Brian Hoyle at 1204 S. 4th Street. As the letter mentioned, the airport farm property was disturbed during the 2013 farming season by off-site grading activities during construction of a warehouse for Ag Leader Technologies along the west side of the City's property, and has not yet been restored. City Council directed staff at the February 25, 2014 meeting to move forward and work with Brian Hoyle/FOX Engineering to develop an agreement for removal of fill soil from the airport farm property and to return it to farmable condition.

Since that time, staff has worked with FOX Engineering, who represents Mr. Hoyle and American Healthcare Investments, LLC of Oklahoma, to draft an agreement. The main points of the agreement are as follows:

- Mr. Hoyle will pay \$1.00 per cubic yard for the soil as measured by a FOX Engineering survey. (The cubic total will be verified by City staff.)
- A minimum of six inches of topsoil will be removed from the site, stockpiled, and reapplied at the completion of removal. It should be noted that the borrow area is highly eroded and does not have much topsoil. All topsoil will be preserved in the excavation. It is estimated that less than six inches currently exists on average across the site.
- The site will be flattened to allow for ease of farming. A grading plan has been prepared for the site and will be used to plan the excavation.
- The site will be scarified to a depth of 12 inches before reapplication of the topsoil. This will be done to improve water retention and facilitate farming.
- Any additional lost revenue due to being unable to farm will be compensated by Mr. Hoyle. This work should be completed by the end of 2014.
- A cover crop of oats or annual rye will be planted to prevent erosion of the site prior to the 2015 planting season.

This agreement will provide income of \$50,000 to the Airport Construction Fund. This would also cover any lost revenue for the 2014 crop season, which is estimated at

\$3,149. This is in addition to the anticipated total farm cash rent of \$102,600 from all of the City-owned farmland surrounding the airport.

It is important to note that Ag Leader's facility on Airport Court is still operating under a temporary occupancy permit until the farm ground is restored. When the agreement is executed, Ag Leader's obligation to restore the airport farm would be transferred to Mr. Hoyle, thereby fulfilling that particular condition of Ag Leader's site plan approval.

A aerial map showing the affected property is attached.

ALTERNATIVES:

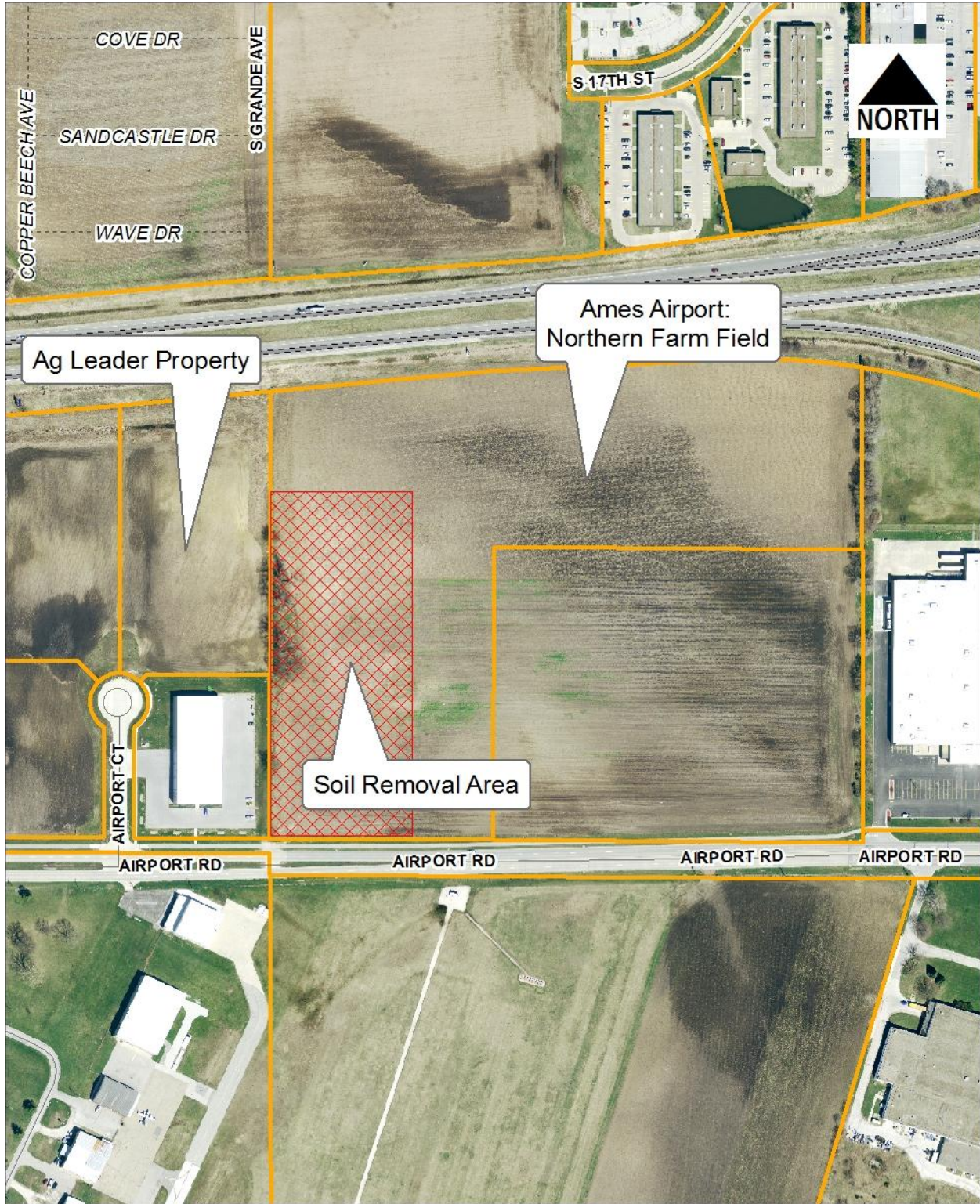
1. Approve the attached agreement with American Healthcare Investments, LLC to purchase soil from the City's airport property.
2. Direct staff to modify the agreement

MANAGER'S RECOMMENDED ACTION:

This project can benefit the City in three ways. First, it would improve the airport ground for farming purposes, which would enhance long-term profitability. Second, it would save some future expense if Grand Avenue were extended south across US Highway 30 to connect to Airport Road, since similar grading would be necessary as part of that project. Third, by lowering the hill, it would help with clear zone requirements of the Runway 19 approach to the airport's main runway. Additionally, it would provide extra income to the Airport Construction Fund, which will increase the amount available for future airport improvements.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the agreement with American Healthcare Investments, LLC to purchase soil from the City's airport property.

Map of Affected Airport Property



Agreement

SOIL PURCHASE AGREEMENT

THIS SOIL PURCHASE AGREEMENT is made and entered into this ____ day of June 2014, by and between **CITY OF AMES**, an Iowa municipal authority ("**Seller**"), and **AMERICAN HEALTHCARE INVESTMENT, L.L.C.**, an Oklahoma limited liability company ("**Buyer**");

WHEREAS, Buyer owns certain real property generally located at 1204 S. 4th Street, Ames, Iowa, containing approximately 11.23 acres, more or less (the "**Property**"), and desires to develop a portion of such property by the addition of soil to increase the elevation of a portion of such property,

WHEREAS, Seller has soil available for sale to and use by Buyer in relation to the development of the Property, and desires to sell the same to Buyer, and Buyer desires to purchase such soil from Seller, on the terms and conditions herein.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Sale of Soil.** Subject to the terms and conditions herein, Seller does hereby agree to sell to Buyer, and Buyer agrees to purchase from Seller fill soil material. Buyer shall have the right to acquire up to 50,000 cubic yards of fill soil from Seller. The soil will be made available by Seller from an approximately 9.4 acre area at the northern Airport farm parcel owned by Seller as generally depicted on Schedule A hereto (the "**Removal Area**"). Buyer shall be responsible for the costs of removal of the soil from the Removal Area.

2. **Purchase Price.** The purchase price for the fill soil being acquired by Buyer hereunder shall be One and 00/100 Dollar (\$1.00) per cubic yard of soil. The total amount of soil and calculation of the total purchase price due by Buyer for the soil acquired from Seller shall be made by FOX Engineering Associates, Inc. ("**Engineer**"). The purchase price shall be paid upon completion of Buyer's work. Currently the parties estimate the completion date to be approximately September 1, 2014.

3. **Fill Soil Removal and Grading.** In connection with the sale of the soil as contemplated hereunder, it is further agreed that Buyer shall be responsible as follows:

A. *Removal of Topsoil.* In connection with removal of the fill soil being acquired, Buyer shall cause its contractor to remove a minimum of six (6) inches of topsoil (the "**Retained Topsoil**") from the area from which the fill soil is being excavated, and shall be stockpiled by Buyer and reapplied to the Removal Area following completion of Buyer's removal of fill soil from the Removal Area. Notwithstanding the foregoing, it is agreed that the Removal Area is highly eroded and the actual amount of topsoil may be less than six (6) inches. Buyer shall have no obligation to provide additional topsoil to the Removal Area in excess of the amount of Retained Topsoil which is stockpiled in the excavation process.

B. *Regrading of Removal Area.* Following completion of Buyer's removal of fill soil from the Removal Area, Buyer shall cause the site to be graded consistent with the grading plan submitted and approved by Seller, a copy of which is attached hereto as Schedule B. It is

acknowledged that the grading of the area will include that the site will be scarified to a depth of twelve (12) inches prior to replacement of the Retained Topsoil.

C. *Lost Farm Revenue Reimbursement.* To the extent Seller is unable to obtain farm ground lease revenues from the Removal Area as a result of Buyer's excavation at the site during 2014, Buyer will reimburse Seller the amount of such lost farm ground lease revenues. Lost revenues for which Buyer shall be responsible shall be calculated at a rate of \$335 per acre of ground not available due to Buyer's work for a total lost revenue payment of **\$3,149.00**. Buyer shall not be responsible for any other costs related to any ground lease affecting the Removal Area.

D. *Cover Crop.* In the event following Buyer's removal of soil from the Removal Area, Seller does not have any tenant to lease and plant the Removal Area after such removal in 2014, then Buyer shall cause the Removal Area to be seeded with a cover crop of oats or annual rye to prevent erosion. Such work shall be performed in accordance with normal standards and provided the work is so performed, nothing herein shall be construed as a guaranty that there shall be no erosion at the Removal Area site after such planting.

E. *Permits.* Buyer shall be responsible for the cost and compliance with any applicable State and local erosion control permits related to Buyer's work.

4. **Seller Representations and Covenants.** In connection the terms hereof, Seller represents, warrants and covenants to Buyer as follows:

A. *Authorization.* All necessary action and approval for the sale of the soil hereunder has been taken and obtained in accordance with all municipal rules and regulations governing Seller and matters of this nature.

B. *Title.* All soil acquired and removed by Buyer in accordance with this Agreement shall be transferred to Buyer free and clear of any and all liens, claims or encumbrances of any nature, and is not subject to any claim of ownership or interest by any third party.

C. *Cooperation.* Seller shall cause all appropriate employees and agents to cooperate with Buyer, and Buyer's contractors and agents, to permit the removal of the soil as contemplated hereunder, on a commercially reasonable schedule, including granting all necessary access to the Removal Area.

5. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, such provision will nevertheless remain in full force and effect in all other circumstances.

6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

7. **Waiver.** The waiver by either party of any breach or violation of any provision of this Agreement does not operate as, and may not be construed to be, a waiver of any subsequent breach or violation hereof.

8. **Governing Law.** This Agreement is made and entered into in the Iowa and shall in all respects be interpreted, enforced and governed by and under the laws of said state.

9. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings between the parties with respect to the subject matter hereof. No change, addition or amendment to this Agreement is effective unless made by a written agreement signed by the parties hereto. No party has made or is relying on any promise, representation or agreement not recited in this Agreement.

10. **Authorized Signature.** Each of the parties hereto represents and warrants that the person signing this Agreement on its behalf is authorized to bind it with respect to the matters contained herein.

11. **Counterparts.** This Agreement may be executed in one or more counterparts (including by means of faxed or other electronic signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

[Remainder of page intentionally left blank - Signature Pages to Follow]

(Seller Signature Page)

IN WITNESS WHEREOF, the parties hereto have executed this Soil Purchase Agreement on the day and year first above written.

SELLER:

CITY OF AMES

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF IOWA)
) ss
COUNTY OF STORY)

The foregoing instrument was acknowledged before me this ____ day of _____ 2014 by _____, the _____ of **CITY OF AMES**, a municipal corporation, on behalf of such municipal corporation.

Notary Public

(Buyer Signature Page)

IN WITNESS WHEREOF, the parties hereto have executed this Soil Purchase Agreement on the day and year first above written.

BUYER:

**AMERICAN HEALTHCARE INVESTMENT,
L.L.C.**

By: _____
Name: Brian H. Hoyle
Title: President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of June 2014 by Brian H. Hoyle, President of **AMERICAN HEALTHCARE INVESTMENT, L.L.C.**, an Oklahoma limited liability company, on behalf of such Company.

Notary Public