

COUNCIL ACTION FORM

SUBJECT: RENEWAL OF PARK LEASES WITH IOWA STATE UNIVERSITY

BACKGROUND:

Several City parks, or portions of parks within the Ames park system, are leased from Iowa State University. Five of these leases expired March 1, 2015. However, prior to that date, University officials agreed to extend the leases until March 1, 2016. This extension was meant to allow time to finalize mutually satisfactory extension proposals. In keeping with past practice, the City Manager and then Senior Vice President for Business and Finance renegotiated the five leases and agreed to jointly support a recommendation to the City Council and Board of Regents. **Consequently, the five leases with the proposed changes from the previous contracts were presented to the City Council and approved on January 12, 2016.**

Subsequent to Council approval, it became apparent that the Board of Regents will no longer support long-term leases of their property with third parties, and now expects Regent universities to manage leases in accordance with long-term strategic land use intentions. With this new philosophy as a backdrop, the City and ISU staff re-engaged in discussions regarding the five park properties.

ISU representatives agreed they could recommend maintaining ownership of the land and granting an extension of a lease to the City if an institutional need could be identified. However, to make such a recommendation it is important to them that: **1) the length of the leases be reduced in comparison to previous agreements, and 2) flexibility be maintained so ISU can use the leased property should the need arise.** Because of the reorganization in the ISU administration, negotiations regarding the leases within this new philosophical framework took longer than anticipated.

Table 1 reflects the City parks that are impacted by these leases. Maps of each park are attached which show the leased area, as well as, any adjacent area owned by the City.

Table 1

Park	Lease Initiated	Acres
Brookside	1951	66.92
Franklin	1960	4.00
McDonald Woods	1967	10.60
Stuart Smith	1973	26.11
Zumwalt Trail Railroad	1970	7.99

While the proposed agreements are attached for Council review, the impact on the five parks are summarized below.

McDonald Woods - No Lease Extension Is Being Recommended

University officials have decided that there is no justification for retaining this property and have decided not to continue to lease this portion of McDonald Woods to the City. It is their intent to sell this property to the highest bidder. It should be pointed out that the land in this natural area park land does not contain any public paths and, therefore, staff does not believe it is advisable to participate in this bid process.

It is the staff's intent to contact the eventual owners of this University property and determine if they would consider donating land adjacent to the north side of the river and south of the river to the City for use by the Parks and Recreation Department.

Zumwalt Trail Railroad - No Lease Extension Is Being Recommended

Here again, University officials have decided not to renew a lease with the City. They want to retain this property as a buffer to their farming operations. While this land has been a part of the City park system for many years, no improvements have existed on the property for many years, and none were planned.

The University would be willing to grant an easement to the City if a decision is made to extend a path through this area sometime in the future. However, because of the extreme topography, the likelihood of this happening is remote.

Franklin Park – 4.5 Year Extension With Requirement To Purchase Within Lease Term

This is another property where the University can no longer justify maintaining ownership. However, realizing that this is a critical component of the City's park system that directly serves the recreational needs of the surrounding neighborhoods, the University is willing to offer this land for sale first to the City. The proposed lease grants the City up to 4.5 years to purchase this property in accordance with the Board of Regents policy which is based on formal appraisals. If the City fails to exercise this purchase option within the term of the lease, it is the intent of the University to initiate a bid process to sell this property to another interested party. (Section 1)

Realizing the importance of this park to the surrounding neighborhoods, it is staff's recommendation that – after signing the extension of this lease – the City move ahead quickly to purchase this property. As the Council will recall, the CDBG annual program has been revised to allow the purchase of this land utilizing this federal funding source. In order to expedite this purchase, both parties have already completed appraisals for this parcel. If the Council chooses to pursue this purchase option, the University administration has indicated they can bring this sale to the Board of Regents at their February 2017 meeting.

Stuart Smith Park - 20 Year Lease With Ability To Cancel With 24 Month Notice

While a 20 year lease is being offered in this agreement, the University has retained the right to terminate this lease by giving a 24 month notice to the City if it determines that it needs the premises for operational or fiscal needs. (Section 9)

This lease further states that should the University terminate the lease for all or some of the property, the parking area and the shared use path will be allowed to remain. As an option, ISU can choose to relocate these two improvements on the premises at their cost.

Brookside Park - 20 Year Lease With Ability Of ISU To Use Western Portion Of Park

Most residents would agree that Brookside is an iconic park in our system. Therefore, it was important to City staff that ISU not be granted a right to terminate this lease within the 20 term of the agreement. **However, the University wanted the ability to use the western portion of the park (the parking area and baseball field) if they determine a program need for it. Therefore, this agreement requires the parties to “cooperate in good faith to develop mutually acceptable scheduling for use of the area should such a need arise.” (Section 3)** The agreement makes it clear that each party will be responsible for any additional costs associated with its use of the property.

OTHER FEATURES REFLECTED IN LEASES:

The proposed lease agreements for Brookside, Franklin, and Stuart Smith contain the following similar language that is different from our previous contracts.

- Section 2 – Rent: Changed from \$1.00 per year to no rent being charged due to the City maintaining the premises.
- Section 3 – Use of Premises: Indicates the City shall use the premises only as a public park for the benefit of the residents of Ames and the students, faculty and guests of ISU.
- Section 4 – Maintenance, Utilities: Requires the City to maintain the premises at its expense, including all buildings, structures, equipment, playgrounds, walks, foot trails, bicycle paths, roads, parking, stream banks, utilities and other improvements on the premises, in good order and safe condition. It also requires ISU approval for cutting down live trees.
- Section 5 – Improvements: Language added explaining that if an improvement is added, the City and ISU will agree in writing as to whether the City will be required to remove the improvement upon termination or expiration of the lease; and if not, the amount of any compensation ISU is to pay the City for the improvement.
- Section 6 – Assignment and Subletting: Any assignment of this lease or subletting of the premises is prohibited without ISU's written permission.
- Section 8 – Taxes: Addition stating that no taxes or assessments are anticipated for the premises, but if there are, the City is responsible for the payment.

- Section 9 – Termination: Defines a serious breach and includes a provision that ISU notify the City of a breach of contract and the right to cure prior to termination.
- Section 10 – Surrender of Premises: Clarifies the City’s responsibility related to removing all buildings, structures, and equipment from the premises and restoring the site to a safe and useful condition, unless the City and ISU have agreed otherwise.
- Section 11 – Liability: Language regarding liability has been updated.
- Section 12 – Insurance: This new section requires the City to provide, at its own expense, insurance or risk finance programs in the amounts it deems appropriate to cover General Liability, Automobile Liability, Workers Compensation, Employers Liability, and Property Insurance.
- Section 13 – Notices: This new section states notices shall be in writing and shall be delivered by messenger or overnight carrier to the other party.
- Section 14 – Miscellaneous: This new section states that the lease shall not be modified without the written mutual consent of the parties.

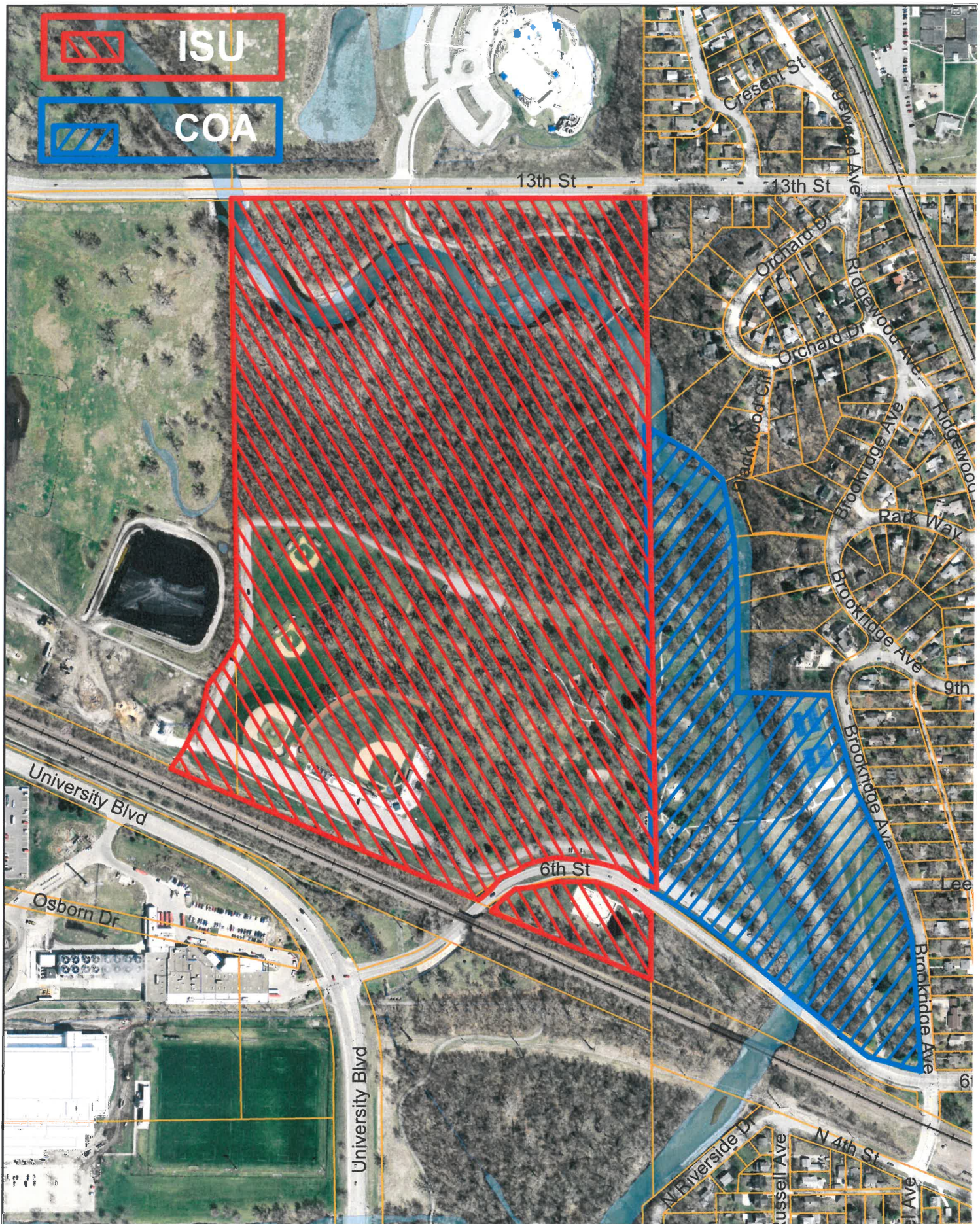
ALTERNATIVES:

- 1) The City Council can decide to approve the attached lease agreements with Iowa State University for Brookside Park, Stuart Smith Park, and Franklin Park.
- 2) The City Council can decide to approve some, but not all, of the three attached lease agreements with Iowa State University.
- 3) The City Council can decide to delay approving any of the three proposed lease agreements with Iowa State University until certain provisions of the agreement(s) are altered.
- 4) The City Council can decide not to approve any of the proposed lease agreements with Iowa State University and allow all three to expire.

CITY MANAGER’S RECOMMENDED ACTION:

The City staff, of course, would have preferred to again extend the leases for all five park properties for a period of fifty years in order to ensure a level of certainty regarding our park system. However, in the face of this new philosophical framework, administrators from ISU and the City worked very hard to develop proposals that would benefit both parties. The results of this effort are attached for Council’s consideration. University officials have indicated that the three lease agreements were approved by the Board of Regents this week.

Therefore, it is the recommendation of the City Manager that the City Council support Alternative #1, thereby approving the attached lease agreements with Iowa State University for Franklin Park, Stuart Smith Park and Brookside Park.



Brookside Park



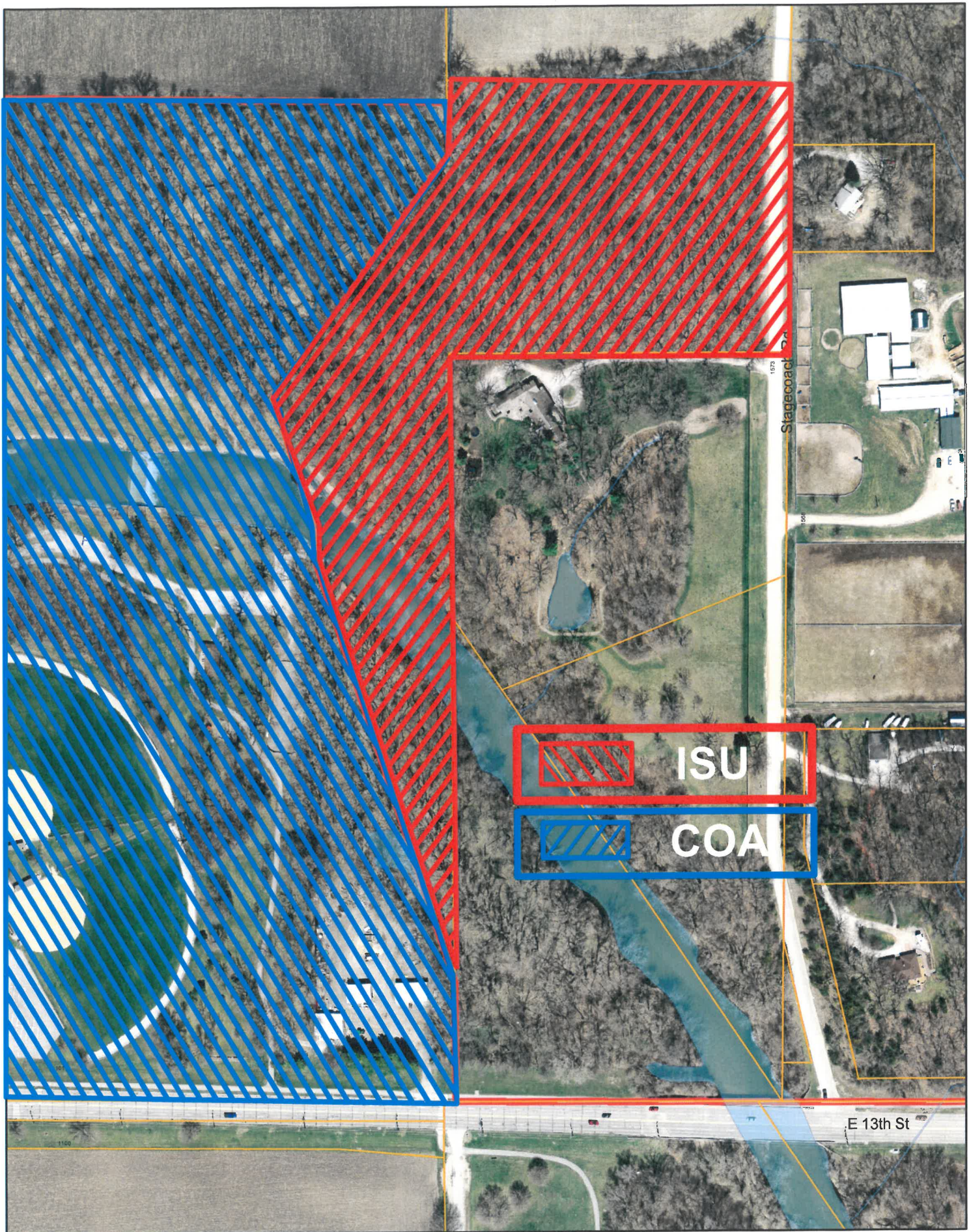
1 inch = 400 feet
Date: 1/7/2016



Franklin Park



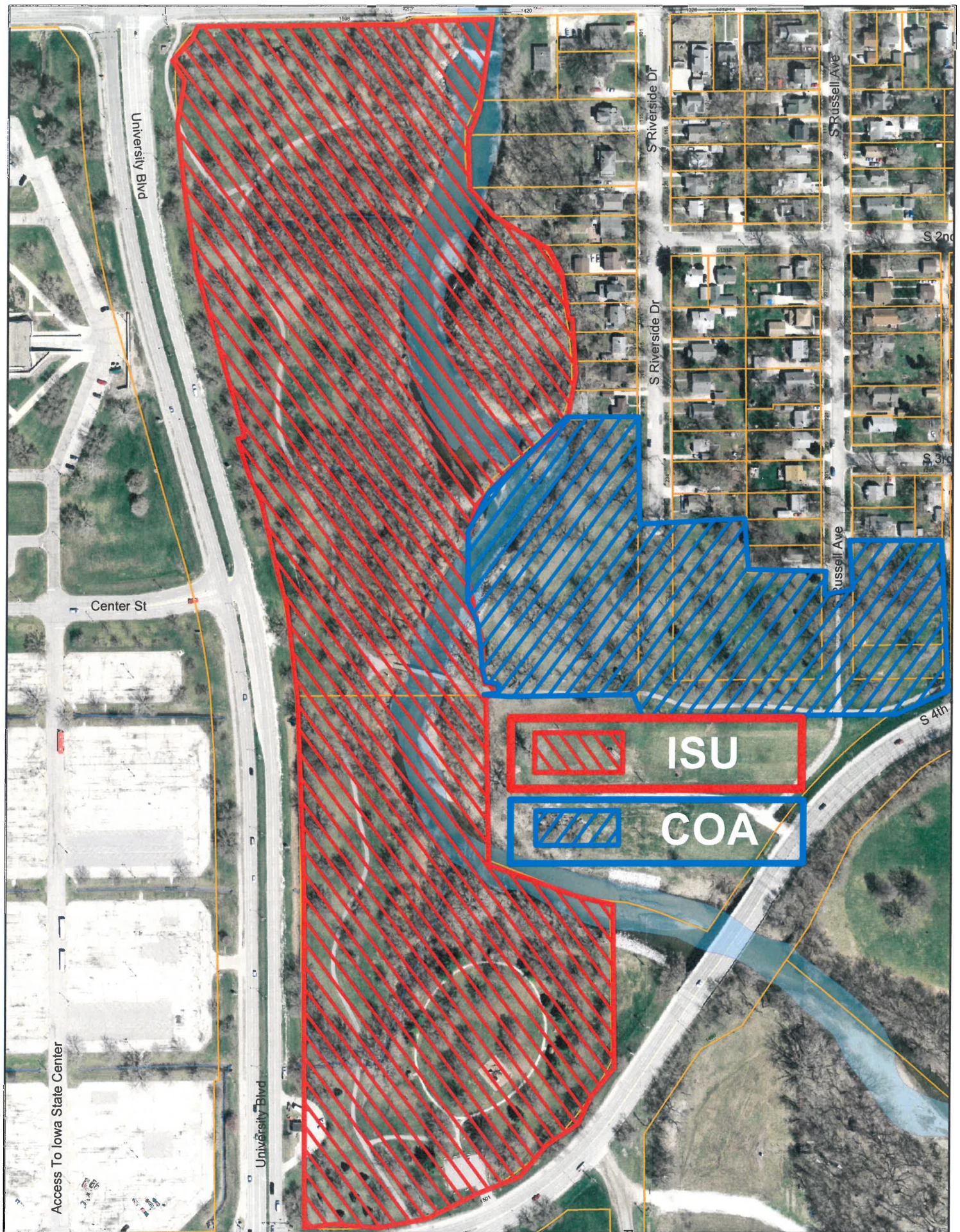
1 inch = 126 feet
Date: 1/7/2016



McDonald Woods
(Part of River Valley Park)



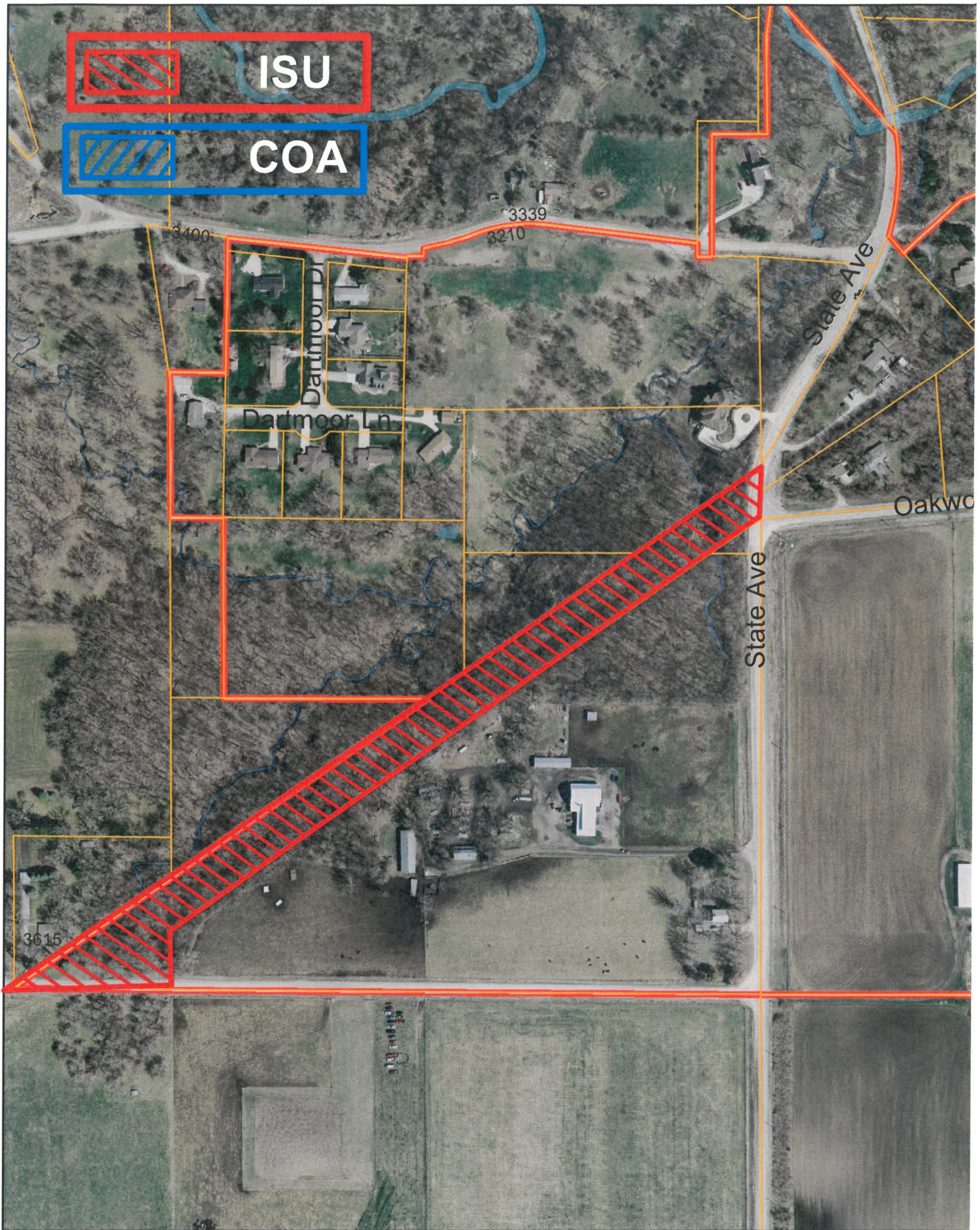
1 inch = 208 feet
Date: 1/7/2016



Stuart Smith Park



1 inch = 233 feet
Date: 1/7/2016



Zumwalt Trail Railroad Park



1 inch = 283 feet
Date: 1/7/2016

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Judy K. Parks, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; 515-239-5146

Return to: Ames City Clerk, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

Lease
Brookside
Park

THIS LEASE AGREEMENT (“this Lease”), effective as of January 1, 2017, between the Board of Regents, State of Iowa acting for and on behalf of Iowa State University of Science and Technology (“ISU”), 1750 Beardshear Hall, Ames, Iowa, and the City of Ames, Iowa (“the City”), 515 Clark Avenue, Ames, Iowa.

1. Premises; Term. ISU, in consideration of the rentals to be paid by the City, leases to the City for use as a public park the following described premises situated in Story County, Iowa (“Premises”):

That part of the East half of the West half of Section 3, Township 83 North, Range 24, West of the 5th P.M. lying North of the main East and West line of the Chicago and Northwestern Railroad right-of-way, containing approximately 66.92 acres,

from January 1, 2017, to December 31, 2037. The Premises is depicted in Attachment A, which is incorporated into and made part of this Lease.

2. Rent. ISU shall not charge any rent to the City. This Lease is of mutual benefit to both parties, and the City’s consideration for this Lease is its agreement to maintain the Premises.

3. Use of Premises. The City shall use the Premises only as a public park for the benefit of the residents of Ames and the students, faculty and guests of ISU. In the event the City ceases to properly maintain the Premises for that purpose or diverts the Premises to any other use, ISU may terminate this Lease as set forth in Section 9. The City shall comply with all applicable laws in connection with its use of the Premises and shall not permit any hazardous substances to be stored or handled on the Premises.

The west side of the Premises consists of an improved baseball field and parking area. Should ISU need to utilize all or a portion of this area to meet programmatic needs, ISU and the City will

cooperate in good faith to develop mutually acceptable scheduling for use of the area. Each party will be responsible for any additional costs associated with its use of the property.

4. Maintenance; Utilities. The City shall maintain the Premises at its expense, including all buildings, structures, equipment, playgrounds, walks, foot trails, bicycle paths, roads, parking, stream banks, utilities and other improvements on the Premises, in good order and safe condition. The City shall not cut down live trees on the Premises without the consent of ISU, but the City may transplant existing trees and shrubs, install new plantings and trim dead and/or broken limbs that create hazardous situations. The City shall establish all utilities to the Premises in its name and timely pay all utility service providers. ISU reserves the right to require the City to remove, at the City's expense, any building, structure or equipment that is unsafe, damaged beyond ordinary wear and tear, or inconsistent with the use as a public park.

5. Improvements. The City may grade the Premises for playground or other park purposes, establish walks, foot trails, bicycle paths, roads and parking and place on the Premises equipment proper and suitable for use in a public park. The City may also construct and maintain on the Premises shelter houses and other permanent buildings or structures for park purposes after obtaining ISU's prior approval of plans, specifications and costs. The approval by ISU of the permanent buildings and structures shall not be unreasonably withheld. At the time the plans are approved, the City and ISU shall mutually agree in writing as to whether the City will be required to remove the approved improvement upon termination or expiration of this Lease and, if not, the amount of any compensation ISU is to pay the City for the approved improvement. The City shall keep the Premises free and clear of all liens arising out of any work performed or material furnished for the City.

6. Assignment and Subletting. Any assignment of this Lease or subletting of the Premises is prohibited without ISU's written permission. Such written permission shall not be unreasonably withheld. Such permission from ISU shall not be necessary if the City desires to enter into agreements with organizations and individuals to use the Premises periodically or temporarily, so long as such use is consistent with the use of the Premises as a public park.

7. Reserved

8. Taxes. The parties anticipate that there will be no real estate taxes or assessments assessed against the Premises or the City's improvements. Should such taxes or assessments be assessed, the City shall be responsible for the payment of such taxes or assessments.

9. Termination. The lease shall terminate upon expiration of this Lease unless earlier terminated by mutual agreement of the parties or as otherwise set forth in this paragraph. In recognition that the City might want to make additional improvements that will require additional time to depreciate, it is agreed that the City may request, and ISU may grant with the approval of the Board of Regents, extensions to this Lease Agreement term at any time.

ISU may also terminate this Lease if the City breaches a material term of this Lease and such breach is serious and goes against the essence of the transaction. A breach is serious and goes against the essence of the transaction only in the following cases:

- a. The City uses the Premises for purposes other than stated in Section 3.
- b. The breach has caused or is reasonably expected to cause damages in excess of \$500,000, such amount to be adjusted annually each July 1 for inflation using the Department of Labor's Consumer Price Index-Urban [CPI-U, All Items, All City Average, 1982-84-100] issued in the preceding month; or
- c. The City has repeatedly breached a material term of this Lease within any two-year period, or the City has engaged in a pattern of material breaches of this Lease Agreement; provided, however, this clause may only apply where the City's breaches indicate deliberate indifference to the terms of this Lease.

ISU shall notify the City of its intent to terminate and the nature of the breach ISU believes has occurred and shall provide the City with a reasonable period commensurate with the nature of the breach to cure such breach. If the City fails to cure such breach by the end of the cure period, ISU shall give at least 30 days advance written notice of termination and termination shall be automatic at the end of the notice period.

10. Surrender of the Premises. Upon the termination of this Lease, the City shall vacate the Premises. Unless ISU and the City have agreed otherwise, the City shall remove, at its expense, all buildings, structures and equipment from the Premises and restore the site of such removed building, structure and equipment to a safe and useful condition. The parties agree to meet at that time and determine a reasonable removal schedule. However, if the City makes a request in writing to extend the term of the Lease Agreement for purposes consistent with Paragraph 3 and such request is made in the period beginning three years prior and ending no later than one year prior to the end of the twenty year term of the Lease Agreement (or any mutually agreed upon modification of the term) and ISU denies the request, then the obligation to remove all improvements will be based on mutually satisfactory terms agreed to by the parties in writing.

11. Liability. The City shall indemnify and hold harmless ISU, the Board of Regents, State of Iowa and the State of Iowa and their respective officers and employees from any and all claims, demands, damages or expenses arising out of (i) the use of the Premises by any and all persons, including employees and contractors of the City or (ii) the City's breach of this Lease.

12. Insurance. The City agrees to provide and maintain, at its own expense, for the term of the lease, insurance or risk finance programs in the amounts it deems appropriate to cover the following risks:

- General Liability – for Bodily Injury and Property Damage

- Automobile Liability – for Bodily Injury and Property Damage
- Workers Compensation – statutory requirements, including self-insurance or large deductible programs
- Employers Liability – statutory requirements, including self-insurance or large deductible program
- Property Insurance – Fire and Extended Coverage, covering Physical Damage for owned property or equipment

The City shall take action reasonably required to ensure collection from insurers under any applicable policies of insurance.

13. Notices. Notices relating to this Lease shall be in writing and shall be delivered by messenger or overnight carrier to the other party at the address set forth above or such other address as may be given in writing in accordance with this section. Notice shall be deemed effective upon receipt.

14. Miscellaneous. This Lease shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Lease by the other party shall not constitute a waiver to subsequently enforce such term or condition. The rights and remedies set forth in this Lease are not exclusive and are in addition to any other rights and remedies available in law or equity. The invalidity or illegality of one or more provisions of this Lease shall not affect the enforceability of the remaining provisions. The parties' rights and obligations in this Lease that, by their nature, would continue beyond the termination of this Lease shall survive such termination.

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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 OF
SCIENCE AND TECHNOLOGY

By _____
Miles E. Lackey
Chief Financial Officer and Chief of Staff

BOARD OF REGENTS, STATE OF IOWA

By _____
Robert Donley
Executive Director

STATE OF IOWA, COUNTY OF POLK, ss:

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert Donley, to me personally known and who, by me duly sworn, did say that he is Robert Donley, that the instrument was signed on behalf of and by the authority of the Board of Regents, State of Iowa and that Robert Donley was authorized to execute this instrument by vote of the Board of Regents, State of Iowa at its meeting on the ____ day of _____, 2016, and the execution of this instrument is a voluntary act and deed of the Board of Regents, State of Iowa and of the executive director.

Notary Public in and for the State of Iowa
My Commission Expires: _____

CITY OF AMES, IOWA

By _____
Ann H. Campbell
Mayor

Attest _____
Diane R. Voss
City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this ____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2016, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa
My Commission Expires: _____

ATTACHMENT A



Brookside Park



**DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR
RECORDER**

Prepared by: Judy K. Parks, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; 515-239-5146
Return to: Ames City Clerk, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

Lease
Franklin Park

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1. Premises; Term. ISU, in consideration of the rentals to be paid by the City, leases to the City for use as a public park the following described premises situated in Story County, Iowa (“Premises”):

A tract of land in the Northwest Quarter of the Northeast Quarter of Section 8, Township 83 North, Range 24 West of the 5th P.M. Iowa, described as follows: Beginning at the Southeast corner of Lot 12, Block 2 of West Ames, now known as West Ames Addition to the City of Ames, Iowa; thence west along the south line of said Lot 12 and said south line extended for a distance of 604.9 feet; thence south parallel with the west line of South Franklin Avenue in Ames, Iowa 294.22 feet; thence east 604.9 feet to the west line of said South Franklin Avenue; thence north along the west line of South Franklin Avenue 294.22 feet to the place of beginning, containing approximately 4 acres,

from January 1, 2017, to June 30, 2021. The Premises is depicted in Attachment A, which is incorporated into and made part of this Lease.

At the end of the term, ISU intends to dispose of the Premises. At any time prior to the end of the term, the City can purchase the Premises at the then appraised value, following the Board of Regents real property sale procedures. If the City elects to purchase the Premises, it shall notify ISU in writing and the parties shall enter into a purchase and sale agreement negotiated in good faith and mutually acceptable to the parties. Such agreement shall be subject to any required approval of the Board of Regents, State of Iowa and City Council for the City of Ames. If the City does not elect to purchase the Premises or if the parties are unable to mutually agree upon a

purchase and sale agreement, ISU may sell of the Premises in accordance with Board of Regents real property sale procedures.

2. Rent. ISU shall not charge any rent to the City. This Lease is of mutual benefit to both parties, and the City's consideration for this Lease is its agreement to maintain the Premises.

3. Use of Premises. The City shall use the Premises only as a public park for the benefit of the residents of Ames and the students, faculty and guests of ISU. In the event the City ceases to properly maintain the Premises for that purpose or diverts the Premises to any other use, ISU may terminate this Lease as set forth in Section 9. The City shall comply with all applicable laws in connection with its use of the Premises and shall not permit any hazardous substances to be stored or handled on the Premises.

4. Maintenance; Utilities. The City shall maintain the Premises at its expense, including all buildings, structures, equipment, playgrounds, walks, foot trails, bicycle paths, roads, parking, stream banks, utilities and other improvements on the Premises, in good order and safe condition. The City shall not cut down live trees on the Premises without the consent of ISU, but the City may transplant existing trees and shrubs, install new plantings and trim dead and/or broken limbs that create hazardous situations. The City shall establish all utilities to the Premises in its name and timely pay all utility service providers. ISU reserves the right to require the City to remove, at the City's expense, any building, structure or equipment that is unsafe, damaged beyond ordinary wear and tear, or inconsistent with the use as a public park.

5. Improvements. The City may grade the Premises for playground or other park purposes, establish walks, foot trails, bicycle paths, roads and parking and place on the Premises equipment proper and suitable for use in a public park. The City may also construct and maintain on the Premises shelter houses and other permanent buildings or structures for park purposes after obtaining ISU's prior approval of plans, specifications and costs. The approval by ISU of the permanent buildings and structures shall not be unreasonably withheld. At the time the plans are approved, the City and ISU shall mutually agree in writing as to whether the City will be required to remove the approved improvement upon termination or expiration of this Lease and, if not, the amount of any compensation ISU is to pay the City for the approved improvement. The City shall keep the Premises free and clear of all liens arising out of any work performed or material furnished for the City.

6. Assignment and Subletting. Any assignment of this Lease or subletting of the Premises is prohibited without ISU's written permission. Such written permission shall not be unreasonably withheld. Such permission from ISU shall not be necessary if the City desires to enter into agreements with organizations and individuals to use the Premises periodically or temporarily, so long as such use is consistent with the use of the Premises as a public park.

7. Reserved

8. Taxes. The parties anticipate that there will be no real estate taxes or assessments assessed against the Premises or the City's improvements. Should such taxes or assessments be assessed, the City shall be responsible for the payment of such taxes or assessments.

9. Termination. The lease shall terminate upon expiration of this Lease unless earlier terminated by mutual agreement of the parties or as set forth in this paragraph related to a breach of contract. In recognition that the City might want to make additional improvements that will require additional time to depreciate, it is agreed that the City may request, and ISU may grant with the approval of the Board of Regents, extensions to this Lease Agreement term at any time.

ISU may terminate this Lease if the City breaches a material term of this Lease and such breach is serious and goes against the essence of the transaction. A breach is serious and goes against the essence of the transaction only in the following cases:

- a. The City uses the Premises for purposes other than stated in Section 3.
- b. The breach has caused or is reasonably expected to cause damages in excess of \$500,000, such amount to be adjusted annually each July 1 for inflation using the Department of Labor's Consumer Price Index-Urban [CPI-U, All Items, All City Average, 1982-84-100] issued in the preceding month; or
- c. The City has repeatedly breached a material term of this Lease within any two-year period, or the City has engaged in a pattern of material breaches of this Lease Agreement; provided, however, this clause may only apply where the City's breaches indicate deliberate indifference to the terms of this Lease.

ISU shall notify the City of its intent to terminate and the nature of the breach ISU believes has occurred and shall provide the City with a reasonable period commensurate with the nature of the breach to cure such breach. If the City fails to cure such breach by the end of the cure period, ISU shall give at least 30 days advance written notice of termination and termination shall be automatic at the end of the notice period.

10. Surrender of the Premises. Upon the termination of this Lease, the City shall vacate the Premises. Unless ISU and the City have agreed otherwise, the City shall remove, at its expense, all buildings, structures and equipment from the Premises and restore the site of such removed building, structure and equipment to a safe and useful condition. The parties agree to meet at that time and determine a reasonable removal schedule.

11. Liability. The City shall indemnify and hold harmless ISU, the Board of Regents, State of Iowa and the State of Iowa and their respective officers and employees from any and all claims, demands, damages or expenses arising out of (i) the use of the Premises by any and all persons, including employees and contractors of the City or (ii) the City's breach of this Lease.

12. Insurance. The City agrees to provide and maintain, at its own expense, for the term of the lease, insurance or risk finance programs in the amounts it deems appropriate to cover the following risks:

- General Liability – for Bodily Injury and Property Damage
- Automobile Liability – for Bodily Injury and Property Damage
- Workers Compensation – statutory requirements, including self-insurance or large deductible programs
- Employers Liability – statutory requirements, including self-insurance or large deductible program
- Property Insurance – Fire and Extended Coverage, covering Physical Damage for owned property or equipment

The City shall take action reasonably required to ensure collection from insurers under any applicable policies of insurance.

13. Notices. Notices relating to this Lease shall be in writing and shall be delivered by messenger or overnight carrier to the other party at the address set forth above or such other address as may be given in writing in accordance with this section. Notice shall be deemed effective upon receipt.

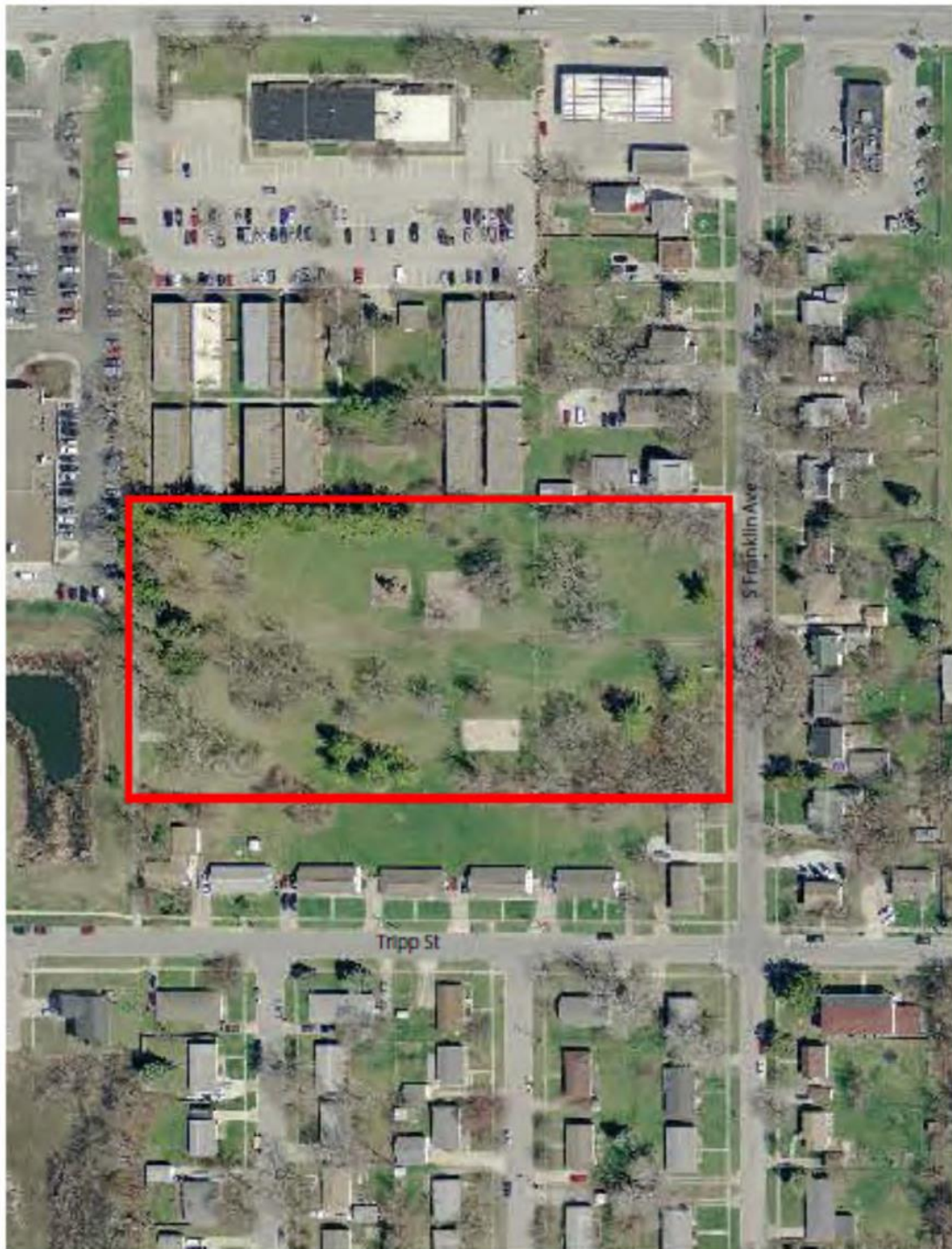
14. Miscellaneous. This Lease shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Lease by the other party shall not constitute a waiver to subsequently enforce such term or condition. The rights and remedies set forth in this Lease are not exclusive and are in addition to any other rights and remedies available in law or equity. The invalidity or illegality of one or more provisions of this Lease shall not affect the enforceability of the remaining provisions. The parties' rights and obligations in this Lease that, by their nature, would continue beyond the termination of this Lease shall survive such termination.

(The remainder of this page is intentionally blank)

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.

<p>IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY</p> <p>By _____ Miles E. Lackey Chief Financial Officer and Chief of Staff</p> <p>BOARD OF REGENTS, STATE OF IOWA</p> <p>By _____ Robert Donley Executive Director</p> <p>STATE OF IOWA, COUNTY OF POLK, ss:</p> <p>On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert Donley, to me personally known and who, by me duly sworn, did say that he is Robert Donley, that the instrument was signed on behalf of and by the authority of the Board of Regents, State of Iowa and that Robert Donley was authorized to execute this instrument by vote of the Board of Regents, State of Iowa at its meeting on the ____ day of _____, 2016, and the execution of this instrument is a voluntary act and deed of the Board of Regents, State of Iowa and of the executive director.</p> <p>_____ Notary Public in and for the State of Iowa My Commission Expires: _____</p>	<p>CITY OF AMES, IOWA</p> <p>By _____ Ann H. Campbell Mayor</p> <p>Attest _____ Diane R. Voss City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this ____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2016, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa My Commission Expires: _____</p>
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ATTACHMENT A



Franklin Park



DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Judy K. Parks, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; 515-239-5146

Return to: Ames City Clerk, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

Lease
Stuart Smith Park

THIS LEASE AGREEMENT (“this Lease”), effective as of January 1, 2017, between the Board of Regents, State of Iowa acting for and on behalf of Iowa State University of Science and Technology (“ISU”), 1750 Beardshear Hall, Ames, Iowa, and the City of Ames, Iowa (“the City”), 515 Clark Avenue, Ames, Iowa.

1. Premises; Term. ISU, in consideration of the rentals to be paid by the City, leases to the City for use as a public park the following described premises situated in Story County, Iowa (“Premises”):

Parcel No. 1: That part of the Northwest ¼ Section 10 Township 84 North Range 24 West of the 5th P.M., Story County, Iowa, described as beginning at a point 802.6 feet West and 75 feet South of the North ¼ Corner of said Section 10; thence Southerly along the East line of University Drive (formerly Elwood Drive) to the North line of South 4th Street; thence Easterly along the North line of South 4th Street to the West line of “old” South Riverside Drive; thence North to a point 33 feet West and 292 feet South of the Northeast Corner Southeast ¼ Northwest ¼ Section 10; thence West 234 feet, thence North 292 feet to the Southwest Corner of Riverside Addition; thence Northerly along the West line of Riverside Addition to the South line of Lincoln Way; thence West along the South line of Lincoln Way to the point of beginning.

Parcel No. 2: Beginning at the intersection of the North right-of-way line of Lincoln Way & the West right-of-way line of Riverside Drive, thence North & Northeasterly along the West right-of-way line of Riverside Drive to the South right-of-way line of the Chicago and Northwestern Railroad, thence Northwesterly along the South right-of-way line of the Chicago and Northwestern Railroad to the centerline of

Squaw Creek. Thence Southerly along the centerline of Squaw Creek to the North right-of-way line of Lincoln Way, thence East along the North right-of-way line of Lincoln Way to the point of beginning, above described land being a part of the Southeast $\frac{1}{4}$ Southwest $\frac{1}{4}$ and Southwest $\frac{1}{4}$ Southeast $\frac{1}{4}$ and Northwest $\frac{1}{4}$ Southeast $\frac{1}{4}$ of Section 3, Township 83 North, Range 24 West of the 5th P.M., Story County, Iowa, containing approximately 26.11 acres,

from January 1, 2017, to December 31, 2037. The Premises is depicted in Attachment A, which is incorporated into and made part of this Lease.

2. Rent. ISU shall not charge any rent to the City. This Lease is of mutual benefit to both parties, and the City's consideration for this Lease is its agreement to maintain the Premises.

3. Use of Premises. The City shall use the Premises only as a public park for the benefit of the residents of Ames and the students, faculty and guests of ISU. In the event the City ceases to properly maintain the Premises for that purpose or diverts the Premises to any other use, ISU may terminate this Lease as set forth in Section 9. The City shall comply with all applicable laws in connection with its use of the Premises and shall not permit any hazardous substances to be stored or handled on the Premises.

4. Maintenance; Utilities. The City shall maintain the Premises at its expense, including all buildings, structures, equipment, playgrounds, walks, foot trails, bicycle paths, roads, parking, stream banks, utilities and other improvements on the Premises, in good order and safe condition. The City shall not cut down live trees on the Premises without the consent of ISU, but the City may transplant existing trees and shrubs, install new plantings and trim dead and/or broken limbs that create hazardous situations. The City shall establish all utilities to the Premises in its name and timely pay all utility service providers. ISU reserves the right to require the City to remove, at the City's expense, any building, structure or equipment that is unsafe, damaged beyond ordinary wear and tear, or inconsistent with the use as a public park.

5. Improvements. The City may grade the Premises for playground or other park purposes, establish walks, foot trails, bicycle paths, roads and parking and place on the Premises equipment proper and suitable for use in a public park. The City may also construct and maintain on the Premises shelter houses and other permanent buildings or structures for park purposes after obtaining ISU's prior approval of plans, specifications and costs. The approval by ISU of the permanent buildings and structures shall not be unreasonably withheld. At the time the plans are approved, the City and ISU shall mutually agree in writing as to whether the City will be required to remove the approved improvement upon termination or expiration of this Lease and, if not, the amount of any compensation ISU is to pay the City for the approved improvement. The City shall keep the Premises free and clear of all liens arising out of any work performed or material furnished for the City.

6. Assignment and Subletting. Any assignment of this Lease or subletting of the Premises is prohibited without ISU's written permission. Such written permission shall not be unreasonably withheld. Such permission from ISU shall not be necessary if the City desires to

enter into agreements with organizations and individuals to use the Premises periodically or temporarily, so long as such use is consistent with the use of the Premises as a public park.

7. Reserved

8. Taxes. The parties anticipate that there will be no real estate taxes or assessments assessed against the Premises or the City's improvements. Should such taxes or assessments be assessed, the City shall be responsible for the payment of such taxes or assessments.

9. Termination. The lease shall terminate upon expiration of this Lease unless earlier terminated by mutual agreement of the parties or as otherwise set forth in this paragraph. In recognition that the City might want to make additional improvements that will require additional time to depreciate, it is agreed that the City may request, and ISU may grant with the approval of the Board of Regents, extensions to this Lease Agreement term at any time.

If ISU determines that it is necessary to take possession of the Premises due to ISU's operational or fiscal needs, ISU may terminate this Lease by giving no less than twenty-four months' notice to the City. If ISU determines that it is necessary to take only a portion of the Premises, ISU shall notify the City of that determination. Within ninety days of receiving the determination notice, the City shall notify ISU whether it desires to continue to use the remainder of the Premises. If the City desires to continue to use the remainder of the Premises, then the parties shall enter into an amendment to this Lease to modify the description of Premises so that it accurately describes the portion of Premises that the City will continue to lease. Such amendment shall be effective twenty-four months after the date of ISU's determination notice unless the parties mutually agree otherwise. If the City does not desire to use the remainder of the Premises, then ISU may terminate this Lease effective no less than twenty-four months after the date of ISU's determination notice. Subsequent to the early termination of the lease and until December 31, 2037, ISU shall continue to make available to the public the parking area located on the Premises and the shared use trail currently running through the Premises; provided, however, that ISU may relocate the parking and shared use trail on the Premises so long as the shared use trail continues to connect with the City of Ames shared use trail system. ISU and the City shall consult with each other regarding other ways to mitigate the impact of the foregoing on the City's programs.

ISU may also terminate this Lease if the City breaches a material term of this Lease and such breach is serious and goes against the essence of the transaction. A breach is serious and goes against the essence of the transaction only in the following cases:

- a. The City uses the Premises for purposes other than stated in Section 3.
- b. The breach has caused or is reasonably expected to cause damages in excess of \$500,000, such amount to be adjusted annually each July 1 for inflation using the Department of Labor's Consumer Price Index-Urban [CPI-U, All Items, All City Average, 1982-84-100] issued in the preceding month; or
- c. The City has repeatedly breached a material term of this Lease within any two-year period, or the City has engaged in a pattern of material breaches of this Lease Agreement; provided, however, this clause may only apply where the City's breaches indicate deliberate indifference to the terms of this Lease.

ISU shall notify the City of its intent to terminate and the nature of the breach ISU believes has occurred and shall provide the City with a reasonable period commensurate with the nature of the breach to cure such breach. If the City fails to cure such breach by the end of the cure period, ISU shall give at least 30 days advance written notice of termination and termination shall be automatic at the end of the notice period.

10. Surrender of the Premises. Upon the termination of this Lease, the City shall vacate the Premises. Unless ISU and the City have agreed otherwise, the City shall remove, at its expense, all buildings, structures and equipment from the Premises and restore the site of such removed building, structure and equipment to a safe and useful condition. The parties agree to meet at that time and determine a reasonable removal schedule. However, if the City makes a request in writing to extend the term of the Lease Agreement for purposes consistent with Paragraph 3 and such request is made in the period beginning three years prior and ending no later than one year prior to the end of the twenty year term of the Lease Agreement (or any mutually agreed upon modification of the term) and ISU denies the request, then the obligation to remove all improvements will be based on mutually satisfactory terms agreed to by the parties in writing.

11. Liability. The City shall indemnify and hold harmless ISU, the Board of Regents, State of Iowa and the State of Iowa and their respective officers and employees from any and all claims, demands, damages or expenses arising out of (i) the use of the Premises by any and all persons, including employees and contractors of the City or (ii) the City's breach of this Lease.

12. Insurance. The City agrees to provide and maintain, at its own expense, for the term of the lease, insurance or risk finance programs in the amounts it deems appropriate to cover the following risks:

- General Liability – for Bodily Injury and Property Damage
- Automobile Liability – for Bodily Injury and Property Damage
- Workers Compensation – statutory requirements, including self-insurance or large deductible programs
- Employers Liability – statutory requirements, including self-insurance or large deductible program
- Property Insurance – Fire and Extended Coverage, covering Physical Damage for owned property or equipment

The City shall take action reasonably required to ensure collection from insurers under any applicable policies of insurance.

13. Notices. Notices relating to this Lease shall be in writing and shall be delivered by messenger or overnight carrier to the other party at the address set forth above or such other address as may be given in writing in accordance with this section. Notice shall be deemed effective upon receipt.

14. Miscellaneous. This Lease shall not be modified without the written mutual consent of the parties. The failure of either party to require performance of any term or condition of this Lease by the other party shall not constitute a waiver to subsequently enforce such term or condition. The rights and remedies set forth in this Lease are not exclusive and are in addition to any other rights and remedies available in law or equity. The invalidity or illegality of one or more provisions of this Lease shall not affect the enforceability of the remaining provisions. The parties' rights and obligations in this Lease that, by their nature, would continue beyond the termination of this Lease shall survive such termination.

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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.

<p>IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY</p> <p>By _____ Miles E. Lackey Chief Financial Officer and Chief of Staff</p> <p>BOARD OF REGENTS, STATE OF IOWA</p> <p>By _____ Robert Donley Executive Director</p> <p>STATE OF IOWA, COUNTY OF POLK, ss:</p> <p>On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert Donley, to me personally known and who, by me duly sworn, did say that he is Robert Donley, that the instrument was signed on behalf of and by the authority of the Board of Regents, State of Iowa and that Robert Donley was authorized to execute this instrument by vote of the Board of Regents, State of Iowa at its meeting on the ____ day of _____ 2016, and the execution of this instrument is a voluntary act and deed of the Board of Regents, State of Iowa and of the executive director.</p> <p>_____ Notary Public in and for the State of Iowa My Commission Expires: _____</p>	<p>CITY OF AMES, IOWA</p> <p>By _____ Ann H. Campbell Mayor</p> <p>Attest _____ Diane R. Voss City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this ____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known and who, by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2016, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p> <p>_____ Notary Public in and for the State of Iowa My Commission Expires: _____</p>
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