

**COUNCIL ACTION FORM**

**SUBJECT: AMES INTERMODAL FACILITY COMMERCIAL TENANT LEASE WITH EXECUTIVE EXPRESS**

**BACKGROUND:**

Under the approved Ames Intermodal Facility operating agreement between the City of Ames and Iowa State University, CyRide staff is charged with negotiating leases for the terminal area of the building. In 2016, staff prepared a three-year agreement for Executive Express that expires June 30, 2019. Their service began operating from the Intermodal Facility on July 1, 2012. Over the last several months, staff has worked with the carrier to negotiate a new five-year agreement that will provide office/waiting room/van storage space for Executive Express service to the Des Moines International Airport.

In negotiating a new lease agreement, the following issues were modified in the new lease agreement:

- Contract term to a five-year agreement – lease starting on July 1, 2019 and expiring on June 30, 2024
- Exclusion of contract terms regarding a contract extension, as a 5-year contract is the maximum allowed by the Federal Transit Administration
- First year's lease rate is \$1,393 per month. The current lease rate is \$1,372. Both rates include a \$300 per month utility fee.
- Addition of Producer Price Index as the method to determine annual rate modifications
- Addition of Arbor Street to excluded streets in traveling to the facility
- Removing previous Director as CyRide's contact person
- Updating CyRide's mailing address

The agreement has been reviewed and approved by:

- City of Ames Legal Counsel and Risk Manager
- ISU's Project Manager for the Intermodal Facility
- Executive Express' owner

The Transit Board of Trustees approved the Executive Express five-year lease at their April 11, 2019 meeting.

**ALTERNATIVES:**

1. Approve the Ames Intermodal Facility Commercial Tenant Lease with Executive Express for a five-year period.
2. Direct staff to renegotiate a lease with Executive Express, with City Council direction on items to be renegotiated.
3. Do not approve a lease with Executive Express for space within the Ames Intermodal Facility.

**MANAGER'S RECOMMENDED ACTION:**

One of the two main purposes of the Ames Intermodal Facility is to coordinate transportation services within a single location. This agreement allows for this coordination to continue based on a negotiated lease rate. With Executive Express, Jefferson Lines and Burlington Trailways all housed at this facility, Ames residents and visitors can easily access transportation to locations outside the community.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. #1, thereby entering into a five-year agreement with Executive Express for space within the Ames Intermodal Facility.

# Ames Intermodal Facility Commercial Tenant Lease

## 1. BASIC PROVISIONS

1.1 Parties: This lease dated for reference purposes only, February 1, 2019, is made by and between the City of Ames, Iowa, d/b/a Ames Transit (hereinafter referred to as "Landlord") and Loghouse Enterprises, Inc., d/b/a Executive Express (hereinafter referred to as "Tenant") (collectively the "Parties" or individually a "Party") for the property located at 129 Hayward Avenue (hereinafter referred to as "Intermodal Facility").

### 1.2 Premises:

(a) Exclusive Premises: That certain real property for the exclusive use of Tenant, consisting of approximately 310 square feet of floor space in the Executive Express office area and 1,620 square feet of vehicle garage, including all improvements therein, and more particularly described on Exhibit "A-1" (hereinafter referred to as "Exclusive Premises").

(b) Common Areas: That certain real property for the common use of the Landlord, Tenant and other tenants of Landlord, consisting of approximately 705 square feet of Executive Express lobby area adjacent to Tenant's office and 1,042 square feet of floor space in the central entry vestibule/men's and women's restrooms/shower area, and approximately 612 square feet of Bus Bay "A," including all improvements therein or to be provided by Landlord under the terms of this Lease, and more particularly illustrated in Exhibit "A-2" (herein referred to as "Common Areas").

(c) Address: The legal address of the exclusive premises is as follows:

129 Hayward Avenue, Suite 101  
Ames, Iowa 50010

(d) Hours of Operation: That certain real property for the exclusive or common use of the Tenant will be available for use by the Tenant 24 hours per day, 7 days per week. Tenant will have a company representative on site during times when the Premises are utilized by Tenant or Tenant's clients.

1.3 Term: The term of this Lease commences on July 1, 2019 (hereinafter referred to as "Commencement Date") and ends June 30, 2024 (hereinafter referred to as "Expiration Date"). Any leasehold encumbrance must be approved by the Federal Transit Administration prior to execution of an agreement or extension of the agreement.

### 1.4 Rental:

(a) Base Rent: Tenant shall pay monthly base rent for the Leased Premises equal to \$1,093 per month for the first year of this agreement (the "Monthly Base Rent"), plus \$300 in utilities, payable in advance prior to the first day of each month. The first month's rent will be paid upon execution of this Commercial Tenant Lease Agreement (hereinafter referred to as "Agreement"). To the extent the Term commences on a day other than the first day of the month, the first month's rent shall be prorated accordingly.

- (b) Rent Increases: The "Monthly Base Rent" shall increase during the term of the lease according to the Producers Price Index (PPI) as referenced in paragraph (c).
- (c) PPI Adjustments: The PPI Adjustment shall be accomplished through the use of the following procedures:
  - (i) The "Reference Date" shall be the lease Commencement Date. The "Comparison Date" shall be in all instances the last day of the Lease Year immediately preceding the Lease Year as to which the PPI Adjustment is to be applicable.
  - (ii) The PPI for Operators and Lessors of Non-Residential Buildings (Except Miniwarehouses) published by the United State Department of Labor, Bureau of Labor Statistics (the "Index"), which is published most immediately preceding the Comparison Date (the "Comparison Index"), shall be compared with the PPI published most immediately preceding the Reference Date (the "Reference Date").
  - (iii) The Monthly Rent for the applicable Lease Year shall be the product that results when the initial Monthly Rent specified above is multiplied by a fraction, the numerator of which is the applicable Comparison Index and the denominator of which is the Reference Index. In no event, however, shall the PPI Adjustment be greater than three percent (3%) with respect to any Lease Year. As soon as the Monthly Rent for the affected Lease Year is set, Landlord shall give Tenant notice of the amount of the Monthly Rent for the Lease Year.
- (d) If the Index is changed so that the Base Year differs from that used as of the lease Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same results as would be obtained if the Index had not been discontinued or revised.
- (e) Rent Payable: Rent shall be payable to Iowa State University as the Landlord's Management Agency (hereinafter referred to as "Representative") and sent to the individual and address below:

Mr. Mark Miller  
Iowa State University  
Program Manager I  
Armory Building  
Ames, Iowa 50011-3034

Notice of change will be transmitted to Tenant by Landlord as described in Section 17 of this Agreement entitled "Notices."

- 1.5 Permitted Use: Operation of a bus terminal and the handling of passengers, baggage and package express by the Tenant and its affiliated or tenant carriers. (See paragraph 5.1 for further provisions.) The Tenant shall have the exclusive right to use the Exclusive Premises for such purposes; however, the use of Common Areas shall be non-exclusive and the Common Area may be used by Landlord for such other purposes it deems appropriate.



- 1.6 Parking Spaces: Included in the lease of the Premises, at no additional cost, is two parking spaces. Any additional parking spaces will be provided at 50% of the "Covered Annual Permit" rate, payable July 1 of each year. The location of these spaces will be identified in writing by the Representative annually and will be subject to change upon written notification by the Representative.

## **2. PREMISES**

- 2.1 Letting: Landlord hereby leases to Tenant, and Tenant hereby leases from landlord, the Premises, for the term, at the rental and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Landlord and Tenant agree is reasonable and the rental based thereon is not subject to whether or not the actual footage is more or less.
- 2.2 Condition: Landlord shall deliver the Premises to Tenant with all leasehold improvements described in the construction plans and specifications dated December 14, 2010. Tenant shall provide all remaining furnishings and fixtures to be utilized by Tenant in the Exclusive Premises. Any alteration of the Premises must be approved by Landlord's Representative in writing prior to said alteration. Tenant agrees to house all vehicles indoors on the Premises as outdoor vehicle storage is prohibited on the Intermodal site.
- 2.3 Compliance: Landlord represents and warrants to Tenant that the Premises comply with all applicable zoning requirements, ordinances, regulations and all applicable law affecting Premises and/or required in Tenant's use of the Premises or common areas appurtenant to the Premises, including the Americans With Disabilities Act (or other laws affecting handicapped access) and any environmental impact or traffic studies or requirements.

## **3. TERM**

- 3.1 Term: The Commencement Date, Expiration Date and Original Term of this Lease are as specified in paragraph 1.3.

## **4. REPRESENTATIONS AND WARRANTIES**

Landlord hereby represents and warrants to Tenant that as of the Commencement Date:

- (a) Landlord has full right, power and authority to enter into this Lease and to execute and perform all of the terms, provisions, covenants and agreements provided herein.
- (b) As of the Commencement Date of this Lease, there are no existing or proposed plans for the widening of any streets adjacent to the premises, or any urban renewal or other public projects affecting the Premises or which may impair Tenant's use and enjoyment of the Premises; however, if additional funding is secured for an expansion of the facility, Landlord will work with the Tenant to accommodate its continued use of the Premises during this construction.
- (c) To the best of its knowledge, Landlord represents that there are no condemnation proceedings or eminent domain proceedings of any kind pending, contemplated or threatened against the Premises;

- (d) To the best of its knowledge, Landlord represents that there are no suits, judgments or notices from any governmental authority relating to any violation of any health, pollution control, building, fire or zoning laws of any governmental authority with respect to the Premises, and there is no litigation or proceeding pending or threatened against or affecting the Premises;
- (e) To the best of its knowledge, Landlord represents that there is no adverse fact relating to the physical, mechanical or structural condition of the Premises or any portion thereof which has been specifically disclosed to Tenant;
- (f) No commitments have been or will be made by the Landlord to any governmental authority, utility company or other organization relating to the premises which would impose an obligation upon Tenant to make any contribution of money or dedications of property or to construct any improvements; and no governmental authority has imposed a requirement that the owner or occupant of the Premises pay any special fees or incur any expenses or obligations in connection with the Premises;
- (g) To the best of its knowledge, other than this lease, Landlord represents that there are no contracts, leases or agreements of any kind whatsoever which restrict Tenant's rights under this Lease or the Exclusive Premises.

## 5. USE

5.1 Use: Tenant shall use and occupy the Premises only for the purposes set forth in paragraph 1.5 or any other use which is incidental thereto including, but not limited, to the supplying of goods and services customarily provided to the traveling public. Tenant shall not use or permit the use of the Premises in a manner that creates waste or a nuisance. Landlord acknowledges that Tenant's proposed use of the premises for its bus terminal operations does not constitute a nuisance.

### 5.2 Hazardous Substances:

- (a) Tenant will comply with all environmental laws during the term of the Lease and agrees to indemnify, defend and hold the Landlord harmless from and against any and all loss, damage, liability and expense (including reasonable attorney's fees) that the Landlord may incur as a result of any claim, demand or action related to environmental conditions as a result of Tenant's use of the Premises.
- (b) Landlord represents and warrants to Tenant that the Premises do not contain any asbestos or Hazardous Materials (as defined below) and Landlord is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the premises including, but not limited to, soil and ground water condition.
- (c) The term "Hazardous Material" as used herein shall include, but not be limited to, asbestos, flammable explosives, dangerous substances, pollutants, contaminants, hazardous wastes, toxic substances and any other chemical, material or related substance, exposure to which is prohibited or regulated by any governmental authority having jurisdiction over the Premises, any substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, by the Superfund Amendments and Reauthorization Act 42 U.S.C. § 9601, *et seq.*; the Hazardous Material Transportation Act, 49 U.S.C. § 1801, *et seq.*; Clean Air Act 42 U.S.C. § 7901, *et seq.*; Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; Clean Water Act, 33 U. S. C. § 1251, *et seq.*; the laws, regulations or rulings of the state in which the Premises is located or any local ordinance



affecting the Premises; or the regulations adopted in publication promulgated pursuant to any of such laws and ordinances.

- 5.3 Tenant's Compliance with Law: Except as otherwise provided in this Lease, Tenant shall, at Tenant's sole cost and expense, fully, diligently and in a timely manner comply with all Applicable Law, which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record or permits relating to Tenant's use of the Premises, now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Tenant shall, within ten (10) days after receipt of Landlord's or Landlord's Representative's written request, provide Landlord with copies of all documents and information including, but not limited to, permits, registrations, manifests, applications, reports and certificates evidencing Tenant's compliance with any Applicable Law, and shall promptly upon receipt notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant to comply with any Applicable Law.
- 5.4 Ingress and Egress: Tenant shall have the non-exclusive right of ingress and egress to and from the Premises and shall not be unreasonably restricted in the operation of its motor buses to and from the Premises. Tenant shall ingress the Premises from Sheldon Avenue via Lincoln Way and egress the Premises on Hayward Avenue to Lincoln Way. Under no circumstances shall Tenant ingress or egress the Premises on Hayward Avenue south of Chamberlain Street or Arbor Street to the east of the facility.

## **6. MAINTENANCE AND REPAIRS; IMPROVEMENTS, ADDITIONS & ALTERATIONS**

Tenant shall maintain the Exclusive Premises in a clean and orderly condition. Tenant shall, at Tenant's sole cost and expense, repair any and all damage done to the Exclusive Premises or Common Areas or the Landlord's adjoining premises by Tenant's employees, agents, contractors, business invitees, customers and patrons. Landlord shall maintain and promptly make all common area and exterior repairs (including landscaping, snow removal and common area maintenance), all repairs, replacements or retro-fitting of a permanent character (including, but not limited to, components in the air conditioning, boiler and heating systems, HVAC systems, sprinkler systems, gas lines, electrical and plumbing fixtures and hot water systems, including heaters), and all floors and floor surfaces, driveways, parking lots, bus docks, wall, roof (including water tightness), foundation, footings, Building Systems (as herein defined) and structural repairs, support systems, strengthening, alternations, reconstructions or additions necessitated by reason of lapse of time, weakness or decay, insect infestation, or damage to or destruction of the Premises, or to any part thereof, or which may, at any time, be required by any governmental or public authority, except for any damage caused solely by Tenant's negligence. The "Building Systems" shall be construed as the building utility elements essential for Tenant's use and occupancy of the Premises including, but not limited to, such systems as are not readily accessible to Tenant, such as underground water, sewer, electric and other utility lines and all trash removal related to the Premises. Tenant shall surrender the Premises in as good order, repair and condition as the same were in the commencement of the Term, damage by fire and items covered by extended coverage, insurance, unavoidable casualty, reasonable wear and tear, alternations, improvements and additions made by Tenant and Landlord's failure to repair excepted.

## **7. INSURANCE AND INDEMNITY**

- 7.1 Landlord Insurance Property: Landlord is insured against all risks of physical loss or damage to the Premises in the amount of the full replacement cost thereof, against any perils commonly included in a broad form all risk policy, including the classifications of fire, lightning, explosion, vandalism, wind

and hail. A copy of Landlord's property policy will be made available at Tenant's request. Landlord is insured for general liability for any common areas.

7.2 Tenant Insurance Public Liability:

- (a) Commercial General Liability – A comprehensive general liability policy for its Premises, including coverage of contractual liability as respects this Agreement, providing a combined single limit of liability of not less than \$1,000,000 per occurrence. Tenant shall furnish a certificate of insurance to Landlord and Representative evidencing the aforesaid coverage and naming the following Landlord as an additional insureds: City of Ames, Ames Transit Authority, Iowa State University of Science and Technology, Board of Regents – State of Iowa, and State of Iowa. The policy shall provide that such insurance applies separately to each insured against whom claim is made or suit is brought. This insurance afforded to additional insureds is to be primary and non-contributory of any other valid and collectible insurance, including but not limited to self-insurance. Additional insured status shall be endorsed to the actual policy and copies of the endorsements attached to the certificate of insurance.
- (b) Personal Property – a policy for Tenant's personal property on the Premises written on an "all risks" of physical loss of damage basis for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurances clauses of the policies of insurance and shall include mischief, theft, water damages of any type and explosion and provide business interruption coverage for a period of one year. Landlord has no obligations to insure, and no liability for any damage to, any personal property of Tenant or its permittees located in the Premises.
- (c) Automobile Insurance – a commercial automobile policy for all owned, leased/rented, unowned, hired and employee non-owned vehicles in a combined single limit of \$1,000,000.
- (d) Worker's Compensation and Employer's Liability –
  - (i) Coverage A State Statutory Limit
  - (ii) Coverage B – Employer's Liability \$100,000/\$500,000/\$100,000

The policy shall contain a waiver of subrogation in favor of City of Ames, Ames Transit Authority, Iowa State University of Science and Technology, Board of Regents – State of Iowa, and State of Iowa. NCCI form number WC 0003 shall be endorsed and a copy of the endorsement attached to the certificate when provided.

Upon execution of this Agreement, Tenant shall deliver to Landlord and Representative copies of policies of any insurance required under this Lease or certificates evidencing the existence and amount of such insurance. All insurance companies providing policies shall be licensed to do business in the State of Iowa and have a minimum AM Best Rating of A-VII. All required insurance policies shall be written on a primary and non-contributory basis. Tenant's failure to maintain and keep in force the required insurance constitutes a material default of this Agreement by Tenant and entities Landlord to the remedies included in paragraph 11 of this Lease. If termination, expiration or any lapse of the



required insurance coverage occurs, Tenant will fax a copy of a new certificate of insurance or other document evidencing reinstatement of coverage within five (5) business days to Landlord's Risk Manager at 515-239-5297 and will provide a copy to the Representative. Landlord is insured for public liability for any common areas.

- 7.3 Indemnity: Except as otherwise agreed upon herein, each party agrees to indemnify and save the other party harmless (and, with respect Tenant, shall also indemnify and save Iowa State University of Science and Technology, Board of Regents – State of Iowa, and State of Iowa) from any and all claims, demands, costs and expenses of every kind whatsoever, including reasonable attorney's fees for the defense thereof, arising from the indemnifying party's wrongful act or negligence in or about the Premises. In case of any action or proceeding brought against either party by reason of any such claim, upon notice from such party, the indemnifying party covenants to defend such action or proceeding by counsel reasonably satisfactory to the other party, unless such action or proceeding alleges the joining of concurring wrongful acts or negligence of both parties, in which case both parties shall share equally in the defense of such action or proceeding to the extent permitted by law.
- 7.4 Waiver of Subrogation: Landlord and Tenant and all parties claiming under or through them hereby mutually release and discharge each other and the officers, employees, agents, representatives, customers and business visitors of Landlord or Tenant from all claims, losses and liabilities arising from or caused by any injury to persons or property covered by third party insurance, even if caused by the fault or negligence of a released party, but only: (1) in the actual amount and to the extent that insurance proceeds are received by the agreed party from third party insurers, (2) if this provision does not void or render invalid any insurance coverage or policy, (3) if consent to this waiver of subrogation by a third party insurer is given after a request has been made therefore (if required under the terms of such policy in order not to void same) and/or an endorsement to the policy is obtained (if an endorsement can be obtained at no additional cost) and (4) applying, in the case of Tenant, to any amounts in excess of the amount of which Tenant may self-insure.
- 7.5 Right to Self Insure: Tenant represents to Landlord and Landlord acknowledges that Tenant may self-insure in the ordinary course of its business. Notwithstanding any other provision contained herein to the contrary, the insurance obligations of Tenant set forth in this paragraph 7 may be satisfied by endorsement to existing excess/umbrella blanket policies written by companies or recognized standing showing a self-insurance retention of not more than \$3,000,000 per occurrence for automobile liability and general liability insurance coverage; worker's compensation insurance coverage is subject to a \$1,500,000 deductible per occurrence with a deductible of \$100,000 per occurrence for property damage insurance coverage, to the extent required under this Agreement.

## **8. DAMAGE OR DESTRUCTION**

If the Premises are damaged or destroyed in whole or in part by fire or other casualty, Landlord shall repair and restore the premises to a good tenantable condition. All rent shall wholly abate in the case the entire Premises is untenable, or shall abate pro rate for the portion rendered untenable in case a part only is untenable, until the Premises is restored to a tenantable condition. Landlord shall commence and complete all work required to be done under this paragraph 8 with reasonable promptness and diligence. In the event Landlord repairs or restores the Premises, the rent due under this Lease shall be abated or reduced proportionately during any period which, by reason of such damage or destruction, there is unreasonable interference with the operation of the business of Tenant. If Landlord does not commence the repair or restoration within thirty (30) days after the damage or destruction occurs, or if repair or restoration will and does require more than ninety (90) days to complete, Tenant may, at Tenant's option, terminate this Lease by giving Landlord notice of Tenant's election to do so at any time prior to the

commencement of the repair or restoration. In that event, this Lease shall terminate as of the date of such damage or destruction.

## **9. REAL PROPERTY TAXES**

Landlord, during the Term, shall pay promptly when due all general ad valorem real estate taxes and assessments which may be imposed upon the Premises.

## **10. ASSIGNMENT AND SUBLETTING**

Other than that of an independent commission contractor, Tenant shall not have the right to assign this Lease, or sublease all or a part of the Premises for any transportation purpose, without the prior written consent of Landlord, which may not be unreasonably withheld, to any person or entity at any time and from time to time. Any such assignment or sublease shall not release Tenant of its obligations, liability and responsibilities under this Lease. Any assignment or subletting of the Premises will be to another qualified Over-the-Road Carrier only.

## **11. TERMINATION FOR CONVENIENCE**

Tenant and Landlord may, by written notice, terminate this contract, in whole or in part, when it is in either entities best interest. If this contract is terminated, a minimum of 90 days notice must be provided in writing. Landlord shall be liable only for payment under the rental provision of this agreement rendered before the effective date of termination.

## **12. DEFAULT; BREACH; REMEDIES**

12.1 Default: The occurrence of any of the following events constitutes a material default of this Lease by Tenant:

- (a) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where the failure continues for a period of twenty (20) days after Tenant receives notice thereof from Landlord.
- (b) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than those described in subparagraph (a) above, where the failure continues for a period of thirty (30) days after Tenant receives notice thereof from landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty (30) day period and thereafter diligently completes the cure.
- (c) The making by Tenant of any general assignment or general arrangement for the benefit of creditors, the filing by Tenant of a petition to have Tenant adjudged a bankrupt and/or the judicial declaration of Tenant as bankrupt.
- (d) The appointment of a trustee or receiver to take possession of substantially all Tenant's assets located at the Premises or of Tenant's interest in this Lease, if possession is not restored to Tenant within thirty (30) days.



- (e) The attachment, execution or other judicial seizure of substantially all Tenant's assets located at the Premises or of Tenant's interest in this Lease, if the seizure is not discharged within thirty (30) days.
- (f) Tenant's action or inaction resulting in a lien being placed on all or part of the Leased Premises, if such lien is not bonded or discharged within thirty (30) days.

12.2 Remedies Upon Tenant's Default: In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, enter into the Premises, remove Tenant's property and take and hold possession of the Premises, expel Tenant and pursue those remedies available to Landlord under the laws of the state in which the Premises is located. Landlord shall make reasonable efforts to relet the premises or any part thereof in order to mitigate any damages resulting from Tenant's default.

12.3 Default by Landlord: Landlord shall not be in default unless Landlord or its Representative fails to perform any covenants, terms, provisions, agreements or obligations required of the Landlord within a reasonable time, but in no event later than thirty (30) days after notice by Tenant to Landlord; provided that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord or its Representative commences performance within the thirty (30) day period and thereafter diligently completes performance.

12.4 Remedies upon Landlord's Default: If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord or its Representative under this Lease, Tenant may, after giving notice as provided above, either cure the default and deduct the cost thereof from rent subsequently becoming due hereafter, or elect to terminate this lease upon giving thirty (30) days notice to Landlord of its intention to do so. In that event, this lease shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any representations and warranties set forth in this Lease (including, but not limited to, those set forth in paragraph 4 herein) shall cease to be the case, and if Landlord shall have failed to commence to cure within sixty (60) days after notice from Tenant and thereafter diligently completes the cure of the same, then, except as specifically provided elsewhere in this Lease, Tenant shall have the right to terminate this Lease upon notice to Landlord. Tenant may also pursue those remedies available to it under the laws of the state in which the Premises are located.

### **13. SEVERABILITY**

The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

### **14. CONDITIONS PRECEDENT**

The rental and other monetary obligations of Tenant under this Lease shall not be effective unless and until Landlord receives a certificate of occupancy to operate Tenant's business on the Premises. In the event Landlord is unable to procure the necessary permits to operate on the Premises within thirty (30) days of the Commencement Date, Tenant may terminate this Lease upon written notice to Landlord.

### **15. TIME OF ESSENCE**

Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.



## 16. RENT DEFINED

All monetary obligations of Tenant to Landlord under the terms of this lease are deemed to be rent.

## 17. NO PRIOR OR OTHER AGREEMENTS

This Lease contains all agreements between the parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

## 18. NOTICES

18.1 All notices required or permitted by the Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be by certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by a nationally recognized overnight courier (next day delivery) and shall be deemed sufficiently given if served in a manner specified in this paragraph 17. Timely delivery of notices as specified in this Lease to the individuals and addresses noted below shall constitute the Party's sufficient delivery of notice. Either Party may, by written notice to the other, specify a different address or individual for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by written notice to Tenant.

### Landlord

Transit Director  
Ames Transit Agency  
601 N. University Blvd.  
Ames, IA 50010

### Representative

Mark Miller  
Program Manager I  
Iowa State University  
Room 27, Armory Bldg.  
Ames, IA 50011

### Tenant

Larry Logeman  
President  
Loghouse Enterprises, Inc.  
d/b/a Executive Express  
3105 County Road 138  
Waite Park, MN 56387

18.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If notice is received on a Sunday or legal holiday, it shall be deemed received on the next business day.

## 19. WAIVERS

No waiver by Landlord of the Default or Breach of any term, covenant or condition hereof by Tenant shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Tenant of the same or of any other term, covenant or condition hereof. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent or similar act by Tenant, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Landlord's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Landlord shall not be a waiver of any preceding Default or Breach by Tenant of any provision hereof, other than the failure of Tenant to pay

the particular rent so accepted. Any payment given Landlord by Tenant may be accepted by Landlord on account of moneys or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment.

## **20. HOLDOVER**

If Tenant remains in possession of the Premises after the expiration or termination of the Lease, and without the execution of a new Lease, Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy.

## **21. CUMULATIVE REMEDIES**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

## **22. COVENANTS AND CONDITIONS**

All provisions of the Lease to be observed or performed by Tenant are both covenants and conditions.

## **23. BINDING EFFECT; CHOICE OF LAW**

This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State of Iowa. Any litigation between the parties hereto concerning this Lease shall be initiated in Story County, Iowa.

## **24. ATTORNEY'S FEES**

If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing party (as herein defined) in any such proceeding, action or appeal thereon shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the other Party of this claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred.

## **25. LANDLORD'S ACCESS; REPAIRS**

Landlord and/or Landlord's Representative shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders or tenants and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part, as Landlord may reasonably deem necessary, provided such activities shall not unreasonably interfere with Tenant's operations. All such activities of Landlord or its Representative shall be without abatement of rent or liability to Lease.



## **26. SIGNS**

Upon written permission of the Landlord, the Tenant may erect such signs on the interior of the Premises as Tenant may deem desirable: (a) if the signs do not violate the laws, rules or regulations of the municipality in which the Premises are situated and (b) if the Landlord determines such signs are compatible with the architecture and aesthetics of the principle structure.

## **27. QUIET POSSESSION**

Landlord covenants and agrees that so long as Tenant observes and performs all of the agreements and covenants required of it hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term without any encumbrance, interference or hindrance by Landlord. If Tenant's use of the Premises is limited or denied through rezoning, environmental impact edict or other action of any public or quasi-public agency or governmental authority, the Lease, at the sole option of the Tenant, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Term will be abated.

## **28. PERFORMANCE UNDER PROTEST**

If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

## **29. AUTHORITY**

If either party hereto is a corporation, trust or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If it is a corporation, trust or partnership, Tenant shall, within thirty (30) days after request by Landlord, deliver the Landlord evidence satisfactory to Landlord of such authority.

## **30. CONFLICT**

Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

## **31. OFFER**

Preparation of this Lease by Landlord or its Representative and submission of same to Tenant shall not be deemed an offer to lease to Tenant. This Lease is not intended to be binding until executed by all parties hereto.

## **32. AMENDMENTS**

This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification.



### 33. MULTIPLE PARTIES

Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Landlord or Tenant, the obligations of such Multiple Parties shall be the joint and several responsibility of all persons or entitled named herein as such Landlord or Tenant.

### 34. NO INTERPRETATION AGAINST DRAFTER

Each party recognizes that this lease is a legally binding agreement and acknowledges that it has had the opportunity to consult with legal counsel. In any construction of the terms of this lease, the same shall not be construed against either party on the basis of that party being the drafter of such terms.

**LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THE LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.**

The parties hereto have executed this Lease at the place on the dates specified above to their respective signatures.

**For City of Ames  
d/b/a Ames Transit Agency:**

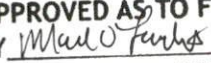
\_\_\_\_\_  
John A. Haila, Mayor

Date: \_\_\_\_\_

**For Loghouse Enterprises, Inc.,  
d/b/a Executive Express**

  
\_\_\_\_\_  
Larry Logeman, President

Date: 3/19/19

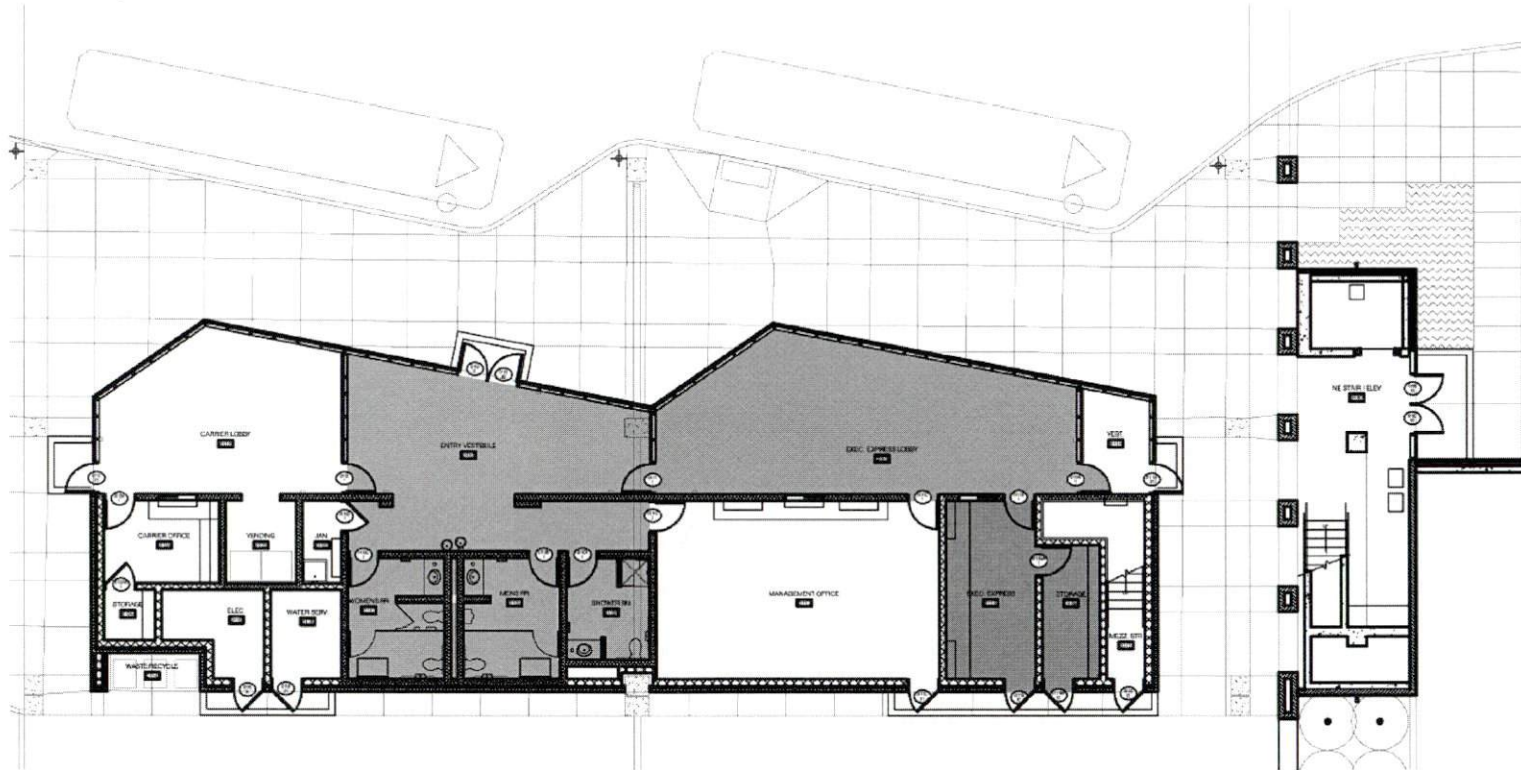
**APPROVED AS TO FORM**  
BY   
**MARK O. LAMBERT**  
**CITY ATTORNEY**

# Exhibit A-1

## Key

- Executive Express Office
- Executive Express Lobby
- Entry Vestibule/Restrooms/Showers

EXHIBIT A-1



TRANSIT TERMINAL - MAIN LEVEL PLAN

1/16" = 1'-0"

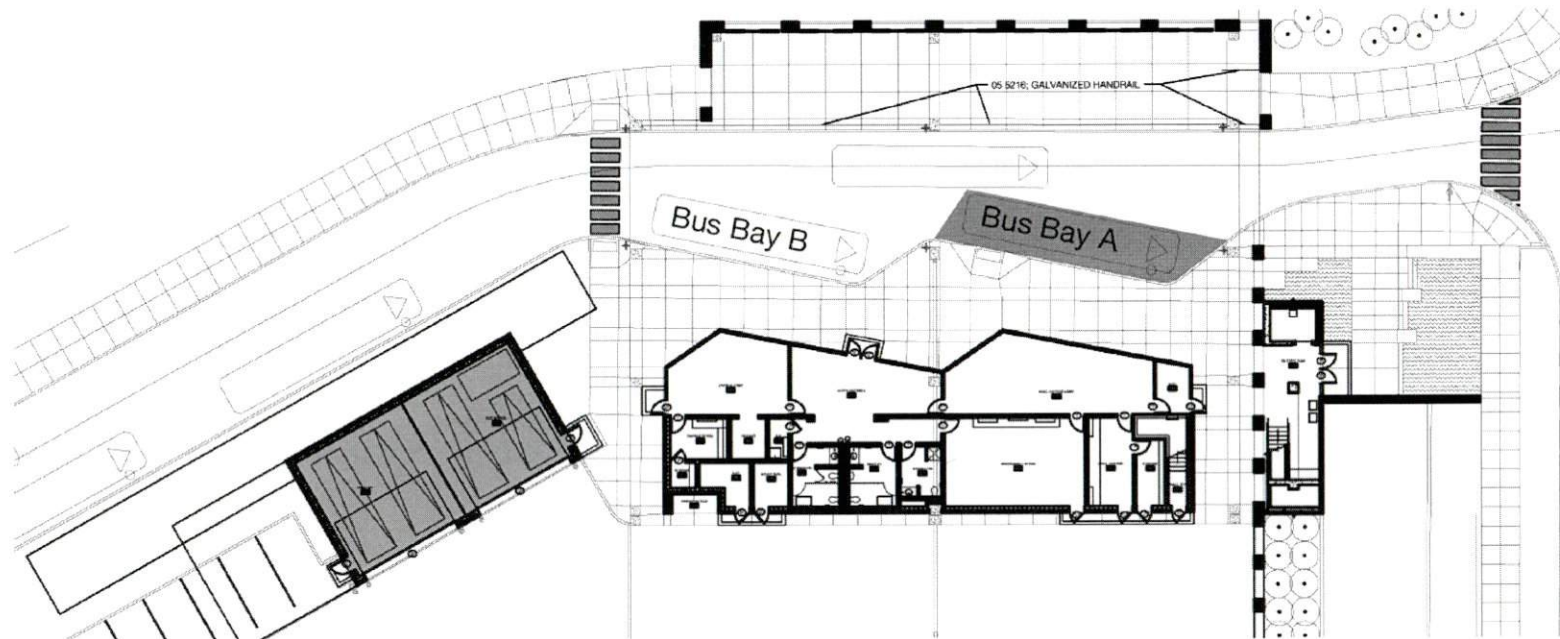
APPROVED AS SHOWN  
BY  
ARCHITECT  
DATE

## Exhibit A-2

### Key

- Bus Bay A
- Vehicle Garage

EXHIBIT A-2



BUS GARAGE

1/32" = 1'-0"