

COUNCIL ACTION FORM

SUBJECT: LEASE AGREEMENT BETWEEN IOWA STATE UNIVERSITY AND CITY OF AMES FOR HEALTHY LIFE CENTER SITE AT ONTARIO AND SCHOLL ROAD

BACKGROUND:

City staff has been working to finalize a lease agreement prior to the September 10th bond referendum for the Healthy Life Center site situated on University property west of Scholl Road and north of Ontario Road. Attached for the City Council's review and approval is a long-term lease for this approximately 9.5-acre site.

The major provisions of this proposed lease are highlighted below:

- The lease will commence of October 1, 2019 and continue for 53 years unless terminated earlier by mutual consent or in accordance with other provision of the agreement. (Paragraphs 2, 15, 16)
- While there will be no lease payments owed the University for use of the land for the Healthy Life Center, the City will be obligated to pay the University up to \$75,000 should the City decide that the University's existing directional sign on the leased property at the corner of Scholl Road and Ontario Road be relocated. (Paragraph 3)
- The City will be required to construct the Healthy Life Center along with the accessory components, install any entryway improvements to the site, maintain the site, and develop storm water management systems to handle the new improvements on the site. (Paragraph 3)
- The City will be allowed to use the site only for programs and activities that support the mission of the Healthy Life Center. (Paragraph 4)
- The City will need approval of the University for the site, utility, and circulation infrastructure plans of the Healthy Life Center before proceeding with the initial construction. (Paragraph 5)
- After the initial construction, the City is allowed to proceed without approval from ISU for 1) additional improvements previously approved in the site plan, 2) modifications of an existing improvement, provided the footprint of the

improvement is not altered, and 3) landscaping improvements on the site. (Paragraph 6)

- The University emphasizes that it is the responsibility of the City to determine whether or not the site is suitable for the construction and operation of the Healthy Life Center and that no environmental studies have been performed on the site. (Paragraphs 8 & 14)
- The City is required to hold the University harmless and indemnify it against any loss or liability arising out of the City's use of the property. (Paragraph 10)
- The City will be responsible to pay any property taxes, assessments, and utility fees charged during the period the City leases the site. (Paragraphs 13 & 7)
- At the end of the lease agreement, the City will be responsible to remove all facilities, equipment, and personal property from the site. The parties will meet and agree on a reasonable schedule to restore the site to open space. However, if the University denies a request from the City to extend the lease anytime between the period beginning three years prior and ending no later than one year prior to the end of the 53-year lease (or any previously agreed to ending date), the obligation to remove the City's property will be based on mutually satisfactory terms of the parties. (Paragraph 14)
- The University may terminate the lease agreement if 1) the City does not begin construction of the HLC within three years from the commencement of the agreement, 2) the City uses the site for purposes not related to the mission of the Healthy Life Center, or 3) the City breaches a material term of the lease agreement. (Paragraph 15)
- The City may terminate the lease agreement if 1) the September 10, 2019 bond referendum fails, or 2) existing environmental hazards are discovered on site. (Paragraph 16)
- The City can sublease space within the Healthy Life Center for uses consistent the mission of the Healthy Life Center (Paragraph 17)

ALTERNATIVES:

1. The City Council can approve the attached lease agreement with the City and Iowa Board of Regents acting on behalf of Iowa State University.
2. The City Council can approve the attached lease agreement with the City and the Iowa Board of Regents, acting on behalf of Iowa State University, with modifications suggested by the City Council.

The attached agreement was approved by the Board of Regents at their August 1st meeting. Therefore, there is no guarantee that the Board would be amenable to modifying the attached agreement at this time.

3. The City Council can reject approval of the attached lease agreement and direct staff to identify another site to host the Healthy Life Center.
4. The City Council can delay making a final decision regarding the proposed lease agreement until the results of the September 10, 2019 bond election are known.

CITY MANAGER'S RECOMMENDED ACTION:

Rather than wait until the results of the September 10th bond election are known to begin negotiations with the University to lease their property for the Healthy Life Center site, the staff has been working to finalize the attached agreement to avoid any delays in starting construction should the referendum pass.

Therefore, it is the recommendation of the City Manager that the City Council support Alternative #1 and approve the attached lease agreement between the City and Iowa Board of Regents acting on behalf of Iowa State University.

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

Prepared by: Mark O. Lambert, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; (515) 239-5146
Return document to: Ames City Clerk, 515 Clark Ave., Ames, IA 50010

LEASE AGREEMENT

**BOARD OF REGENTS, STATE OF IOWA
ACTING FOR IOWA STATE UNIVERSITY OF
SCIENCE AND
TECHNOLOGY TO THE
CITY OF AMES
(Healthy Life Center)**

THIS LEASE AGREEMENT made this _____ day of _____, 2019, between the City of Ames, Iowa, hereinafter called “City”, and the Board of Regents, State of Iowa acting for and on behalf of Iowa State University of Science and Technology, hereinafter called “University”,

WITNESSETH:

1. The University hereby agrees to lease to the City for use as a public facility known as the Healthy Life Center the following described site situated in Story County, Iowa (“Leased Site”):

LEGAL DESCRIPTION ATTACHED AS EXHIBIT A

2. The term of this Lease Agreement shall be fifty-three (53) years, commencing on the 1st day of October, 2019, and ending at midnight on the 30th day of September, 2072, unless earlier terminated by mutual agreement of the parties or as set forth in Paragraph 15 of this Lease Agreement. In recognition that the City might want to make additional improvements on the Leased Site in the future that will require additional time to depreciate, it is agreed that the City may request, and the University may grant with the approval of the Board of Regents, extensions to this Lease Agreement term at any time.

3. There shall be no money payments due or owing the University under this Lease Agreement. The full, complete, and satisfactory consideration for this Lease Agreement shall be the

following obligations, which shall be performed by the City at no cost to the University:

- a. Construct on the Leased Site the Healthy Life Center building, along with the accessory components such as, but not limited to, the outdoor playground, parking lot, community gardens, sidewalks, bike/shared use path(s) etc., that make the life-long goal of healthy living accessible and enjoyable to people of all ages and socio-economic status;
- b. As determined necessary by the City for access to the Leased Site, install the entryway improvements which may include, but are not limited to, traffic control devices and turning lanes along Ontario Street;
- c. Maintain the Leased Site; and
- d. Develop storm water management systems in accordance with applicable City codes.

If the City determines that the University directional signage currently located on the Leased Site needs to be relocated, the City shall reimburse the University for the cost of relocation up to \$75,000. The University shall invoice the City for the relocation costs, and the City shall reimburse the University within 60 days.

4. The City shall use the Leased Site for programs and activities that support the goal of the Healthy Life Center as stated in Paragraph 3(a). The City will own and manage the Healthy Life Center.

5. The City is authorized to make all of the improvements on the Leased Site that have been included in the September 10, 2019, bond referendum, as generally shown on the conceptual plan attached as Exhibit B. The City shall submit its site, utility and circulation infrastructure (sidewalk and multi-use trail) plans for the improvements to the University for approval, which shall not be unreasonably withheld. All construction shall be in conformance with such approved plans.

6. Following the completion of the initial construction project as described in Paragraph 5, the City may also construct on the Leased Site additional permanent buildings and other improvements that are consistent with purposes set forth in Paragraph 3(a) of this Lease Agreement after obtaining the University's approval; provided, however, that no prior approval shall be required for: (i) the construction of any improvement depicted in Exhibit B; (ii) any modification of an existing improvement provided the footprint of the improvement remains as depicted in Exhibit B; or (iii) landscaping. If new site, utility or circulation infrastructure (sidewalk and multi-use trail) plans are developed for the new improvements, the City shall submit the plans to the University for approval, which shall not be unreasonably withheld. All construction shall be in conformance with such approved plans.

7. The City may grade the Leased Site and install on the Leased Site utilities necessary for the development of the Healthy Life Center building, outdoor gardens, parking lot, playground, storm water facilities, or other related purposes. The City shall pay for all utility services furnished to the Leased Site that serves the City's programs and buildings.

8. The University makes no representations or warranties regarding the Leased Site. The City is responsible for determining whether the Leased Site is suitable for the construction and operation of the Healthy Life Center and the programs and activities on the Leased Site.

9. The City, after taking possession of the Leased Site and until the termination of this Lease Agreement, shall care for and maintain the Leased Site in a reasonably safe and serviceable condition consistent with other City facilities. The City shall also remove snow, mow grass, remove weeds, prune and care for trees, bushes and other vegetation, and provide any needed similar landscaping services on any property between the east boundary of the Leased Site and the western edge of Scholl Road and between the south boundary of the Leased Site and northern edge of Ontario Street. The City will not knowingly permit or allow the Leased Site to be damaged or depreciated in value by any dumping of refuse, discharge of hazardous waste or any act of the City, its agents or employees. The City shall do what is reasonably necessary to control soil erosion resulting from the City's use of the Leased Site, including maintenance and preservation of existing watercourses and waterways. The City shall comply with all applicable laws, regulations, and ordinances, including but not limited to those pertaining to accessibility by persons with disabilities. The City shall pay or cause to be paid all costs for work done by it or caused to be done by it on the Leased Site, and the City will keep the Leased Site free and clear of all mechanics' liens or claims relating to the City's public improvements and other liens on account of work done for the City. The City shall be primarily responsible for providing emergency services on the Leased Site. However, nothing herein shall contravene any existing or future 28E Agreements between the parties.

10. The City does hereby covenant and agree to indemnify and hold harmless the University, its officers and employees, against any loss or liability whatsoever, including reasonable attorney's fees, pertaining to any and all claims by any and all persons, resulting from or arising out of the City's construction, location, operation and maintenance of the Leased Site.

11. The University reserves the right to access the Leased Site to install and maintain on the Leased Site utility conduit, pipelines and similar items to supply utilities to property owned or controlled by the University. The University shall perform the installation and maintenance in a manner reasonably calculated to minimize interference with the programs and activities on the Leased Site and shall, at its expense, restore to its prior condition any portion of the Leased Site, including any City improvement on the Leased Site, disrupted or damaged by the University's work. The University reserves the right to enter the Leased Site and the improvements during regular business hours for purposes of conducting periodic inspections of the Leased Site, provided such inspections shall be subject to the terms of, and shall not interfere with, the rights of the City under this Lease Agreement.

12. The University may continue to use the Leased Site for agricultural purposes at no-charge until the City commences construction. During such time, the University shall own any crops grown on the Leased Site and revenues from the sale of the crops. The City shall notify the University when the City desires to begin construction on the Leased Site. The City shall provide such notice by no later than December 1st of the year preceding the calendar year during which construction is to commence.

13. The Parties anticipate that there will be no real estate taxes or assessments assessed against the Leased Site or the City's improvements. Should taxes or assessments be assessed for the period during which the City has leased the Leased Site, the City shall be responsible for the payment of such taxes or assessments.
14. At the end of the term of Lease Agreement, the City will remove all facilities, equipment, improvements, and personal property ("City's Property") from the Leased Site and return the Leased Site to a safe, open space, unless otherwise agreed to in writing by the Parties. The Parties agree to meet and determine a reasonable schedule for the removal of City's Property and return of the Leased Site to open space. However, if the City makes a request in writing to extend the term of the Lease Agreement for purposes consistent with Paragraph 3(a), 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 fifty-three year term of the Lease Agreement (or any mutually agreed modification of the term), and the University denies the request, then the obligation to remove City's Property will be based on mutually satisfactory terms agreed to by the Parties in writing.

Both Parties acknowledge that no environmental study has been performed on the Leased Site prior to entering into this agreement to determine if any hazardous materials exist on the Leased Site prior to the City taking possession of it. However, upon termination of the lease the City agrees to remove any hazardous materials that are deposited as a result of City sponsored activities on the Leased Site during the term of the agreement.

15. This Lease Agreement is granted and all rights hereunder shall endure except that if one or more of the following events occurs the University may terminate the Lease Agreement following the procedures indicated in this Paragraph:
 - a. The City fails to begin construction of the improvements described in Paragraph 5 within three years from the commencement of this Lease Agreement.
 - b. The City uses the Leased Site for purposes other than stated in Paragraph 3(a).
 - c. The City breaches a material term of this Lease Agreement and such breach is serious and goes to the essence of the transaction. A breach is serious and goes to the essence of the transaction only in the following cases:
 - i. The City has breached a term of this Lease Agreement and such breach has caused or is reasonably expected to cause damages in excess of \$500,000, such amount to be adjusted annually each September 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;
 - ii. The City has repeatedly breached a material term of this Lease Agreement within any two-year period, or the City has engaged in a pattern of material breaches of the Lease Agreement; provided, however, this clause shall apply only where the City's breaches indicate deliberate indifference to the terms of this Lease Agreement.

For termination pursuant to Subparagraph 15(a), the University shall give at least 60 days advance written notice, and termination shall be automatic at the end of the 60 day notice period. For termination pursuant to Subparagraphs 15(b) and 15(c), the University shall notify the City in writing of its intent to terminate and the nature of event or breach the University believes has occurred and shall provide the City with a reasonable period commensurate with the nature of the event or breach to cure such event or breach. If the City fails to cure such event or breach by the end of the cure period, the University shall give at least 30 days advance written notice, and termination shall be automatic at the end of the 30 day notice period. Prior to the expiration of the 30-day notice period, the City may appeal to the Board of Regents in accordance with the Board Policy Manual to contest whether the event or breach occurred, whether the University provided a reasonable cure period, or whether the City cured the event or breach. If the City files an appeal, the Lease Agreement shall not be terminated while the appeal is pending. The foregoing shall in no way affect or impair the right of either party to pursue any other legal or equitable remedy to which either party maybe entitled. In the event of termination of the lease under this Paragraph 15, the City shall retain ownership of the Healthy Life Center building and accessory facilities and equipment but shall be obligated to remove them from the Leased Site as set forth in Paragraph 14.

16. The City may terminate this Lease Agreement upon written notice to the University if the September 10, 2019 bond referendum fails to secure enough votes to pass, or if existing environmental hazards are discovered to be present at the Leased Site.
17. This Lease Agreement may not be assigned or the Leased Site subleased by the City without the advance, written consent of the University and approval of the Board of Regents. The foregoing shall not prohibit the City from subletting a portion of the Healthy Life Building or the Leased Site so long as the City requires its subleasee to use it for purposes consistent with this Lease Agreement. This Lease Agreement may not be assigned by the University without the advance, written consent of the City.
18. All notices under this Lease Agreement shall be in writing and shall be deemed to have been given: (i) upon hand delivery or (ii) the next business day after sending by a nationally recognized overnight carrier with written confirmation of receipt. The Parties shall deliver notices to the following:

If to University:

Senior Vice President for Operations and Finance
Iowa State University
1350 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011

And

University Counsel
Iowa State University

3550 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011

If to City:
City Manager
City of Ames
515 Clark Avenue
Ames, Iowa 50010

And

City Attorney
City of Ames
515 Clark Avenue
Ames, Iowa 50010

19. This Lease Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Lease Agreement and supersedes all prior agreements, whether written, oral, or implied. This Lease Agreement 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 Agreement by the other party shall not constitute a waiver to subsequently enforce such term or condition. The invalidity or illegality of one or more provisions of this Lease Agreement shall not affect the enforceability of the remaining provisions. The parties' rights and obligations in this Lease Agreement that, by their nature, would continue beyond the termination of this Lease Agreement shall survive such termination.

Signature Page follows on next page

CITY OF AMES, IOWA

By: _____
John Haila, Mayor

Attest by: _____ Diane R. Voss, City Clerk

State of Iowa)
County of Story)

This record was acknowledged before me on _____, 2019 by John Haila as Mayor of the City of Ames, Iowa.

Notary Public in and for Said County
My Commission expires: _____

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

By: _____
Pamela Elliott Cain, Interim Senior Vice President for
Operations and Finance

State of Iowa)
County of Story)

This record was acknowledged before me on _____, 2019 by Pamela Elliott Cain as Interim Senior Vice President for Operations and Finance of Iowa State University of Science and Technology.

Notary Public in and for Said County
My Commission expires: _____

BOARD OF REGENTS, STATE OF IOWA

By: _____
Mark Braun, Executive
Director



This record was acknowledged before me on _____, 2019 by Mark Braun as Executive Director of the Board of Regents, State of Iowa.

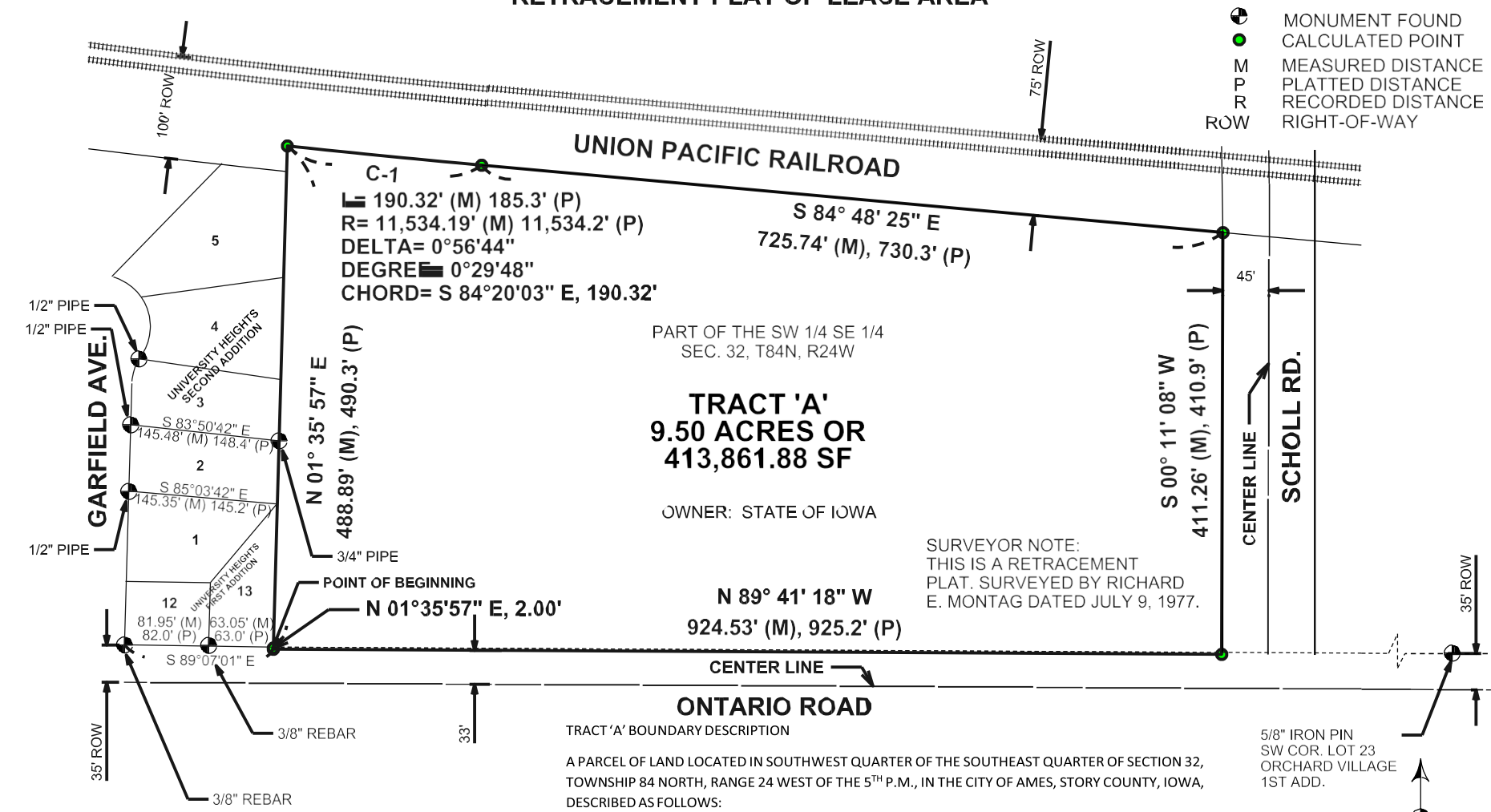
Notary Public in and for Said County
My Commission expires: _____

EXHIBIT A

RETRACEMENT PLAT OF LEASE AREA

LEGEND

-  MONUMENT FOUND
-  CALCULATED POINT
- M** MEASURED DISTANCE
- P** PLATTED DISTANCE
- R** RECORDED DISTANCE
- ROW** RIGHT-OF-WAY



NOTE: ALL BEARINGS ARE ASSUMED.

LICENSED PROFESSIONAL LAND SURVEYOR

MYRON G DARINGER

19758

IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

MYRON G DARINGER _____ DATE _____

PRINTED OR TYPED NAME

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2019 _____

PAGES OR SHEETS COVERED BY THIS SEAL: _____

GRAPHIC SCALE



DATE
05/15/19
SCALE
1" = 150'
DRAWN
MD
FIELD BOOK
1
SHEET 1 OF 1

Exhibit B

