



ITEM 11H

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PLANNING, ZONING AND BUILDING SAFETY

**Public Health,
Housing Inspections &
Inspection Services**

TO: Gregg Mandsager, City Administrator

FROM: Dave Gobin, Community Development Director

DATE: November 4, 2014

RE: Memorandum of Understanding/Easement Agreement – Colorado Street Reconstruction Project

INTRODUCTION: As part of the Colorado Street re-alignment project, the City knew it would end up with odd pieces of real estate it would have to dispose of or repurpose at a future date.

A good reason that these parcels have not been focused on lately is because the re-alignment area has not undergone final engineering to generate the “as built” drawings and surveys needed to create legal descriptions for each parcel. This is expected to be completed by the spring of 2015.

However, given that the winter season will soon be on us, one of those real estate opportunities is available to start the completion process by entering into an Easement Agreement with a Memorandum of Understanding (MOU) with an adjacent property owner indicating that the final purchase awaits the property’s legal description and a resolution to dispose of the property next year.

RECOMMENDATION/RATIONALE: Staff recommends City Council approve the Resolution for an Easement Agreement with exhibits that include a MOU and a map of the property. This will allow the adjacent property owner to pave his lot at his risk until final disposal is approved at a later date.

RESOLUTION NO. _____

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MUSCATINE, IOWA AND MUSCATINE PLAZA PROPERTIES, LLC. REGARDING THE SALE OF CERTAIN TO BE VACATED RIGHT-OF-WAY AND APPROVING AN EASEMENT AGREEMENT FOR THE SAME TO BE VACATED RIGHT-OF-WAY

WHEREAS, the Colorado Street Reconstruction project as generated a surplus area of approximately 13,779 square feet of right-of-way that serves no public need due to a realignment of Colorado Street;

WHEREAS, Muscatine Plaza Properties, LLC owns property adjacent to said area of surplus right-of-way and desires to acquire said area of surplus right-of-way for purpose of expanding its parking lot;

WHEREAS, the City of Muscatine and Muscatine Plaza Properties, LLC have drafted memorandum of understanding, attached as "Exhibit A" by which Muscatine Plaza Properties LLC agrees to purchase said surplus right-of-way at price of \$1.05 per square foot ;

WHEREAS, upon completion of the Colorado Street Reconstruction Project the City shall prepare an acquisition plat of said surplus right-of-way, this acquisition plat will be based on the as-built drawings of the Colorado Street Reconstruction Project;

WHEREAS, Muscatine Plaza Properties, LLC desires to construct a parking lot on said surplus right-of-way, prior the preparation of the acquisition plat and sale of said right-of-way;

WHEREAS, the City of Muscatine has determined that allowing the construction of parking lot on said right-of-way prior to its sale to Muscatine Plaza Properties, LLC will be beneficial to the economic development of the community;

WHEREAS, the City of Muscatine and Muscatine Plaza Properties, LLC have drafted an easement agreement, attached as “Exhibit B” by which the City of Muscatine will allow Muscatine Plaza Properties LLC to construct and operate a parking lot on the surplus right-of-way that is covered in the memorandum of understanding attached as “Exhibit A”

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, Iowa that the memorandum of understands attached hereto and identified as “Exhibit A” and the easement agreement attached hereto and identified as “Exhibit B” are hereby by accepted by the City of Muscatine and the Mayor and City Clerk are hereby authorized and directed to sign this resolution, said memorandum of understanding, and said easement agreement.

PASSED, APPROVED AND ADOPTED this 6th day of November 2014.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

DeWayne M. Hopkins, Mayor

Attest:

Gregg Mandsager, City Clerk

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered into this _____ day of _____, 2014, by and between the City of Muscatine, Iowa (City) and Muscatine Plaza Properties, LLC (Owner).

WHEREAS, the City wishes to sell surplus Right-of-Way and Owner wishes to acquire certain Right-of-Way from the City with it's public and private utility rights in place, as described and shown on the attached drawing at and by this reference made a part hereof; and

WHEREAS, the City wishes to receive certain considerations as conditions to such acquisitions;

NOW THEREFORE, it is hereby agreed by and between the Owner and the City as follows:

1. The City grants to the Owner a quitclaim deed to the surplus ROW area described and located on the Acquisition Area drawing attached. This area will be defined by an acquisition plat at a later date and the actual area will be the property of the sale.
2. The Owner agrees to pay \$1.05 per square foot for the area determined in the acquisition plat.
3. The City shall be responsible for survey and preparation of the acquisition plat and recording of the acquisition documents. The City shall also be responsible for grading and paving, and parking lot and storm sewer shown on the design plans entitled Colorado Street Reconstruction with a 09/17/13 Letting Date. The City acknowledges the owner's intended use for this property is for expanded parking lot and signage. The parking lot and the signage shall comply with the applicable city code requirements and permit requirements.
4. This Agreement shall be binding upon and shall inure to the benefit of each party, a party's successors in interest, legal representatives and assigns, subject to the limits identified in this Agreement or subject to state law and regulations.

Signed this _____ day of _____, 2014

Plaza Properties, LLC

Donald D. Sturms (Contract Seller)

DeWayne M. Hopkins,
Mayor City of Muscatine

Ruth M. Sturms (Contract Seller)

ATTEST:

Michael R. Steele (Contract Seller)

EASEMENT AGREEMENT

This **Easement Agreement** (“Easement Agreement”) is entered into as of _____, 2014 (“Effective Date”), between **Muscatine Plaza Properties, LLC**, an Iowa limited liability company (“Grantee”), and the **City of Muscatine, Iowa**, an Iowa municipality (“Grantor”).

1. **Background.** Grantor is the owner of the real estate located at _____, Muscatine, Iowa, legally described on the attached **Exhibit A** (“Grantor Real Estate”). Grantor and Grantee have entered into a Memorandum of Understanding (“MOU”), whereby Grantee will purchase a portion of the Grantor Real Estate from Grantor, as depicted on the attached **Exhibit B** (“Subject Real Estate”). In anticipation of the closing of the sale of the Subject Real Estate to Grantee, Grantee has requested, and Grantor has agreed to grant, the right to access and use the Grantor Real Estate, pursuant to the terms and subject to the conditions set forth in this Easement Agreement.

2. **Temporary Construction Easement.** Grantor grants to Grantee a temporary construction easement on and over the Grantor Real Estate (“Temporary Easement”) for the purpose of constructing a parking lot (“Lot”) and installing signage (“Signs”) on the Subject Real Estate. The Temporary Easement shall include the right of Grantee and its contractors to enter the Grantor Real Estate with the necessary labor, equipment, and material for constructing the Lot and installing the Signs. Grantee agrees to construct and install the Lot and Signs at its sole cost in accordance with all applicable city code requirements. The Temporary Easement shall terminate upon Grantee’s completion of the construction of the Lot and installation of the Signs.

3. **Access Easement.** Grantor grants to Grantee an easement on and over the Subject Real Estate for use of the Lot by Grantee and its invitees and for the purpose of maintaining and repairing the Lot and Signs (“Access Easement”). The Access Easement shall terminate only upon the first to occur of: (a) the closing of the sale of the Subject Real Estate to Grantee and the recording of all documents necessary to transfer the Subject Real Estate to Grantee; (b) the termination of this Easement Agreement in writing by both parties; or (c) a material breach or default (which remains uncured after the expiration of any applicable cure period) by Grantee of Grantee’s obligations under the MOU that results in the termination of the MOU.

4. **Maintenance and Repair.** Grantee, at its sole cost, is responsible for all necessary maintenance and repairs required to maintain the Lot and Signs in good operating condition, in accordance with all applicable city code requirements.

5. **No Interference.** Grantor agrees that it will use and operate the Grantor Real Estate in a manner that does not materially interfere with the use and maintenance of the Lot and Signs and Grantee’s rights hereunder. Grantor further agrees that it will not construct or install, or permit the construction or installation of, any permanent or temporary structure on the Grantor Real Estate without the prior written consent of Grantee. Upon written notice from Grantee, Grantor shall, at its sole expense, take reasonable actions to eliminate any such interference.

6. **Perpetual Easements.** The Access Easement granted herein is appurtenant to and runs with the land and shall be perpetual, unless terminated as provided herein. Any conveyance of title to any part of the Grantor Real Estate shall be subject to the provisions of this Easement Agreement, and any transferee of any interest in any part of the Grantor Real Estate shall automatically be deemed, by acceptance of such interest, to have agreed to be bound by all of the provisions of this Easement Agreement. The parties bind themselves and their respective successors and assigns to warrant and forever defend the Access Easement granted herein.

7. **Private Use.** Nothing contained herein shall ever be deemed to create a gift or dedication of all or any portion of the Grantor Real Estate to the general public or for any public use or public purpose whatsoever. The parties intend that this Easement Agreement will be strictly limited to and for the purposes expressed herein. Grantor shall have the right to close any portion of the Grantor Real Estate for such period of time required by law to prevent prescriptive rights from accruing to the Grantor Real Estate.

8. **Non-Exclusive Benefit.** Grantor reserves the right to grant such other or similar easements, rights, rights-of-way, and privileges over, across, and under the Grantor Real Estate, so long as such easements, rights, rights-of-way, and/or privileges do not have a material adverse affect on the use of the Easements granted herein.

9. **Indemnification.** Grantee and its successors and assigns shall indemnify and hold harmless the Grantor, and its officials, employees, and agents (“Indemnified Parties”), from liability or damages that an Indemnified Party may suffer as a result of third-party claims or lawsuits, to the extent arising out of or as a result of use by Grantee of the Easements created herein, except to the extent attributable to the acts or omissions of any Indemnified Party. Grantor shall cooperate in the defense of any claim, accept joint defense paid at Grantee’s sole cost, and forego any objection to any settlement made on behalf of the Grantor and Grantee, so long as such settlement does not create any cost to Grantor.

10. **Grantor’s Warranty.** Grantor warrants to Grantee that it is the lawful owner of the Grantor Real Estate, that it will warrant and defend the Grantor Real Estate against all lawful claims, and that it has good and lawful authority to sell and convey the Grantor Real Estate.

11. **No Liability for Erosion Control.** Nothing contained herein shall be deemed to require Grantee to undertake any erosion control or other environmental measures on or for the Grantor Real Estate. Grantor acknowledges and agrees that it has consulted, or had the opportunity to consult, with counsel prior to executing this Easement Agreement and has had the opportunity to review and seek guidance regarding the Easements granted herein. Any additional erosion control or other measures deemed necessary or desirable by Grantor on or for the Grantor Real Estate shall be the sole and absolute responsibility of Grantor, and Grantee shall not be liable in any way whatsoever for the cost or any other liability arising directly or indirectly from Grantor’s inspection, assessment, actions, or omissions with regard to erosion control or other environmental matters concerning the Grantor Real Estate.

12. **General Provisions.** This Easement Agreement: (a) constitutes the entire understanding between the parties as to the subject matter hereof and merges all prior negotiations, agreements, or discussions between them relating thereto; (b) is binding upon the parties and their respective successors and permitted assigns; (c) may not be amended or modified unless such amendment or modification is made in writing and signed by all of the parties; (d) may not be assigned by any party without the prior written consent of the other parties; and (e) shall be governed by the laws of the State of Iowa (excluding Iowa law with respect to conflict of laws). No provision of this Agreement may be waived unless such waiver is made in writing and signed by the party to be bound thereby. The unenforceability, invalidity, or illegality of any provision of this Agreement does not affect or impair any other provision or render it unenforceable, invalid, or illegal. The rights and remedies of the parties set forth herein are cumulative and are not exclusive of any other rights or remedies which the parties would otherwise have at law, in equity or otherwise. All exhibits referred to in this Easement Agreement are incorporated by reference.

[Signature Page Follows]

The parties have executed this Easement Agreement as of the Effective Date.

Grantor
City of Muscatine, Iowa

Grantee
Muscatine Plaza Properties, LLC

By _____
DeWayne M. Hopkins, Mayor

By _____
Michael R. Steele, Manager

Attest _____
Name _____

STATE OF IOWA, MUSCATINE COUNTY, ss.

This instrument was acknowledged before me on _____, 2014, by DeWayne M. Hopkins, as the Manager of Muscatine Plaza Properties, LLC.

Notary Public in and for the State of Iowa

STATE OF IOWA, MUSCATINE COUNTY, ss.

This instrument was acknowledged before me on _____, 2014, by Michael R. Steele, as the Mayor of the City of Muscatine, Iowa.

Notary Public in and for the State of Iowa

EXHIBIT A
Grantor Real Estate Legal Description

EXHIBIT B
Subject Real Estate

