

MEMORANDUM

TO: Gregg Mandsager, City Administrator
FROM: Richard Klimes, Director of Parks and Recreation 
DATE: August 8, 2018
RE: Iowa Department of Transportation – Proposed Lease Agreement for Mark Twain Overlook

INTRODUCTION:

Please accept this memo and the attached information as a request for approval to continue the lease agreement from the Iowa Department of Transportation for Mark Twain Overlook.

BACKGROUND:

The Mark Twain Overlook area is owned by the IDOT and has been leased to the City since 1978 for maintenance care and recreational usage. The last lease was for a five (5) year period with the expiration date of July 1, 2017.

The City is involved in this lease to provide for more detailed maintenance care than the IDOT is willing or able to provide. The area is an entryway into the Muscatine Community and does have recreational value as the view from the overlook is very popular.

RECOMMENDATION:

At this time, it is the City Staff recommendation to enter into a lease agreement for an additional five (5) years July 1, 2018 to July 1, 2023 and on a year to year basis beginning on the 1st day of July 2023 with the Iowa Department of Transportation for the maintenance care of the Mark Twain Overlook area.

BACKUP INFORMATION:

1. Lease Agreement

Thank you for your time and attention to this matter. Please contact me if you have any questions or concerns.

C. Nick Gow, Superintendent of Parks


OFFICE OF RIGHT OF WAY
AMES, IA 50010
RIGHT OF WAY LEASE

Parcel No. 5
Project No. UN-92-9(18)---41-70

County Muscatine
Lease No. 70-14-4

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the Iowa Department of Transportation, acting for the State of Iowa (hereinafter called "Lessor") and City of Muscatine County of Muscatine, State of Iowa, (hereinafter called "Lessee"), WITNESSETH:

The Lessor hereby agrees to lease to Lessee from the 1st day of July, 2018 to the 1st day of July, 2023, and on a year to year basis beginning on the 1st day of July, 2023,

Section 1. The Lessor, for and in consideration of **MUTUAL BENEFIT** and the covenants and agreements herein contained, hereby leases to the Lessee for the use of public park and scenic overlook PURPOSES ONLY, the following described premises to wit:

All that part of a tract bounded by Lombard Street on the north, by the right-of-way boundaries of Iowa 92 on the south, by the street previously known as Front Street on the east and Second Street on the west, as shown in "crosshatch" on the Exhibit "A" Plat of Land, attached hereto and by reference made a part hereof.

Section 2. The Lessee shall maintain at its expense the land and equipment in a park like atmosphere and mow the area approximately six times a year or whenever is necessary to provide a well-maintained appearance.

Section 3. The Lessee shall keep and maintain the leased premises in such a manner consistent with Section 2 of this lease and not in any way interfere with the operation or activity of the Iowa Department of Transportation or the State of Iowa or any of its agents, contractors, or agencies on the leased property or adjacent lands. The Lessee agrees to remove any improvements, including fencing, buildings or other items erected by Lessee upon the leased premises and to vacate and surrender quiet and peaceable possession of said premises upon thirty (30) days written notice.

Section 4. It is further understood and agreed that the purpose of this lease is for the development and maintenance of Park for the use and enjoyment of the general public and that any commercial operation or commercial use of the leased premises is prohibited.

Section 5. The Lessor reserves the right to enter upon that portion of the leased area for any reason (highway construction or maintenance, utility relocation, to erect and maintain snow fence, or any other highway related purpose). It is further agreed that Lessee shall not be entitled to any compensation as a result thereof.

Section 6. It is further agreed that the Lessee shall not assign or sublet any part of the leased premises except with the prior written consent of the Lessor and that, if in the opinion of the Iowa Department of Transportation, the Lessee abandons the property or fails to keep each and every condition of this lease, the rights of the Lessee shall cease and the Lessor may take immediate possession of the premises.

Section 7. If for any reason the Lessor desires to terminate this lease, Lessee agrees to vacate and this lease shall terminate on Lessee receiving thirty (30) days Notice to Quit from Lessor, and Lessee agrees to surrender possession of the premises on the day that Lessee is required to do so by the terms of the Notice.

Section 8. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof, shall at no time or under any circumstances be used for, or devoted to political purposes or the conduct of political activities, including but not limited to: meetings, rallies, caucuses, administration, distribution of literature which relates to or bears upon the action of any political organization, unit or party.

Section 9. Lessee warrants that Lessee is not employed by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person; and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.

Section 10. Lessee shall protect, indemnify and save harmless the Lessor against all loss, damage, and liability which lessor may incur by reason of having leased the premises to Lessee.

WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first herein written.

LESSEE: City of Muscatine _____ Date
Diana L. Borderson, Mayor
215 Sycamore St
Muscatine, IA 52761
Telephone No. 563-264-1550

Gregg Mandsager, City Administrator Date

STATE OF IOWA, COUNTY OF _____, ss:

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the same as (his) (her) (their) voluntary act and deed.

(SEAL)

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

APPROVAL RECOMMENDED:

BY: _____ Date
Joe Guckert
Property Manager
Telephone No. 515-239-1976

**APPROVED:
IOWA DEPARTMENT OF TRANSPORTATION**

BY: _____ Date
Mike Jackson
Property Management Supervisor
Office of Right of Way

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mike Jackson, to me personally known, who being duly sworn did say that he is the Property Management Supervisor for the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department by its authority and the said person, as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said Department, by it voluntarily executed.

(NOTARY SEAL)

Notary Public in and for said State
My Commission Expires: _____

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.



Exhibit "A"
Plat of Land
70-14-4

EXHIBIT "A"
PLAT OF LAND

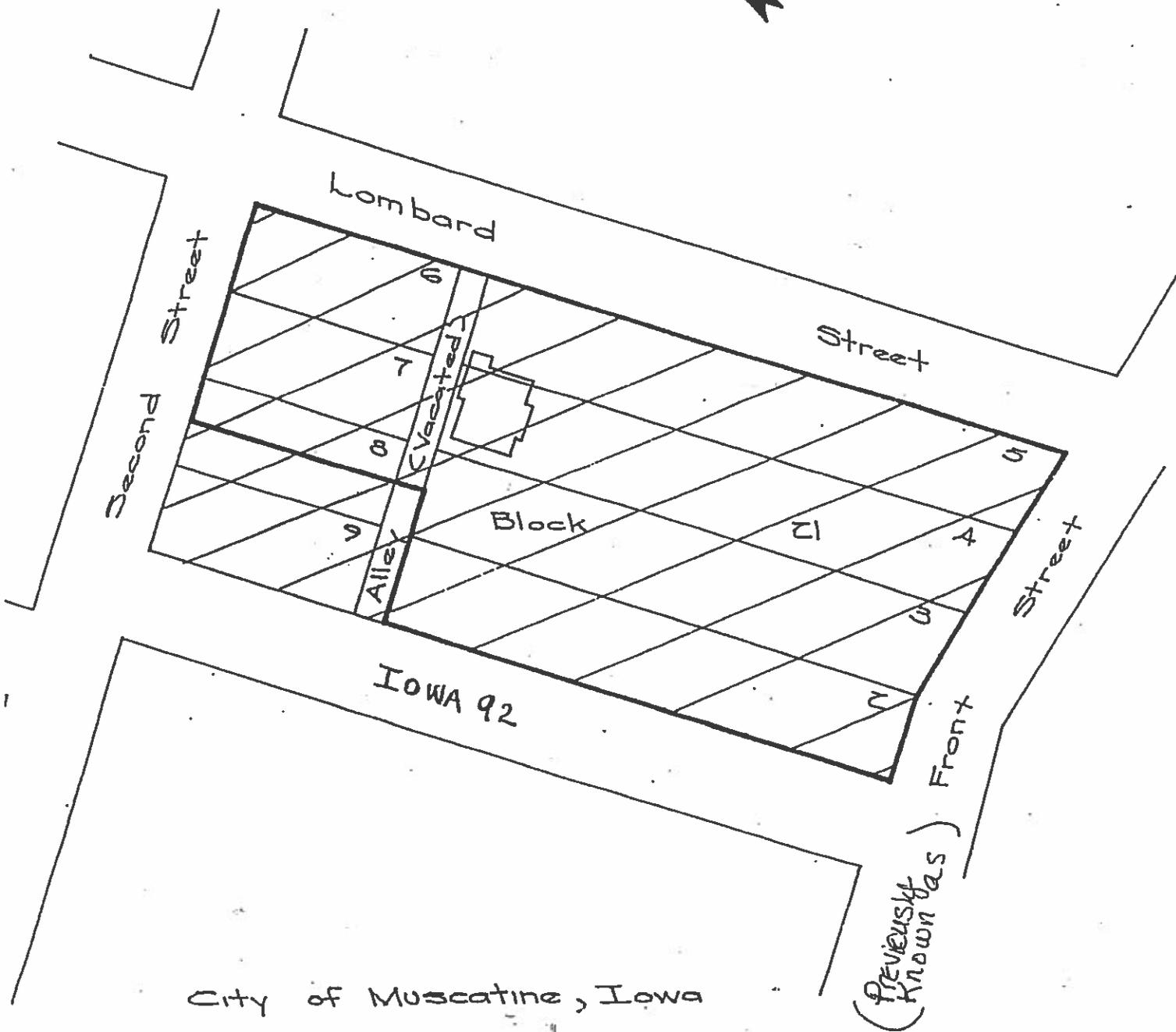
2

Acquired From - MARQUETTE CLUB

R.O.W. AREA _____ ACRES

LOCATION

FROM & STA. _____ TO & STA. _____
SECTION 36 TWP. 77N RANGE 2W



LEASE EXTENSION
PAGE 2 OF 2

MUSCATINE _____ COUNTY

PROJECT NO. UN-92-9(18)--41-70