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COMMUNITY DEVELOPMENT

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

MEMORANDUM

**To:** Mayor and City Council Members  
**From:** Andrew Fangman, City Planner  
**Cc:** Gregg Mandsager, City Administrator  
Dave Gobin, Community Development Director  
**Date:** January 3, 2019  
**Re:**

- Request for Approval of a Purchase Agreement Regarding the Sale of Surplus City Property (614 Mulberry Avenue)
- Resolution Authorizing the Sale of and Executing a Deed of Surplus City Property (614 Mulberry Avenue)

The City of Muscatine has accumulated a number of parcels of land for which the continued public ownership of no longer serves any useful purpose. In order to return these parcels to a useful purpose, restore them to the tax roll, and to reduce maintenance costs associated with these parcels to the City, the City Council has previously declared a number of City owned parcel as surplus and directed City Staff to actively seek the sale of these surplus properties.

City Staff has negotiated a purchase agreement with Rebuilding Together Muscatine County for the purchase of 614 Mulberry, a property no longer used by the City which last house the Safe Streets office. The City is proposing to sell this property to Rebuilding Together Muscatine County at deeply discounted price, in exchange for a binding commitment from Rebuilding Together Muscatine County to within a year renovate this structure into a single family home.

This surplus parcel is 965 square feet in size and contains a 740 square foot structure that was originally constructed as a home in 1900 and which was converted into office space by the City of Muscatine in 1996.

This property was donated to this City of Muscatine in 1996. After conversion to office space it was used a number of community purposes, most recently serving as home to Safe Streets. The building has been vacant since late 2017. The City has no current or future use for this property. On June 22, 2018 put out a request for proposal for the sale and reuse of this building. No responses to the request for proposal were received by the August 1, 2018 deadline. City staff subsequently negotiated the attached purchase agreement with Rebuilding Together Muscatine County.

A purchase price of \$259 has been negotiated. The cost to the City of processing the sale of a surplus property is \$250. As such a sale price of \$250 was established to ensure the cost to the City of completing this transaction does not exceed its sale price. Selling this surplus property

to Rebuilding Together Muscatine County at this discounted price will benefit the community in the in the following manner

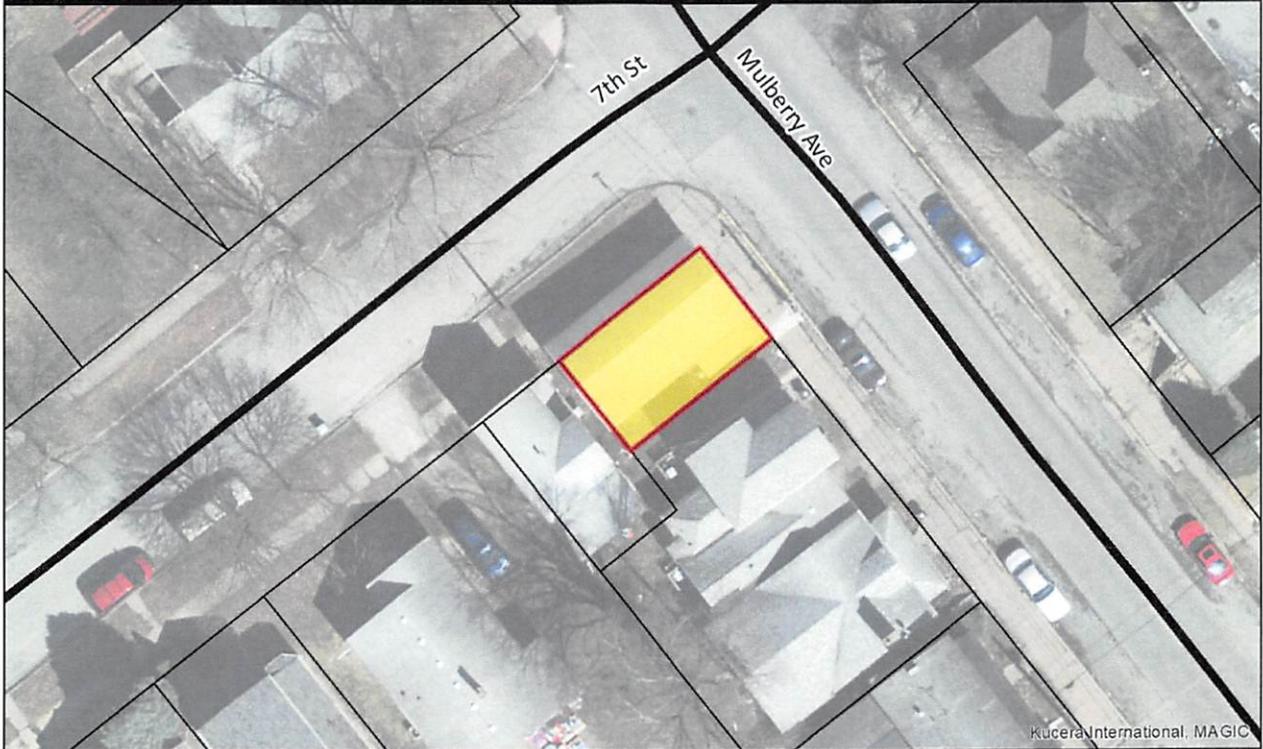
Providing this property Rebuilding Together Muscatine County this price is a concrete step that the City can take towards the critical goal increasing the supply of high-quality affordable homes. As Rebuilding Together Muscatine County is a non-profit the savings on land acquisition costs that they would realize under this proposed purchase agreement will directly go towards providing affordable housing. Additionally, the purchase agreement requires that any proceeds from the future sale of the property shall only be used by the Rebuilding Together to cover the costs of remodeling the existing structure on the property into a single-family residence and to support the operation of Rebuilding Together Muscatine County. City would also financially benefit from no longer having to maintain this property and to have it returned to the tax rolls.

It is in the best of the community for the to be returned to productive use in a timely manner, as such this purchase agreement commits Rebuilding Together Muscatine County to start work on remodeling the existing structure into a single family dwelling within one year of the completion of this transaction. If construction does not begin with a year, Rebuilding Together Muscatine County would be required to deed the property back to the City at no cost. This agreement contains also mechanism by which this one-year deadline to begin construction can be extend by mutual extent.

If City Council approves this purchase agreement, it will then be asked to act, at the same meeting on the attached Resolution executing the purchase agreement and deeding this property to Rebuilding Together Muscatine County.

#### **Supporting Documents**

1. Map
2. Purchase Agreement
3. Resolution Authorizing the Sale of and Executing a Deed of Surplus City Property
4. Deed
5. Certificate



**Legend**

-  Surplus City Parcel
-  Parcel Lines



Date Source: Muscatine Area Geographic Information Consortium and City of Muscatine  
Prepared by: Andrew Fangman, City Planner  
Date: December 27, 2018

## **REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is deemed made on the date the last of the parties executes this Agreement (the "Effective Date") by and between the City of Muscatine, Iowa, whose address for the purposes of this Agreement is 215 Sycamore Street, Muscatine, Iowa 52761 (hereafter referred to as the "Seller") and Rebuilding Together Muscatine County Incorporated, whose address for the purposes of this Agreement is 1424B Houser Street (collectively hereafter referred to as the "Buyer.")

### **RECITALS**

WHEREAS, Seller is the owner of the following legally described property, also known as 614 Mulberry Avenue, PIN# 0835429008 situated in the City of Muscatine, Muscatine County, Iowa, described as:

A part of Lot Six (6) in Block One Hundred Eighteen (118) of the City of Muscatine, Iowa, particularly described as follows: Beginning at the Northeasterly corner of said Lot 6, the intersection of the Westerly line of Mulberry Avenue and the Southerly line of Seventh Street; thence South 37° 52'31" East a distance of 24.76 feet; thence South 52°12'43" West a distance of 39.26 feet; thence North 38°50'39" West to the North line of said Lot 6, abutting along the Easterly line of a certain tract conveyed to Pauline E. Maguire by Warranty Deed dated July 18, 1974, filed for record July 19, 1974, and recorded in Book 266 of Lots, page 214, of the records of Muscatine County, Iowa; thence North 51°59" East to the point of beginning.

Subject only to easements, restrictions and covenants of record (collectively referred to as the "Property");

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property;

WHEREAS, Buyer and Seller desire to set forth the obligations, restrictions, limitations, and conditions upon which the property will be conveyed by Seller to Buyer;

WHEREAS, Seller desires that the Buyer to remodel the existing structure on the Property into a code compliant single-family residence in timely manner;

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, each for the other, Buyer and Seller agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, for the Purchase Price set forth below and, on the terms, and conditions set forth in this Agreement, the Property. For purposes of this Agreement, Property shall be deemed to mean, on a collective basis: (a) the parcel of land described above (the "Land"), together with all rights, easements and interests appurtenant thereto; (b) all improvements located on the Land, if any.

2. Compensation. Seller, in consideration of the mutual covenants and agreements contained herein, agrees to sell to Buyer and Buyer, in consideration of the mutual covenants and agreements contained herein, agrees to purchase the Property from Seller for the following consideration:

a. Cash in the amount of \$250.00, and

b. The parties acknowledge that disposal of the Buyer Land as part of this Agreement will require a public hearing and approval of the Muscatine City Council, in addition to approval of this Agreement as a whole. If disposal of the property is not approved by the Muscatine City Council, this Agreement shall be rendered null and void.

3. Payment of the Purchase Price. The Purchase Price shall be paid by Buyer to Seller as follows:

3.1 Cash. \$250.00 in cash shall be paid by Buyer to Seller, in good and immediately available funds by wire transfer or cashier's check, at the time of Closing.

4. Abstract and Title. If the Buyer desires an abstract of title to the Property, the Buyer shall obtain said abstract at no cost to the seller.

5. Requirement for the Buyer to Remodel the Existing Structure on the Property into a Single-Family Home on the Property in a Timely Manner. The Buyer shall remodel the existing structure on the Property into a code compliant single-family residence in timely manner under the following guidelines:

5.1 Within one year of closing of the Property the Buyer shall obtain the building permits necessary for the conversion of the existing structure on the Property into a single-family home. The City Administrator may grant a single extension of up to six months to this deadline, upon making a determination that the Buyer is making a good faith effort to construct a new single-family home on the property. Any subsequent extension, or any extension longer than six months shall require approval by City Council.

5.2 Construction shall be completed, and a certificate of occupancy for said single-family residence issued within one year of the issuance of the building permits.

5.3 Buyer shall not sell the property until all obligations set forth in Section 5 of this agreement has been fulfilled.

6. Remedy for failure of the Buyer to Remodel the Existing Structure on the Property into a Single-Family Home on the Property in a Timely Manner. If the Buyer fails to its obligations established under Section 5 this agreement, the Buyer shall within 30 days of receipt of a written notice from the Seller of the Buyer of a failure to meet said obligations the Buyer shall convey the Property back to Seller by a general quit claim deed, conveying to Seller good and merchantable fee simple title to the Property.

7. Future Sale of the Property. The Seller agrees that any proceeds from the future sale of the property shall only be used by the seller to cover the costs of remodeling the existing structure on the property into a single-family residence and supporting operation of Rebuilding Together Muscatine County

8. Permitted Exceptions. The Property shall be conveyed by Seller to Buyer subject only to the local municipal zoning ordinance, real estate taxes not yet due and payable, easements and restrictions of record and other exceptions to title that are of record, approved by Buyer and those other matters as hereinafter provided (the "Permitted Exceptions").

9. Closing. The Closing of this transaction shall occur as soon as reasonably practicable, after a conditional user permit allowing for the construction of a single family home on the Property has been approved, as agreed in writing by the parties (hereinafter referred to as the "Closing Date") at a location mutually agreed upon by the parties herein. Time is of the essence in this Purchase Agreement.

10. Real Estate Taxes. Buyer shall pay all real estate taxes assessed against the Property for all periods through the date of Closing, including a prorated share of the real estate taxes due for the tax period in which the Closing takes place (payable in the subsequent fiscal tax year).

11. Special Assessments. Buyer shall be responsible for all special assessments with respect to the property.

12. Commission. Seller and Buyer each represent and warrant to the other that no brokerage commission, finder's fee or other compensation is due and payable with respect to the transaction contemplated by this Agreement. Buyer represents to Seller that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated. Seller represents to Buyer that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated herein. Seller and Buyer each, one to the other, indemnify, protect, defend and hold the other harmless from and against all losses, claims, costs, expenses and damages (including but not limited to reasonable attorney fees) resulting from the claims of any broker, finder or other such party claiming, by, through or under the acts or agreements of the indemnifying party. The warranties and obligations of the parties pursuant to this paragraph shall survive the termination of the Closing. Should any third-party claim a commission is due and owing, both parties agree to cooperate in challenging such claim. Such cooperation shall not be deemed to alter the indemnifications contained in this paragraph in any manner.

13. Warranties and Representations of Seller. Seller warrants and represents to Buyer that it has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out the Seller's obligations hereunder. All requisite partnership, corporate or other actions necessary to authorize Seller to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Seller will be necessary to sell the Property fully and completely to Buyer at Closing except as otherwise set forth and provided herein; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage loan agreement or instrument to which Seller is a party or by which the Property is bound. Other than the interests noted elsewhere in this Agreement, if any, Seller represents and warrants to Buyer that there are no adverse

or other parties in possession of the Property or any part of thereof No party has been granted any license, lease or other right or interest relating to the use or possession of the Property, or any part thereof, other than as expressly provided for herein or of record or which will be terminated concurrently with Closing. At Closing, a Groundwater Hazard Statement will be filed by Sellers regarding the following: (i) wells; (ii) solid waste disposal; (iii) hazardous wastes; and (iv) underground storage tanks located on the Property. These representations contained in the Groundwater Hazard Statement shall be for the benefit of the Buyer who shall be entitled to rely upon said representations.

14. Warranties and Representations of Buyer. Buyer warrants and represents to Seller that it has the full right, power and authority to acquire the Property from Seller as provided in this Agreement and to carry out the Buyer's obligations hereunder upon final approval from the Muscatine City Council.

15. Conveyance Documents. Seller shall convey the Property to Buyer by a general quit claim deed, conveying to Buyer good and merchantable fee simple title to the Property, subject only to such reasonable title exceptions meeting the title standards of the Iowa State Bar association and encumbrances as provided herein or as have been approved by Buyer (the "Permitted Exceptions") and in a form reasonably acceptable to counsel for Seller and Buyer.

16. Closing Costs. Seller shall pay all documentary and transfer taxes and recording fees necessary to cure title objections meeting the title standards of the Iowa State Bar Association. Buyer shall pay the recording fees in connection with the Deed conveying title to Buyer, and any financing documents encumbering or relating to the Property and other documents Buyer desires to record. Buyer shall pay the premium for issuing the Iowa Title Guaranty or title policy (if any) described herein. Each party shall be responsible for paying its own attorney fees. Buyer shall cause an appropriate closing statement to be prepared in advance of Closing for proper execution by both Buyer and Seller consistent with the terms of this Agreement. Buyer shall be responsible for any settlement fees associated with Closing.

17. Section 1031 Exchange. Buyer and Seller each reserve the right, at the sole election of each Buyer and Seller, to structure this transaction as an exchange of like-kind properties under Section 1031 of the Internal Revenue Code and the regulations and proposed regulations thereunder. If either Buyer or Seller so elects, each shall reasonably cooperate with the other, provided any such exchange is consummated pursuant to an agreement that is mutually acceptable to Buyer and Seller and which shall be executed and

delivered on or before the Closing Date and provided such Section 1031 exchange does not delay the Closing Date. Each party shall in all events be responsible for those costs and expenses related to their respective Section 1031 exchange (including but not limited to all attorney fees and costs).

18. Possession; Risk of Loss. Subject to the terms of the existing Ground Lease between Seller and Buyer, all risk of loss with respect to the Property shall remain with Seller until Closing of the purchase of the Property. Seller shall preserve and care for the Property until Closing in a manner consistent with its prior practice.

19. Existing Tenancy or Other Interests. Seller confirms the Property is not subject to an existing lease or other possessory interest not shown of record. If such an interest exists, Seller agrees to provide documentation executed by the party holding such interest in which such interest is terminated prior to Closing.

20. Lien Waivers. If at Seller's (or its affiliates) request or direction any person or entity has supplied material or services for the Property within six (6) months prior to the Effective Date of this Agreement which may form the basis of a Mechanic's Lien being filed against the Property, then the Seller shall provide copies of written lien waivers from all such persons or entities supplying material or services prior to the Closing Date. Seller agrees to indemnify and hold Buyer harmless from any such claims which arise because of the filing of Mechanic's Liens for work contracted for by Seller prior to the Closing Date and specifically reserves the right to pursue an action in connection therewith, which right shall survive Closing.

21. Pending Actions. Seller has no notice of any action, litigation, proceeding, or investigation against itself, related entities, its partners, or the Property, which would affect the Property or the right of Seller to sell and convey the Property, or any action, litigation, proceeding, or investigation, including without limitation, any eminent domain proceeding which would result in any lien, claim, right, or interest in the Property in favor of any third party.

22. Notices. Neither party shall have the right to terminate this Agreement or seek any remedy for a breach hereof by the other party unless such breach continues for a period of thirty (30) days following written notice by the party seeking to pursue such remedy, specifying the occurrence and description of such default under this Agreement and unless the party given such notice shall have failed to commence to take such steps as are necessary to cure such breach or default as soon as possible (or having so commenced such steps to cure shall thereafter have failed to proceed

diligently and with continuity to remedy the same). All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed at the addresses specified above and shall be effective upon such deposit.

23. Assignment; Agreement Binding on Successors; Survival of Provisions. This Agreement may not be assigned or transferred by any of the parties without the express written consent of the other. This Agreement, and amendments, if any, and all representations, warranties, indemnification obligations, rights and duties hereunder, shall survive the Closing and shall be fully binding at all times against Seller, and Buyer as well as any and all of its or their successors in interest, assigns or transferees.

24. Default; Remedies of the Parties.

21.1 Buyer's Remedies for Seller's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Seller fails or refuses to timely convey the Property to Buyer in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Buyer, Buyer may elect one of the following remedies (a) be entitled to terminate Buyer's obligations under this Agreement by written notice to Seller; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

21.2. Seller's Remedies for Buyer's Default. If (a) each of the conditions precedent set forth in *this* Agreement have been satisfied or waived prior to the Closing Date and (b) Buyer fails or refuses to timely purchase the Property and Close in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Seller, Seller may elect one of the following remedies (a) be entitled to terminate Seller's obligations under this Agreement by written notice to Buyer; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

21.3 Attorney Fees. The non-defaulting party shall be entitled to collect costs and attorney fees from the party in default.

25. Time. Time is of the essence in the performance of each party's obligations hereunder.

26. No Waiver. Subject to the deemed approvals under this Agreement, no waivers by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

27. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

28. Counterparts and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Buyer and Seller and approved by the Muscatine City Council.

29. Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

30. Survival of Warranties. Any warranties, covenants and representations contained in this document shall survive the execution of this Agreement and any other documents, including the Quit Claim Deed given by Seller to Buyer to consummate this transaction, shall not be merged into such documents.

31. Attorney Fees. In the event of default by either party pursuant to any of the terms of this Agreement, the prevailing party in any litigation or enforcement action shall be entitled to reimbursement by the defaulting party for any of the prevailing party's reasonable attorney fees, court costs, and other associated costs of enforcement.

32. Governing Law; Construction. This Agreement shall be construed pursuant to the laws of the State of Iowa. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid. If any such provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.

33. Headings. Article and section headings used in this Agreement are for the convenience of the parties only and shall not affect the construction of this Agreement.

34. Further Assurances. At or after Closing, the parties shall prepare, execute and deliver at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**Seller**

City of Muscatine, Iowa

By: \_\_\_\_\_  
Gregg Mandsager, City Clerk

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

By: \_\_\_\_\_  
Diana L. Broderson, Mayor

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

**Buyer**

By: \_\_\_\_\_  
Rebuilding Together Muscatine County Incorporated

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