

**RESOLUTION NO. 2019-0251**

**A RESOLUTION SETTING A PUBLIC HEARING CONCERNING THE  
DECLARATION OF REAL ESTATE AS SURPLUS PROPERTY AND  
OFFERING SAID REAL ESTATE FOR SALE A PORTION OF PARCEL #1303456011  
SOUTH SIDE OF ROBY AVENUE**

**WHEREAS**, the City Council of Muscatine, Iowa, is considering declaring the following described real estate in Muscatine, Iowa, to-wit:

Lots 18, 19, 20, 21, 22, and 23, in Block 2, of South Park Addition to the City of Muscatine, in Muscatine County, Iowa.

as surplus property and offering said real estate for sale.

**WHEREAS**, a public hearing must be conducted by the City Council of Muscatine prior to the as surplus property and offering said real estate for sale.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council for the City of Muscatine, that a Public Hearing is hereby established. Said hearing to be conducted at 7:00 p.m. on Thursday, September 5, 2019, in the City Hall Council Chambers and the attached public notice of the time and place of said public hearing shall be given by publication in the Muscatine Journal as required by the Code of Iowa

**PASSED, APPROVED AND ADOPTED** this 15<sup>th</sup> day of August 2019.

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

\_\_\_\_\_  
**Diana L. Broderson, Mayor**

**Attest:**

\_\_\_\_\_  
**Gregg Mandsager, City Clerk**

## 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" or "City") and Clint T. Church and Dana R. Chruch, whose address for the purposes of this Agreement is 802 E. 9th Street (collectively hereafter referred to as the "Buyer.")

### RECITALS

WHEREAS, Seller is the owner of the following legally described property:

Lots 18, 19, 20, 21, 22, and 23, in Block 2, of South Park Addition to the City of Muscatine, in Muscatine County, Iowa.

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;

### 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, together with all rights, easements and interests appurtenant thereto; and (b) all improvements located on the land, if any.
2. Sidewalk/Trail Easement. Buyer agrees to provide, as a condition of purchase of the Property, seller a permanent easement for the future construction of a sidewalk or trail. Said easement shall encompass the northerly 10' of the property, adjoining Roby Avenue.
3. 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 \$8,828.00 (the "Purchase Price"), and
  - b. The parties acknowledge that disposal of the Property 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.
4. Payment of the Purchase Price. The Purchase Price 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.
  5. 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.
  6. Closing. The Closing of this transaction shall occur as soon as reasonably practicable, after, 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.
  7. Real Estate Taxes. The Property is currently tax-exempt while owned by the City. Buyer shall pay all real estate taxes assessed against the Property for all periods following the date of Closing.
  8. Special Assessments. Buyer shall be responsible for all special assessments with respect to the Property.
  9. 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.

10. Warranties and Representations of Seller. Seller warrants and represents to Buyer that, upon approval of the Muscatine City Council, 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. 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.

11. Conveyance Documents. Seller shall convey the Property to Buyer by a general quit claim deed.

12. Closing Costs. Seller shall pay any necessary transfer taxes. 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.

13. 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.

14. 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.

15. 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.

16. Default; Remedies of the Parties.

16.1 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.

16.2. 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.

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. **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.

24. **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.

25. **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.*

26. **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: Clint T. Church  
Clint T. Church

Date: 7/25/19

**Buyer**

By: Dana R. Church  
Dana R. Church

Date: 7/25/19

## COMMUNITY DEVELOPMENT

### MEMORANDUM

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

**To:** Mayor and City Council Members  
**From:** Andrew Fangman, City Planner  
**Cc:** Gregg Mandsager, City Administrator  
**Date:** August 15, 2019  
**Re:** Request to Approve a Purchase Agreement and a Resolution Setting a Public Hearing Regarding the Sale of a Portion of Surplus City Property Located on Roby Avenue (Parcel # 1303456011)

The City of Muscatine has accumulated a number of parcels of land for which the continued public ownership 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 parcels as surplus and directed City Staff to actively seek the sale of these surplus properties.

City Staff has negotiated a purchase agreement Clint T. Church and Dana R. Church who own the parcel, 810 Division Street to the south of the surplus city parcel, regarding the sale of an approximately 1 acre portion of the 3.70acre a surplus city owned Parcel # 1303456011, which is located on the south side of Roby Avenue, see attached map.

This parcel was donated to the City of Muscatine in 2016. The portion of this parcel being proposed for sale is only 140' as measure from Roby Avenue. This greatly reduces the potential for this portion of the parcel to be developed for a park and recreation type use. The balance of the parcel, which not being proposed for sale, is more than 400' and is located adjoining other undeveloped City owned land which adjoins Kent-Stein Park, is much better suited for any such future development.

The continued City ownership of this parcel due to ongoing maintenance costs and forgone property tax revenue is not in the financial interest of the City.

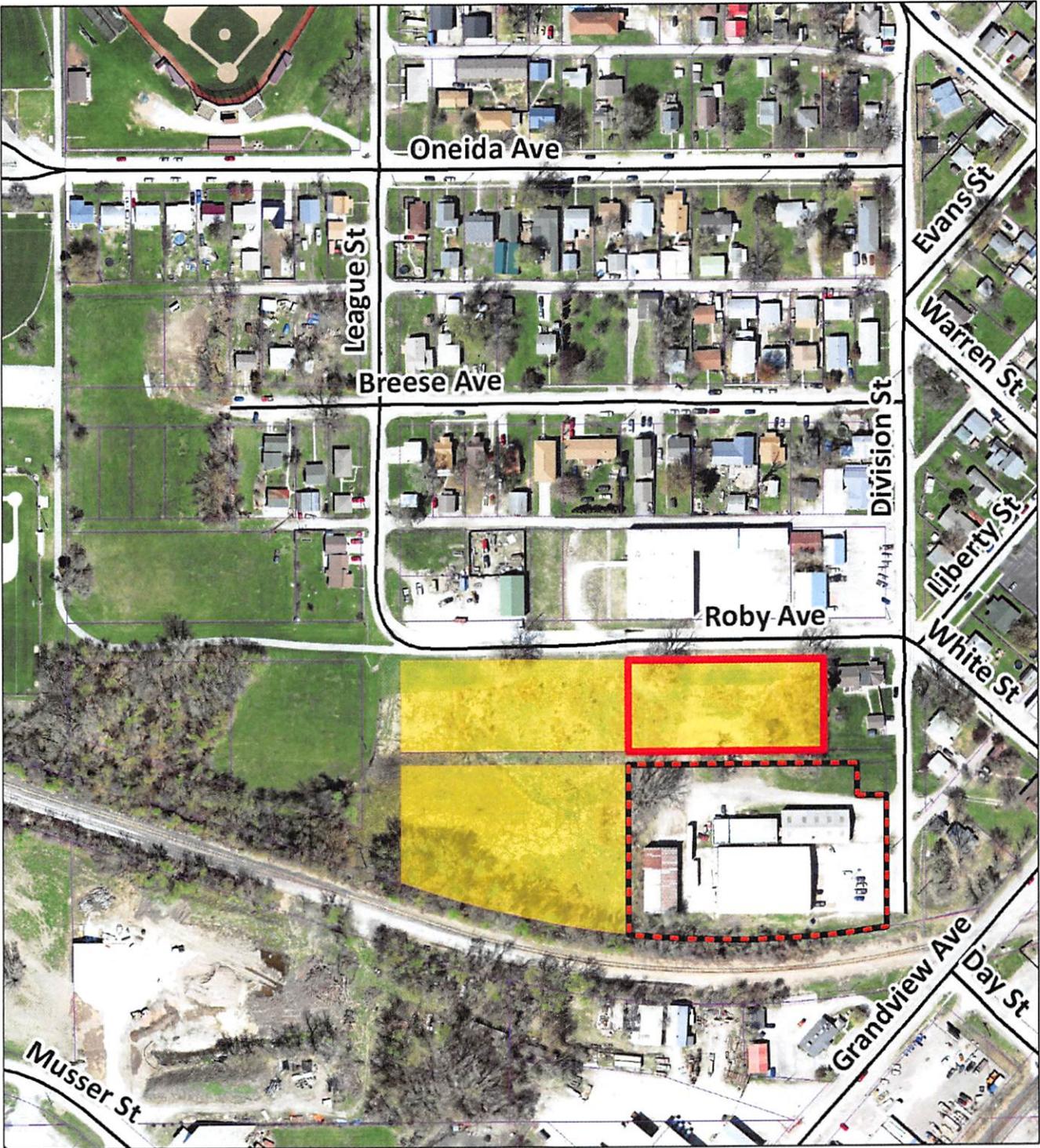
Clint T. Church and Dana R. Church, the adjoining property owners to the south, has made the City an offer of \$8,828 to purchase the area depicted on the attached map. The purchase price represents a prorated portion of the assessed value of the entire 3.79-acre City owned parcel. This purchase agreement also requires the dedication of a 10' easement along Roby Street to allow for the future construction of a multi-trail. Once the Grandview Avenue Corridor project is completed, Roby Avenue will be the only segment in more than 15 miles of continuous connected trail, where the trail is on-street painted lane, and not a separated 10' trail. While there are no current plans to constructed a separated trail along Roby Avenue, such a project

may eventually be desired and this trail easement will ensure that it would remain possible to build.

The next steps in the sales process is for Council to approve the attached purchase agreement and pass the attached resolution to set the required public hearing on the sale of this surplus parcel.

**Supporting Documents**

1. Purchase Agreement
2. Resolution Setting a Public Hearing
3. Public Notice



# Proposed Sale of Surplus Property on Roby Avenue

 Portion of City Parcel Proposed for Sale

 Current City Owned Surplus Parcel

 Purchaser's Current Parcel

 Parcels

0 100 200 400 Feet



**PUBLIC NOTICE**

**TO THE CITIZENS OF MUSCATINE, IOWA:** You are notified that the City Council of Muscatine, Iowa, is considering declaring the following described real estate in Muscatine, Iowa, to-wit:

**Lots 18, 19, 20, 21, 22, and 23, in Block 2, of South Park Addition to the City of Muscatine, in Muscatine County, Iowa., according to the recorded thereof, as surplus property and offering said real estate for sale.**

**You are further notified that oral or written statements in support of or opposition to this proposed lease may be made at a public hearing before the City Council to be held at 7:00 o'clock P.M. on September 5, 2019, in the Council Chambers in City Hall, 215 Sycamore Street, Muscatine, Iowa.**

**Gregg Mandsager, City Clerk**