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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
CC: Greg Jenkins, Interim City Administrator
From: Andrew Fangman, Assistant Community Development Director
Date: December 19, 2019
Re:

- Request to Approve a Property Exchange and Temporary Construction Easement Agreement with HNI Corporation, Related to the 2nd Street and Mulberry Avenue Roundabout Project.
- Resolution to Approve Right of Way Dedications from HNI Corporation, Related to the 2nd Street and Mulberry Avenue Roundabout Project
- Resolution to Approve a Temporary Construction Easements from HNI Corporation, Related to the 2nd Street and Mulberry Avenue Roundabout Project

BACKGROUND:

The construction of a roundabout at the intersection of 2nd Street and Mulberry Avenue is the last remaining uncompleted portion of the Mississippi Drive Corridor Project. The conversion of this intersection into a roundabout necessitates the acquisition of additional right-of-way on both the northeast and southeast corners of this intersection. The realignment of this intersection will also generate surplus right-of-way, that will upon completion of this project serve no useful public purposes. The completion of this project will require temporary construction easements from the adjoining property owner.

Presented for City Council approval is an agreement between the City and HNI Corporation (the adjoining property owner on both the northeast and southeast corners of the 2nd and Mulberry intersection). This agreement will facilitate the acquisition of the required right-of-way; the obtention of the necessary temporary construction easements; and the disposition of the surplus right-of-way that will be generated by this project.

Between the northeast and southeast corners of this intersection there are seven distinct areas which will be dedicated as right-of-way, subjected to temporary construction easements, or disposed of as surplus property. This requires the execution of seven distinct transactions between the City and HNI, with some of these transactions coming prior to commencement of construction, and others occurring upon completion of the project. All seven of these transactions are interlinked and all are an integral part of the understanding between the City and HNI of how all the required transactions for this project should occur. This understanding is

"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain

the basis for this agreement which provides for the linkage between all seven transactions and establishes when each sequence should occur.

This agreement reflects the very generous support of HNI for making significant improvements to one of the most critical intersections in Muscatine. HNI will be donating the right-of-way and temporary construction easements necessary for this project. This donation is in addition to the \$50,000 that the HNI Foundation is contributing to this project. These contributions by HNI allow for the public dollars in this project to be stretched further.

The seven different areas which are covered by this agreement are depicted on a map attached as page 4 of this memo. These areas are labeled as Areas A through G. Following is an overview of the proposed transactions for each area covered by this agreement.

Area A - Right-of-way dedication on the southeast corner of the Mulberry and 2nd intersection

This area will be dedicated by HNI to the City as right-of-way. Upon completion of the project this area will contain permanent roadway and sidewalk improvements. A resolution accepting this right-of-way dedication is also on the December 19th City Council agenda.

Area B – Temporary construction easement on the southeast corner of the Mulberry and 2nd intersection

HNI will grant a temporary construction easement for this area. Upon completion of the project this will be restored as specified in the temporary construction easement. This temporary construction easement will automatically be canceled upon completion of the project. A resolution accepting the temporary construction easement is also on the December 19th City Council agenda.

Area C - Right-of-way dedication on the northeast corner of the Mulberry and 2nd intersection

This area will be dedicated by HNI to the City as right-of-way. Upon completion of the project this area will contain permanent roadway and sidewalk improvements. A resolution accepting this right-of-way dedication is also on the December 19th City Council agenda.

Area D – Temporary construction easement on the northeast corner of the Mulberry and 2nd intersection

HNI will grant a temporary construction easement for this area. This temporary construction easement grants the City permission to demolish the existing building located at 507 E. 2nd Street. This building is located in both Area C and Area D. Upon completion of the project this will be restored as a parking lot as specified in the temporary construction easement. The City's cost to construct this parking is capped, as per the easement agreement at \$44,500, with HNI being obligated to pay the rest. This temporary construction easement will automatically be canceled upon completion of the project. A resolution accepting the temporary construction easement is also on the December 19th City Council agenda.

Area E – Disposal of surplus property – A portion 515 E. 2nd St

On August 1, 2019, the City acquired the parcel located a 515 E. 2nd St from a private individual, and has since demolished the building located on this parcel. Only a portion (Area F) of this parcel is needed for this project. The remainder of this parcel (Area E) serves no current or future public

use, and is too small for it to be independently redeveloped. As such, the proposed agreement calls for this area to be deeded to the adjoining property owner (HNI). This would return the property to the tax roll, allow for it to be put back to a productive use by combining it with the much larger adjoining parcel, and helps offset the land HNI is giving up with right-of-way dedications associated with this project. This transaction will be complete one month after the temporary construction easements for Areas B and D expire and the overall project is complete.

Area F –Retention of a portion 515 E. 2nd St

The City will retain, as part of the Mulberry Avenue right-of-way a portion of the parcel located at 515 E. 2nd St.

Area G – Alley #2 east of Mulberry Avenue

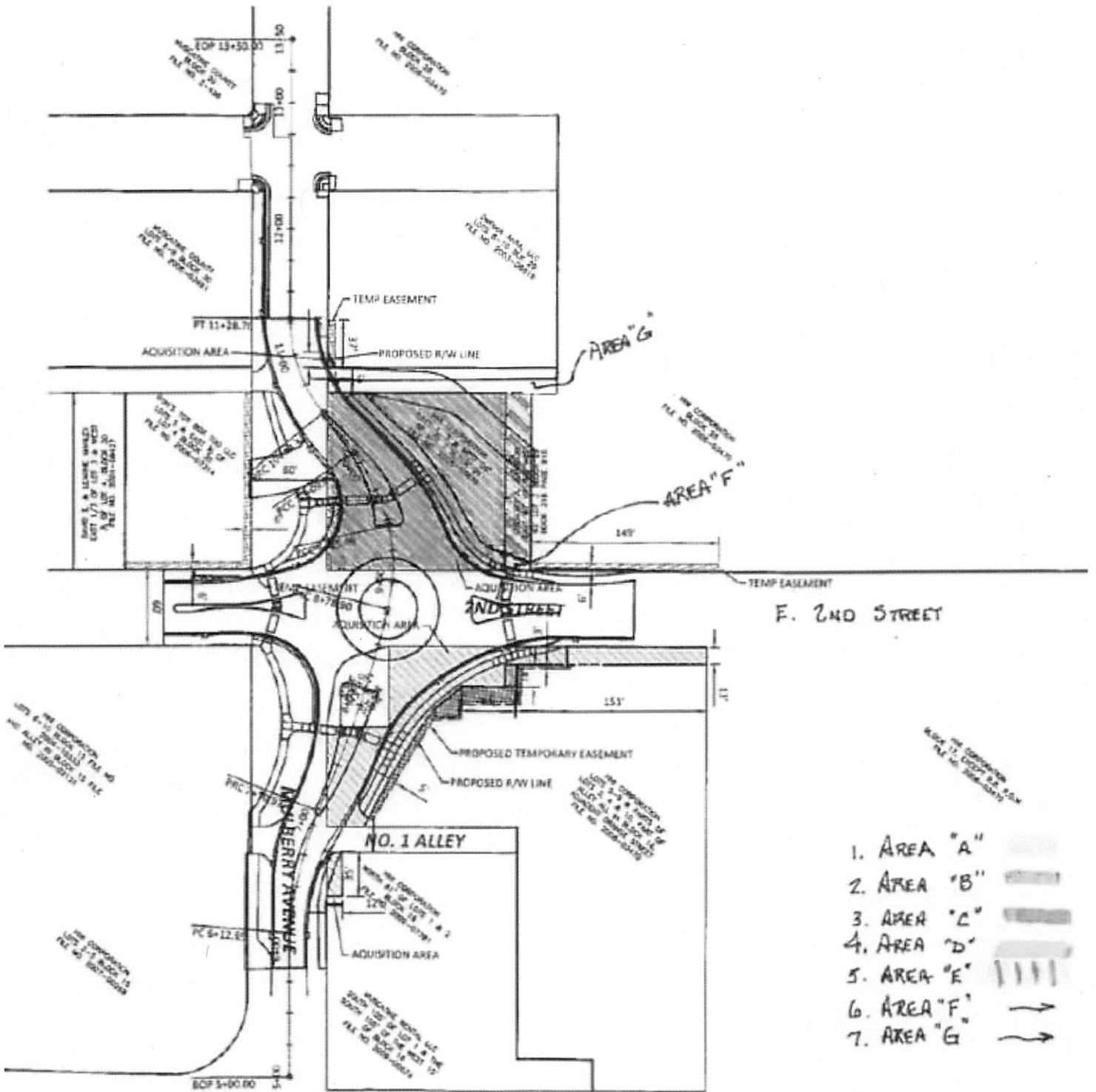
East of Mulberry Avenue, Alley #2 is a 180' stub that dead ends at HNI's current property. Upon completion of this project this portion of Alley #2 will no longer serve any public purpose, as it will only adjoin two parcels. In such situations, it is in the interested of the City to vacate such surplus right-of-way and convey it to the adjoining property owners. This benefits the City by returning this area to the tax roll and relieves the City of the duty to maintain infrastructure that is no longer serving a public purpose. In such situations, it has long been City policy to offer each adjoining property owner the right of first refusal on the half nearest their adjoining parcel. As such HNI will automatically be offered the southerly half of this portion of the Alley #2 right-of-way. If the adjoining property owner to the north, whom currently does not have physical vehicular access to the alley, declines to take the northerly half of this right-of-way, the northerly half of the Alley #2 right of way, would be offered to HNI. The ordinance to vacate this right-of-way and the subsequent City Council action to transfer ownership of the vacated right-of-way to the adjoining property owner(s), will be completed by April 2, 2020

RECOMMENDATION/RATIONALE

Staff recommends approval of the proposed agreement as it is necessary to proceed with construction of the 2nd Street and Mulberry Avenue Project, and would also provide for the disposal of the resulting surplus property.

BACKUP INFORMATION:

- 1. Property Exchange and Temporary Construction Easement Agreement, with HNI Corporation, Related to the 2nd Street and Mulberry Avenue Roundabout Project.**
- 2. Resolution Accepting the Dedication of Right of Way at the Mulberry Avenue and 2nd Street Intersection.**
- 3. Resolution approving an easement agreement with HNI Corporation regarding temporary construction easements necessary for the 2nd Street and Mulberry Avenue Roundabout Project.**
- 4. Real Property Charitable Donations Agreement.**



PROPERTY EXCHANGE AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This **Property Exchange and Temporary Construction Easement Agreement** (this “Agreement”) is effective as of December, 2019 (the “Effective Date”), by and between **HNI Corporation**, an Iowa corporation (“HNI”), and the **City of Muscatine, Iowa**, an Iowa municipality (the “City”), with respect to a charitable donation and grant of construction easements to facilitate the construction of a roundabout, as described herein (the “Contribution”).

1. **Background.** The City is a political subdivision or governmental unit for purposes of Section 170(c)(1) of the Internal Revenue Code of 1986 (the “Code”). HNI desires to support the City through its Contribution for use exclusively for public purposes. City desires to dispose, to the adjoining property owner, surplus real estate which will serve no public function upon completion of the Mulberry/2nd St Roundabout.

2. **Agreement.** In consideration of the mutual covenants herein contained, it is agreed that:

2.1 HNI shall fully execute a dedication of right of way to the City for the area depicted as Area A on the map attached as Exhibit A.

2.2 HNI shall fully execute a temporary construction easement to the City for the area depicted as Area B on the map attached as Exhibit A.

2.3 HNI shall fully execute a dedication of right of way to the City for the area depicted as Area C on the map attached as Exhibit A.

2.4 HNI shall fully execute temporary construction easement to the City for the Area D depicted on the map attached as Exhibit A.

2.5 City shall execute a warranty deed conveying the property depicted as Area E on the map attached as Exhibit A.

2.6 City shall vacate the alley right of way shown as Area G on Exhibit A. Once said alley right of way is vacated, City shall execute a warranty deed conveying the southerly half of said vacated alley right of way to HNI. If the property owner adjoining the northerly half of said right of way declines its option to receive the northerly half of said vacated right of way, City shall execute a warranty deed conveying the northerly half of said vacated alley right of way to HNI.

2.7 The area shown as Area F on the map attached as Exhibit A shall not transfer and title to Area F shall remain at all times with the City.

2.8 The dedications of right of way described in Sections 2.1 and 2.3 are referred to herein together as the “Dedications.” Area A and Area C are referred to herein together as the “Dedicated Area.”

2.9 The temporary construction easements described in Sections 2.2 and 2.4 are referred to herein as the “Easements.” Area B and Area D are referred to herein together as the “Easement Area.”

3. **Settlement.**

3.1 **Settlement 1 – Dedicated Area and Easement Area.** Settlement and delivery of possession for the Dedicated Area shall be on or before December 31, 2019 (“Settlement 1”). If HNI determines Settlement can be earlier, the City will accommodate and accept the earlier date. Settlement will be held at the office of the City or may be accomplished by electronic exchange of counterpart signatures. The parties will execute the Easements and a Real Property Charitable Donation Agreement to effect the Dedications on the same date.

3.2 **Settlement 2 – Area E.**

(a) Settlement and delivery of possession for the property transfer from the City to HNI described in Section 2.5 shall occur within one month of the expiration of the Easements (“Settlement 2”). If the City determines Settlement 2 can be earlier, HNI will accommodate and accept the earlier date. Settlement will be held at the office of the City or may be accomplished by electronic exchange of counterpart signatures.

(b) At Settlement 2, City will deliver to the HNI an executed warranty deed in form and manner satisfactory to both parties.

(c) City shall pay all real estate taxes and assessments that are due and payable as of the Settlement 2 date. Real property taxes on the real property described as Area E will be prorated as of the Settlement 2 date, based upon the latest available tax information.

(d) All risk of loss for the real property described as Area E covered by Settlement 2 will remain with the City until Settlement 2 is completed.

3.3 **Settlement 3 – Area G.**

(a) Settlement and delivery of possession for the property transfer from the City to HNI described in Section 2.6 shall occur on or before April 10, 2020 (“Settlement 3”). If the City determines Settlement 3 can be earlier, HNI will accommodate and accept the earlier date. Settlement will be held at the office of the City or may be accomplished by electronic exchange of counterpart signatures.

(b) At Settlement 3, City will deliver to the HNI an executed warranty deed in form and manner satisfactory to both parties.

(c) All risk of loss for the real property described as Area G will remain with the City until Settlement 3 is completed.

4. **Representations and Warranties.**

4.1 HNI represents and warrants to the City that: (a) it has good and marketable title to the Dedicated Area and the Easement Area, free from all mortgages, security interests, or other encumbrances; (b) there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or, to HNI’s actual knowledge, threatened against the Dedicated Area or the Easement Area, or pending or, to HNI’s actual knowledge, threatened litigation against HNI that could affect its title to the Dedicated Area or the Easement Area; and (c) it has full authority and power to enter into this Agreement and, when signed, this Agreement will be a valid obligation of HNI.

4.2 The City represents and warrants to HNI that: (a) it is a governmental unit or political subdivision for purposes of Section 170(c)(1) of the Code; (b) it has good and marketable title to the real property depicted in Exhibit A as Area E and Area F, free from all mortgages, security interests, or other encumbrances; (b) there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or, to City's actual knowledge, threatened against Area E or Area F, or pending or, to City's actual knowledge, threatened litigation against the City that could affect its title to the Area E or Area F; and (b) the City has full authority to and power to enter into this Agreement and, when signed, this Agreement will be a valid obligation of the City.

5. **General.** This Agreement: (a) along with the Real Property Donation Agreement, the dedications, and the deeds required to effect the transfers and agreements outlined herein, constitutes the entire understanding between the parties hereto as to the subject matter hereof and merges all prior negotiations, agreements, or discussions between them relating thereto; (b) shall be 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 each of the parties; (d) may not be assigned by either party without the prior written consent of the other party; 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. If there is any litigation between the parties with respect to this Agreement or the subject matter hereof, the prevailing party in such litigation shall be entitled to collect all of its costs and expenses in such litigation, including reasonable attorneys' fees and court costs, from the other party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

HNI Corporation

City of Muscatine

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF IOWA, MUSCATINE COUNTY, ss.

This instrument was acknowledged before me on December____, 2019, by Steven M. Bradford, as the Secretary of HNI Corporation.

Notary Public in and for the State of Iowa

IN WITNESS WHEREOF, we have hereunto affixed our hands this _____ day of _____, 2019.

Diana Broderson, Mayor

ATTEST:

Greg Jenkins, Interim City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Diana Broderson and Greg Jenkins to me personally known, who, being by me duly sworn, did say that they are the Mayor and Interim City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the _____ day of _____, 2019, and the said Diana Broderson and Greg Jenkins acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

Exhibit A
To Property Exchange and Temporary Construction Easement Agreement

MAP

