



City of Muscatine



AGENDA ITEM SUMMARY

DATE: 7-15-21

City Council

STAFF

Andrew Fangman, Assistant Community Development Director

SUBJECT

Request to approve a purchase agreement for the purchase by J.L. Winter LCC of two surplus City owned parcels on 41st Street in unincorporated Muscatine County

EXECUTIVE SUMMARY

A purchase agreement for the purchase by J.L. Winter LCC of two surplus City owned parcels on 41st Street in unincorporated Muscatine County has been negotiated and is presented for Council Action.

STAFF RECOMMENDATION

Staff recommends approval purchase agreement.

BACKGROUND/DISCUSSION

J.L. Winter LCC, the parent commission, Muscatine Metals has approached City staff about purchasing 29.09 acres of City owned land on 41st Street in unincorporated Muscatine County, these two contiguous parcels are located on the south side of 41st Street approximately 1,000 feet west of the Stewart Road/41st Street intersection, see attached map. Muscatine County has zoned the area as I-2 Heavy Industrial District. Muscatine Metals has expressed a desire to develop a parking area/ trailer drop lot at this location, and has purchased the adjoining parcel to the east from a private party for this purpose.

In the 1970's the City, used these parcels for the disposal of trees killed the Dutch Elm Disease. In addition, it also appears that cinders from the Muscatine Power & Water generating station and sludge from the City's Water Pollution Control Plant were also buried along with dead elm trees on this site. The City of Muscatine has not had an active use for these parcels for a number of decades. Additionally, while it does not pose an environmental hazard, the burial of dead trees, cinders, and sludge significantly limits the development potential of these parcels, as it would be difficult to construct a building on them or use these parcels for crop production.

On March 19, 2020, City Council approved, after a public hearing, a resolution declaring these parcels surplus, and authorized staff to negotiations on their sale. These negotiations have resulted in the purchase agreement being presented for council approval. In exchange for these two surplus parcels J.L. Winters LLC will pay the City \$17,500, and grant the City a 12,000 square foot permanent easement for sanitary sewer lift station on a property at 2405 Grandview Avenue that is owned by J.L. Winters LLC.

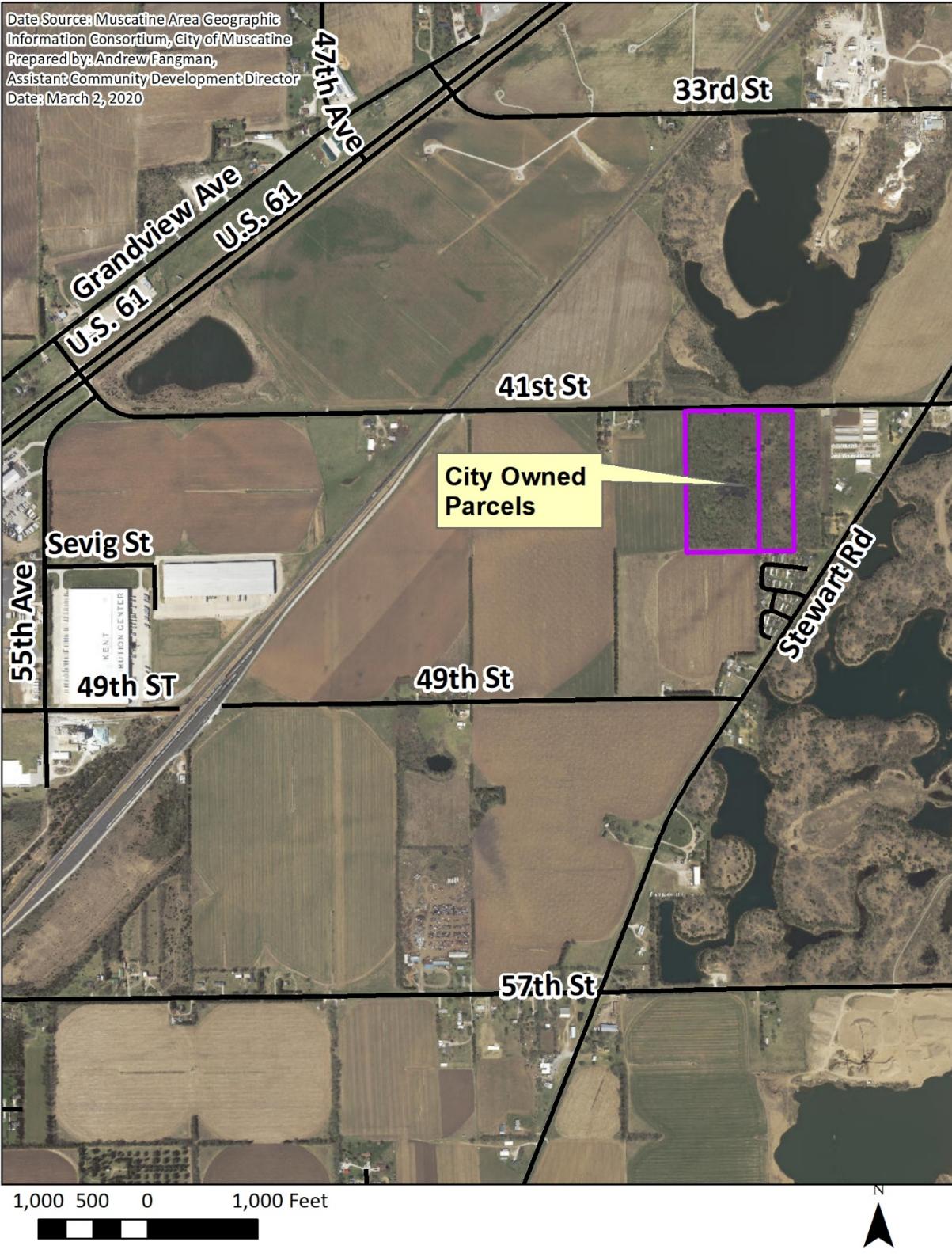
To allow for sanitary service to the forthcoming Love's Travel Stop that will be constructed at the northeast corner the U.S. 61/Grandview intersection, and all of the rest of the City bound by Mittman Road, Grandview Avenue, and U.S. 61, it is necessary to construct a new lift station in the vicinity of this intersection. Approval of this purchase agreement would allow for the City to acquire a location to construct this lift station without a cash outlay.

CITY FINANCIAL IMPACT

The financial impact of this action will be positive. The sale will generate \$17,500 in revenue, and allow for a needed location for a sanitary lift station to be acquired without a direct monetary cost to the City.

ATTACHMENTS

1. Map
2. Purchase Agreement



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 J.L. Winter, L.L.C., whose address for the purposes of this Agreement is 10457 County Road G44X, Muscatine, Iowa 52761 (hereafter referred to as the "Buyer").

RECITALS

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

(Parcel Number: 1321100004)

The east half of the northwest quarter of the northeast quarter of Section 21, Township 76 North, Range 2 west of the 5th P.M. Muscatine County, Iowa; and

(Parcel Number: 1321200012)

Except for the easterly 350 feet, the west half of the northwest quarter of the northeast quarter of Section 21, Township 76 North, Range 2 west of the 5th P.M. Muscatine County, Iowa.

Subject only to easements, restrictions and covenants of record, totaling approximately 29.09 acres (collectively referred to as the "Property");

WHEREAS, Buyer desires to purchase from City and City 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.

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 payment of \$17,500.00 (the "Purchase Price"), and
- b. A permanent easement granted by Buyer to the City upon land located at 2405 Grandview, Muscatine, Iowa 52761, as generally depicted on the attached Exhibit A and legally described below, at no cost to the City (the "Easement.")

[insert legal of easement]

The Easement shall be in substantially the same form as Exhibit B, to be executed by the Buyer and recorded of record.

3. Council Approval. The parties acknowledge that sale 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 purchase 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 and Easement. The Purchase Price and Easement shall be provided by Buyer to Seller at the time of Closing.

5. Abstract and Title. Seller shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, and deliver it to Buyer for examination. It shall show merchantable title in Seller's name in conformity with this Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. The Seller shall make every reasonable effort to promptly perfect title. If Closing is delayed due to Seller's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of Buyer when the purchase price is paid in full.

6. Condition of the Property. Seller and Buyer agree that the Property shall be sold, and that Buyer shall accept possession of the Property, "As Is, Where Is, With All Faults," and that the Seller make no representation or warranty of any kind with regard to the uses, merchantability, or fitness for a particular purpose, and the City does hereby disclaim and renounce any such representation or warranty. The Property is sold "as is" condition including, without limitation, as to any hazardous materials contamination. The parties acknowledge that the Property was previously used by the City as grounds to dispose of trees killed by the Dutch Elm Disease, cinders from the Muscatine Power & Water generating station, and sludge from the City's Water Pollution Control Plant, in additional to potentially other contaminated or hazardous materials. In purchasing the Property, the Buyer is relying solely upon its own inspection or investigation of the Property.

7. Closing. The Closing of this transaction shall occur as soon as reasonably practicable, after the Muscatine City Council has approved this transaction and all necessary steps have been taken to transfer title and possession to Buyer (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.

8. 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, if applicable.

9. Special Assessments. Buyer shall be responsible for all special assessments with respect to the Property.

10. 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.

11. 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. 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, which will disclose those known materials set forth in Section 6 above.

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

13. Closing Costs. Buyer 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. Each party shall be responsible for paying its own attorney fees.

14. Possession; Risk of Loss. All risk of loss with respect to the Property shall remain with Seller until the Closing Date. Seller shall preserve and care for the Property until the Closing Date in a manner consistent with its prior practice, including the maintenance of sufficient insurance to cover any loss or damage to the Property prior to the Closing Date. If the Property is damaged or destroyed in any material way prior to the Closing Date, Seller shall promptly notify the Buyer of

said damage and Buyer shall have the option to (i) terminate this Agreement with written notice to Seller, or (ii) complete the closing and receive insurance proceeds paid to the Seller as a result of the loss incident.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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: _____

Carol Webb, City Administrator

Date: _____

Buyer

J.L. Winter, L.L.C.

By: _____

Justin Winter

Its: _____

Date: _____

EXHIBIT A



EXHIBIT B

WHEN RECORDED RETURN TO:

Erin M. Clanton
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266

Preparer Information: Erin M. Clanton, 6701 Westown Parkway, Suite 100, West Des Moines, Iowa 50266 (515) 274-1450

PUBLIC SANITARY LIFT STATION EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, J.L. Winter, L.L.C., an Iowa limited liability company, with its principal place of business in Muscatine, Muscatine County, Iowa, hereinafter referred to as "Grantor", in consideration of the sum of one dollar (\$1.00), and other valuable consideration, in hand paid by the City of Muscatine, Iowa, receipt of which is hereby acknowledged, do hereby sell, grant and convey unto the City of Muscatine, Iowa, a municipal corporation, in the County of Muscatine, State of Iowa, hereinafter referred to as "Grantee" or "City", a permanent easement under, through, and across the following described real estate:

See Attached Exhibit
The "Easement Area"

That the above described easement is granted unto the City of Muscatine, Iowa, for the purpose of constructing, reconstructing, repairing, replacing, enlarging, inspecting and maintaining the following public improvements:

Public Sanitary Lift Station

1. Erection and Placement of Structures, Obstructions, Plantings or Materials Prohibited.

Grantor and its grantees, assigns and transferees shall not erect any fence or other structure under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the City, nor shall Grantor cause or permit any obstruction, planting or material to be placed under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the City.

2. Change of Grade Prohibited. Grantor and its grantees, assigns and transferees shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City. The City shall have the right to restore any changes in grade, elevation or contour without prior written consent of the Grantor, its grantees, assigns or transferees.

3. Right of Access. The City shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area from property adjacent thereto as herein described, including but not limited to, the right to remove any unauthorized fences, structures, obstruction, planting or material placed or erected under, over, on, through, across or within the Easement Area.

4. Property to be Restored. The City shall restore the Easement Area after exercising its rights hereunder, provided, however, that the City's duty of restoration shall be limited to grading and replacing grass, sod or any other ground cover (but not including any structures, trees or shrubs). The City shall not be responsible for any construction, reconstruction, replacement, repair or maintenance of any improvements located within the Easement Area.

5. Liability. Except as may be caused by the negligent acts or omissions of the City, its employees, agents or its representatives, the City shall not be liable for injury or property damage occurring in or to the Easement Area, the property abutting said Easement Area, nor for property damage or any improvements or obstructions thereon resulting from the City's exercise of this Easement. Grantor agrees to indemnify and hold City, its employees, agents and representatives harmless against any loss, damage, injury or any claim or lawsuit for loss, damage or injury arising out of or resulting from the negligent or intentional acts or omissions of Grantor or its employees, agents or representatives.

6. Easement Benefit. This Easement shall be for the benefit of the City, its successors and assigns, and its permittees and licensees.

7. Easement Runs with Land. This Easement shall be deemed perpetual and to run with the land and shall be binding on Grantor and on Grantor's heirs, successors and assigns.

8. Consent and Subordination of Mortgage Holder(s). By signing this Agreement, the undersigned lender, its successors and assigns consents to the terms of this easement agreement and hereby subordinates its interest in the Easement Area to the interest of the City and its successors and assigns.

9. Approval by City Council. This Easement shall not be binding until it has received the final approval and acceptance by the City Council by Resolution which approval and acceptance shall be noted on this Easement by the City Clerk.

That the Grantor does hereby covenant with the said Grantee, and successor-in-interest, that said Grantor holds said real estate by title and fee simple; that it has good and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever, except as may be herein stated; that said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever, except as may be herein stated.

IN WITNESS WHEREOF, we have hereunto affixed our hands this _____ day of _____, 2021.

By _____

Its: _____

STATE OF IOWA)
) ss:
COUNTY OF MUSCATINE)

On this _____ day of _____, 2021, before me, a Notary Public in and for said county, personally appeared **Justin Winter**, to me personally known, who, being by me duly sworn did say that he is the _____ of J.L. Winter, L.L.C., an Iowa limited liability company; that said instrument was authorized by Resolution adopted by the Company on the _____ day of _____, 2021, and that said Justin Winter acknowledged the execution of said instrument to be his voluntary act and deed and the voluntary act and deed of said Company, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

ACCEPTANCE BY CITY

STATE OF IOWA)
) ss:
COUNTY OF MUSCATINE)

I, _____, City Clerk of the City of Muscatine, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City by Resolution No. _____, passed on the _____ day of _____, 2021, and this certificate is made pursuant to authority contained in said Resolution.

City Clerk of the City of Muscatine, Iowa