

COMMUNITY DEVELOPMENT

MEMORANDUM

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

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Andrew Fangman, City Planner
Date: November 5, 2015
Re: Resolution Granting HNI Corporation a Permanent Easement to Construct Supports for a Bridge Structure Over Oak Street Within the Public Right-of-Way

INTRODUCTION: HNI Corporation has requested a permanent easement to construct supports for a bridge structure over Oak Street within the public right-of-way.

BACKGROUND: As part of a larger expansion/renovation project HNI Corporation desires to construct a bridge over Oak Street in the 300 block, in order to move products and people between buildings located on the opposite sides of Oak Street. A similar bridge over Oak Street already exists near the proposed location. In order to accommodate this bridge, piers will need to be placed within the public right-of-way on the east side of Oak Street. The proposed location is on the eastern edge of this right-of-way, not within the street, will leave a passable sidewalk meeting ADA standards, and directly adjacent to Muscatine Power and Water transformers which are also located within the public right-of-way.



Proposed Location of Bridge Supports and Proposed Easement

RECOMMENDATION/RATIONALE: Staff recommends approval of this resolution. The portion of the right-of-way in which the supports for the bridge structure does not serve any public function, construction of bridge support structures in this location will not endanger or otherwise impede motorized or non-motorized traffic along Oak Street. Facilitating further investment by HNI in their facilities at this location is beneficial to the economic health of the community,

BACKUP INFORMATION:

1. Resolution and Easement Agreement
2. Plans for Bridge Structure
3. Map of Location of Bridge Structure

RESOLUTION NO. _____

**RESOLUTION ACCEPTING PERMANENT
RIGHT-OF-WAY EASEMENT AGREEMENT**

WHEREAS, THIS PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT (the "Agreement") attached as Exhibit A is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and **HNI Corporation**, an Iowa for-profit corporation (hereinafter referred to as "Grantee").,

WHEREAS, Grantor is the owner of certain real estate located in the Oak Street right-of-way adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to obtain a perpetual, non-exclusive easement and ingress and egress rights over and across the Property in order to construct the supports for a conveyor bridge, with full authority to enter upon, construct, erect, repair, replace and maintain the supports for the conveyor bridge. Grantor is willing to grant Grantee an easement for said purpose, subject to the terms and conditions set forth in the attached right of way easement;

WHEREAS, In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants, conveys and declares unto Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way easement including ingress and egress rights over and across the Property, for the purposed of the construction, repair and maintenance of the supports for a conveyor bridge (hereinafter the "Project"), the renderings and geographic map of which are attached to Exhibit A:

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa, approve the permanent right-of-way easement agreement attached as Exhibit A.

PASSED, APPROVED AND ADOPTED this 5th day of November, 2015.

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

DeWayne M. Hopkins, Mayor

Attest:

Gregg Mandsager, City Clerk

WHEN RECORDED RETURN TO:

Andrew Fangman
City Planner
City of Muscatine
215 Sycamore Street
Muscatine, Iowa 52761

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

PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT

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1. **Property and Purpose.** Grantor is the owner of certain real estate located in the right-of-way adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to obtain a perpetual, non-exclusive easement and ingress and egress rights over and across the Property in order to construct the supports for a conveyor bridge, with full authority to enter upon, construct, erect, repair, replace and maintain the supports for the conveyor bridge. Grantor is willing to grant Grantee an easement for said purpose, subject to the terms and conditions set forth below.

2. **Grant of Easement.** In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants, conveys and declares unto Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way easement including ingress and egress rights over and across the Property, for the purposed of the construction, repair and maintenance of the supports for a conveyor bridge (hereinafter the "Project"), the renderings and geographic map of which are attached hereto as Exhibit "B."

3. **Use by Grantor.** Grantor retains the right to use the Property. The Property is subject to all matters of record, including all easements of record, the retained rights of Grantor and whatever other easements, rights, licenses or grants that contemporaneous herewith or subsequent hereto, may be granted, or otherwise created by Grantors, provided that any subsequently created interest does not prevent Grantee from utilizing this Easement for its intended purpose. This Easement shall revert to Grantor upon release.

4. Grantor's Improvements. Grantee shall replace and restore any and all improvements of Grantor on the Property and Grantor's adjoining land which are disturbed by Grantee's activities, including, but not limited to, curbing, landscaping, paving, irrigation systems, utility infrastructure and/or traffic controls (collectively, "Grantor's Improvements"). Grantee agrees to restore the Property to a condition after construction substantially the same as prior to entry by the Grantee.

5. Approvals. Erection of the Project will require a permit and compliance with the City of Muscatine, Iowa ordinances. Nothing in this Agreement shall be construed to exempt the Grantee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding any permits or approvals necessary for the anticipated use of the Easement by Grantee, including but not limited to building permits, zoning or conditional use permits as may be legally required. By executing this Agreement, Grantor does not waive any of its regulatory authority over the Project.

6. Maintenance. After Grantee commences construction and/or erection of the Project on the Property, Grantee shall maintain, repair and replace the Project and keep it in good order, condition and state of repair. In the event Grantee fails to fulfill its obligations to maintain, repair and replace the Project as set forth herein, Grantor shall have the right, but not the obligation, to perform such maintenance, repair and replacement after providing Grantee thirty (30) days written notice of Grantor's intent to perform the same and opportunity to cure, and assess such costs to the Grantee. Grantee shall maintain, repair and replace any and all of Grantor's Improvements that are affected by Grantee's maintenance, repair and replacement of the Project.

7. Indemnification. Grantee, with respect to its use of the Property for the Project, agrees to indemnify, protect, defend, and hold harmless Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any act or omission of Grantee, its agents, servants or employees.

8. Recording Costs. The Grantee hereby agrees to pay the recording costs to record this easement with the Muscatine County Recorder.

9. Covenants with the Land. All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Grantor, Grantee and their respective assigns and successors in title.

10. Captions and Governing Law. The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto affixed our hands this _____ day of _____, 2015.

DeWayne M. Hopkins, Mayor

ATTEST:

Gregg Mandsager, City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the ____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DeWAYNE M. HOPKINS** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and 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 _____, 2015, and the said **DeWAYNE M. HOPKINS** and **GREGG MANDSAGER** 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

HNI CORPORATION

By: _____
Name: _____
Title: _____

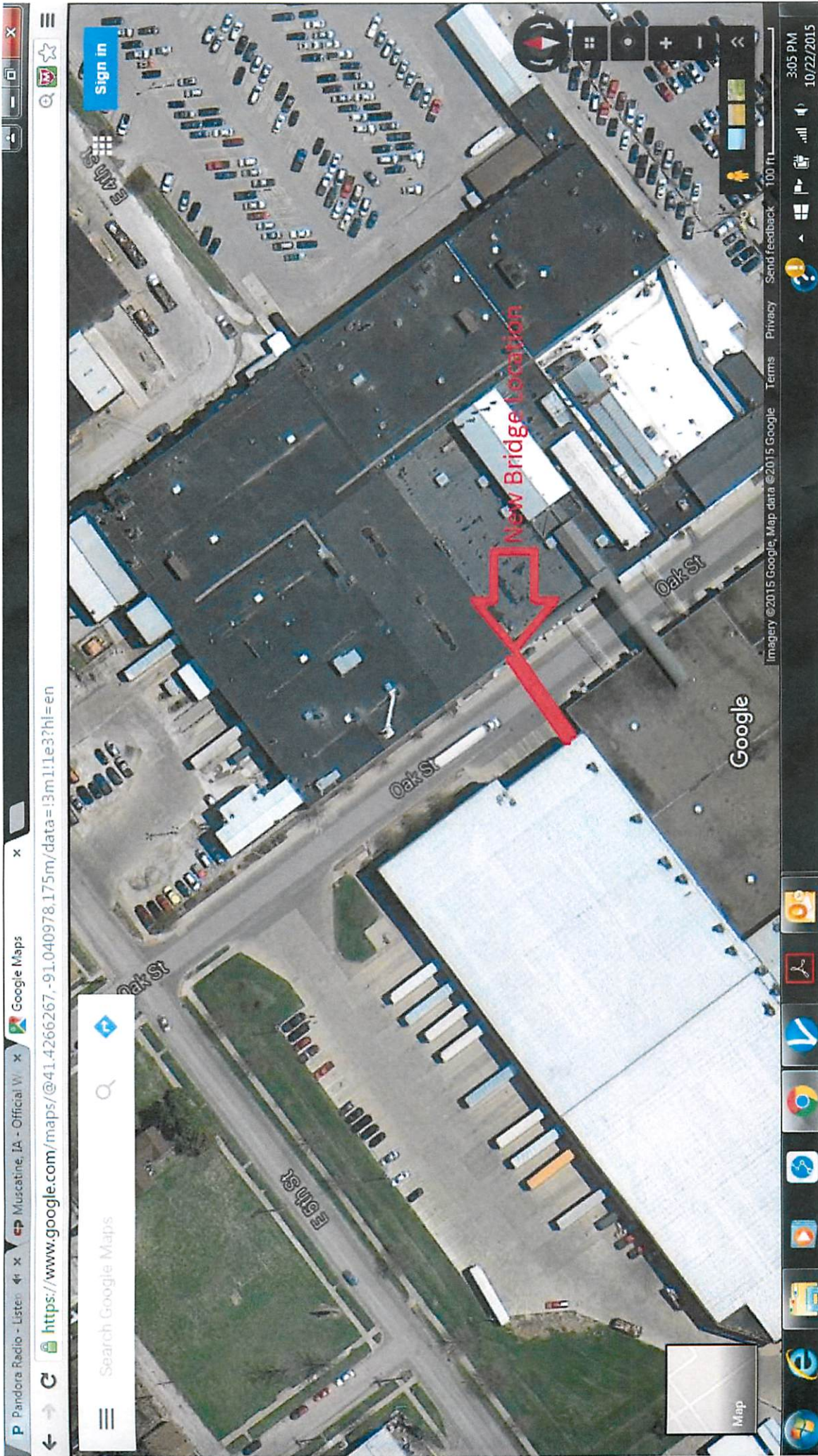
STATE OF IOWA, MUSCATINE COUNTY, ss:

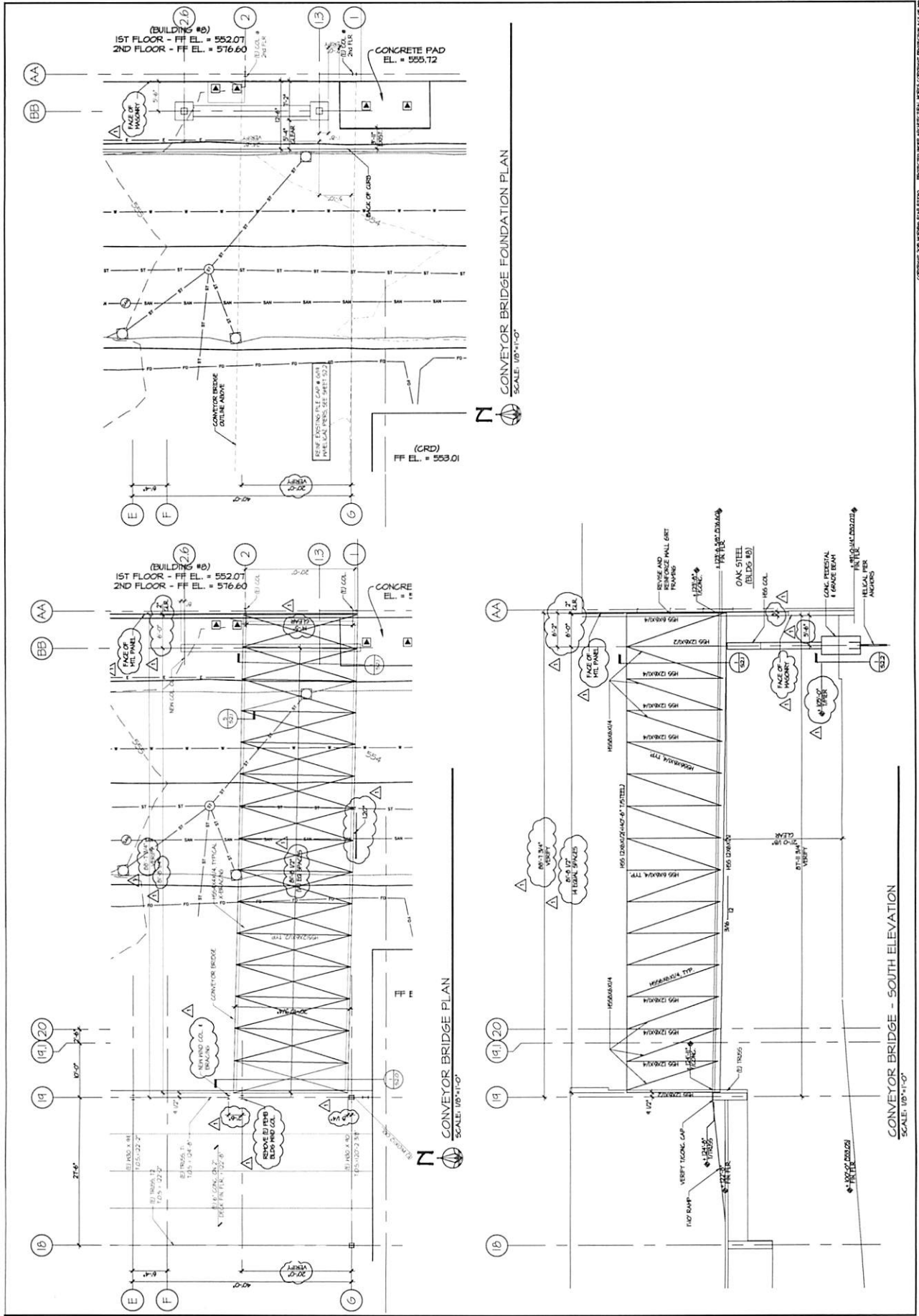
On this ____ day of _____, 2015, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is _____ of **HNI CORPORATION**, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of **HNI CORPORATION**, by authority of its Board of Directors, and that _____, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **HNI CORPORATION**, by it and by him/her voluntarily executed.

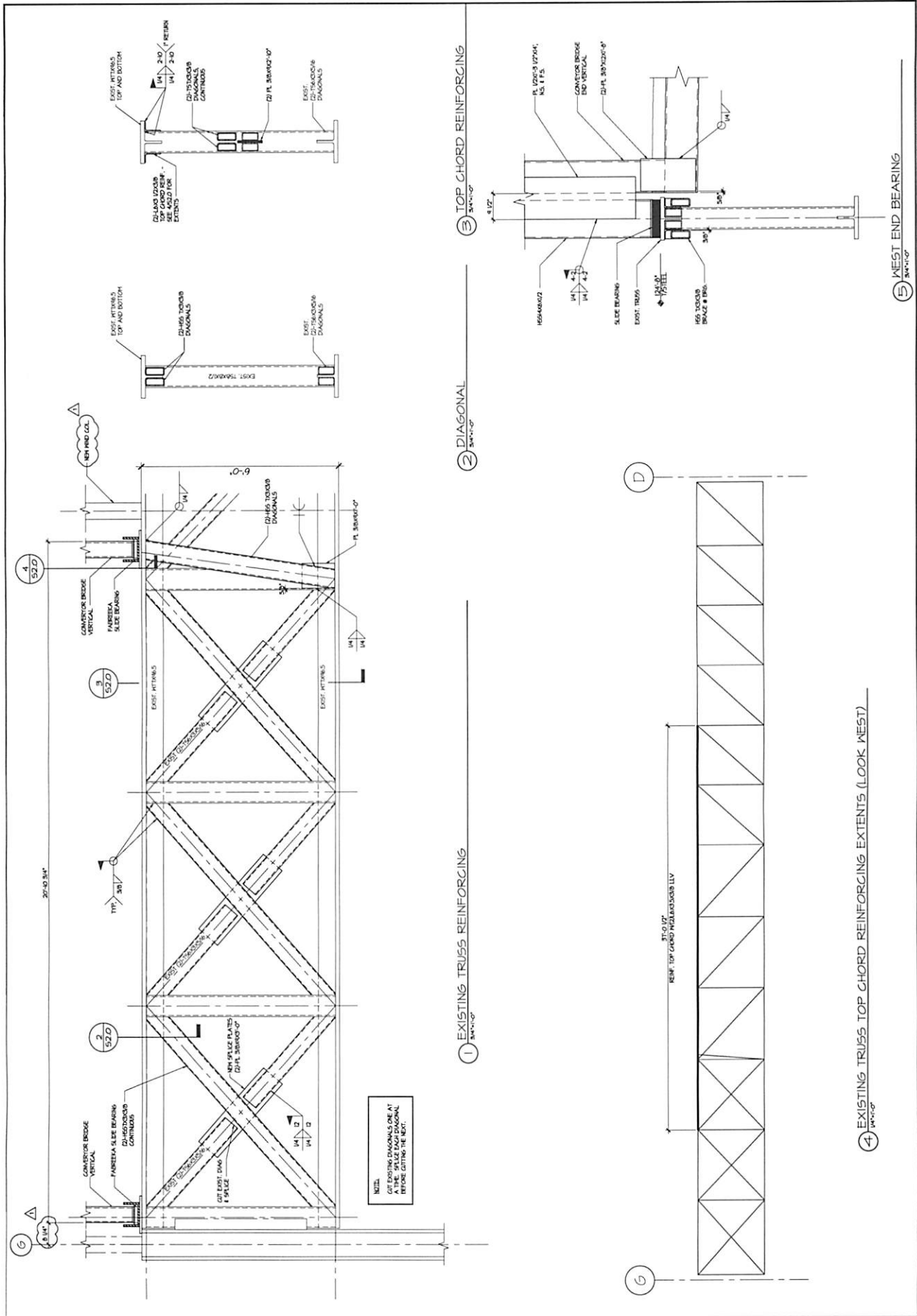
Notary Public in and for the State of Iowa

EXHIBIT A

A portion of the Oak Street Right of Way that is located between the northeasterly right of way line of Oak Street and a line running parallel, but located 8' southwesterly from, to the northeasterly right of way line of Oak Street; and that located between 333' and 433' distant southeasterly from an intersection with the centerline of 5th Street.







CRD - OAK STEEL CONVEYOR BRIDGE HNI INDUSTRIES MUSCATINE, IOWA

