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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: September 5, 2019
Re: Resolution Approving the Sale of a Portion of Surplus City Property Located on Roby Avenue (Parcel # 1303456011) and Accepting a Trail Easement on Said Property

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 final step in the sale process is for council to approve the attached resolution which, approves the attached purchase agreement, executes the deed, and approves the acceptance of a trail easement.

Supporting Documents

1. Resolution
2. Purchase Agreement
3. Deed
4. Trail Easement

Drafted by & Return to: Andrew Fangman, City Planner, City of Muscatine, 215 Sycamore St.,
Muscatine, IA 52761; (563) 262-4141
Send Tax Statement to: Not Applicable.

TRAIL EASEMENT

Clint T. Church and Dana R. Church, (collectively hereinafter “Grantors”) hereby grant to City of Muscatine, Iowa, its successors and assigns (hereinafter “Grantee”) a perpetual right and easement to construct and use a trail or sidewalk for public passage by foot and non-motorized bicycle over a certain parcel of land as described as the ortherly 10’ of 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 to the terms and conditions contained in this Trail Easement.

1. Grantee shall have the right but not the obligation to construct, maintain, mark, and use a trail across the Grantors’ parcels of land, within the permanent easement delineated as “Permanent Trail Easement” in the attached Exhibit A, including the construction of trail surfacing, facilities for the necessary channeling of surface water, and appropriate signage (all of the foregoing collectively referred to herein as “Construction”). Grantee shall repair, at Grantee’s sole cost and expense, any damage to the Grantors’ properties caused by the Construction and shall restore the Grantors’ properties to their original condition. Grantee shall also prevent that part of the Grantors’ properties lying adjacent and/or contiguous to the Permanent Trail Easement from suffering any adverse consequences due to the construction, placement, or use of the trail, including any flooding or other standing water that did not exist before the said construction, placement, or use of said trail.
2. Grantee have the right but not the obligation to invite public use of the trail, and Grantee shall use reasonable efforts to maintain the trail and to discourage littering and other acts that would encroach upon the natural features of the trail corridor or that would diminish its attractiveness. Grantors shall retain the right but not the obligation to mow along the trail, remove snow, and otherwise enhance the utilization of the trail. In no event shall Grantors incur any additional responsibilities or liabilities by virtue of or arising from this grant of easement to Grantee.
3. Coordination with Grantor; Restoration & Repair.
 - a. Grantee's construction and maintenance shall not interfere with Grantor's business operations outside the temporary and permanent easement areas during all phases of construction.

- b. All construction activities must be coordinated with Grantor's representative so as to not unreasonably interfere with Grantor's business operations on Grantor's property.
 - c. Grantee will complete all grading and seeding to restore all portions of the project area along the developed trail to its original condition.
- 4. **Interference with Easement.** Grantor, individually or by assignment easement or otherwise, shall not erect or construct any buildings, structures or appurtenances on the Easement Parcel that would interfere with the Grantee's operation of or access to the trail located therein, without written permission of Grantee, which permission will not be unreasonably withheld. In the event of any unauthorized erection or construction by Grantor, Grantee shall not be liable for personal injuries or responsible for damages in carrying out its permissible functions under this Easement.
- 5. **Liability.** It is further agreed that Grantee (except as above provided) shall be liable for any damage to any property of the Grantor caused by the Grantee, while constructing, reconstructing, operating, maintaining, patrolling or removing the trail, equipment, appurtenances or other associated portions thereof. However, nothing herein contained shall be construed to relieve any contractor, subcontractor or employee of the Grantee from liability to the Grantor, officers, employees, agents or contractors for damages caused by the Grantee, or by any contractor, subcontractor or employee of the assigns. So long as Grantee invites public use of this trail, the City of Muscatine shall provide liability protection equal in coverage to that provided for all streets and trails within the City.
- 6. **Additional Terms.**
Where used herein, Grantor shall mean Grantor, grantors, their heirs, beneficiaries, fiduciaries, successors or assigns.

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

Grantor

By: _____

Clint T. Church

Date: _____

Buyer

By: _____

Dana R. Church

Date: _____

Grantee

City of Muscatine, Iowa

By: _____

Gregg Mandsager, City Clerk

Date: _____

By: _____

Diana L. Broderson, Mayor

Date: _____

STATE OF IOWA, COUNTY OF MUSCATINE, SS:

The foregoing instrument was acknowledged before me on September ____, 2015, by
Clint T. Church and Dana R. Chruch

[SEAL]

Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF MUSCATINE, SS:

The foregoing instrument was acknowledged before me on Septmeber ___, 2019, by Diana L. Broderson and Gregg Mandsager, as Mayor and City Clerk, respectively, of the CITY OF MUSCATINE, STATE OF IOWA, on behalf of whom the instrument was executed.

[SEAL]

Notary Public in and for the State of Iowa

EXHIBIT A

The northerly 10' of Lots 18, 19, 20, 21, 22, and 23, in Block 2, of South Park Addition
to the City of Muscatine, in Muscatine County, Iowa..

RESOLUTION NO. _____

A Resolution Authorizing the Sale of
City Property to Clint T. Church and Dana R. Church

WHEREAS, as Resolution was adopted by the City Council of Muscatine, Iowa, on August 15, 2019, concerning the declaration as surplus and the proposed sale of all the City's right, title, and interest in and to the real property described in the copy of the Deed attached to this Resolution and incorporated by reference; and

WHEREAS, the Resolution provided that notice of intention to declare as surplus and then sell the real property should be given by publication of a Public Notice in *The Muscatine Journal* no less than 4 or more than 20 days before the City Council meeting to be held on September 5, 2019, and the notice was published as specified in the Resolution and as required by law; and

WHEREAS, the Resolution provided for a public hearing on the declaration as surplus and the subsequent sale of real property, and such public hearing has been held; and

WHEREAS, A purchase agreement between City of Muscatine Clint T. Church and Dana R. Church for the purchase of this property for \$8,828 has been presented for City Council Approval; and

WHEREAS, Said purchase agreement between City of Muscatine Clint T. Church and Dana R. Church for the purchase of this requires that the buyers provide the City 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.

IT IS, THEREFORE, RESOLVED, by the City Council of Muscatine, Iowa, as follows:

1. The City Council of Muscatine, does hereby declare to be surplus and it to be in the best interest of the public to dispose of 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.**
2. The Mayor is authorized and directed to sign the Purchase Agreement attached as "Exhibit B", and the City Clerk is authorized and directed to attest to the Mayor's signature.
3. The City of Muscatine, Iowa, will sell and convey all its right, title, and interest in and to the real property described as **Lots 18, 19, 20, 21, 22, and 23, in Block 2, of South Park Addition to the City of Muscatine, in Muscatine County, Iowa;** to Clint T. Church and Dana R. Church in exchange for \$8,828.
3. The Mayor is authorized and directed to sign the Deed for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature; and will be in substantially the same form as the copy of the Deed attached to this Resolution as "Exhibit B".
5. The deed will be delivered upon receipt of \$8,828 and signed and notarized sidewalk and trail easement attached as "Exhibit C".
6. Any resolution or part thereof in conflict or inconsistent with this Resolution is repealed.

PASSED, APPROVED, AND ADOPTED on September 5, 2019.

(CITY SEAL)

ATTEST:

Diana L. Broderson, Mayor

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 \$8,8828.00 (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

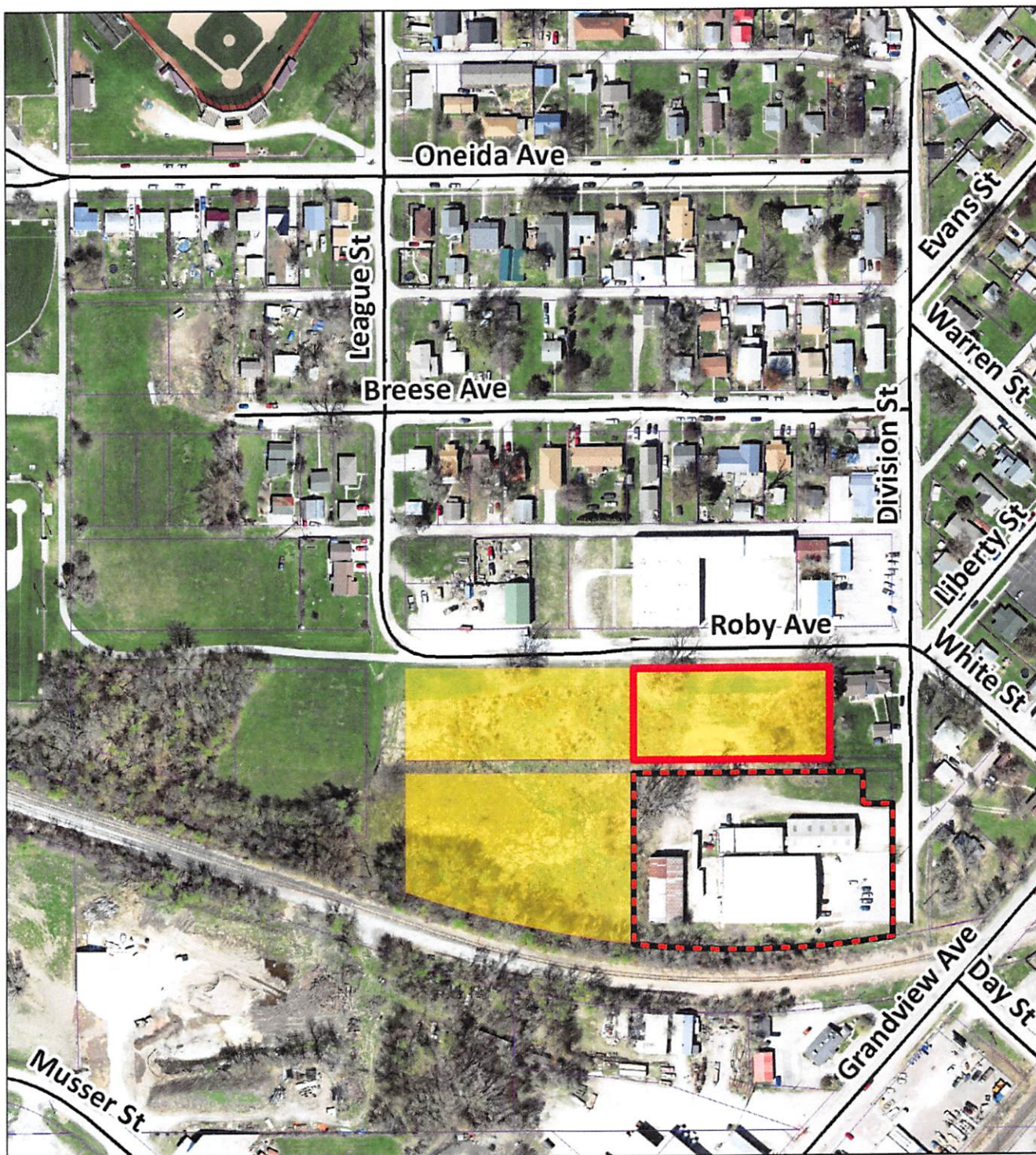
Date: 7/25/19

Buyer

By: Dana R. Church

Dana R. Church

Date: 7/25/19



Proposed Sale of Surplus Property on Roby Avenue

Portion of City Parcel Proposed for Sale
 Purchaser's Current Parcel

Current City Owned Surplus Parcel

Parcels

0 100 200 400 Feet

