

REAL PROPERTY CHARITABLE DONATION AGREEMENT

This **Real Property Charitable Donation 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 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.

2. **Contribution.** HNI will donate to the City the real property described on the attached **Exhibit A**, and all buildings and improvements situated thereon (collectively, the "Real Property"), all on the terms and subject to the conditions of this Agreement.

3. **Settlement.**

3.1 Settlement and delivery of possession shall be on or before December 31, 2019 ("Settlement"). 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.

3.2 At Settlement, HNI will deliver to the City an executed dedication of right of way to the Real Property in form and manner satisfactory to both parties.

3.3 At Settlement, and after both HNI and the appraiser have completed Parts I-III of the form, the City will deliver to HNI an executed Form 8283, Noncash Charitable Contributions. In accordance with Form 8283, the City does not attest to the fair market value or the amount of the contribution by virtue of this signature.

3.4 HNI shall pay all real estate taxes and assessments that are due and payable as of the Settlement date. Real property taxes on the Real Property will be prorated as of the Settlement date, based upon the latest available tax information.

3.5 All risk of loss for the Real Property will remain with HNI until Settlement.

4. **Representations and Warranties.**

4.1 HNI represents and warrants to the City that: (a) it has good and marketable title to the Real Property, 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 Real Property, or pending or, to HNI's actual knowledge, threatened litigation against HNI that could affect their title to the Real Property; 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; 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.

4.3 The City further agrees to cooperate with HNI to complete any documentation or additional paperwork necessary or helpful to assist HNI in documenting its gift or to make a filing with any government entity or regulator. In the event the tax deductibility of the Contribution is challenged, the City agrees to provide reasonable assistance to HNI in contesting the unfavorable determination or

ruling. To the extent legal fees are incurred in the drafting, negotiating or reviewing any documents pursuant to this section, HNI will reimburse the City for all such reasonable costs.

5. **Additional Agreements and Covenants.** The City agrees to: (a) use the Real Property exclusively for the public purpose of constructing a traffic roundabout substantially in accordance with the rendering attached as **Exhibit B**; and (b) operate and keep the Real Property in good repair and condition, including maintaining the road surfaces, safety features, and landscaping.

6. **Right to Inspect.** As part of its due diligence, the City may conduct inspections, tests, and studies with respect to the physical and environmental condition of the Real Property. The City and its consultants, agents, engineers, inspectors, contractors, and employees shall be given reasonable access to the Real Property for the purposes of performing such due diligence. The City shall not conduct any intrusive or destructive inspections or borings without HNI's prior written consent, which consent shall not be unreasonably withheld. The City's due diligence shall not interfere with HNI's business operations. The City shall have the absolute right to terminate this Agreement if the results of these inspections indicate that the Real Property cannot be used for the public purposes anticipated by this Agreement.

7. **Disclosure of Gift.** The parties acknowledge that certain state or federal laws now or in the future may require HNI to disclose information on donations provided to charitable entities. HNI may report information about the Contribution provided under this Agreement, as required by law. Once reported, such information may be publicly accessible. Notwithstanding any other provision in this Agreement, the City understands and agrees that HNI reserves the right to post on a website accessible to the public, information regarding the Contribution and this Agreement, whether or not required by law, including the identity of the City, the value of the Contribution, the purposes for such Contribution, and other information as HNI determines is appropriate, in its sole discretion.

8. **General.** This Agreement: (a) 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]

The parties have duly executed this Agreement as of the Effective Date.

HNI Corporation

City of Muscatine, Iowa

By _____
Name _____
Title _____

By _____
Name _____
Title _____

**Exhibit A
To Real Estate**

Donation Agreement

LEGAL

DESCRIPTION

A PART OF LOTS 1, 2 AND 3 IN BLOCK 29 OF THE ORIGINAL TOWN IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

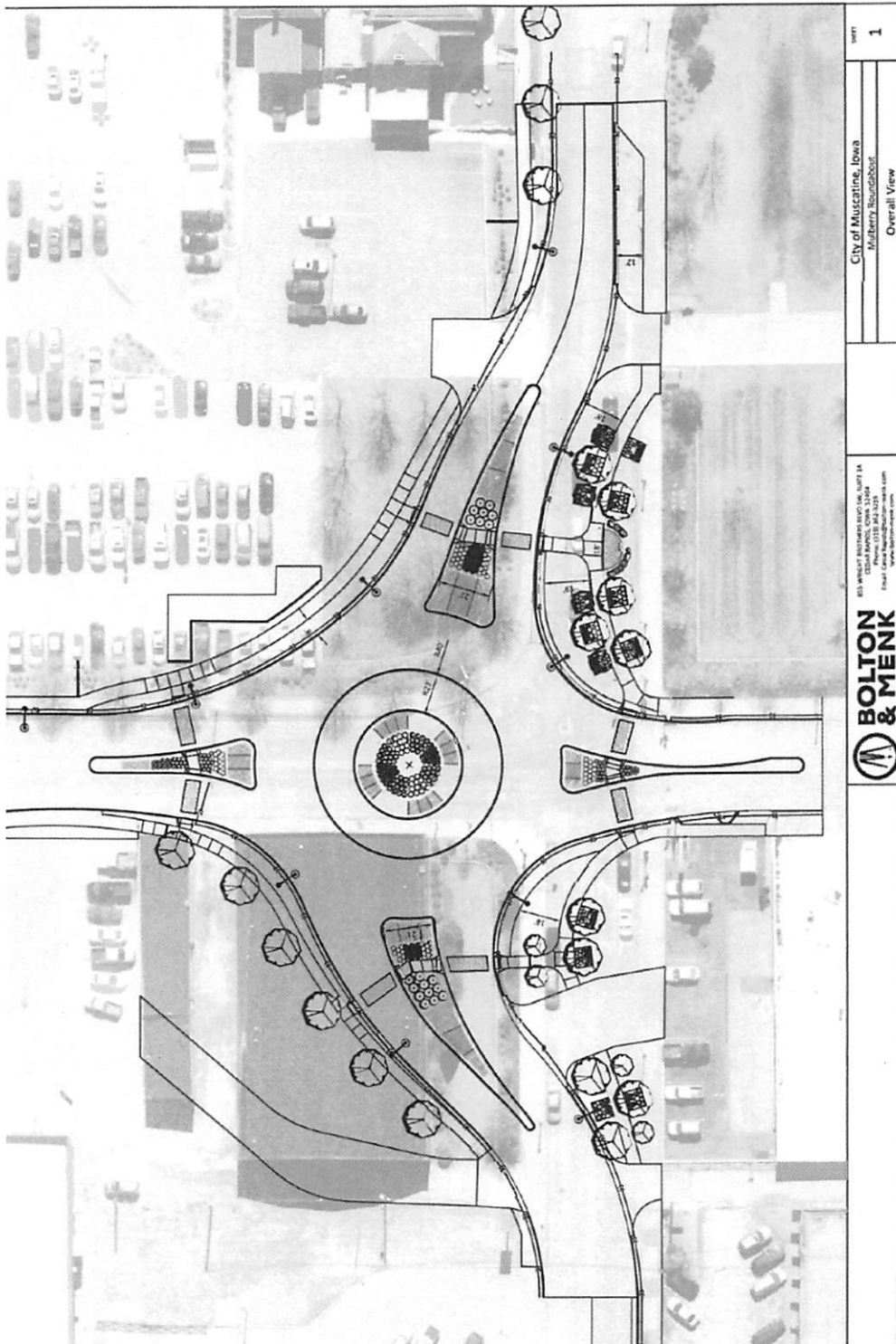
BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 1 OF BLOCK 29; THENCE NORTH 51°49'08" EAST 30.70 FEET; THENCE SOUTH 84°34'12" EAST 41.84 FEET TO THE BEGINNING OF A 257.64 FOOT RADIUS CURVE CONCAVE SOUTHERLY WHOSE 88.18 FOOT CHORD BEARS SOUTH 74°05'34" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 88.61 FEET TO THE BEGINNING OF A 57.44 FOOT RADIUS CURVE CONCAVE NORTHERLY WHOSE 38.88 FOOT CHORD BEARS SOUTH 85°57'13" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 37.54 FEET TO THE WESTERLY LINE OF THE EASTERLY 20 FEET OF THE WESTERLY 40 FEET OF LOT 3; THENCE SOUTH 38°05'57" EAST 14.58 FEET TO THE NORTHERLY RIGHT OF WAY OF 2ND STREET; THENCE SOUTH 51°53'10" WEST 139.94 FEET TO THE EASTERLY RIGHT OF WAY OF MULBERRY AVENUE; THENCE NORTH 38°12'17" WEST 139.47 FEET TO THE POINT OF BEGINNING. PARCEL "S" CONTAINS 0.29 ACRES AND SUBJECT TO EASEMENTS OF RECORD.

and

A PART OF LOTS 1, 6, 7, 8, 9 AND 10 AND THE VACATED ALLEY IN BLOCK 16 OF THE ORIGINAL TOWN IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

BEGINNING AT THE NORTHEASTERLY CORNER OF BLOCK 16; THENCE SOUTH 38°21'34" EAST 13.04 FEET; THENCE SOUTH 51°39'40" WEST 150.92 FEET; THENCE SOUTH 37°12'47" EAST 17.68 FEET; THENCE SOUTH 52°28'05" WEST 42.57 FEET; THENCE SOUTH 13°11'16" WEST 28.35 FEET TO THE BEGINNING OF A 1170.66 FOOT RADIUS CURVE CONCAVE EASTERLY WHOSE 143.07 FOOT CHORD BEARS SOUTH 08°23'32" EAST THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 143.16 FEET; THENCE SOUTH 38°36'02" EAST 22.64 FEET; THENCE SOUTH 51°25'37" WEST 12.17 FEET; THENCE NORTH 38°31'39" WEST 132.18 FEET; THENCE NORTH 51°27'47" EAST 48.84 FEET; THENCE NORTH 38°34'23" WEST 63.69 FEET; THENCE NORTH 52°09'28" EAST 250.98 FEET TO THE POINT OF BEGINNING. PARCEL "J" CONTAINS 0.28 ACRES AND SUBJECT TO EASEMENTS OF RECORD.

Exhibit B
To Real Estate Donation Agreement
TRAFFIC ROUNDABOUT RENDERING



SHEET 1	City of Muscatine, Iowa Mulberry Roundabout Overall View
<div data-bbox="1242 1081 1291 1270">  BOLTON & MENK </div> <div data-bbox="1242 924 1291 1071"> <small>805 WINDYBUSH BLVD. SUITE 100 MUSCATINE, IOWA 52701 PHONE 319.262.3225 EMAIL: info@boltonmenk.com WWW.BOLTONMENK.COM</small> </div>	
<small>Scale: 1" = 40' (1:1600) Date: 07/17/2013 Drawn: J. Smith Checked: J. Smith Approved: J. Smith</small>	



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Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

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.**

