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**MEMORANDUM**

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TO: RANDY HILL, PUBLIC WORKS DIRECTOR

FROM: JON LUTZ, CITY ENGINEER

SUBJECT: BOSCH LAND DONATION

DATE: July 15th, 2013

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**INTRODUCTION:**

Before former Mayor Bob Bosch passed away in 2010 he met with me on several occasions to explain his wishes to donate land along Hershey Avenue near Houser to the City of Muscatine. See the attached site plan. Since that time, a formal agreement between the Bosch Family Trust and other land partners has been drafted to convey property. This agreement resolves a dispute between the Bosch Family Trust and the gifting of land by Bob Bosch during his lifetime.

**BACKGROUND:**

The attached "Property Exchange Agreement" outlines which tracts will be conveyed to the City and which ones will be held by the Bosch Family Trust and Meyer-Manjoine. The attached site plan shows tracts 1 through 6. Tracts 1, 3 and 4 will be conveyed to the City. Geographically, these lots lay North of Hershey, west of Houser and south of the Ag Learning Center. Most of the land is rugged wooded terrain, however there is a large gently sloping grassed area along the west border. Meyer-Manjoine desires to become the sole owner of tract 5, while the Bosch Family Trust would retain ownership of tracts 2 and 6. Tracts 1, 3 and 4 will provide a corridor of opportunity which will tie visitors for athletic events at Kent/Stien and the Soccer Complex to the Ag Learning Center and further to Discovery Park. There is no immediate need to perform work on the property, however, the right of way bordering Houser and Hershey will need regular mowing. City staff will determine the means to perform that work.

Property conveyance would be within 30 days after City Council approves this agreement or within 30 days following court approval of the Bosch land transfer. There are no stipulations attached to the agreement regarding land use for the City tracts. The costs associated with this transfer is limited to costs for updating the abstracts and legal preparation and review of documents.

**RECOMMENDATION/RATIONALE:**

I recommend City Council consent to accepting lots 1 and 3 and 4, and further approve the property exchange agreement.

**ADDITIONAL INFORMATION:**

1. Site Plan
2. Property Exchange Agreement

## **PROPERTY EXCHANGE AGREEMENT**

### **BACKGROUND**

The parties to the Agreement are the City of Muscatine hereafter referred to as the "City", and Kram, Inc. together with First National Bank of Muscatine as Trustee of the Bosch Family Trust hereafter referred to as "Bosch", and Meyer-Manjoine, Inc., hereafter referred to as "Meyer".

WHEREAS, Bosch and Meyer are the owners of six tracts of land located in the City of Muscatine along Houser Street as shown on Exhibit A attached hereto.

WHEREAS, The City of Muscatine disputes the ownership of portions of the above described tracts believing it is the recipient of gifts of portions of this land by Robert Bosch.

WHEREAS, The City of Muscatine desires to become the owner of tracts one (1), three (3) and four (4), and Meyer desires to become the sole owner of tract five (5) and Bosch desires to remain the owner of tracts two (2) and six (6).

WHEREAS, the parties described herein desire to enter into this agreement to define their obligations relating to the transfer of these tracts of land to the appropriate party as defined herein and to settle any claims they may have relating to ownership of these tracts.

### **ARTICLE I PRESENT OWNERSHIP**

1.01 Ownership of tracts one (1) and two (2) are held by First National Bank as successor trustee of Robert D. Bosch and Miriam Bosch as Trustees of the Bosch Family Trust. Said Tracts are described below:

Tract 1 A tract of land located in the Northeast Quarter of Section 4 and the Northwest Quarter of Section 3, Township 76 North, Range 2 West of the 5<sup>th</sup> P.M., City of Muscatine, Muscatine County, Iowa, more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of said Section 4; thence North 89° 33' 21" East 40.00 feet to the Easterly right-of-way line of Houser Street; thence North 00° 03' 27" West 620.83 feet along said Easterly right-of-way line; thence North 84° 43' 00" East 141.77 feet; thence North 00° 19' 00" West 334.03 feet to the center line of Hershey Avenue; said point being the beginning of a 572.96 foot radius nontangent curve concave Southerly whose cord bears North 82° 35' 36" West 227.51 feet; thence Northwesterly along said center line curve an arc distance of 229.03 feet to the Westerly right-of-way line of Houser Street and the point of beginning of the tract herein described, said point of being the beginning of a 572.96 foot radius nontangent curve concave Southerly whose chord bears South 85° 17' 48" West 13.50 feet; thence Southwesterly along said center line curve an arc distance of 13.50 feet; thence South 84° 36' 20" West 441.93 feet along said center line to the intersection of the extension of and existing fence line; thence North 00° 19' 20" West 661.45 feet along said existing fence; thence South 81° 08' 12" East 640.79 feet along said

existing fence to the Westerly right-of way line of Houser Street; thence South 35° 43' 09" West 71.88 feet along said Westerly right-of-way to the beginning of a 714.07 foot radius tangent curve concave Easterly whose chord bears South 17° 39' 40" West 442.69 feet; thence Southwesterly along said Westerly right-of-way curve and arc distance of 450.10 feet; thence South 00° 23' 49" East 39.87 feet to the centerline of Hershey Avenue and the point of Beginning. Said tract contains 6.988 acres and is subject to road right-of-way and easements of record.

**Tract 2.** A tract of land located in the West Half of Section 3, Township 76 North, Range 2 West of the 5<sup>th</sup> P.M., in the City of Muscatine, Muscatine County, Iowa more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 3; thence North 89° 33' 21" East 40.00 feet to the Easterly right-of-way line of Houser Street; thence North 00° 03' 27" West 620.83 feet along said Easterly right-of-way line, thence North 84° 43' 00" East 141.77 feet; thence North 00° 19' 00" West 334.03 feet to the center line of Hershey Avenue and the point of beginning of the tract herein described; said point being the beginning of a 572.96 foot radius nontangent curve, concave Southerly whose chord bears North 78° 35' 24" West 148.55 feet; thence Northwesterly along said center line curve an arc distance of 148.96 feet to the Easterly right-of-way line of Houser Street; thence North 00° 23' 49" West 40.37 feet along said Easterly right-of-way line to the beginning of a 634.07 foot radius tangent curve concave Easterly whose chord bears North 17° 39' 41" East 393.09 feet; thence continuing Northeasterly along said Easterly right-of-way curve an arc distance of 399.68 feet; thence North 35° 43' 09" East 112.38 feet along said Easterly right-of-way; thence South 81° 08' 12" East 29.33 feet to the extension of an existing fence line; thence North 76° 53' 08" East 292.91 feet along said fence line and fence line extended; thence South 74° 29' 12" East 819.20 feet along said fence line; thence South 00° 13' 40" East 572.42 feet to the center line of Hershey Avenue; thence North 83° 35' 44" West 861.56 feet along said center line to the beginning of a 572.35 foot radius tangent curve concave Northerly whose chord bears North 74° 09' 42" East 187.63 feet; thence Northwesterly along said center line curve an arc distance of 188.48 feet; thence North 64° 43' 40" East 53.30 feet to the beginning of a 572.96 foot radius tangent curve concave Southerly whose chord bears North 67° 56' 05" West 64.10 feet; thence Northwesterly along said center line curve an arc distance of 64.14 feet to the Point of Beginning. Said tract contains 17.706 acres and is subject to road right-of-way and easements of record.

**1.02** Ownership of Tracts 3, 4 and 5 is vested in an undivided ½ interest in Kram, Inc., (Bosch) and an undivided ½ interest in Meyer-Manjoine, Inc., (Meyer). The legal description for these tracts is described as follows:

A tract of land lying in the North West Quarter of the North West Quarter of Section 3, and the North East Quarter of the North East Quarter of Section 4, all in Township 76 North, Range 2 West of the 5<sup>th</sup> Principal Meridian, described as follows:

Beginning at the North West corner of said Section 3; thence West 495 feet; thence South 1023.5 feet; thence South 80° 49' East 755 feet; thence North 76° 52' East 303.5 feet; thence South 74° 9' East 804.8 feet; thence North 1294.8 feet to section line; thence West 1320 feet to the place of beginning, containing 47.13 acres, more or less. Except part thereof conveyed to the City of

Muscatine, Iowa, by Warranty Deed recorded in Book 246 of Lots, page 736, of the records in the Office of the Recorder of Muscatine County, Iowa.

1.03 Ownership of Tract 6 is vested in Kram, Inc., ( Bosch) and is legally described as follows:

All of Lots Nine (9) and Ten (10) of West Hill Addition to the City of Muscatine, Iowa, as per Auditor's Plat thereof, except the following parts thereof:

(1) Commencing at the Northeast Corner of Lot Ten (10) on the South line of Lucas Street, thence South along the East line of said Lot Ten (10), 140 feet, thence Westerly and parallel with the Southline of Lucas Street, 80 feet, thence North and parallel with the East line of said Lot Ten (10), 140 feet to the South line of Lucas Street, thence Easterly along the South line of Lucas Street to the point of beginning.

(2) The part thereof conveyed to Clarence R. Hollenbeck, Sr., and Anna B. Hollenbeck, by Warranty Deed recorded in Book 186 of Lots, page 383 in the Office of the Recorder of Muscatine County, Iowa.

(3) Commencing at the Northwest corner of said Lot Nine (9) where the West line thereof intersects with the South line of Lucas Street, thence Southeasterly along the South line of Lucas Street 71.7 feet, thence Southerly and larallel with the West line of said Lot Nine (9), 140 feet, thence Northwesterly and parallel with the Southerly line of Lucas Street to the West line of said Lot Nine (9), thence Northerly along the West line of said Lot Nine (9) to the point of beginning.

## ARTICLE II EXCHANGE AGREEMENT

For good and valuable consideration, the parties agree to the following terms and conditions.

2.01 Transfer of Real Estate. At closing, the following conveyances shall be made:

- (a) Bosch shall via Warranty Deed transfer ownership of Tract I to the City of Muscatine.
- (b) Bosch and Meyer shall transfer it's ownership of Tracts 3 and 4 to the City.
- (c) Meyer shall transfer it's 50% ownership of Tracks 5 to Bosch.
- (d) No transfer of ownership of Tracts 2 & 6 will be required as part of this Agreement.

2.02 Closing. Closing shall occur no more than 30 days after the second of (1) City approval of this Agreement, and the appropriate resolutions to accept this real estate have been filed and (2) Court approval of the transfers by the Bosch Family Trust have been obtained.

**ARTICLE III**  
**TERMS APPLICABLE TO ALL DIVISIONS**

**3.01    Abstracting and Legal Description.** The parties have been unable to locate abstracts for Tracts 1, 3, 4 & 5. The parties agree that new abstracts shall be made for these Tracts and delivered to the attorneys 30 days prior to closing to ensure merchantable title will be conveyed to each respective party. The cost of the abstract for Tract 5 shall be Meyers responsibility. The cost of the abstract for Tracts 1, 3, & 4 shall be the City's responsibility. The Parties shall rely on the abstracts to determine the appropriate legal descriptions for the parcels, including the appropriate manner to exclude sufficient right-of-way for Houser Street.

**3.02    Current Real Estate Taxes.** Bosch & Meyer shall pay any real estate taxes due and payable for the September 2012, and March 2013 tax payments and any prior unpaid taxes in proportion to their current ownership prior to the transfer described herein.

**3.03    Tax Pro-Rate** Real estate taxes shall be pro-rated between the parties as of the date of closing in the manner normally used by the members of the Muscatine County Bar Association.

**3.04    Court/City Approval.** Prior to closing, Bosch shall send all notices to any beneficiaries to obtain Court approval of this Agreement. Any Orders approving this Agreement shall be filed of record prior to closing. In addition, the City shall send and publish all Notices, conduct all hearings and pass all resolutions required to approve this Agreement and to accept said Warranty Deed from Bosch.

**3.05    "As-Is" Condition of Real Estate.** The parties agree that they have made any and all inspections of the real estate which is the subject of this Agreement and accept said real estate in it's "as-is" condition with no exceptions other than merchantability of title.

**3.06    Documents Required for Closing.** The consideration for the Deeds described above in Article 2.01 shall contain a recitation in the body of each Deed that the consideration is less than \$500.00. Accordingly no Ground Water Hazard Form or Declaration of Value Form will be required to be delivered to each respective party at closing.

**3.07    Settlement and Release of Claim.** In consideration of the exchange of Deeds as described in Article 2.02 between the City and Bosch, the City hereby releases and discharges any claims with relation to Bosch or Meyer regarding Tracts 1 through 6 for any claims which arise out of the alleged gifting actions of Robert Bosch prior to his death.

**3.08    Possession.** Each party shall have possession of the Tracts deeded to it at the time of closing.

**3.09    Insurance.** The real estate which is subject to this Agreement is unimproved. Each party shall keep in force the insurance it has on these Tracts, if any, until closing. Each party may purchase insurance to cover their interests in this real estate prior to closing if they so choose.

**3.10    Time is of the Essence.** After this Agreement has been fully signed, each party, shall work

diligently to obtain approval by the Court, Beneficiaries, Public/City as required and inform the other of the steps and progress required to fulfill this Agreement and work towards closing.

3.11 Remedies of the Parties. If any of the parties fails to timely perform their obligations under this Agreement, the other party or parties shall be allowed to utilize any and all remedies or actions of law or equity available to them. In any litigation relating to this Agreement, the successful party shall be entitled to recover Court Costs and reasonable attorney's fees from the unsuccessful party.

3.12 Binding on Heirs. This Agreement shall bind and benefit the heirs, devisees, legal representatives, successors, and assignees of the parties hereto.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

First National Bank of Muscatine, as Trustee of Bosch Family Trust and Representative of Kram, Inc.

\_\_\_\_\_  
Mike Wilson, Trust Officer

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Meyer-Manjoine, Inc.

\_\_\_\_\_  
Christina Harfst, Secretary/Treasurer

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

The City of Muscatine, Iowa

By \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_





**CITY OF MUSCATINE  
HERSHEY PARK  
SITE PLAN**

DRN:	JL
HERSHEYPARK.DWG	
DATE:	01/24/11
SCALE:	1" = 500'
SHEET	1 OF 1