

RESOLUTION NO. 93451-0516

**RESOLUTION TO ACCEPT EASEMENTS FOR MUSSER PARK TO WIGGENS
ROAD TRAIL PROJECT**

WHEREAS, the City is undertaking a project to connect Musser Park to Wiggins Road using a system of trails and Muscatine County roadways; and

WHEREAS, it is necessary for the City to obtain permanent easements from private property owners along the trail route; and these owners have agreed to provide such easements at no cost to the city;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA that the attached easements from Ronald and Gloria Hart and Brian and Jamie Wolfe, all of Muscatine, IA, be accepted by the City.

PASSED, APPROVED AND ADOPTED this 5th day of May 2016.



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



Diana L. Broderson, Mayor

Attest:



Gregg Mandsager, City Clerk

37.00

Instrument #: 2016-03472
07/08/2016 09:54:01 AM Total Pages: 7
EAS EASEMENT
Recording Fee: \$37.00 Transfer Tax: \$0
Sarah M Hearst - Recorder, Muscatine County Iowa

Prepared by:
Jim Edgmond, City Engineer
Department of Public Works
1459 Washington St.
Muscatine, IA 52761
563-263-8933

Taxpayers/Property Owners
Brian M. Jr. and Jamie L. Wolfe
2200 Grandview Avenue
Muscatine, IA 52761

Return Address
Jim Edgmond, City Engineer
Department of Public Works
1459 Washington St.
Muscatine, IA 52761

Document Title
CITY OF MUSCATINE
PERMANENT EASEMENT FOR PUBLIC TRAIL

Grantors
Brian M. Jr. and Jamie L. Wolfe

Grantee
City of Muscatine

Parcel ID #'s
1309476001
1309476002
1309476003



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

CITY OF MUSCATINE - PERMANENT EASEMENT FOR PUBLIC TRAIL

May 1, 2016

Brian & Jamie Wolfe
2200 Grandview Avenue
Muscatine, IA 52761

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

Dear Brian & Jamie,

In accordance with past written and verbal discussions and communications, the City has prepared the following revised language to be incorporated into the easement agreements in order to address our mutual concerns.

This offer also reflects the sale price of lots 2 and 3 of WCI Subdivision and the assessed value of lot 1. Other value of \$400.00 was assigned to loss of riparian buffer and windbreak along the RR tracks. The offer amount is \$9,722.01. An additional fencing allowance is described in a following paragraph.

Easement Language:

Grantor: Brian & Jamie Wolfe

Grantee: City of Muscatine

- 1. Easement Purpose.** The Permanent Easement Parcel is for use of a trail for public passage by foot and non-motorized bicycles. Grantee shall have the right, but not the obligation to construct, maintain, mark and use a trail across Grantor's parcel of land, in the location shown on the easement plat, including the construction of trail surfacing, facilities for the necessary channeling of surface water and appropriate signage. The Temporary Easement Parcel shall be as shown on the easement plat and is for the purpose of extra space necessary for construction of the trail.

The temporary and permanent easements shall be as shown on the attached easement plat.

- 2. Access to Easement Parcel.** Grantor grants unto Grantee the right of reasonable ingress and egress to, from, over, along and across the easement parcels at all times for the purposes of developing, maintaining, repairing and patrolling of said trail, equipment, appurtenances and any parts thereof and for maintenance of the sewer force main and structures.

Grantee shall invite public use of the trail and use reasonable efforts to maintain the trail, and discourage littering and other acts that would encroach upon the natural features of the trail corridor or diminish its attractiveness. Grantor shall retain the right, but not the obligation, to mow along the trail, remove snow and otherwise enhance the utilization of the trail.

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 interfere with Grantor's business operations on Grantor's other 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.
- (d) Grantee shall not use temporary easement for borrow material except where necessary to obtain proper drainage using drainage swales and culverts with raised trail profile over culvert crossings.

4. Fences. Grantee agrees to provide a fencing allowance for the grantors use to construct, at the grantors option, fencing along but not on the permanent trail easement at 2200 Grandview Avenue. The lump sum fencing allowance is \$19,465.00. It is the responsibility of the grantor to secure all necessary approvals for fence construction including collaboration with the gas pipeline company, Muscatine Power and Water, and any other affected utility companies. The construction of any fencing, including methods and materials, is at the discretion of the grantor and becomes the property of the grantor.

Grantee agrees to provide a single, lump sum allowance for the Grantors repair and maintenance of any fencing installed associated with this agreement. The lump sum repair and maintenance allowance is \$2,275.00.

Grantee agrees to provide a single, lump sum security system allowance for the Grantors use to purchase a video surveillance system. The lump sum security system allowance is \$4,415.28.

- 5. No 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.
- 6. 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.

7. Additional Terms.

Where used herein, Grantor shall mean Grantor, grantors, their heirs, beneficiaries, fiduciaries, successors or assigns.

8. Liability and Hold Harmless Agreement

The Grantee assumes the entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including

death) to any person, or damage, or alleged damage, to property of Grantee sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expense in connection therewith or resulting from construction and public use of the trail.

That within the confines of a governmental function, Grantee assumes the entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage to property of others, sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance or operations of the Grantee as a governmental function, its agents, and employees, including losses, expenses or damages sustained by the Grantor, and agrees to indemnify and hold harmless the Grantor its agents, and employees from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, based on, any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting from construction and public use of the trail.

37.00
cash

Instrument #: 2016-03471
07/08/2016 09:51:09 AM Total Pages: 7
EAS EASEMENT
Recording Fee: \$37.00 Transfer Tax: \$0
Sarah M Hearst - Recorder, Muscatine County Iowa



Prepared by:

Jim Edgmond, City Engineer
Department of Public Works
1459 Washington St.
Muscatine, IA 52761
563-263-8933

Taxpayers/Property Owners

Ronald E. and Gloria Hart
2050 Mississippi View Drive (Home)
2108 Grandview Ave. (Property Address)
Muscatine, IA 52761

Return Address

Jim Edgmond, City Engineer
Department of Public Works
1459 Washington St.
Muscatine, IA 52761

Document Title

CITY OF MUSCATINE
PERMANENT EASEMENT FOR PUBLIC TRAIL

Grantors

Ronald E. and Gloria Hart

Grantee

City of Muscatine

Parcel ID #

1309400041



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

CITY OF MUSCATINE - PERMANENT EASEMENT FOR PUBLIC TRAIL

May 1, 2016

Ronald E. Hart & Gloria Hart
2050 Mississippi View Drive
Muscatine, IA 52761

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

Dear Mr. and Mrs. Hart,

The City has prepared the following language to be incorporated into the easement agreement for the construction of a public trail on your property along the railroad alignment behind the Elms establishment at 2108 Grandview Ave. Compensation would be according to the property valuation table dated June 17, 2014. That amount is \$5,069.82. An additional fencing allowance has been added to address your security concerns and is described in a following paragraph.

Easement Language:

Grantor: Ronald E. Hart & Gloria Hart
Grantee: City of Muscatine

- 1. Easement Purpose.** The Permanent Easement Parcel is for use of a trail for public passage by foot and non-motorized bicycles. Grantee shall have the right, but not the obligation to construct, maintain, mark and use a trail across Grantor’s parcel of land, in the location shown on the easement plat, including the construction of trail surfacing, facilities for the necessary channeling of surface water and appropriate signage. The Temporary Easement Parcel shall be as shown on the easement plat and is for the purpose of extra space necessary for construction of the trail.

The temporary and permanent easements shall be as shown on the attached easement plat.

- 2. Access to Easement Parcel.** Grantor grants unto Grantee the right of reasonable ingress and egress to, from, over, along and across Grantor’s property at all times for the purposes of developing, maintaining, repairing and patrolling of said trail, equipment, appurtenances and any parts thereof and for maintenance of the sewer force main and structures.

Grantee shall invite public use of the trail and use reasonable efforts to maintain the trail, and discourage littering and other acts that would encroach upon the natural features of the trail corridor or diminish its attractiveness. Grantor shall retain the right, but not the obligation, to mow along the trail, remove snow and otherwise enhance the utilization of the trail.

- 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. No 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. Fences.** Grantee agrees to provide a fencing allowance for the grantors use to construct, at the grantors option, fencing along but not on the permanent trail easement at 2108 Grandview Avenue. The lump sum fencing allowance is \$8,000. It is the responsibility of the grantor to secure all necessary approvals for fence construction including collaboration with the gas pipeline company, Muscatine Power and Water, and any other affected utility companies. The construction of any fencing, including methods and materials, is at the discretion of the grantor, it is understood that any fencing installed is owned by the grantor and becomes the property of the grantor.
- 7. Additional Terms.**
Where used herein, Grantor shall mean Grantor, grantors, their heirs, beneficiaries, fiduciaries, successors or assigns.

Please review and sign if the language above is satisfactory. If you desire changes, please note or mark up and return so we can proceed to a final agreement. This language will be included on the actual easement documents.

Dated 6/17, 2016. (SIGN IN INK)

Ronald E. Hart
(Owner)

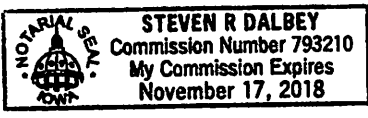
Gloriann Hart
(Owner)

NOTARY PUBLIC PLEASE COMPLETE LEFT AND RIGHT SIDES)

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF IOWA, COUNTY OF MUSCATINE } ss.
On this 17th day of June, 2016,
before me, the undersigned, a Notary Public in and for said
State, personally appeared Ronald E and Gloriann
Hart

to me personally known
or proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the
person(s), or the entity(ies) upon behalf of which the person(s)
acted, executed the instrument.



(SEAL)

Steven R Dalbey (Sign in Ink)
Steven R. Dalbey (Print/Type Name)
Notary Public in and for said State
My Commission Expires: 11/17/2018

Capacity Claimed By Signer:

- INDIVIDUAL
- CORPORATE
Titles of Corporate Officer(s):

- Corporate Seal is affixed
- No Corporate Seal procured
- PARTNERSHIP

___ Limited or ___ General
- ATTORNEY-IN-FACT
- EXECUTOR(s) or TRUSTEE(s)
- GUARDIAN(s) or CONSERVATOR(s)
- OTHER: _____

Signer is Representing:

Names of entity(ies) or person(s)

BUYER'S ACKNOWLEDGMENT

STATE OF IOWA: On this ___ day of _____, 201___, before me, the undersigned personally appeared,
known to me to be an authorized representative of Buyer and who did say that said instrument was signed on
behalf of Buyer by its authority duly recorded in its minutes, and said authorized representative acknowledged
the execution of said instrument, which signature appears hereon, to be the voluntary act and deed of Buyer
and by it voluntarily executed.

Notary Public in and for the State of Iowa

BUYER'S APPROVAL

Approved by: (Date)

RESOLUTION NO. 93451-0516

**RESOLUTION TO ACCEPT EASEMENTS FOR MUSSER PARK TO WIGGENS
ROAD TRAIL PROJECT**

WHEREAS, the City is undertaking a project to connect Musser Park to Wiggins Road using a system of trails and Muscatine County roadways; and

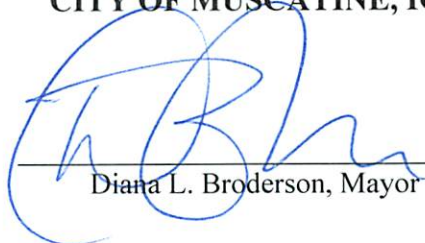
WHEREAS, it is necessary for the City to obtain permanent easements from private property owners along the trail route; and these owners have agreed to provide such easements at no cost to the city;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA that the attached easements from Ronald and Gloria Hart and Brian and Jamie Wolfe, all of Muscatine, IA, be accepted by the City.

PASSED, APPROVED AND ADOPTED this 5th day of May 2016.

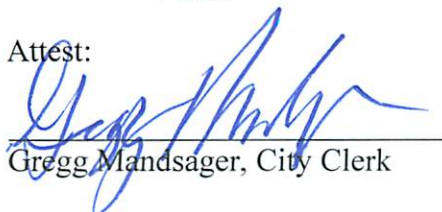


**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**



Diana L. Broderson, Mayor

Attest:



Gregg Mandsager, City Clerk



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit
263-8152

MEMORANDUM

Equipment Maintenance
Roadway Maintenance
Collection & Drainage
Building & Grounds
Engineering

To: Kristy Korpi, Interim Public Works Director
FROM: Jim Edgmond, City Engineer
DATE: May 03, 2016
RE: Musser to Wiggins Road Trail, acceptance of easements

INTRODUCTION:

The ROW for this trail was previously negotiated with these property owners, however, once the route was redone, the city decided to open the negotiation and include expenses such as fencing and security to allow the city to pay the property owner directly and have them do the improvements they were requesting instead of doing this work via the contract where the work would be subject to the federal funding restrictions.

BACKGROUND:

The attached memo and two easement agreements from Steve Dalbey cover the subject matter. I have been involved with these negotiations also and I do feel that the landowners will get what they want and it will be at an overall less price than if the City did this work via the trail contract.

RECOMMENDATION/RATIONALE:

Recommend city council approve this resolution to accept the easements agreements as provided.

BACKUP INFORMATION:

1. Memo dated April 28, 2016
2. Hart Easement agreement
3. Wolfe Easement agreement

"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain