DONATION AGREEMENT: McFarland State Bank to the City of Stoughton

McFarland State Bank, a Wisconsin banking corporation (the "Bank") and the City of Stoughton, a Wisconsin municipal corporation (the "City") make this agreement effective as of May 30, 2018 (the "Effective Date").

RECITALS. The Bank owns the real property commonly known as 207 S. Forrest Street and 216 E. Main Street, Stoughton, Wisconsin, as legally described on *Exhibit A* (the "Property"). The Bank wishes to donate the Property to the City, and the City wishes to accept that donation, on the terms and conditions that follow.

AGREEMENT. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. **DONATION**. Upon and subject to the terms and conditions in this agreement, the Bank will donate to the City, and the City will accept from the Bank, the following:

   (a) The Property, together with all of its easements, rights, privileges, but subject to all encumbrances, servitudes, and other title exceptions; and

   (b) The items of personal property situated on the Property at the time of Closing and inventoried on *Exhibit B*.

   The donation by the Bank excludes any other property that the Bank may own or use in connection with the Property.

2. **VALUE**. The Bank and the City stipulate that the fair market value of the Property will be determined by an appraisal obtained by the Bank, and used for all purposes under this agreement and for all purposes in connection with valuation of this donation under the Internal Revenue Code.

3. **DONATION**. The transfer of the Property from the Bank to the City is a donation to the City by the Bank. The City represents that it is an organization subject to Section 115 of the Internal Revenue Code, and that the City satisfies the definition contained in Section 170(c)(1). The City will execute any documents or instruments reasonably requested

by the Bank either before or after the Closing in order to further effectuate the tax treatment of this donation as tax deductible to the Bank. The Bank's obligations under this agreement are contingent upon confirmation that the donation will be tax deductible to the Bank.

4. **USE**. For so long as the City owns the Property, the City will use the Property solely for public or municipal purposes.

5. **"AS IS."** This agreement is contingent upon the City conducting such investigations of the Property, as it deems necessary to determine the feasibility, in the City's sole discretion, of the Property for the permitted uses. The City may elect to not accept a donation of the Property for any reason, at any time prior to June 30, 2018 (the "Deadline"), by providing written notice of the same to the Bank. If the City so notifies the Bank on or before expiration of the Deadline, then this agreement shall be null, void, and of no further force or effect and neither party shall have any further liability hereunder.

   (a) The City, at its sole cost and expense, may perform whatever due diligence investigations on the Property it desires, except that any invasive investigations are subject to the Bank's prior written approval. If the Bank approves any invasive investigations, then the City must restore the Property to substantially the condition existing prior to the invasive investigation. The City will indemnify, hold harmless, and defend the Bank against any loss or damage (including reasonable attorneys' fees and court costs) arising in connection with any such due diligence investigation performed by the City under this agreement.

   (b) As part of its due diligence investigations, the City may examine title to the Property as it deems necessary or required. At its option and its sole cost and expense, the City may procure a title insurance commitment, committing to insure in the City marketable title to the Property, subject to such conditions and exceptions as may be set forth therein and as may be acceptable to the City. Unless the City asserts this due diligence contingency in writing on or before expiration of the Deadline, the City will be conclusively

presumed to have accepted title to the Property in the condition shown on the title commitment, together with matters as to which the City has actual or constructive knowledge had it undertaken a reasonable investigation. The City will pay (and the Bank will bear no responsibility for) any costs and expenses associated with examining title to the Property, as well as any costs or expenses relating to any other aspect of the City's due diligence investigation.

(c) The City will accept the Property at Closing in its AS-IS, WHERE-IS, & WITH ALL FAULTS condition.

i. The Bank hereby disclaims any duty to make any representation or warranty to the City, whether at common law, under Chapter 709, under Wis. Stat. §100.18, or otherwise. No employee or agent of the Bank has any authority to make any representation or warranty to the City—past, present, or future. The Bank hereby disclaims any representation or warranty made by any employee or agent of the Bank before the time that the City signs this agreement, whether oral or written, express or implied, and including, without limitation, any implied warranty of habitability, marketability, or fitness for a particular purpose. This agreement contains the entire, integrated agreement of the Bank and the City, and supersedes any prior conversations, negotiations, agreements, or statements.

ii. The City accepts the duty to inspect and investigate the Property, and agrees not to rely on any representation or warranty made by the Bank or its employees or agents—past, present, or future. Rather, the City will rely solely on its own inspections of the Property. The City agrees to take the risk that the Bank or its employees or agents may have knowledge of the Property that might have affected the City's decision to enter into this agreement. The City stipulates that no statement made by the Bank or its employees or agents

after the time that the City signs this agreement is binding against the Bank unless made in writing. The City accepts the Property at Closing from the Bank at its own risk.

6. **CONVEYANCE**. At Closing, the Bank will convey the Property to the City by quit claim deed, together with a deed restriction, in the form attached hereto as *Exhibit C*.

7. **CLOSING**. The consummation of the gift of the Property (the "Closing") will occur on a date specified by the Bank on at least 30 days' prior written notice to the City, but not later than a reasonable time after the Bank has taken occupancy of its new building, which is presently under construction in the Kettle Park West development in Stoughton, and has moved out of the Property (the "Closing Date"). The place of Closing shall be Madison, Wisconsin, at the office of a title company or at such other location as the parties agree. The City will pay any costs involved in the Closing, including, without limitation, title insurance, transfer taxes, recording fees, and other such closing costs (except that each party would pay the fees of its own counsel and consultants). The City will also pay the Bank $5,000 towards the Bank's legal fees incurred in connection with this transaction. The Bank will sign customary forms of title company affidavits, such as an owner's affidavit or gap undertaking, but any representations in those forms will be limited to the Bank's actual knowledge.

8. **PRORATIONS**. The Bank will pay any real estate taxes, general or special, assessed against the Property and applicable to any period before Closing, and any utility or other bills or charges related to any period prior to Closing. The City will indemnify and defend the Bank for any such taxes, bills, or charges that may arise from and after Closing.

9. **POSSESSION**. Possession of the Property shall be delivered by the Bank to the City at Closing.

10. **COMMISSION**. The Bank and the City represent and warrant to the other that the warranting party has not had any contact or dealings through or with any real estate broker, agent, or finder who has acted as the procuring cause in connection with the transaction contemplated

herein. Each party covenants and agrees to indemnify and defend the other party from and against any and all claims, actions, suits, proceedings or demands and any and all loss, cost, damage, expense, judgment, settlement, fee including, without limitation, attorneys' fees arising from the covenanting party's breach of its foregoing representation, warranty, and covenant.

11. **COUNTERPARTS**. This agreement may be executed in counterparts and all such counterparts constitute one agreement binding on all the parties, notwithstanding that all the parties are not signatories to the same counterpart.

12. **SURVIVAL**. Any provision hereof which by its terms would be performed after the Closing Date shall survive the Closing and shall not merge in the closing or in the Deed. The representations, warranties, and agreements of the parties in this agreement survive Closing.

13. **INTEGRATION**. This agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings, or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements are invalid and not binding upon the parties unless in writing and signed by both parties. No party may assign agreement without the other's prior written consent.

14. **NOTICES**. All notices and demands hereunder must be in writing, and sent to the parties as shown below. A party may change its notice information at any time or from time to time by written notice as provided herein. Notices will be deemed received in any of the following ways:

    (a) if hand delivered, on the date of delivery;

    (b) if sent by FedEx, UPS, or a similar national commercial courier service (e.g., Airborne Express, United Parcel Service or Federal Express) on the date confirmed by that service;

(c) if sent electronically to the e-mail address set forth below, on the date of transmission.

If to the Bank: McFarland State Bank Attn: David Locke 5990 US Highway 51 McFarland WI 53558 dlocke@msbonline.com	With a copy to: Boardman and Clark, LLP Attn: John Starkweather 1 S. Pinckney Street, Suite 410 Madison, WI 53701-0927 jstarkweather@boardmanclark.com
If to the City: City of Stoughton Attn: Rodney Scheel City Hall 381 East Main Street Stoughton, WI 53589 rjscheel@ci.stoughton.wi.us	With a copy to: Stafford Rosenbaum LLP Attn: Matthew P. Dregne 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784 mdregne@staffordlaw.com

Signed as of the Effective Date:

MCFARLAND STATE BANK By:_____ E. David Locke, Chairman & CEO	**CITY OF STOUGHTON** By:_____ Tim Swadley, Mayor By:_____ Holly Licht, City Clerk

Exhibit A—Legal Description of the Property

Exhibit B—Schedule of Donated Personal Property

Exhibit C—Form of Quit Claim Deed

From: Rodney J. Scheel
Sent: Wednesday, May 23, 2018 2:57 PM
To: Matthew Dregne <MDREGNE@staffordlaw.com>; Tim Swadley <TSwadley@ci.stoughton.wi.us>
Subject: RE: Emailing: DRAFT v1. Donation Agreement McFarland State Bank Stoughton (A3115532-2x9DEB4).DOCX

Here are some thoughts about the draft.

1. The effective date seems too early. If we are seeking confirmation of the donation prior to signing it, we will need to have the Common Council consider it at the June 12th meeting. I don't think this will create a problem for MSB based on our meeting last week with them.
2. Value – should we be concerned about the appraisal process and amount they obtain? It doesn't indicate an "independent" appraisal or one that is done using any particular standard.
3. I will leave it to someone else to determine if the City is subject to Section 115 of the IRC and satisfies the definition of section 170(c)(1).
4. Use – As discussed on Friday, there should be a time limit for which this property must be used for public or municipal purposes. I would recommend something rather short term in case something changes. Maybe 10 years?
5. "As Is" – I would recommend extending the "Deadline" to July 31st or better yet, August 15th (which would be a day after a regular Council meeting). If the Common Council authorizes the consultant to conduct the Relocation Study at their meeting on June 12th it is expected to take about 6 weeks to complete that effort. That assumes they can start immediately and it goes as envisioned.
6. Are there any due diligence investigations that we would like to have completed such as asbestos, lead paint, hazardous materials? If this is not done now, it will need to be done as part of any remodeling effort. It is likely some material may need to be addressed as is the case in older buildings, so maybe this isn't something we need to do before the acceptance deadline.
7. Under the "Closing" section there is a contradiction. This section is confusing: "(except that each party would pay the fees of its own counsel and consultants). The City will also pay the Bank $5,000 towards the Bank's legal fees incurred in connection with this transaction." It seems they do want us to pay $5,000. Do we want to have a hard deadline for the closing such as by December 31, 2018?
8. Prorations – There may be a Special Assessment that they are paying for Street improvements that took place a few years ago. It seems they should satisfy this obligation before or at closing. This may be already a requirement of the sale property or clear enough in the proposed language, but I suggest it be considered.
9. Notices – I am fine with being the person who is notified but wonder if it shouldn't be the City Clerk?

I don't know how to address expenses with the Common Council at this point but there are several potential expenses we will have just in accepting the donation such as:

- Relocation study – Approximately $13,000
- Asbestos/Lead/Hazardous Material Testing – May not be necessary prior to acceptance - $4,000 Est?
- City Legal Fees
- Title Work – How much and should this be done before the acceptance deadline?
- $5,000 Bank closing fees

- City Closing costs?
- Utility costs for the building in 2018 since it is not budgeted now.
- Obviously, the acceptance commits the City to maintain and use the new facility; many of which are unclear at this time. This will come with new expenses including renovation costs. In addition, City Hall will still need to be funded.

Let me know if you want to discuss or if you have any questions on the items.

Rodney Scheel
Director of Planning & Development
City of Stoughton
608.873.6619