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**WATER POLLUTION CONTROL**

MEMORANDUM

To: Gregg Mandsager, City Administrator

Cc: Nancy Lueck, Finance Director  
Fran Donelson, Secretary

From: Jon Koch, Director WPCP

Date: May 31<sup>st</sup>, 2016

Re: Lutheran Homes Land Use Agreement Extension

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**INTRODUCTION:** The City of Muscatine staff have negotiated a 15 year extension to the agreement for two biosolid lagoons located on Lutheran Homes property. City staff request the approval of the land use agreement between the City of Muscatine and Lutheran Homes to continue the operation of the biosolid program.

**BACKGROUND:** The City and Lutheran Homes signed a 15 year agreement in 1986 to construct and maintain two (2) lagoons on the farm land owned by Lutheran Homes for the purpose of storage and distribution of biosolids generated by the Water Pollution Control Plant. This agreement was extended in 2001 and is now due for renewal. The original agreement did not include any compensation to Lutheran Homes for the use of 10 acres on their property for these lagoons. In return the City constructed a sanitary sewer connection in the location of the Lutheran Homes sewage lagoon. During negotiations the Lutheran Homes board requested that a land use fee be assessed for the 10 acres at half the rate charged to farmers for use of the adjacent land. Average fees from recent rates charged would be approximately \$1000 annually.

**RECOMMENDATION/RATIONALE:** Staff recommends approval of the land use agreement extension for an additional 15 years between the City of Muscatine and Lutheran Homes for the biosolids lagoons, biosolids distribution system and biosolid distribution rights.

**BACKUP INFORMATION:**

1. 2016 Agreement Extension

**EXTENSION OF AGREEMENT TO OPERATE AND MAINTAIN LIQUID SLUDGE  
STORAGE LAGOON, PUBLIC SANITARY SEWER AND TO APPLY LIQUID SLUDGE  
ON AGRICULTURAL LAND**

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Muscatine, Iowa (“City”), and the Lutheran Homes Society, formerly known as the German Evangelical Lutheran Society (“Lutheran Homes”).

WHEREAS, the City owns and operates a Water Pollution Control Plant which generates liquid sludge that the City has a need of a location to store and to apply on agricultural land, and

WHEREAS, Lutheran Homes owns and operates a residential care facility and agricultural operation on real estate located adjacent to the City and has connected its sanitary sewer system to the Water Pollution Control Plant owned and operated by the City by means of a sanitary sewer and further desires that the City continue to apply liquid sludge upon its agricultural land.

Now therefore in consideration of the mutual agreements and covenants provided herein, the parties hereto agree as follows:

1. Lutheran Homes grants to the City the right to utilize certain portions of its real estate located in the County of Muscatine, State of Iowa, for the operation and maintenance of the liquid sludge storage lagoon(s) along with the right of access to the lagoon(s) at all times during the term of this Agreement, the total amount of acres and the exact location will be shown in Exhibit A hereto attached which may be hereafter modified with the mutual agreement of the parties hereto.
2. Upon the expiration of this Agreement, Lutheran Homes may elect to require the City to remove the lagoon(s) and accessory equipment except the public sanitary sewer. City will also be responsible for restoring the real estate to a condition satisfactory to Lutheran Homes after removal of the lagoon(s) and accessory equipment.
3. Lutheran Homes grants to the City the right to apply liquid sludge upon agricultural land owned by Lutheran Homes and the City agrees to apply liquid sludge in accordance with the rules and regulations prescribed therefore by the applicable federal, state and local regulatory agencies. The schedule of applying the liquid sludge will be mutually agreed upon by Lutheran Homes and the City and the City will give priority in the application schedule to the property owned by Lutheran Homes to the extent possible. The method of distribution of the sludge shall be approved by Lutheran Homes and the location of the distribution system shall be as shown on Exhibit A hereto attached. The City further agrees to advise Lutheran Homes and its tenant of the constituents of the liquid sludge in order to coordinate the application of the sludge in accordance with good farming practices.

4. The City agrees to maintain a public sanitary sewer from a point in close proximity to the abandoned Lutheran Homes sewage lagoon to the nearest existing city public sanitary sewer and Lutheran Homes agrees to grant a permanent easement 30 feet wide for the operation and maintenance of this sanitary sewer located on its real estate. The exact location of the public sanitary sewer is shown on Exhibit A. The City agrees to reimburse Lutheran Homes for any actual damages caused to the real estate or growing crops in the operation and maintenance of the public sanitary sewer.
5. The City agrees to permit Lutheran Homes to connect to the public sewer without any connection fee being charged, but Lutheran Homes agrees that, subject to Section 7 of this Agreement, it will be subject to the sanitary sewer rates and the use of the sanitary sewer as provided in Chapter 5 and 6 of Title 13 of the City Code of Muscatine as now provided or may hereafter be amended.
6. Lutheran Homes also grants to the City a permanent easement 20 feet wide for the operation and maintenance of a force main sewer on the property of Lutheran Homes to the location of the liquid sludge storage lagoons(s) along with the right to operate and maintain the force main as shown on Exhibit A, and the City agrees to reimburse Lutheran Homes for any actual damages caused to the real estate or growing crops in the operation and maintenance of the force main sewer and sludge distribution system.

7. In consideration of the agreement of Lutheran Homes to the above terms: (a) the City shall, by July 11 of each year during the term of this Agreement, pay Lutheran Homes annual rent for the 10 acres occupied by the lagoon(s) at a rate per acre equal to 50% of the rent per acre then payable to Lutheran Homes by the tenant of the farmland owned by Lutheran Homes adjacent to the lagoon(s); Lutheran Homes shall provide an invoice to the City on or about June 1 of each year during the term of this Agreement stating the amount of such rent due for the following year and, at the City's request, provide documentation of the amount of such invoice; and (b) the City shall, in lieu of additional rent, forbear from charging Lutheran Homes for any surcharge on the City's sewer rates otherwise applicable to a user outside the City limits.

87. The right of the City to operate and maintain the liquid sludge storage lagoon(s) and the application of the liquid sludge upon the agricultural land of Lutheran Homes which began July 11, 2001, shall be extended from July 11, 2016, for an additional period of 15 years thereafter to July 11, 2031, at which date such rights shall terminate unless extended by mutual agreement of the City and Lutheran Homes.
98. The City hereby agrees to indemnify, defend and hold harmless Lutheran Homes, its officers, directors and employees from and against any and all claims, loss, damages, expenses, penalties or fines, arising out of or concerning the City's operations pursuant to this agreement, including but not limited to attorney fees and the costs of any clean up or fines imposed because of pollution caused or alleged to be caused by the application of liquid sludge by the City.
109. This Agreement and all construction, operation and maintenance in connection therewith, including necessary design plans and specifications of this project is subject to the review and approval of the appropriate federal, state and local regulatory agencies, and if approved is later denied or withdrawn, then this Agreement shall be null and void. In the event that such approval or permit is denied or revoked, the City agrees to remove the lagoon and accessory equipment as requested by Lutheran Homes, but not the sanitary sewer herein referred to. The City agrees to take the appropriate measures to preserve the top soil to the extent possible in all construction and

maintenance authorized by this Agreement and to place such a requirement in any contracts which it may enter into with construction contractors.

110. This Agreement shall be binding upon the parties hereto, their successors and assigns.

Executed in duplicate at Muscatine, Iowa, the date first hereinabove written.

LUTHERAN HOMES SOCIETY

By \_\_\_\_\_  
Steve Cauley, President ~~Dave Armstrong, Administrator~~

Attest:

\_\_\_\_\_

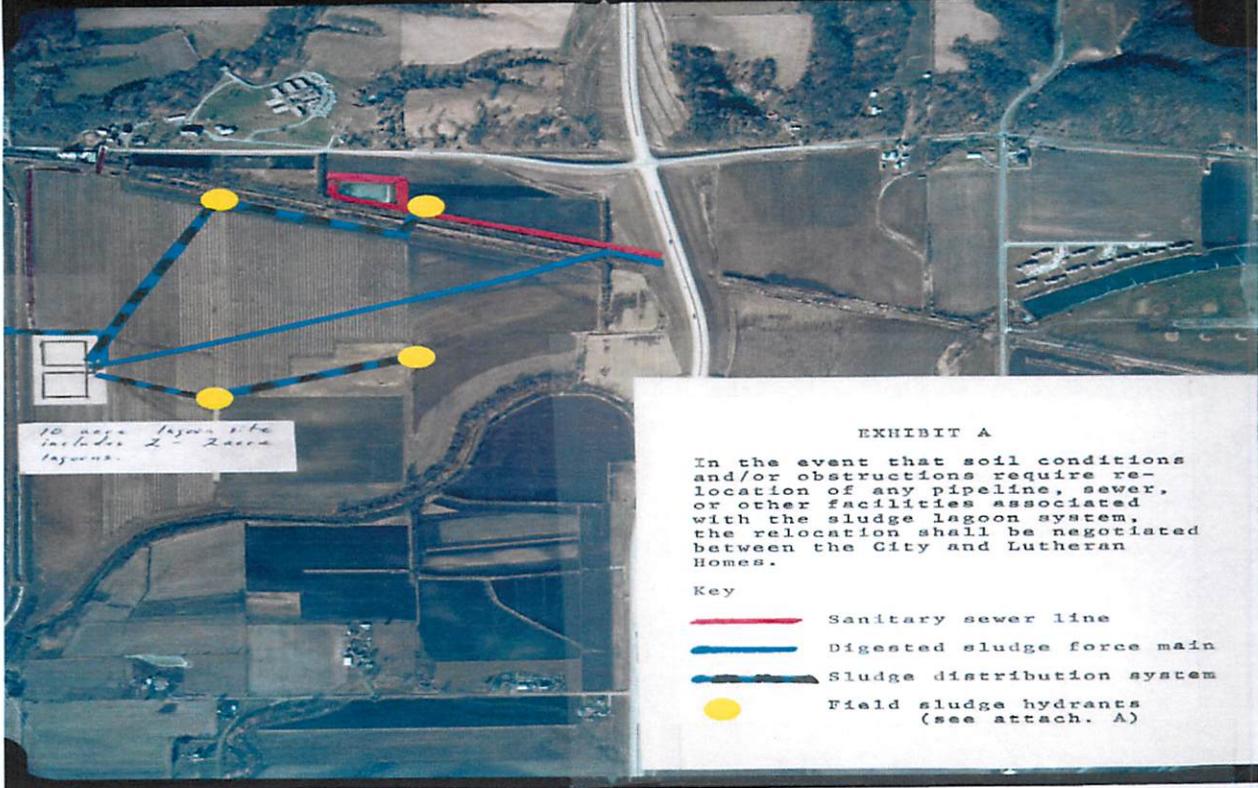
CITY OF MUSCATINE

By \_\_\_\_\_  
Diana Broderson, Mayor

Attest:

\_\_\_\_\_

Gregg Mandsager, City Administrator



**Attachment A**



**Field Sludge Hydrant**