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CITY ADMINISTRATOR

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MEMORANDUM

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Date: September 13, 2011  
To: Mayor O'Brien and Muscatine City Council  
From: Gregg Mandsager, City Administrator  
Re: Drainage District Agreement

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**Introduction:** Please see the attached 5-year agreement with Board of Trustees for the Muscatine-Louisa Drainage District No. 13, which sets out payment for utilization of the drainage area under control of the District.

**Background:** The City of Muscatine utilizes the Muscatine Slough to receive storm water runoff from the Western and Southern parts of town. The Muscatine-Louisa Drainage District has jurisdiction over the Muscatine Slough, its main drainage ditch, partly within and continuing west of the City. Section 468.130 of the Code of Iowa provides that the Drainage Board may by contract permit the City to discharge its storm water into Muscatine Slough. Historically, the City has made just one negotiated payment of \$20,000 to the Drainage District.

Based on the attached agreement, the City of Muscatine will pay the Drainage Board \$10,000.00 in full and complete satisfaction of any amounts due for use of Muscatine Slough in prior years. This payment will be made on or before December 31, 2011. Thereafter the City of Muscatine will pay the Drainage Board \$5,000.00 per year no later than July 7 of each year commencing in July 2012 and continuing until July 2016. As a condition of the permit, the City will keep pump logs documenting the hours of operation of the two pumps adjacent to Houser Street and provide the Drainage Board written documentation of the hours of operation at least semiannually until June 30, 2017.

**Recommendation:** City Staff recommends City Council approval of this agreement in full satisfaction of all claims that the District may have to date and over the next five years.

## CONTRACT FOR THE MUSCATINE SLOUGH PERMIT

This contractual agreement and release (the "Contract") is made and entered into by and between the Board of Trustees of Muscatine-Louisa Drainage District No. 13 (hereinafter referred to as "District") and the City of Muscatine, Iowa (hereinafter referred to as the "City").

**WHEREAS**, the City has for many years utilized a drain locally known as Muscatine Slough to receive storm water runoff from within the City; and

**WHEREAS**, as a result of the City's sewer separation projects there will be an increase in said runoff in the future; and

**WHEREAS**, the District has jurisdiction over Muscatine Slough, its main drainage ditch, partly within and continuing west of the City to a pumping station; and

**WHEREAS**, the Code of Iowa provides that the District may by contract permit the City to discharge its sewage into Muscatine Slough; and

**WHEREAS**, the parties desire to enter into this Contract embodying their mutual understanding and promises;

**NOW THEREFORE**, for and in consideration of the releases and covenants contained herein, and further good and valuable consideration the receipt and sufficiency of which is expressly acknowledged by each of the parties hereto, it is agreed as follows:

Section 1. Permit and other Consideration. Upon the execution of this Contract by both parties, and the payment of the initial amount by the City to the District, as set forth below, a permit to discharge will be granted by the District to the City under the following terms:

- A. The City will pay the District the initial amount of ten thousand dollars (\$10,000.00) for the City's use of Muscatine Slough in the past and through June 30, 2011, which payment will be made on or before December 31, 2011.
- B. The City will pay the District five thousand dollars (\$5,000.00) per year no later than July 7th of each year, commencing in July 2012 and continuing until July 2016, with the permit remaining in effect until June 30, 2017.
- C. As a condition of the permit, the City agrees to keep pump logs documenting hours of operation of the two pumps adjacent to Houser Street and to provide the District written documentation of the hours of operation at least semi-annually upon request until the permit expires.
- D. Unless a party provides written notice of termination six (6) months prior to the expiration of this Contract, the parties agree to engage in good faith negotiations concerning the terms of a subsequent Contract. In the event the parties are unable

to reach a voluntary agreement, they agree to equally share the costs (not including attorney's fees) to submit any disputes to mediation.

Section 2. The District's Release. Based on the consideration identified herein, District agrees to release, acquit and forever discharge City—and its present or past elected officials, officers, appointees, affiliates, subsidiaries, agents, representatives, employees, managers, insurers, legal representatives and assigns—from any and all claims, demands and or causes of action, recognized at law or in equity, founded upon statute, common law or administrative regulation, known or unknown, secreted or concealed, mature or not yet mature, that District does or may possess against City or which relates in any way to the threatened legal action. This includes, but is not limited to, any claim that is alleged or that could be alleged by District or on its behalf at the present time.

Section 3. The City's Release. Based on the consideration identified herein, City agrees to release, acquit and forever discharge District—and its present or past elected trustees, officials, officers, appointees, affiliates, subsidiaries, agents, representatives, employees, managers, insurers, legal representatives and assigns—from any and all claims, demands and or causes of action, recognized at law or in equity, founded upon statute, common law or administrative regulation, known or unknown, secreted or concealed, mature or not yet mature, that City does or may possess against District or which relates in any way to the threatened legal action. This includes, but is not limited to, any claim that is alleged or that could be alleged by City or on its behalf at the present time.

Section 4. Joint Representations and Warranties. The parties to this Release represent and warrant to each other that: (a) this Release represents a compromise settlement of disputed claims, the liability for which each party hereto has expressly denied. The execution of this Release by any party hereto shall not be deemed an admission of liability or fault on the part of any person or entity executing this Release; (b) the consideration provided in this Release is all the consideration any party hereto shall receive and there are no promises, written or oral, expressed or implied, for the receipt of any additional consideration made by any parties as to induce any party hereto to execute this Release; (c) each party to this Release has had an opportunity to review this Release with their own independent legal counsel prior to its execution and so executes this Release solely upon the reliance and advice of their own independent legal counsel and has not relied upon any conversation, writing or remark of any other party or legal counsel acting on behalf of any other party hereto; (d) this Release shall be binding on the parties, their heirs, administrators, representatives, executors, successors and assigns; (e) the parties acknowledge that they have not transferred, to any person or entity, any rights, causes of action or claims related in this Release; (f) there is no person, entity or organization which owns or can claim to own any interest in whole or in part any of the claims being released herein; and (g) each party is under no disability or contractual agreement that would limit the ability to enter into this Release and be fully bound of each of the terms contained herein.

Section 5. Construction of Release. This Release shall be construed and enforced according to the laws of the State of Iowa. Each of the parties hereto has independently had the opportunity to fully negotiate the terms hereof and modify the draftsmanship of this Release. The terms of this Release shall be construed and interpreted without any presumption, inference or

rule of law requiring the construction or interpretation of any provision of this Release against the interests of the party causing this Release to be drafted.

Section 6. Counterparts. There are multiple parties to this Release. This Release may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument and in the making of proof thereof, it shall not be necessary to produce or account for more than one such counterpart.

Section 7. Integrated Release and Amendments. This is a fully integrated Release. This Release constitutes the entire Release between the parties pertaining to the subject matter of the Release and final compromise of any and all claims of the parties to this Release. This Release supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions and understandings of the parties hereto in connection with the subject matter contained within this Release. No amendment, waiver, change or modification of any of the terms, provisions or conditions of this Release shall be effective unless made in writing and signed by all of the parties. A waiver of any provision of this Release shall not be deemed a waiver of future compliance herewith and such provisions subject to a claim or waiver shall remain in full force and effect until the arbitrator issues a final determination that a waiver has occurred.

Section 8. Severability. Should any provision of this Release be deemed illegal, invalid or otherwise unenforceable, in whole or in part, the remainder of this Release shall be valid and enforceable to the fullest extent permitted by law. Additionally, the parties agree that any provision found to be illegal, invalid or otherwise unenforceable may, by court order, be redrafted to comply with existing law.

Section 9. Waiver. The failure to insist upon strict compliance with any of the terms of this Agreement shall not be deemed a waiver of such terms, and the waiver of any right or power under this Agreement at any time shall not be deemed a waiver of such right or power at any other time.

IN WITNESS WHEREOF the party below has executed this Agreement on the 19<sup>th</sup> day of Auguts 2011.

The Board of Trustees of Muscatine-Louisa  
Drainage District No. 13

  
\_\_\_\_\_  
By: [NAME]  
[TITLE] 

IN WITNESS WHEREOF the party below has executed this Agreement on the 15<sup>th</sup> day of September, 2011

## **CITY OF MUSCATINE, IOWA**

By:

**Richard W. O'Brien,  
Mayor**

**Attest:**

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**Gregg Mandsager,  
City Administrator**