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COMMUNITY DEVELOPMENT

**Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement**

MEMORANDUM

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Steven Boka, Director of Community Development
Date: June 5, 2013
Re: Request to enter into 28E Agreement with the State of Iowa

INTRODUCTION: The City of Muscatine is requested to enter into a 28E Agreement with the Iowa Department of Public Health to provide inspection services, record keeping, and other activities related to swimming pools, spas, tanning facilities and tattoo establishments within the City of Muscatine and Muscatine County, for the period beginning July 1, 2013 and ending June 30, 2016.

BACKGROUND: The City of Muscatine has provided health inspection services on behalf of the State of Iowa for over 30 years. As discussed and approved by the City Council for the during the FY 12/13 Budget, the Community Development Department was reorganized to shift the health inspection services to an existing employe by providing support for the additional training required by the State to keep the service at the local level. The State Department of Public Health is now satisfied that the City has the training and capacity to continue providing the required health inspection services. To that end, the City Council, as the local Health Agency, is requested to approve an Interagency Agreement with the Department of Public Health as set out in the attached Agreement. The Agreement has also been discussed with the Muscatine County Board of Supervisors and Muscatine County Board of Health and has received their support for a county-wide program.

RECOMMENDATION/RATIONALE: Departmental staff has worked very hard to complete the required training and assure the State that the City has the capacity to operate, manage and enforce the health inspection program the way that is expected by the State. In recognition of that effort, the State Department of Public Health is now offering a 3-year Agreement with the City that will extend to serve the entire county. It is recommended that the City Council approve the attached Interagency Agreement with the Iowa Department of Public Health as set out in the attached Agreement.

BACKUP INFORMATION:

1. Agreement
2. Letter from the Muscatine County Board of Health

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

Muscatine County Board of Health

1609 Cedar Street

Muscatine, IA 52761

563-263-0122

James Wester, Chairman
Frances Nelson
Neva Rettig-Baker
Dr. Rebecca Mueller
William Koeliner

March 25, 2013

Muscatine City Council Members:

The Muscatine County Board of Health reviews pool, tanning, and tattoo inspections for Muscatine County that are completed by a state 28E agreement with Johnson County Public Health. At our most recent board meeting on March 20, 2013 the board members consulted with Steve Boka and Ken Rogers from the city of Muscatine. Ken Rogers provides this service to the city and has the capacity to provide this service to those establishments in the county, but are outside of city limits.

The Board of Health is recommending to the city of Muscatine to provide this service to the entire county starting July 1, 2013. The current state contract agreement with Johnson County Public Health ends on June 30, 2013 as does the current city of Muscatine 28E contract agreement with the state. The timing for this change is very appropriate with the ending of these three year agreements.

The Board feels that the service provided by the city of Muscatine would improve the quality of service to our county. The Board recognizes that this will require a 28E agreement with the state to change the city's 28E agreement contract from city of Muscatine to county of Muscatine, and that this would require approval by the Muscatine City Council. The Board of Health hopes that the Muscatine City Council will approve this change for the benefit of our county.

Sincerely,



Jim Wester, Chairman

Cc: Muscatine County Board of Supervisors
Steve Boka
Ken Rogers



Mariannette Miller-Meeks, B.S.N., M.Ed., M.D.
Director

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

28E-2014-PTT-MU

BETWEEN THE

IOWA DEPARTMENT OF PUBLIC HEALTH

AND

City of Muscatine

This Agreement is made and entered into by and between the City of Muscatine, herein after called the CONTRACTOR and the Iowa Department of Public Health, hereinafter called DEPARTMENT pursuant to Iowa Code Section 28E.12.

PURPOSE: It is the mutual desire of the CONTRACTOR and the DEPARTMENT to assure the health and safety of the public by providing effective environmental health services. This agreement delegates the DEPARTMENT'S inspection and enforcement authority with respect to swimming pools and spas, tattoo establishments, and tanning facilities to the CONTRACTOR.

- I. The term of this Agreement shall be July 1, 2013 to June 30, 2016.
- II. Contract Administrators

Ken Sharp, Director, Division of Environmental Health is the Authorized State Official for this agreement. The Authorized State Official must approve any changes in the terms, conditions, or amounts specified in this contract. Questions regarding implementation of this contract should be referred to Carmily Stone at telephone (515)281-0921 or Carmily.Stone@idph.iowa.gov .

Steven Boka has been designated by the CONTRACTOR to act as the Contract Administrator. This individual is responsible for financial and administrative matters of this contract.

Name	Steven Boka
Business Name	City of Muscatine
Street Address	215 Sycamore Street Muscatine, Iowa 52761
City, State, Zip	Muscatine, Iowa 52761
Telephone Number	(563) 262-4141
Email	sboka@muscatineiowa.gov

- III. General Provisions
 - A. The DEPARTMENT agrees to:

- I. Provide technical assistance, rule interpretation and clarifications, engineering support, and registration, permitting, and licensing information to the CONTRACTOR on matters related to the swimming pool and spa program, the tattoo establishment program, and tanning facility program.
- II. Provide and maintain a standard inspection form for inspection programs to be used by CONTRACTOR. Review and approve local inspection forms when requested by CONTRACTOR.
- III. Provide and maintain open book self study for new inspectors. Provide feedback to new inspectors regarding study responses.
- IV. Provide and maintain an annual report form to be completed by CONTRACTOR.
- V. Develop and provide at a minimum one annual training for swimming pool, spa, tattoo, tanning program.
- VI. Coordinate training for new inspectors.
- VII. Delegate enforcement activities to the CONTRACTOR unless:
 1. The CONTRACTOR specifically requests the DEPARTMENT's involvement and the DEPARTMENT agrees to assist.
 2. The CONTRACTOR actions are determined by the DEPARTMENT to be inappropriate ,untimely, or inadequate.
 3. The statute or rules require enforcement action to be taken by the DEPARTMENT.

B. The CONTRACTOR agrees to:

- I. Provide the services outlined in this agreement in the following geographic area(s):
 1. Muscatine County
- II. Provide consultation and information to swimming pool and spa facilities, tattoo facilities, and tanning facilities to eliminate or minimize potential health and safety problems.
- III. Employ adequate personnel to perform inspection services outlined in this agreement. Adequate personnel is defined by:
 1. Registered Environmental Health Specialist/Registered Sanitarian (REHS/RS) in good standing with the National Environmental Health Association, or
 2. Certified Environmental Health Technician (CEHT) in good standing with the National Environmental Health Association, or
 3. Provide documentation to the DEPARTMENT that the combination of education and experience are consistent with the requirements of the REHS/RS and/or CEHT credentials, or
 4. Ensure that a new hire will meet one of the above within 2 years of hire. Provide documentation of meeting this requirement upon request from the DEPARTMENT.
- IV. Provide a list of employees providing inspection services under this contract upon request from the DEPARTMENT.
- V. Ensure employees providing inspection services outlined in this agreement obtain a minimum of twelve (12) hours of continuing education per year. The continuing education must be training that has been approved for credit by the Iowa Environmental Health Association's Environmental Health Registry. The CONTRACTOR shall provide evidence of meeting this requirement upon request from the DEPARTMENT.
- VI. Verify that all inspectors review the applicable Iowa Administrative Codes and this 28E Agreement on an annual basis.

- VII. Use an inspection form provided or approved by the DEPARTMENT in conducting all inspections pursuant to this agreement.
- VIII. Conduct all enforcement actions prior to requesting the DEPARTMENT to carry out final action.
- IX. Submit an annual report on the form provided by the DEPARTMENT. Submit an annual report on the progress of the county in meeting the following Iowa Public Health Standards:
 - 1. Standard AD-3 Comply with and enforce public health laws, rules, and regulations.
 - 2. Local Criteria EH 1c-L Annually report environmental health activities to the local board of health and the public.
 - 3. Local Criteria EH 1d-L Maintain a policy and procedure manual for all environmental health services provided. The manual must address the minimum required components and be reviewed at least every three years.
- X. Link with the local board of health for each jurisdiction where services are provided to assist the local board of health in performing its roles and responsibilities as defined in 641 IAC-77.3. The CONTRACTOR shall provide a report to each local board of health in each county outlined in III. B. I at least annually.
- XI. Maintain accurate, current, and complete records of all activities related to this agreement for a period of three years.
- XII. Allow the DEPARTMENT to review the CONTRACTOR'S program at the DEPARTMENT'S discretion, which may include a site visit. The review may include a review of the rules, policies, and procedures of the CONTRACTOR; a review of records maintained by the CONTRACTOR related to this agreement; and a review of the CONTRACTOR'S compliance with this agreement. Following each site visit, the DEPARTMENT shall submit a written report to the CONTRACTOR which identifies the findings of the site visit. The DEPARTMENT shall request that the CONTRACTOR submit a corrective action plan with a timetable to address any deficiencies or problems noted in the site visit. The CONTRACTOR shall submit the corrective action plan to the DEPARTMENT for approval within the timelines outlined in the written report. The DEPARTMENT shall review the corrective action plan and accept it or require that it be modified. Failure to provide the required corrective action may result in suspension or termination of the contract.
- XIII. Comply with the confidentiality requirements contained with Iowa Code Chapter 22, 139 A, 141 A, and other relevant provisions of state law.

IV. For the Swimming Pool and Spa Program

A. The DEPARTMENT agrees to:

- I. Register swimming pools and spas pursuant to Iowa Code Chapter 135I and 641 IAC Chapter 15, maintain a registration database, and distribute to the CONTRACTOR information on currently registered swimming pools, water slides, and spas.
- II. Conduct plan review and perform on-site inspections of new construction or substantial reconstruction. The DEPARTMENT will notify the CONTRACTOR when on-site inspections are conducted in an attempt to include the local agency on the inspection.
- III. Provide facility status updates.

B. The CONTRACTOR agrees to:

- I. Employ adequate personnel to perform swimming pool and spa program services outlined in III. B. III. in this agreement. In addition, the personnel performing swimming pool and spa program services must have a current Certified Pool Operator (CPO) certificate and meet the education requirements of 641 IAC 15.11 (2).

- II. Ensure that a new inspector has completed the following prior to performing inspections:
 1. Obtained a CPO certificate,
 2. Verified that they have read 641 IAC Chapter 15, and
 3. Submitted the completed open book self study developed by the DEPARTMENT.
- III. Provide personnel with the following minimum equipment necessary to perform inspections:
 1. Test kit meeting the requirements of 641 IAC 15.4(2)"f" (1)-(3)
 2. Measuring Tape
 3. GFCI Receptacle Tester
 4. Digital Camera
 5. Digital Thermometer
 6. Screwdrivers- Phillips and Flat Head
- IV. Conduct annual and for-cause special inspections of all registered swimming pools and spas within the coverage area outlined in this agreement to determine compliance with 641 IAC Chapter 15.
- V. Conduct enforcement actions of violations of the rules governing operation of swimming pools and spas found in 641 IAC – Chapter 15.
- VI. Submit an annual report to the DEPARTMENT that contains the following information:
 1. The number of swimming pool and spa inspections completed each month, including routine and special inspections.
 2. The number of swimming pools and spas that were closed at the time of inspection by the CONTRACTOR or by the facility management specifically for rule violations regarding:
 - a. Clarity.
 - b. Disinfection residual.
 - c. ORP.

The number of enforcement actions taken.

 3. The violations that were noted on the inspection sheet in 50% or more of the facilities inspected. If no violations fit the previous criteria, note the top 3 violations cited.

V. For the Tattoo Establishment Program

A. The DEPARTMENT agrees to:

- I. Permit tattoo artists, permanent color technologists, tattoo establishments, mobile units, and temporary establishments in accordance with Iowa Code Section 135.37 and 641 IAC Chapter 22.
- II. Provide artist and establishment status updates.

B. The CONTRACTOR agrees to:

- I. Employ adequate personnel to perform tattoo program services outlined in III. B. III. in this agreement. In addition, the personnel performing tattoo program services shall have successfully completed a bloodborne pathogen certification from the American Red Cross or an equivalent nationally recognized organization. A new inspector must verify that they have read 641 IAC Chapter 22 and must submit the completed open book self study developed by the DEPARTMENT with their certification prior to performing inspections.
- II. Ensure that a new inspector has completed the following prior to performing inspections:
 1. Obtained a Bloodborne Pathogen Certification,

2. Verified that they have read 641 IAC Chapter 22, and
 3. Submitted the completed open book self study developed by the DEPARTMENT.
- III. Conduct annual and for-cause inspections of all permitted tattoo establishments, temporary establishments, and mobile units, within the coverage area outlined in this agreement to determine compliance with 641 IAC – Chapter 22
 - IV. Conduct enforcement actions of violations of the rules governing operation of tattoo establishments found in 641 IAC Chapter 22
 - V. Submit an annual report to the DEPARTMENT that contains the following information:
 1. The number of tattoo establishment inspections completed each month, including routine and special inspections.
 2. The violations that were noted on the inspection sheet in 50% or more of the facilities inspected. If no violations fit the previous criteria, note the top 3 violations cited.
 3. The number of enforcement actions taken.

VI. For the Tanning Facilities Program

A. The DEPARTMENT agrees to:

- I. Permit tanning facilities in accordance with Iowa Code Chapter 136D and 641 IAC Chapter 46.
- II. Provide the CONTRACTOR training material for tanning facility operators.
- III. Provide tanning facility status updates.

B. The CONTRACTOR agrees to:

- I. Employ adequate personnel to perform tanning program services outlined in III. B. III. in this agreement. A new inspector must verify that they have read 641 IAC Chapter 46 and must submit the completed open book self study developed by the DEPARTMENT with their certification prior to performing inspections.
- II. Ensure that a new inspector has completed the following prior to performing inspections:
 1. Verified that they have read 641 IAC Chapter 46, and
 2. Submitted the completed open book self study test developed by the DEPARTMENT.
- III. Conduct annual and for-cause inspections of all permitted tanning facilities within the coverage area outlined in this agreement to determine compliance with 641 IAC Chapter 46.
- IV. Conduct enforcement actions of violations of the rules governing operation of tanning facilities found in 641 IAC Chapter 46.
- V. Conduct and coordinate monitored examinations for owners and managers in accordance to 641 IAC Chapter 46.
- VI. Submit an annual report to the DEPARTMENT that contains the following information:
 1. The number of tanning facility inspections completed each month, including routine and special inspections.
 2. The violations that were noted on the inspection sheet in 50% or more of the facilities inspected. If no violations fit the previous criteria, note the top 3 violations cited.
 3. Number of enforcement actions.

VII. Manner of financing

- A. The DEPARTMENT shall not be financially responsible for the any of the functions to be performed by the CONTRACTOR under the provisions of this agreement. The CONTRACTOR shall charge, collect, and retain inspection fees for the respective programs in accordance with the following rules:
- I. For the Swimming Pool and Spa program, pursuant to Iowa Code Chapter 135I and 641 IAC – 15.13.
 - II. For the Tattoo Establishment program, pursuant to Iowa Code section 135.37 and 641 IAC – 22.12.
 - III. For the Tanning Facilities program, pursuant to Iowa Code Chapter 136D and 641 IAC – 46.4(7).

VIII. It is mutually understood and agreed that:

- A. This agreement can be amended by the mutual written consent of both parties only.
- B. Any use of the DEPARTMENT'S name, logo, or other identifier must have prior written approval from the DEPARTMENT.
- C. The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in the Iowa District Court in and for Polk County, Iowa. If, however, jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability that may be available to the DEPARTMENT or the State of Iowa.
- D. Termination
- a. This contract may be terminated by the CONTRACTOR upon thirty (30) working days advance written notice for the failure of the DEPARTMENT to comply with any term, condition, or provision of this contract. In this event, the CONTRACTOR shall deliver to the DEPARTMENT written notice specifying the nature of the DEPARTMENT'S default. The DEPARTMENT shall have the thirty-day notice period to correct the problem that resulted in the default notice.
 - b. The contract may be terminated by the CONTRACTOR upon thirty (30) working days advance written notice if circumstances beyond the control of the CONTRACTOR make continuation of this contract impossible.
 - c. This contract may be terminated by the DEPARTMENT for any of the following reasons:
 - i. Default by the CONTRACTOR. The failure of the CONTRACTOR to comply with any term, condition, or provision of this contract shall constitute a default by the CONTRACTOR. In this event, the DEPARTMENT shall deliver to the CONTRACTOR written notice specifying the nature of the CONTRACTOR's default. The DEPARTMENT may make termination of the contract effective immediately. If the notice of default does not indicate that the contract shall be terminated immediately, the CONTRACTOR shall have thirty-day notice period to correct the problem that resulted in the default notice.
 - ii. The Convenience of the DEPARTMENT. The DEPARTMENT may terminate this contract in whole or in part without the payment of any penalty or incurring any further obligation to the CONTRACTOR whenever, for any reason, the DEPARTMENT shall determine that such termination is in the best interest of the State. In this event, the

DEPARTMENT shall issue a termination notice to the CONTRACTOR at least ten (10) days prior to the effective termination date.

- iii. Change in Law. The DEPARTMENT shall have the right to terminate this contract without penalty by providing ten (10) days written notice to the CONTRACTOR if any of the following conditions exist:
1. The DEPARTMENT'S authorization to operate is withdrawn or there is a material alteration in the programs administered by the DEPARTMENT;
 2. The DEPARTMENT'S duties are substantially modified.

IN WITNESS WHEREOF the parties have signed their names effective the day and year first above written.

County Board of Health

BY

Chair, City Council

Iowa Department of Public Health

BY

Ken Sharp, Director
Division of Environmental Health