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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: March 26, 2012
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 Inspections and Appeals enforce to Iowa Code Chapters 137C (Hotel Sanitation Code), 137D (Home Food Establishments) and 137F (Food Establishments and Food Processing Plants) with respect to retail establishments located within the City of Muscatine, for the period beginning July 1, 2012 and ending June 30, 2013.

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 upcoming FY 12/13 Budget, the Community Development Department is being reorganized to shift the health inspection services to an existing employee and to provide support for the additional training required by the State to keep the service at the local level. The State Department of Inspections and Appeals 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 Inspections and Appeals to license, inspect, and enforce Iowa Code Chapters 137C, 137D and 137F with respect to retail establishments as set out in the attached agreement.

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 is offering a 1-year Agreement with the City. The Department will review the program following the completion of this Agreement and may offer a 3-year program after that time. It is recommended that the City Council approve the attached Interagency Agreement with the Iowa Department of Inspections and Appeals for health inspection services as set out in the attached Agreement.

BACKUP INFORMATION:

1. Agreement

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

INTERAGENCY AGREEMENT
Between
IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
And
Muscatine City Council

This Agreement is entered into between the Iowa Department of Inspections and Appeals (hereinafter "Department") and **Muscatine City Council** (hereinafter "Local Health Agency") pursuant to the authority of Iowa Code section 28E.12.

1. PURPOSE AND SCOPE: The purpose of this Agreement is to authorize the performance of food and hotel licensing, inspection and enforcement activities by the Local Health Agency on behalf of the Iowa Department of Inspections and Appeals. The scope of the Local Health Agency's authority is limited to the performance of food and hotel licensing, inspections and enforcement with respect to retail establishments as permitted by Iowa Code Chapters 137C (Hotel Sanitation Code), 137D (Home Food Establishments) and 137F (Food Establishments and Food Processing Plants). The Department shall inspect and enforce all applicable laws as they apply to wholesale food processing plants including those whose operation is limited to the storage of food products pursuant to 137F. The Department will inspect and enforce all applicable laws as they apply to wholesale food processing plants which manufacture, package or label food products. The Department hereby retains the independent authority to license, inspect, enforce, or take any other action it deems necessary pertaining to any establishments to be inspected by the Local Health Agency. The Department will inform the Local Health Agency of any action it has completed within its jurisdiction.

2. DELEGATION: The Local Health Agency is hereby authorized to enforce Iowa Code Chapters 137C (Hotel Sanitation Code), 137D (Home Food Establishments) and 137F (Food Establishments and Food Processing Plants) with respect to retail establishments as long as this Interagency Agreement is in force.

3. GEOGRAPHICAL REGION: Food and hotel licensing, inspections and enforcement shall be conducted by the Local Health Agency in the following geographical region: **City of Muscatine.**

4. DURATION: This Agreement shall commence on July 1, 2012 shall continue in full force and effect until June 30, 2013.

5. TERMINATION: Either party may terminate this Agreement by providing the other party a written notice of intent to terminate at least sixty (60) days prior to the intended date of termination. Notice shall specify the reasons for termination and be delivered by U.S. certified mail. Upon termination, the Local Health Agency shall transfer to the Department all inspections, licensing and enforcement records in its

possession and all other documents generated as a result of this Agreement. Not later than thirty (30) days following the termination date, the Local Health Agency shall transfer all materials to the Department at the following address:

Iowa Department of Inspections and Appeals
Food and Consumer Safety Bureau
Lucas State Office Building
321 E. 12th St.
Des Moines, Iowa 50319-0083

6. DUTIES OF LOCAL HEALTH AGENCY: The Local Health Agency agrees that the Agency and its employees shall:

- a. Comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and Department guidance when performing within the scope of this Agreement.
- b. Apply Iowa Code Chapters 137C (Hotel Sanitation Code), 137D (Home Food Establishments) and 137F (Food Establishments and Food Processing Plants), as well as administrative rules promulgated pursuant to these chapters, to retail establishments including temporary foods establishments, or institutions, found in the designated geographical region specified by Section 3 of this Agreement.
- c. Inspect food establishments and institutions using the Food Code as adopted pursuant to Iowa Code section 137F.2. The inspection frequency shall be no less frequent than that prescribed by the Food Code or the risk-based system adopted pursuant to the Food Code by the Department (see Attachment 1—Risk Based Frequency).
- d. Conduct biennial inspections of hotels and motels per Iowa Code Section 137C.11.
- e. Forward requests for variances or HACCP (Hazard Analysis and Critical Control Points) plans and Agency recommendations to the Department for approval. Variances and HACCP plan approvals may only be granted by the Department if sufficient information is provided to substantiate the need and propriety for the action. The Department shall provide the Local Health Agency with copies of approvals of all variances or HACCP plans within the Local Health Agency's geographic region.
- f. Issue State licenses. Licenses, applications and inspection forms will be on forms prescribed by the Department. The actual cost of the forms or materials shall be paid by the Local Health Agency. The Local Health Agency shall also distribute any materials during inspections that are provided by the Department without cost to the Local Health Agency.

g. Notify the Department within one business day of the existence of any potential foodborne or other illness caused by, or suspected of having been caused by, unsanitary conditions existing in any establishment licensed or inspected under this Agreement. The Local Health Agency shall complete to the fullest extent possible the DIA Foodborne Illness Complaint and History Intake Form and either email or fax the intake and subsequent inspections report(s) or documentation as described in Attachment 2. The Local Health Agency shall also follow the Department's investigative procedures related to foodborne illness reports.

h. Cooperate in any federal or state food program survey to be conducted within the jurisdiction of the Local Health Agency during the terms of this Agreement.

i. Allow the inspection files and practices of the Local Health Agency to be monitored by the Department. This includes submitting inspection data files on a minimum of a semi-monthly (twice per month) basis. Failure to submit files for a period of more than one month without extenuating circumstances shall be considered grounds for termination of the agreement. To the greatest extent possible, all inspectors shall complete inspection reports for food service establishments, retail food establishments, mobile food establishments, hotels/motels, and home food establishments via the electronic inspection application using tablet computers by December 31, 2012.

j. Take corrective action on all food disasters that occur in areas covered by this Agreement. Such disasters include, but are not limited to, handling or disposing of food in cases of fire, windstorms and floods. The Local Health Agency shall furnish the Department with a written report of the occurrence upon request. The Local Health Agency shall immediately notify the Department of any suspected intentional contamination of food in a regulated establishment.

k. Hire inspection personnel who possess experience and educational qualifications equivalent to the Environmental Specialist classification, as defined by the Iowa Department of Administrative Services, Human Resources Enterprise. All Local Health Agency food inspection personnel shall complete Level One Training, as prescribed by Standard 2 of the FDA Voluntary National Retail Food Regulatory Program Standards (2011) and complete standardization to the FDA Food Code within eighteen (18) months of beginning food inspection work and every thirty-six (36) months thereafter. All training for each inspector shall be logged in the inspection database and certificates of completion shall be maintained by the Local Health Agency. As of January 1, 2012, a log of joint inspections prior to independent inspections shall also be maintained for all agency staff that have not attained standardization. Each inspector shall also attend the Department's new inspector training within eighteen (18) months of beginning food inspection work. This curriculum shall include an in-person HACCP course offered by the Department. The local health agency shall develop a plan for the completion of the training curriculum

for all current staff within 12 months and the plan shall be completed within 36 months of executing this agreement.

l. Send representation, absent Department-approved extenuating circumstances, to all Department-sponsored regional meetings and FDA training in Iowa. In addition, applicable Department-sponsored training shall be attended by all new employees and those employees who have not previously attended.

m. Refer to the Department all processing plants, including those that are manufacturing thermally processed low acid foods packaged in hermetically sealed containers under 21 CFR Part 113 or acidified foods under 21 CFR Part 114.

n. Send all plans for Reduced Oxygen Packaging under 3-502.12 of the Food Code to the Department for approval.

o. The Local Health Agency shall use and include all supervisory, inspection, and administrative staff on the Foodshield system. This system contains current policy interpretations and resources related to the performance of this agreement.

p. The Local Health Agency shall provide an up-to-date contact sheet within 30 days of signing this Agreement, within 30 days of changes, and reviewing and updating annually. The Local Health Agency shall also provide at least one after-hours emergency contact.

q. The Local Health Agency shall propose and submit to the Department a plan to meet and maintain the following standards by December 31, 2012 and shall meet each standard by June 30, 2015:

- i. A programs policy that requires (See FDA Voluntary National Retail Food Regulatory Program Standards (2011), Standard 3):
 1. On-site corrective actions as appropriate to the type of violation,
 2. Discussion of long-term control of risk factors options, and
 3. Follow-up activities.
- ii. FDA Voluntary National Retail Food Regulatory Program Standards (2011), Standard 4 on Uniform Inspection Program.
- iii. FDA Voluntary National Retail Food Regulatory Program Standards (2011), Standard 6 on Compliance and Enforcement.

r. If the Local Health Agency is enrolled or enrolls in the FDA Voluntary National Retail Food Regulatory Program Standards (2011), the Local Health Agency shall provide the Department with a copy of any self-assessment completed and the Department shall audit any standards met.

s. The Local Health Agency shall use the data system adopted by the Department for inspections and licensing of establishments pursuant to this Agreement.

t. The Local Health Agency shall have memorandum of understanding (MOU) with either another Local Health Agency currently contracting with the Department or the Department to provide the services outlined in this agreement if inspection personnel are unavailable by July 1, 2012. A copy of the MOU shall be provided to the Department.

t. The Local Health Agency shall have memorandum of understanding (MOU) with either another Local Health Agency currently contracting with the Department or the Department to provide the services outlined in this agreement if inspection personnel are unavailable by July 1, 2012. A copy of the MOU shall be provided to the Department.

7. DUTIES OF DEPARTMENT: The Department agrees that the Department and its employees shall:

- a. Answer local health agency questions on federal and state rules, regulations, executive orders and Department guidance under the scope of this Agreement.
- b. Review variance and HACCP plan requests taking into account the recommendation of the Local Health Agency and notify the Local Health Agency of the disposition of each request under the jurisdiction of the Local Health Agency.
- c. Provide licenses and forms prescribed by the Department for the cost of producing the licenses and forms.
- d. Provide the Local Health Agency with any complaints or foodborne illness requests received by the Department for entities under the jurisdiction of the Local Health Agency.
- e. Provide guidance to the Local Health Agency when investigating a foodborne illness or foodborne illness complaint.
- f. Provide ongoing performance reviews and feedback, including an annual electronic file review and an in-person program review every three years.
- g. Provide a electronic data system that includes mobile inspection capabilities.
- h. Provide guidance to the Local Health Agency during food disasters and potential intentional contamination events.
- i. Provide new inspectors training as needed, but no less than annually.
- j. Provide other training courses such as HACCP and food microbiology as needed, but no less than every 18 months.

- k. Provide food-related courses to assist the Local Health Agency in meeting continuing education requirements.
- l. Provide audits for the FDA Voluntary National Retail Food Regulatory Program Standards (2011).
- m. Provide new inspector mentoring for single inspector Local Health Agencies and other Local Health Agencies as requested.
- n. Provide standardization of one inspector per Local Health Agency and restandardization as required.

8. MANNER OF FINANCING: The functions to be performed by the Local Health Agency are to be financed by the Local Health Agency at no obligation to the Department. Licensing fees shall be assessed as prescribed by applicable Iowa law. The Local Health Agency shall retain the licensing fee set in Iowa Code sections 137C.9(2011), 137D.2(2011) and 137F.6(2011) and their successors.

9. EMPLOYEES: Department employees are not employees of the Local Health Agency.

a. Salaries, unemployment, and liability. The Department shall remain liable for its employees' salaries, unemployment compensation, worker's compensation protection and civil liabilities pursuant to Iowa Code Chapter 669. Each Department employee shall be deemed to be performing regular duties for the Department while performing services pursuant to the Interagency Agreement. Local Health Agency employees are not employees of the Department. The Local Health Agency shall remain liable for its employee's salaries, unemployment compensation, worker's compensation protection and civil liabilities pursuant to Iowa Code Chapter 670. Each Local Health Agency employee shall be deemed to be performing regular duties for the Local Health Agency while performing services pursuant to the Interagency Agreement.

b. Conflict of interest. Each Local Health Agency employee responsible for performing inspection, supervisory, or administrative functions under this agreement shall complete a Conflict of Interest Statement (see Attachment 2) which shall be updated at least annually or upon change. If there is a conflict of interest, the Local Health Agency shall submit the conflict of interest statement and proposed plan to remediate the conflict. This shall be completed within thirty (30) days of signing of the agreement and within thirty (30) days of report of a conflict. The Department shall accept, reject, or propose modifications to the remediation of conflicts by local health agency employees within thirty (30) days of receipt.

c. Secondary employment. Each Local Health Agency shall also complete a Conflict of Interest Statement and proposed remediation for any employees with secondary employment that involves providing goods, products, services, or labor of any kind to

establishments licensed and inspected by the Local Health Agency pursuant to this agreement.

10. REPORTING: The Local Health Agency shall provide the Department with reports as described in Section 6 of this Agreement. Fiscal data on licenses issued and fees collected shall be reported to the Department on an annual basis. Reporting formats will be prescribed by the Department. The Department may request additional information and the Local Health Agency shall make every effort to provide the additional information with the timeframes requested.

11. REFERRALS: Any complaints made to the Department, regarding an establishment regulated by the Local Health Agency, shall be referred to the Local Health Agency for investigation and enforcement. Complaint referrals shall be investigated with utmost expediency, but in no case shall this exceed seven (7) calendar days. The Local Health Agency will provide a written copy of its findings regarding the referred complaint to the Department within five (5) working days of the completion of the investigation. The Local Health Agency may adopt the Department's Complaint Policies and Procedures. If the Department's Complaint Policies and Procedures are adopted, the timeframes for investigation of complaints within that document shall apply. All complaints shall be entered into the electronic data system.

12. LEGAL OR ADMINISTRATIVE ENTITY: No new legal or administrative entity is created by this Interagency Agreement.

13. PROPERTY: Nothing in this Interagency Agreement shall be deemed to affect any change with respect to the ownership of the real or personal property of either party to this Agreement.

14. FILING AND RECORDING: Pursuant to Iowa Code section 28E.8, a copy of this Agreement shall be filed by the Department with the Secretary of State.

15. COUNTERPARTS: The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

16. SEVERABILITY: If any provision of this Agreement is determined by the court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement. The undersigned hereby execute and enter into this Interagency Agreement. Each signatory represents that he or she has been authorized in accordance with state law to sign and bind the agency represented.

By _____ **Date** _____
Rod Roberts, Director
Iowa Department of Inspections and Appeals

By _____ **Date** _____

(Signature)
DeWayne Hopkins, Mayor
Muscatine City Council

Attachments:

Attachment 1: Iowa Department of Inspections and Appeals Risk Based Inspection
Attachment 2: Iowa Department of Inspections and Appeals Foodborne Illness Reporting
Process
Attachment 3: Conflict of Interest Statement

ATTACHMENT 1

Department of Inspections and Appeals Risk Assessment Criteria April 1, 2011

Level One (Low Risk): Inspection Frequency every 24 months

- Process 1 Foods – “No Cook Step” (Without a Consumer Advisory)
- Types of establishments covered may include, bars, sandwich shops, that do not cook (Subway, Quizno’s), convenience stores that do not cook (Kum & Go, Git n Go). It would also include Casey’s General stores in this even though they cook pork and chicken fritters. Pizza places without buffets and salad bars (Domino’s, Pizza Hut Carry Out).

Level Two (Medium Risk): Inspection Frequency every 12 months

- Process 2 Foods – “Same Day Service”
- Limited Process 3 Foods “Complex Food Preparation” (A small amount of Process 3 foods would be allowed in a Level 2 establishment i.e. sauces, daily specials)
- Types of establishments this may include depending on the menu are steakhouses and bar-grills, pizza places with salad bars and buffets, that have no or limited Process 3 foods on the menu.
- Service sites only for Highly Susceptible Populations

Level Three (High Risk): Inspection Frequency every 6 months

- Establishments that prepare and serve food to a Highly Susceptible Population
- Multiple Process 3 Foods “Complex Food Preparation”
- Catering Operations
- Process 1 Foods with a Consumer Advisory i.e. sushi, oysters
- Facilities selling Shellstock
- Facilities with an issued special process variance
- Facilities with a required HACCP Plan
- Types of facilities buffet restaurants, sushi bars, full service diners, Mexican restaurants.

Additional considerations in the determining of an establishments risk level. If an establishment meets one or more of the following criteria their risk level should be adjusted up a level.

- Establishments that have shown consistent non-compliance with risks factor violations (2 or more consecutive inspections with risks factor violations).
- Establishment that have any violations under sections 2-101.11, 2-102.11, 2-201.11, or 2-201.12.
- Establishments that have shown consistent non-compliance with multiple non-critical violations.
- Establishments with complaints of a critical nature that have been found to be valid.
- Establishments that have been linked to a FBI outbreak by epidemiological evidence.

ATTACHMENT 2

Department of Inspections and Appeals Foodborne Illness Reporting and Investigation Process

1) *Before you have a foodborne illness:*

- Review the DIA Environmental Outbreak Checklist.
- Make sure you have copies of the current DIA Foodborne Illness Complaint Form.

2) *Intake of Foodborne Illness*

- Use the most current DIA Foodborne Illness Complaint Form (Revised 03.22.2011) when taking a complaint.
- Try and get as much information from the 7-day history as possible from the complainant: recording all foods/drinks/condiments, accurate dates and times, symptoms, onset symptoms and duration, names of establishments including each establishment's license number. If the person cannot remember, indicate that on the form. Completion of the form may take 20 -30 minutes.
- **If you do not have the time or resources to take the complaint, please contact DIA at 515-281-6096, and Mary will do the Foodborne Illness Complaint Form and forward a copy back to the contracting local health agency.** Mary Montgomery is DIA's Foodborne Illness Intake Specialist. The complaint form is forwarded directly to IDPH .
- Contracting local health agency enters the complaint into the food database as a general complaint (not foodborne illness complaint).
- If the local health agency takes the complaint, please immediately forward the entire DIA Foodborne Illness Complaint Form to Mary Montgomery Mary at mary.montgomery@dia.iowa.gov or fax 515-281-3291.
- Complainant's establishments are logged into a database for surveillance. This new database allows us to track all establishments identified on the FBI complaint forms indicating possible patterns and enabling us to respond accordingly.
- If patterns are identified, the Local Public Health and contracting local health agency are contacted.

3) *Resulting Actions*

Outbreak

- If there are numerous complaints from the establishment or the complaints have met the definition of an Outbreak (two or more persons ill from different households), please follow the Foodborne Illness Outbreak Contact Structure Handout attached until you have reached someone.
- All parties will be contacted and a conference call will commence the FBI outbreak with roles and tasks assigned.
- Use the DIA Environmental Outbreak Checklist detailing the main topics and issues related to FBI Environmental Investigations.
- Review this checklist in advance. In an outbreak situation, anticipate multiple trips to the establishment.

Complaint

- If an inspection has not been completed for the year, conduct an inspection.
- If an inspection has been conducted and it doesn't seem likely FBI came from the establishment, a phone call can be made.
- Use Foodborne Illness Complaint Checklist as guidance of what information to obtain during the visit or phone call. Phone inspections are entered in the database as "Other" type inspection, document that a phone call was made, FBI complaint, whether it was founded or not, and details obtained from the call. Similar notation is suggested when visiting establishment.

4.) *Send the Resulting Action*

Send the inspection report to the Foodborne Illness Intake Specialist, Mary Montgomery. All foodborne illness complaints and reports are maintained. The complaints and reports are used to review trends as part of the 2011 FDA Voluntary Retail Food Regulatory Program Standards.

If you need guidance or have any questions, call Greg at 515-689-3764. If no answer, hang up and call again. If still no answer, leave a message or contact the next person in the FBI Contact Structure. Greg is available to help with the FBI Program and provide resources, answer questions, give guidance on investigation, report writing, and to help improve surveillance.

Greg Utterback
Food & Consumer Safety Bureau
Foodborne Illness Coordinator
Food Safety Specialist
515-689-3764
greg.utterback@dia.iowa.gov

Mary Montgomery
Foodborne Illness Intake Specialist
515-281-6096
mary.montgomery@dia.iowa.gov

ATTACHMENT 3

Conflict of Interest Statement Food and Consumer Safety Bureau Department of Inspections and Appeals

In order to prevent conflicts of interest or the appearance of conflicts of interest, employees of local health agencies providing food inspection and licensing services under contract with the Department must disclose potential conflicts of interests and secondary employment. If a local health agency employee has a potential conflict, the employee and local health agency should propose to the Department of Inspections and Appeals a Conflict Remediation Plan. Furthermore, local health agencies shall require all employees to disclose secondary employment. If the secondary employment involves providing goods, products, services, or labor of any kind to establishments licensed and inspected by the Local Health Agency, the Conflict of Interest Statement and a Conflict Remediation Plan shall be submitted to the Department. The Department may approve, reject, or propose amendments to a Conflict Remediation Plan.

Please list any food establishments, food processors or hotels/motels where you have worked as an employee, consultant, officer, or any other manner in the last two years. Please list the name of the establishment and the city.

Please list any food establishments, food processors or hotels/motels operations where you have a financial or ownership interest. Please list the name of the establishment/processor and the city.

Do you currently have any secondary employment? If so, please list and describe the secondary employment? If so, does the secondary employment involve providing good, products, services, or labor of any kind to food establishment or hotels/motels, please describe.

Please list any immediate family member(s), who may fit any of the following criteria. Immediate family members includes a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

1. Do you have immediate family members(s) who are currently or within the last two years have been employed by a food establishment or hotel/motel?

☐ Yes ☐ No

If yes, who _____ and where _____.

2. Do you have any immediate family member(s) who have financial interest or ownership interest in a food establishment, food processor, or hotel/motel?

☐ Yes ☐ No

If yes, who _____ and where _____.

Local Health Agency Employee:

Signature:

Date:
