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**MEMORANDUM**

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**TO:** Randy Hill, Public Works Director

**FROM:** Jon Lutz, City Engineer

**SUBJECT:** Security Fence Agreement with GPC

**DATE:** January 31, 2012

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**INTRODUCTION:**

The City of Muscatine has been requested to approve a Security Fence Agreement on the Muscatine Island Levee with Grain Processing Corporation.

**BACKGROUND:**

An agreement between GPC and the City was approved in 2006 allowing the construction of a chain link fence for security on the riverside crown along the entire length of GPC's industrial area. GPC now plans to extend the levee fence in the upstream direction approximately 400'. Sarah Jones, Rock Island Corps of Engineers, requires an agreement be established between the City and GPC because the proposed fence is considered to be a levee encroachment. The 2006 agreement was used as a template with additional items added regarding ease of City access, fence openings, and GPC use of the levee. The agreement was reviewed and approved by the City Attorney.

**RECOMMENDATION/RATIONALE:**

I recommend the city enter into this agreement with GPC.

**BACKUP INFORMATION:**

1. The 2006 Agreement
2. The Proposed Agreement
3. Site Plan

## AMENDED AND RESTATED

### SECURITY FENCE AGREEMENT – MUSCATINE LEVEE

This Amended and Restated Security Fence Agreement (“Agreement”) is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between GRAIN PROCESSING CORPORATION, 1600 Oregon Street, Muscatine, Iowa (hereinafter “GPC”), and THE CITY OF MUSCATINE, IOWA (hereinafter “City”).

Whereas, GPC and the City have entered into a Security Fence Agreement dated December 7, 2006 (“2006 Agreement”) concerning placement and maintenance of a security fence (“Current Fence”) in relation to the Mississippi River levee within the right-of-way (or easement) of the Muscatine Local Flood Protection Project (“levee”); and

Whereas, GPC requests and the City agrees that GPC shall extend the Current Fence north along the levee in accordance with this Agreement; and

Whereas, this request has been reviewed and approved by the U.S. Army Corps of Engineers, Rock Island District (hereinafter “Corps”), and the specific conditions requested by the Corps have been incorporated herein; and

Whereas, the City is responsible (subject to Corps approval and subject to the further terms of this Agreement) for the operation and maintenance of the levee within the Muscatine City Limits, but shall not be responsible for GPC infrastructure or equipment run on the levee or any damages associated with the installation, use or maintenance of such infrastructure or equipment;

Now therefore, in consideration of the mutual promises hereinafter set forth, GPC and the City mutually agree as follows:

1. GPC may construct an extension of the Current Fence within the right of way of the levee at GPC’s cost on the riverside crown of the levee from the Current Fence north 410 feet and then down the crown westward along GPC’s property toward the south end of Illinois Street (“Extension Fence”). Together, the Current Fence and Extension Fence are referred to herein as the “Security Fence”.

2. GPC shall be responsible for the repair and maintenance of the Security Fence at GPC’s cost.

3. GPC shall be responsible for, at GPC’s cost, controlling brush and tree growth along the levee by cutting or chemical spraying. Such control shall be done to the satisfaction of the Muscatine City Engineer and the Corps.

4. GPC shall remove and replace the Security Fence, at GPC's cost, if it interferes with needed levee maintenance or improvement.

5. Installation of the Extension Fence shall meet the standard FE #6 fencing specifications as required by the Corps.

6. Fencing within the right-of-way of the levee shall be gated at both the north and south ends of the Security Fence to allow access for regular inspection, maintenance and emergency response. Gates shall also be installed at 200' intervals along the Extension Fence to provide access for regular inspection, maintenance and for emergency response.

7. If any disruption of the levee is caused due to the removal and installation of the Security Fence, GPC shall restore the levee to its original condition at GPC's cost.

8. As-built drawings of the completed Extension Fence work shall be submitted to Ms. Sarah Jones of the Corps, and to the Muscatine City Engineer within 90 days of work completion.

9. Failure on the part of GPC to meet any portion of this Agreement will render the Agreement null and void and the fence shall be relocated to the Current Fence location at GPC's cost.

10. Notices required to be sent to either party shall be sent as follows:

To GPC: Grain Processing Corporation  
1600 Oregon Street  
Muscatine, IA 24761  
ATTN: LEGAL DEPARTMENT  
With a copy to GPC Engineering Department

To City: City Engineer  
Public Works Department  
1459 Washington Street  
Muscatine, IA 52761  
With a copy to:  
City Attorney  
City Hall  
215 Sycamore Street  
Muscatine, IA 52761

11. The City shall be granted vehicle and foot access on the levee right of way for regular inspection, maintenance and emergency response. Access shall be through the

north or south guard gate or through a levee gate opened by GPC personnel. Such access shall be as unfettered as reasonably possible under the circumstances.

12. This Agreement shall amend and replace the 2006 Agreement and shall be binding upon GPC and any successors in interest to GPC.

Approved by action of the Muscatine City Council.

\_\_\_\_\_  
DeWayne Hopkins, Mayor  
City of Muscatine

\_\_\_\_\_  
Date

\_\_\_\_\_  
John C. Thorpe, President  
Grain Processing Corporation

\_\_\_\_\_  
Date

Attachment: Letter from Kent Stenmark, Corps of Engineers, dated November 6, 2006

STATE OF IOWA, MUSCATINE COUNTY, SS:

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2012, by DeWayne Hopkins, Mayor of the City of Muscatine on behalf of whom instrument was executed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa

STATE OF IOWA, MUSCATINE COUNTY, SS:

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2012, by John C. Thorpe, President of Grain Processing Corporation on behalf of whom instrument was executed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa



DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING - P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF

<http://www.mvr.usace.army.mil>

November 6, 2006

Emergency Management Division

Mr. Rob McDonald  
City Engineer Office  
1459 Washington Street  
Muscatine, Iowa 52761

Dear Mr. McDonald:

We have reviewed the proposal from Grain Processing Corporation, dated November 1, 2006, regarding the removal and relocation of the landward side security fencing to the riverside crown of the levee, within the right-of-way of the Muscatine Local Flood Protection Project.

After reviewing the proposal for impacts to the flood control project, we have no objection to the relocation of the fencing and furnish the following comments:

- a. The installation of the security fencing should meet the standard FE #6 fencing specifications. (A copy of the FE #6 fencing specifications and drawing is enclosed for your review.)
- b. Any fencing deemed necessary within the right-of-way of the levee shall be gated to allow access for regular maintenance and emergency response.
- c. If any disruption to the levee is caused due to the removal and installation of the fencing the levee must be restored to its original condition.
- d. As-built drawings of the proposed work are required, please submit to the undersigned.

Questions regarding the above subject matter will be taken by Mr. Mark Clark at (309) 794-5264 or Email [Mark.Clark@usace.army.mil](mailto:Mark.Clark@usace.army.mil).

Sincerely,

Kent A. Stenmark  
Chief, Emergency Management  
Division

Enclosure

XC: L. Koch

XC: RLZ

D Pinter

J D Spark

## SECURITY FENCE AGREEMENT – MUSCATINE LEVEE

This Agreement is made and entered into effective the 7th day of December 2006, by and between GRAIN PROCESSING CORPORATION, 1600 Oregon Street, Muscatine, Iowa (hereinafter "GPC"), and THE CITY OF MUSCATINE, IOWA (hereinafter "City").

Whereas, GPC has requested that a security fence be relocated in relation to the Mississippi River levee within the right-of-way (or easement) of the Muscatine Local Flood Protection Project ("levee"); and

Whereas, this request has been reviewed and approved by the U.S. Army Corps of Engineers, Rock Island District (hereinafter "Corps") (copy of letter attached), and the specific conditions requested by the Corps have been incorporated herein; and

Whereas, the City is responsible (subject to Corps approval) for the operation and maintenance of the levee within the Muscatine City Limits;

Now therefore, in consideration of the mutual promises hereinafter set forth, GPC and the City mutually agree as follows:

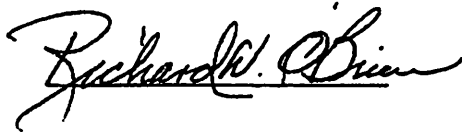
1. GPC may remove and relocate the remainder of their existing security fence from the landward side toe of the Mississippi River levee to the riverside crown of the levee, all within the right-of-way of the levee and at GPC's cost.
2. GPC shall be responsible for the repair and maintenance of the fence at GPC's cost.
3. GPC shall be responsible for, at GPC's cost, controlling brush and tree growth along the levee by cutting or chemical spraying. Such control shall be done to the satisfaction of the Muscatine City Engineer and the Corps.
4. GPC shall remove and replace the fence, at GPC's cost, if it interferes with needed levee maintenance or improvement.
5. Installation of the security fencing shall meet the standard FE #6 fencing specifications as required by the Corps.
6. Fencing within the right-of-way of the levee shall be gated at the ends to allow access for regular inspection, maintenance and emergency response. In the event that both parties mutually agree to transfer brush and tree control to the City, GPC will install gates in the fence every 200 feet, that face the Mississippi River, at GPC's cost. These gates shall be acceptable to the City Engineer.
7. If any disruption of the levee is caused due to the removal and installation of the fencing, GPC shall restore the levee to its original condition at GPC's cost.
8. As-built drawings of the completed work shall be submitted to Mr. Mark Clark of the Corps, and to the Muscatine City Engineer within 90 days of work completion.
9. Failure on the part of GPC to meet any portion of this Agreement will render the Agreement null and void and the fence shall be relocated to its previous location at GPC's cost.
10. Notices required to be sent to either party shall be sent as follows:

To GPC: Grain Processing Corporation  
1600 Oregon Street  
Muscatine, Iowa 52761  
ATTN: Legal Department  
With a copy to: GPC Engineering Department

To CITY: City Engineer  
Public Works Department  
1459 Washington Street  
Muscatine, Iowa 52761  
With a copy to:  
City Attorney  
City Hall  
215 Sycamore Street  
Muscatine, Iowa 52761

11. This Agreement shall be binding upon GPC and any successors in interest to GPC.

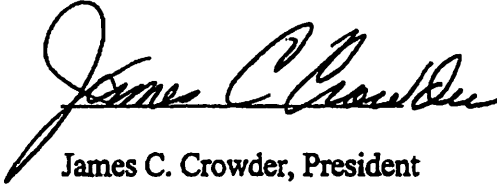
Approved by action of the Muscatine City Council.



12/07/2006

Richard W. O'Brien, Mayor  
City of Muscatine

Date



12-11-06

James C. Crowder, President  
Grain Processing Corporation

Date

Attachment: Letter from Kent Stenmark, Corps of Engineers, dated November 6, 2006

STATE OF IOWA, MUSCATINE COUNTY, SS:

This instrument was acknowledged before me on December 8, 2006, by Richard W. O'Brien, Mayor of the City of Muscatine on behalf of whom instrument was executed.



Lorrie Fry  
Notary Public

STATE OF IOWA, MUSCATINE COUNTY, SS:

This instrument was acknowledged before me on December 11<sup>th</sup>, 2006, by James C. Crowder, President of Grain Processing Corporation on behalf of whom instrument was executed.



Chris Brown  
Notary Public





# CITY OF MUSCATINE

(Property Information)

