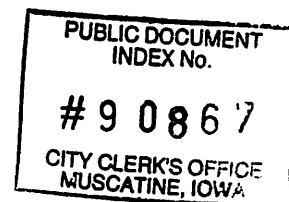


MEMORANDUM  
June 12, 2009



TO: A.J. Johnson, City Administrator  
FROM: Richard Klimes, Director of Parks and Recreation  
SUBJECT: Weed Park/MP&W Tennis Court Easement

A handwritten signature in black ink, appearing to be "Richard Klimes", with a small number "2" written below it.

Please accept this memo and the attached information as a request for the Muscatine City Council to approve an Easement Agreement between the City of Muscatine and Muscatine Power and Water.

In developing the "Tennis Court Construction Project", the old water tower site owned by Muscatine Power and Water was identified as a key location in developing tennis courts in Weed Park. The area would provide for the most cost effective and functional way to replace/build tennis courts in the park system.

The City staff, City Attorney and Muscatine Power and Water staff has prepared a Recreational Easement between Muscatine Power and Water and the City of Muscatine. At this time staff would request that the Muscatine City Council approve the Recreational Easement with MP&W for the Tennis Court Construction Project.

Thank you for your time and attention to this matter. Please contact me if you have any questions, comments or concerns.

C: Les Dennis, Park Maintenance Supervisor



## Muscatine Power and Water

3205 Cedar Street • Muscatine, Iowa 52761-2204  
563-263-2631

June 8, 2009

Harvey Allbee  
City Attorney  
115 East 2<sup>nd</sup> Street  
Muscatine, IA 52761

Re: Recreational Easement for MP&W Property near Weed Park

Dear Harvey:

Per our prior email correspondence, enclosed is a copy of the agreed upon Recreational Easement from Muscatine Power & Water to the City of Muscatine for the property near Weed Park executed on behalf of the Board of Trustees. The Board voted unanimously to grant the easement and spoke positively of the planned tennis court project.

Muscatine Power & Water concurs with the City's plans to erect fencing, hard surface tennis courts, posts to support the tennis nets and sidewalks in the easement area in accordance with the terms of the easement. I understand that Rich Klimes will continue to work with Ray Danz, MPW's Director of Operations and his staff, to coordinate the utility work associated with the project.

Thank you for taking care of the Recorder's Cover Sheet. Please send a copy of the recorded easement to my attention.

Thanks,

A handwritten signature in blue ink that reads "Brandy Dulceak". The signature is fluid and cursive, written over a light blue background.

Brandy Dulceak  
Staff Attorney



Prepared by: Brandy Dulceak, Staff Attorney 563-262-3310  
Muscatine Power and Water, 3205 Cedar St., Muscatine, IA 52761

## **RECREATIONAL USE EASEMENT AGREEMENT**

For consideration provided by the **City of Muscatine, Iowa ("Grantee")**, to the **Board of Water, Electric, and Communications Trustees for the City of Muscatine, Iowa d/b/a Muscatine Power & Water ("Grantor")**, the receipt of which is hereby acknowledged, Grantor grants, conveys and warrants to Grantee, its successors and assigns, a perpetual right-of-way and recreational use easement in, over, under and upon the following described real estate owned by Grantor:

Tract of real estate situated in the Southeast Quarter of Section 25 Township 77 North, Range 2 West of the 5<sup>th</sup> P.M. in Muscatine County, Iowa, described as follows:

Commencing at a point one foot North of the intersection of the North line of Hillcrest Avenue and West line of Weed Park, which point is 1504.5 feet East of the East Line of Park Avenue in the City of Muscatine, Iowa; thence due North along the West line of Weed Park 200 feet; thence due West 200 feet; thence due South 200 feet to a point one foot North of the North line of said Hillcrest Avenue; thence due East to the point of beginning.

The easement area is to be used for the purpose of constructing, reconstructing, operating, repairing, or maintaining public tennis courts, other public recreational facilities or other appurtenances related to the recreational use of the easement area. Grantor further grants Grantee the right of reasonable ingress and egress to, from, over, along and across the easement area.

Grantor and Grantee further agree that Grantee shall reimburse Grantor for the relocation of any electric lines, communications lines, water mains, appurtenances or accessories currently installed in the easement area that may be necessitated by Grantee's use of the easement area. Grantee further agrees to maintain the easement area, including any lawn mowing, snow removal or other necessary maintenance.

Grantee individually or by assignment, easement or otherwise shall not erect or construct any buildings, structures or appurtenances on the above-described easement area without written permission of Grantor. In the event of such unauthorized construction by Grantee, Grantor shall not be liable for personal injuries or responsible for damages to the same in carrying out Grantor's responsibilities with regard to any electric lines, communications lines, water mains, appurtenances or accessories installed in the easement area.

It is further agreed that Grantee (except as provided above) shall be liable to Grantor for any damage to any property of the Grantor caused by the Grantee, its officers, employees or contractors, while making use of the easement area. However, nothing in this easement agreement shall be construed to relieve any contractor, subcontractor or employee of Grantee from liability to the Grantor, officers, employees, agents or contractors for damages caused by the Grantee, or by any contractor, subcontractor or employee of the Grantee's assigns.

This easement agreement binds the parties and their respective heirs, beneficiaries, fiduciaries, successors or assigns, and shall run with the land

*Signatures follow on next page.*

Grantor- Board of Water, Electric, and Communications Trustees for the City of Muscatine, Iowa d/b/a Muscatine Power & Water

Signed: Sal LoBianco

Print Name: Sal LoBianco Title: General Manager

Dated: June 8, 2009

ATTEST

Signed: Donald W. Kerker

Print Name: Don Kerker Title: Board Secretary

STATE OF IOWA, County of Muscatine, ss:

On June 8, 2009, before me, a Notary Public, personally appeared Sal LoBianco, as General Manager, authorized by the Board of Water, Electric and Communications Trustees for the City of Muscatine, Iowa, and that he acknowledged execution of this instrument to be a voluntary act and deed.



Brenda Christensen  
Notary Public

Grantee- City of Muscatine, Iowa

Signed: Richard W. O'Brien

Print Name: Richard W. O'Brien Title: Mayor

Dated: June 18, 2009

ATTEST

Signed: A.J. Johnson

Print Name: A.J. Johnson Title: City Administrator

STATE OF IOWA, County of Muscatine, ss:

On June 18, 2009, before me, a Notary Public, personally appeared Richard W. O'Brien, Mayor of the City of Muscatine, Iowa, and that he acknowledged execution of this instrument to be a voluntary act and deed.



Fran Donelson  
Notary Public

BRENDA CHRISTENSEN  
Commission Number T48020  
My Commission Expires  
July 24, 2010



17-4-2010  
Brenda Christensen  
Commission Number T48020  
My Commission Expires  
July 24, 2010