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Executive Council of Iowa

CAPITOL BUILDING
DES MOINES, IOWA 50319
PHONE: 515 281-5368

August 7, 2023

Mr. Nathan Schmitz
Land & Water Bureau
Iowa Department of Natural Resources
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319

Dear Mr. Schmitz:

The Executive Council, in a meeting held this date, approved the following lease:

Lease between DNR and Muscatine Power and Water

Date of Lease: July 1, 2023 to December 31, 2027

Legal Description: A portion of the bed of the Mississippi River approximately 2,177 feet in frontage and 200 feet in depth at river mile 453 in Section 14, Township 76 North, Range 2 West of the 5th P.M. in Muscatine County, Iowa immediately south of the Muscatine City limits as that limit existed in 1945. A map of the leased premises is attached as Exhibit "A", which is hereby incorporated herein.

Purpose: Barge loading and unloading of coal

Annual Fee: \$23,100.00

EXECUTIVE COUNCIL OF IOWA

Victoria Newton

Victoria Newton
Executive Secretary

Newton, Victoria [TOS]

From: Moss, Michael J. [DOT] <Michael.Moss@iowadot.us>
Sent: Wednesday, August 2, 2023 8:52 AM
To: Newton, Victoria [TOS]
Cc: Schmitz, Nathan [DNR]; Steffensmeier, Andrew; Angstrom, Melissa [DOT]
Subject: FW: Chapter 18 Lease No 22-R
Attachments: 22-R Muscatine Power and Water - Lease - 2023 Tenant + Director Signed.pdf

Ms. Newton,

This is to advise that I have reviewed and hereby recommend Executive Council approval of the attached Chapter 18 lease forwarded to me for review by Nathan Schmitz at the DNR's Land and Water Bureau.

By way of background, this a commercial lease which involves Mississippi River frontage at river mile 453 in Section 14, Township 76 North, Range 2 West of the 5th PM, Muscatine County, Iowa. The lessee, Muscatine Power and Water, intends to use the property for barge loading and unloading purposes, and it has agreed to pay an annual fee of \$23,100.00 for this privilege. The term of the lease is less than five (5) years. The DNR has determined that a lease subject to the conditions of this agreement will preserve the State's title and not adversely affect public use of the real estate.

If you or the Executive Council members need me to provide anything further, please do not hesitate to let me know. Thank you.

Sincerely,

Michael J. Moss



Michael J. Moss

Assistant Attorney General

Office of the Attorney General of Iowa
Transportation Division

800 Lincoln Way
Ames, Iowa 50010

Main: (515) 239-1521 | Direct: (515) 239-1524

Email: Michael.moss@iowadot.us | www.iowaattorneygeneral.gov

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From: Schmitz, Nathan <nathan.schmitz@dnr.iowa.gov>

Sent: Tuesday, August 1, 2023 2:09 PM

To: Moss, Michael J. [DOT] <Michael.Moss@iowadot.us>; Newton, Victoria [TOS] <victoria.newton@tos.iowa.gov>

Cc: Steffensmeier, Andrew <andrew.steffensmeier@ag.iowa.gov>

Subject: Chapter 18 Lease No 22-R

CAUTION:

This email originated from outside the Iowa Department of Transportation.
Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mike,

Please find attached lease 22-R with Muscatine Power and Water. If you approve of this lease please forward to Ms. Newton the same.

Thanks,



iowadnr.gov

NATHAN SCHMITZ | Land Management Specialist

Land & Water Bureau

Iowa Department of Natural Resources

P: 515-371-2062 NEW

Wallace State Office Building

502 E. 9th St. Des Moines, IA 50319



**EXECUTIVE COUNCIL OF IOWA LEASE
[IOWA DEPARTMENT OF NATURAL RESOURCES]**

The Executive Council of Iowa (Council), upon recommendation of the Iowa Department of Natural Resources (DNR), is authorized by Iowa Code Section 461A.25, to lease public real estate in accordance with a rental fee schedule established in 571 Iowa Administrative Code, Chapter 18.

Whereas Muscatine Power and Water, (Tenant), a Municipal Utility, 3205 Cedar Street, Muscatine, IA 52761 has made a proper application for a renewal lease of real estate described as a portion of the sovereign bed of the Mississippi River. The Tenant's request has been reviewed by the DNR and it has determined that a lease subject to the conditions of this agreement will preserve the state's title and not adversely affect public use of the real estate.

Therefore, the Council leases to the Tenant the following described premises (referred to in the lease terms as "Leased Premises"):

A portion of the bed of the Mississippi River approximately 2,177 feet in frontage and 200 feet in depth at river mile 453 in Section 14, Township 76 North, Range 2 West of the 5th P.M. in Muscatine County, Iowa immediately south of the Muscatine City limits as that limit existed in 1945. A map of the leased premises is attached as Exhibit "A", which is hereby incorporated herein.

The Tenant, in consideration of the agreements below, leases from the State of Iowa the Leased Premises, according to the following conditions:

- 1. TERM OF LEASE.** The term of this lease shall be from July 1, 2023 to December 31, 2027 inclusive.
- 2. RENTAL.** The DNR has determined the proposed use to be commercial. The Tenant shall pay rent for the term of this lease to the DNR at its offices at the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034 or at such place as it may direct, as follows: \$11,550 (\$23,100 * 6/12) on the date this lease is executed by the Tenant, and \$23,100 on or before January 1, in each succeeding year for the term of the lease. If the IAC571- Chapter 18 Fee Schedule is amended during the term of this lease, the fee shall be adjusted to meet the revised schedule.
- 3. TENANT'S USE OF THE PREMISES.** Consistent with the limitations described herein, the Tenant agrees during the term of this lease to use and occupy the Leased Premises only for barge loading and unloading of coal. Other uses are prohibited unless authorized by a written amendment to this lease.

4. STRUCTURES.

- a. Only those structures or fills existing on the Leased Premises at the time of execution of this lease are authorized under this lease. The following structures and fills exist on the premises at the time of execution of this lease:
 - i. A barge unloading appurtenance and mooring cells
- b. The Tenant shall not materially modify, alter or add to those structures or fills identified herein without first obtaining permission from the DNR, which may require the issuance of a Sovereign Lands construction permit pursuant to Iowa Code section 461A.4 and 571 IAC chapter 13 depending on the extent of such modification or addition. The Tenant also agrees to obtain all necessary permits from other governmental agencies prior to performing any construction on the Leased Premises and comply with any zoning requirements that may apply to their adjacent property.
- c. If the structures described herein deteriorate beyond repair or are otherwise destroyed, regardless of cause, the Tenant must reconstruct, repair or remove such structures, but only after consultation with and written approval by DNR, which may require the issuance of a Sovereign Lands construction permit pursuant to Iowa Code section 461A.4 and 571 IAC chapter 13 depending on the extent of such modification or addition.
- d. General maintenance described in paragraph five (5) below does not constitute a material modification, alteration, or addition for purposes of subparagraphs b and c of this section.

5. MAINTENANCE. The structure(s) described above shall be maintained by the Tenant to keep in good working order. The Tenant shall be responsible to make repairs and adjustments to such structures, if required, to avoid any harm or injury to the public.

6. TITLE TO PREMISES. The Tenant agrees that title of the state of Iowa to the Leased Premises will not be affected by Tenant's occupancy; and any accretion to the Tenant's land resulting from fills, jetties or other structures placed and kept on state-owned real property under the authority of an appropriate permit and this lease shall be the property of the state of Iowa and that the Tenant shall have no accretion rights thereto.

7. DEPARTMENT'S USE OF THE PREMISES. Representatives of the DNR may enter upon the Leased Premises for the purposes of viewing alteration thereof by the Tenant, to inspect compliance with the terms of this lease, or to perform any duties of the DNR.

8. PUBLIC USE OF THE PREMISES. This lease shall not be construed to give the Tenant exclusive use of the Leased Premises. The right to enter upon the Leased Premises for any lawful purpose is hereby specifically reserved to the public of the state of Iowa. However, this lease is not intended to deny the Tenant the right to exclude the public from using the Leased Premises, or

portions thereof, in a manner that poses risk to the public health, safety or welfare by virtue of the Tenant's authorized use or that unreasonably interferes with the Tenant's authorized use.

9. SURRENDER OF PREMISES AT END OF TERM. At the expiration of the term of this lease and any renewal periods, the Tenant will yield possession of the Leased Premises to the DNR and will, within 90 days after the expiration of the term of this lease, remove all fill, equipment or structures and restore the affected area to an undisturbed condition.

10. AMENDMENT, TRANSFER, ASSIGNMENT, AND SUBLEASE. This lease may be amended only by written mutual consent of the parties. The Tenant shall not transfer or assign this lease and shall not sublet the Leased Premises or any part thereof except with prior written consent of the DNR.

11. INDEMNIFICATION. The Tenant agrees to jointly and severally indemnify and hold the State, its agencies, officials and employees harmless from all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the DNR, related to or arising from its acts under this Lease. The Tenant shall be solely responsible and liable for any and all of its actions or inactions, as well of the actions or inactions of its subcontractors, employees, agents, licensees, and invitees, and results thereof, of any nature, which may occur within or upon the Leased Premises or in connection with this Lease.

12. TERMINATION AND DEFAULT OF TENANT. This lease shall terminate automatically, without notice, on the date specified in numbered Paragraph 1 above. However, the DNR may terminate this lease for material violation of any condition of this lease. Notice of such termination by the DNR shall be given in writing, and the Tenant shall have 30 days after service thereof to remove themselves from the Leased Premises unless a longer period is specified in the notice. If the Tenant, after termination, fails to remove any structure or fill placed on state land under authority of a DNR permit or this lease, the DNR, with assistance from the Attorney General, may bring an action for a court order compelling removal at the Tenant's expense.

13. NOTICES. All notices provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, addressed to the parties as provided above. The address to which the notices shall be mailed to either party may be changed by written notice given by either party to the other. Nothing in this paragraph shall preclude the giving of any notice by personal service.

14. CONSTRUCTION. Words and phrases in this document shall be construed as in the singular or plural number and as masculine, feminine or neuter gender according to the context.

15. RENEWAL. This lease may be renewed if it does not adversely affect a public interest. In the event renewal is desired, the Tenant agrees to apply for renewal of this lease at least 60 days prior to the expiration date.

16. SEVERABILITY. If any provision of this lease is determined by a 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 lease.

17. COMPLIANCE WITH LAWS. The Tenant shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders in its utilization of the Leased Premises.

18. CHOICE OF LAW AND FORUM. The parties agree this lease shall be construed solely in accordance with the laws of the State of Iowa, and the parties further agree and acknowledge in the event there are any court proceedings arising out of or in any manner related to this lease such proceedings shall be brought exclusively in the Iowa District Court in and for Polk County with respect to which the parties fully consent to that court's jurisdiction and waive any objections of any sort to such proceedings going forth in that forum. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the DNR or the State of Iowa.

19. ENTIRE AGREEMENT. This lease constitutes the entire agreement between DNR and the Tenant with respect to the use of the Leased Premises as described here, and the Tenant acknowledges that it is entering into the lease solely on the basis of the terms and conditions herein contained and not in reliance upon any representation, statement, inducement or promise, whether oral or written, not contained herein. This lease supersedes all prior contracts and agreements between DNR and the Tenant for the use of the Leased Premises.

- Remainder of this page left intentionally blank. -

TENANT:

Brandy D. Olson

Brandy Olson
General Counsel/Director, Legal, Regulatory & People Services

STATE OF Iowa, Muscatine COUNTY:

This instrument was acknowledged before me on 7/31/23 (date) by Brandy Olson as General Counsel/Director, Legal, Regulatory & People Services for Muscatine Power and Water

Sarah Wienke
NOTARY PUBLIC FOR THE STATE OF Iowa



IOWA DEPARTMENT OF NATURAL RESOURCES:

Recommended for approval by majority vote of the Iowa Natural Resource Commission at its meeting on June 8th 2023, as reflected by the minutes.

Kayla Lyon Digitally signed by Kayla Lyon
Date: 2023.08.01 09:06:43 -05'00'
Kayla Lyon, Director

EXECUTIVE COUNCIL OF IOWA:

This lease is approved under the authority of a resolution adopted at an official meeting of the Executive Council of Iowa on August 7, 2023, as reflected by the minutes.

Victoria Newton
Victoria Newton
Executive Secretary

EXECUTIVE COUNCIL
AUG 07 2023
EXECUTIVE COUNCIL
~~JUL 07 2023~~



Exhibit A

