



**SUBJECT: Approve Sale of Purchased Capacity from Polk County Rural Water District #1 to Xenia Rural Water District**

**SUMMARY:**

Polk County Rural Water District #1 (PCRWD #1) has purchased from Des Moines Water Works 125,000 gallons per day of purchased capacity. In 2013, PCRWD #1 entered into a Total Service 28E agreement with DMWW. Because purchased capacity does not provide much benefit under a Total Service relationship, PCRWD #1 recently offered their purchased capacity for sale.

Xenia Rural Water District would like to purchase the 125,000 gallons of purchased capacity from PCRWD #1. Xenia currently has 2.82456 MGD, and this purchase of an additional 125,000 gallons would provide Xenia with 2.94956 MGD. Xenia has agreed to pay \$2.581 per gallon, or \$322,625, to PCRWD #1 for this purchased capacity. PCRWD #1 will have no purchased capacity after this sale.

Legal Counsel has reviewed the attached agreement effecting the sale and assignment of purchased capacity from PCRWD #1 to Xenia, along with the appropriate supplemental adoption annexes.

**FISCAL IMPACT:**

There is no fiscal impact to Des Moines Water Works as a result of this sale of purchased capacity by PCRWD #1 to Xenia Rural Water District. Des Moines Water Works will update purchased capacity records to reflect the assignment of 125,000 gallons in purchased capacity from PCRWD #1 to Xenia Rural Water District.

**RECOMMENDED ACTION:**

Recommend the Board approve and consent to Polk County Rural Water District #1's sale and assignment of 125,000 gallons per day of purchased capacity to Xenia Rural Water District and authorize the Chairperson and CEO and General Manager to execute the Agreement for Assignment and Sale of Purchased Capacity and appropriate supplemental Adoption Annexes.

**BOARD REQUIRED ACTION:**

Motion to approve and consent to Polk County Rural Water District #1's sale and assignment of 125,000 gallons per day of purchased capacity to Xenia Rural Water District and authorize the Chairperson and CEO and General Manager to execute the Agreement for Assignment and Sale of Purchased Capacity and appropriate supplemental Adoption Annexes.

_____ / _____ (date)	_____ / _____ (date)	_____ / _____ William G. Stowe CEO and General Manager (date)
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**SUPPLEMENT NUMBER 1 TO ADOPTION ANNEX**

This Supplement Number 1 to Adoption Annex is executed effective as of \_\_\_\_\_, 2014, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and Polk County Rural Water District #1 (“PCRWD #1”), and shall form a part of the Adoption Annex dated July 26, 2005 (the “Adoption Annex”), and the Wholesale Water Service Master Agreement dated June 10, 2005, among DMWW, PCRWD #1, and other Participants (the “Wholesale Water Service Master Agreement”) for the purpose of reflecting the sale of 125,000 gallons purchased capacity to Xenia Rural Water District (“Xenia”).

1. Effective as of this date, the Purchased capacity of PCRWD #1 shall be reduced to 0.00 gallons and shall be as follows in total:

1996 Purchased Capacity:	None
2005 Purchased Capacity:	0.125 MGD
2014 Sale to Xenia:	<u>(0.125) MGD</u>
TOTAL	0.000 MGD

2. PCRWD #1’s purchased capacity shall be reduced to zero after the effective date under the terms of the 28E Total Service Agreement between PCRWD #1 and DMWW.

This Supplement No. 1 to Adoption Annex shall be effective as of the date set forth above and shall form a part of the Adoption Annex and the Wholesale Water Service Master Agreement from and after such date.

BOARD OF WATER WORKS TRUSTEES  
OF THE CITY OF DES MOINES, IOWA

PCRWD #1, IOWA

By: \_\_\_\_\_  
Graham R. Gillette, Chairperson

By: \_\_\_\_\_  
Francis Schlueter, Chair

ATTEST: \_\_\_\_\_  
William G. Stowe, CEO and  
General Manager

ATTEST: \_\_\_\_\_

**SUPPLEMENT NUMBER 3 TO ADOPTION ANNEX**

This Supplement Number 3 to Adoption Annex is executed effective as of \_\_\_\_\_, 2014, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and Xenia Rural Water District, Iowa (“Xenia”), and shall form a part of the Adoption Annex dated July 26, 2005 as previously supplemented by Supplements #1 and #2 (the “Adoption Annex”), and the Wholesale Water Service Master Agreement dated June 10, 2005, among DMWW, Xenia, and other Participants (the “Wholesale Water Service Master Agreement”) for the purpose of reflecting the current Service territory of Xenia and the acquisition by Xenia of an additional 125,000 gallons of purchased capacity from Polk County Rural Water District #1 (“PCRWD #1”) as follows:

1. Effective as of the date above, the Purchased Capacity of Xenia shall be increased by 125,000 gallons per day and shall be as follows in total:

1996 Purchased Capacity:	2.59456 MGD
Converted Off-Peak Capacity	0.23000 MGD
2005 Purchased Capacity	None
2014 Purchase from PCRWD #1	<u>0.12500 MGD</u>
<b>TOTAL:</b>	<b>2.94956 MGD</b>

2. DMWW acknowledges that all of the capacity acquired by Xenia from PCRWD #1 has been fully paid for by PCRWD #1, and that Xenia is not responsible for any of the consideration to be paid to DMWW by PCRWD #1 and that such consideration shall be the sole responsibility of PCRWD #1.

This Supplement No. 3 to Adoption Annex shall be effective as of the date set forth above and shall form a part of the Adoption Annex and the Wholesale Water Service Master Agreement from and after such date.

BOARD OF WATER WORKS TRUSTEES  
OF THE CITY OF DES MOINES, IOWA

XENIA RURAL WATER DISTRICT

By: \_\_\_\_\_  
Graham R. Gillette, Chairperson

By: \_\_\_\_\_  
Dan Lovett, Chair

ATTEST: \_\_\_\_\_  
William G. Stowe, CEO and  
General Manager

ATTEST: \_\_\_\_\_  
Harold Jensen, Secretary

**AGREEMENT FOR ASSIGNMENT AND SALE OF  
PURCHASED CAPACITY AND SUPPLEMENTAL AGREEMENT**

AGREEMENT FOR ASSIGNMENT and SALE of PURCHASED CAPACITY AND SUPPLEMENTAL AGREEMENT and made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between XENIA RURAL WATER DISTRICT ("**Xenia**"), Polk County Rural Water District #1 ("**PCRWD #1**"), and the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA ("**DMWW**").

**RECITALS:**

- A. DMWW is municipal utility organized and acting under Chapter 388, Code of Iowa, which manages and controls the water works system serving the City of Des Moines, Iowa and environs.
- B. PCRWD #1 is a rural water district organized and existing under Chapter 504, Code of Iowa, has a water utility within its boundaries, which is operated under a Total Service 28E Agreement with DMWW (the "PCRWD #1 28E Agreement").
- C. Xenia is a rural water district organized Chapter 357A, Code of Iowa and operates a water utility within its boundaries.
- D. PCRWD #1 acquired 125,000 gallons of purchased capacity under the Wholesale Water Service Master Agreement dated June 10, 2005 (the "**Master Agreement**") and Adoption Annex dated July 26, 2005.
- E. Xenia is a party to the Master Agreement by reason of an Adoption Annex dated July 26, 2005, and has purchased capacity with DMWW totaling 2.82456 MGD, as set forth therein prior to the transaction provided hereby.
- F. Xenia desires to purchase and PCRWD #1 desires to sell and assign to Xenia 125,000 gallons per day of purchased capacity under the terms provided herein, which will reduce the purchased capacity of PCRWD #1 to zero (0.00) gallons.
- G. PCRWD #1 and Xenia each desire to now execute a Supplement to Adoption Annex under the Master Agreement to reflect this sale and purchase of purchased capacity.
- H. DMWW desires to approve and consent to such transactions, and the parties desire to document the resulting relationships as provided herein.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Xenia hereby purchases, and PCRWD #1 hereby sells and assigns 125,000 gallons per day of the purchased capacity originally acquired by PCRWD #1 under the Purchased Capacity Agreement and fully applicable under the Master Agreement. After such sale, Xenia shall have a total purchased capacity of 2.94956 MGD under the Master Agreement. After such sale, PCRWD #1 shall have a total purchase capacity of zero (0.00) gallons under the Master Agreement, but it shall remain a party to the Master Agreement.
2. DMWW approves and consents to the purchase by Xenia and the sale and assignment by PCRWD #1.
3. Xenia agrees to pay PCRWD #1 the sum of \$ 322,625.00 upon execution of this Agreement, contingent upon the approval of this Agreement by the governing bodies of all Parties. Xenia shall be solely responsible for such payment to PCRWD #1. DMWW neither has, nor shall make, any claim to such proceeds.
4. PCRWD #1 and DMWW shall execute a Supplement No. 1 to Adoption Annex in the form of Exhibit A hereto. Xenia and DMWW shall a Supplement No. 3 to Adoption Annex in the form of Exhibit B hereto.
5. The Master Agreement shall remain in full force and effect as modified by the above described supplements.
6. Xenia does not assume, nor is it obligated, to DMWW, its creditors, successors or assigns, in connection with any obligations for indebtedness in any way related to the capacity purchased by Xenia from PCRWD #1 hereunder. PCRWD #1 shall defend and hold Xenia harmless from any obligations therefore and indemnify Xenia for any and all claims, demands, suits and expenses, including but not limited to attorney fees and costs, in any way related to any such obligation or indebtedness.
7. Except as necessarily herein modified, all other agreements now existing by and among DMWW, PCRWD #1, and Xenia remain unchanged.

BOARD OF WATER WORKS TRUSTEES  
OF THE CITY OF DES MOINES, IOWA

POLK COUNTY RURAL WATER DISTRICT  
#1, IOWA

By: \_\_\_\_\_

Graham R. Gillette, Chairperson

By: \_\_\_\_\_

Francis Schlueter, Chairperson

ATTEST: \_\_\_\_\_

William G. Stowe, CEO and General Manager

ATTEST: \_\_\_\_\_

XENIA RURAL WATER DISTRICT, IOWA

By: \_\_\_\_\_

Dan Lovett, Chairperson

ATTEST: \_\_\_\_\_

Harold Jensen, Secretary