

AGENDA ITEM FORM

SUBJECT: Authorize Chairperson to Execute the 28E Agreement between Des Moines Water Works, the City of Waukee, and Xenia Rural Water District for the Waukee/Xenia Joint System Facilities

SUMMARY:

- Des Moines Water Works (DMWW), the City of Waukee, and Xenia Rural Water District are entering into a 28E Agreement to get additional water to the City of Waukee.
- Xenia owns and operates a water booster station located adjacent to the L.P. Moon Booster Station and a 24-inch water main along Hickman Road.
- Xenia and Waukee worked out a deal in which Waukee will purchase capacity in the booster station and feeder main from Xenia. Waukee purchased 278 gallons per minute of capacity in the booster station for \$135,686.11 and the same capacity in the feeder main for \$121,216.67. This capacity purchase in no way includes DMWW.
- Waukee shall also design and construct a new chemical feed facility for Xenia near the intersection of Hickman and T Avenue. DMWW is not involved in the design or construction of this facility.
- Waukee shall also design and construct two new control valves which will control water into Waukee and Xenia's systems. DMWW staff will be involved in oversight of this construction.
- DMWW will design and construct an expanded chemical feed facility at the LP Moon site which will boost chlorine in the new Joint Waukee/Xenia booster station. Waukee will reimburse DMWW for 100% of these costs.
- DMWW will take over operations and maintenance of the Joint Waukee/Xenia Booster Station and the 24-inch feeder main to the start of Xenia's system. Waukee and Xenia will reimburse DMWW 100% of the costs needed for operation and maintenance.
- DMWW will take over operations and maintenance of the control valve used to fill the Waukee system. Waukee will reimburse DMWW 100% of the costs needed for operation and maintenance.
- Xenia will take over operations of the new chemical feed facility and the control valve used to fill the Xenia system.
- DMWW staff has been working with DMWW legal counsel to complete the 28E Agreement.
- All parties have reviewed the agreement and consider it ready for approval by all necessary Boards and Councils.

FISCAL IMPACT:

The City of Waukee will reimburse Des Moines Water Works for 100% of the costs incurred by DMWW as part of this project. Waukee and Xenia will reimburse DMWW for 100% of costs needed for operation and maintenance of the new joint facilities.

RECOMMENDED ACTION:

Authorize the Chairperson to execute the 28E Agreement between Des Moines Water Works, the City of Waukee, and Xenia Rural Water District for the Waukee/Xenia Joint System Facilities.

BOARD REQUIRED ACTION:

Motion to approve and authorize the Chairperson to execute the 28E Agreement between Des Moines Water Works, the City of Waukee, and Xenia Rural Water District for the Waukee/Xenia Joint System Facilities.

<p><i>Nathan W Casey</i> 2/19/19 Nathan W. Casey, P.E. (date) Engineering Supervisor</p>	<p><i>[Signature]</i> 2/19/2019 Michael J. McCurnin, P.E. (date) Engineering Services Manager</p>	<p><i>[Signature]</i> 2/20/19 William G. Stowe (date) CEO and General Manager</p>
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**CHAPTER 28E AGREEMENT BY AND BETWEEN
THE CITY OF WAUKEE, IOWA
XENIA RURAL WATER DISTRICT,
AND THE BOARD OF WATER WORKS TRUSTEES OF THE
CITY OF DES MOINES, IOWA**

THIS CHAPTER 28E AGREEMENT (hereinafter "this Agreement") is made and entered into by and among the CITY OF WAUKEE, IOWA ("Waukee"), XENIA RURAL WATER DISTRICT ("Xenia"), and the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA ("DMWW") (each a "party" and collectively "the parties") as of the dates set forth below.

PREAMBLE

WITNESSETH:

WHEREAS, the parties desire to enter into an Agreement pursuant to Chapter 28E, Iowa Code, to cause, and to undertake certain enhancements to the water systems as described herein in order to provide service to Waukee and Xenia from facilities currently owned by Xenia.

WHEREAS, Waukee has previously entered into a Wholesale Water Service Master Agreement with DMWW dated June 10, 2005, with related Adoption Annex executed effective August 15, 2005 as supplemented by Supplement Number 1 to Adoption Annex dated July 1, 2012 (the "2005 Wholesale Master Agreement") which shall continue to govern the wholesale supply of water by DMWW; and

WHEREAS, Xenia has previously entered into a Wholesale Water Service Master Agreement with DMWW dated June 10, 2005, with related Adoption Annex executed effective July 26, 2005 as supplemented by Supplement Number 1 to Adoption Annex dated December 18, 2007, Supplement Number 2 to Adoption Annex dated October 1, 2013 (the "2005 Wholesale Master Agreement"), and Supplement Number 3 to Adoption Annex dated December 18, 2014 which shall continue to govern the wholesale supply of water by DMWW; and

WHEREAS, Xenia desires to sell to Waukee capacity in its existing 24" feeder main located along West Hickman Road from DMWW's LP Moon facility (the "L.P. Moon Site") to T Avenue and capacity in its existing booster station located at the L.P. Moon Site. Following such sale Waukee and Xenia will jointly own this facility.

WHEREAS, Waukee and Xenia desire that DMWW assume responsibility for operation and maintenance of the jointly owned Waukee/Xenia booster station located at the L.P. Moon Site and the 24" feeder main to T Avenue. The cost of operation, maintenance and improvements to this station will be paid by Waukee and Xenia to DMWW according to the provisions of this agreement.

WHEREAS, Waukee and Xenia also desire to provide for design and construction of certain improvements to the shared water service facilities as established, with Waukee to proceed with design, bidding, and construction of new facilities, and with costs to be paid and shared, as provided herein;

NOW THEREFORE, in consideration of the mutual undertakings hereby provided, Waukee, Xenia, and DMWW do hereby agree as follows:

**Article I - Joint Exercise of Powers Under
Chapter 28E of the Code of Iowa.**

1. **Purpose.** Pursuant to Chapter 28E, Code of Iowa (2017), the parties agree that the purposes of this Agreement are: (i) to provide for the shared use of certain water utility facilities located as shown in Exhibit A and to share capacity in an existing water main and booster station as set forth in Exhibit B-1 and B-2 to be improved as provided herein (hereinafter referred to collectively as the “Waukee/Xenia Joint System Facilities”); (ii) to provide for the design and construction of certain improvements to the Waukee/Xenia Joint System Facilities; (iii) to provide for the ownership, operation, use and maintenance of the Waukee/Xenia Joint System Facilities, including operation of a part thereof by DMWW; and (iv) to make appropriate provision for the costs and expenses of the foregoing.

2. **Scope.** The Waukee/Xenia Joint System Facilities shall consist of newly constructed improvements at the locations shown in Exhibit A together with shared use of an existing water main and booster station with the total project to be implemented in five parts as follows:

Part 1 – The sale by Xenia to Waukee of the right of use of 400,000 gallons per day of capacity in the existing 24” water main along West Hickman Road from the L.P. Moon site to T Avenue. Following the sale Xenia and Waukee shall jointly own this facility.

Part 2 – The sale by Xenia to Waukee of the right to use 400,000 gallons per day of capacity in the existing Waukee/Xenia booster station located at the L.P. Moon site. Following the sale Xenia and Waukee shall jointly own this facility.

Part 3 – Waukee shall design and construct all new facilities required to make the Waukee/Xenia Joint System operate including, chloramination and chemical feed facility, a new control valve to control flow into Waukee, a new meter pit for metering water into Waukee, a new control valve to control flow to Xenia, a new meter pit for metering of water to Xenia, along with analyzers, telemetry and controls at these facilities.

Part 4 – Xenia shall disconnect the current chemical feed systems in the Clive Booster Station. DMWW shall design and construct a chlorine feed system from the L. P. Moon Pump Station that will be piped over to the Waukee/Xenia booster station to provide the opportunity to control the chlorine residual leaving the Waukee/Xenia booster station. Waukee shall pay all costs associated with these improvements.

Part 5 –DMWW shall operate the Waukee/Xenia booster station located at the L.P. Moon Site until such time as such operation is terminated as provided herein. Costs for ongoing operation and maintenance of the facilities shall be paid by Waukee and Xenia as provided in Article IV of this Agreement.

The Xenia sale of capacity to Waukee is intended to support the respective needs of Waukee with ownership, use, and costs allocated as provided herein. The Waukee/Xenia Joint System Facilities shall be owned as provided in Article I Section 7 and Article III of this Agreement, and the costs of sale shall be paid by Waukee as detailed in Exhibits B-1 through B-4.

3. 28E Finding. The parties agree that the improvements to the Waukee/Xenia Joint System Facilities to be constructed hereunder reflect appropriate regional planning, and, in conformity with Section 28E.18, Code of Iowa (2017) that there are no other suitable facilities available for rent or sharing in lieu of such improvements.

4. Effective Date. Pursuant to Section 28E.5 of the Code of Iowa (2017), the parties agree that this Agreement shall be effective upon its approval and execution by all parties and its filing with the Iowa Secretary of State (the "Effective Date").

5. No Entity. No separate entity is created hereby.

6. Designated Administrator. The parties hereby agree that CEO and General Manager of DMWW shall be designated as the sole administrator of this Agreement as provided by Section 28E.6 of the Code of Iowa.

7. Individual Ownership and Responsibility. Except as otherwise explicitly provided herein, each party shall at all times hold and own its respective properties. Each party shall be solely authorized to supervise, direct, and manage its own activities and the activities of its respective employees and agents hereunder. Each party shall retain sole responsibility and liability for its own acts and omissions hereunder and for the acts and omissions of its respective employees and agents hereunder, and each party waives subrogation against the other for all claims, suits, damages, and demands which are covered by any insurance, including but not limited to property, casualty and workers compensation insurance.

8. Master Agreement and Other Existing Agreements. The 2005 Wholesale Master Agreement between DMWW and Waukee and DMWW and Xenia shall remain in full force and effect. DMWW and Waukee shall separately execute a Supplement Number 2 to Adoption Annex in the form set forth in Exhibit C to reflect the terms hereof. DMWW and Xenia shall separately execute a Supplement Number 4 to Adoption Annex in the form set forth in Exhibit D to reflect the terms hereof.

9. Authority. Each of the parties represents and warrants that it has authority to enter into this Agreement and to perform its obligations hereunder and that the execution of this Agreement has been duly authorized by its governing body.

Article II - Responsibilities

1. Project Implementation. The Waukee/Xenia Service Facilities will be established by execution of five (5) steps, identified herein as Part 1, 2, 3, 4, and 5. Waukee and DMWW shall be responsible for undertaking construction of the required public improvements as detailed herein.

2. Part 1 Responsibilities. Xenia shall provide 400,000 gallons per day of capacity rights in its existing 24” water main along West Hickman Road from the Xenia Booster Station located at the L.P. Moon Site to T Avenue (the “West Hickman Road Main”) to Waukee in exchange for payment computed as set forth in Exhibit B-1 and as provided in Article IV of this Agreement. Such payment shall be made as provided in Article IV of this Agreement.

3. Part 2 Responsibilities. Xenia shall provide 400,000 gallons per day of capacity rights in its existing booster station located at the L.P. Moon Site to Waukee in exchange for payment computed as set forth in Exhibit B-2 and as provided in Article IV of this Agreement. Such payment shall be made as provided in Article IV of this Agreement.

4. Part 3 Responsibilities. Waukee shall be responsible for the design and construction of the improvements to the Waukee/Xenia Service Facilities identified in Part 3. Xenia will assume responsibility for operation and maintenance of the new chemical feed building and related underground facilities. DMWW will assume responsibility for operation and maintenance of the Waukee meter pit and control valve along with related controls in the chemical feed building.

5. Part 4 Responsibilities. DMWW shall be responsible for designing and constructing improvements to the Waukee/Xenia Service Facilities as identified in Part 4. Waukee shall pay DMWW for the full costs of the improvements made as provided in Article IV of this Agreement.

6. Part 5 Responsibilities. DMWW shall operate and maintain the Waukee/Xenia booster station located at the L.P. Moon Site and the 24” feeder main to T Avenue on behalf of Waukee and Xenia as an independent contractor beginning on May 31, 2019 and continuing until such responsibility shall be terminated by not less than six months’ notice given jointly by Waukee and Xenia to DMWW. Xenia will be responsible for responding to utility locates requests. Waukee and Xenia shall be responsible to pay DMWW the full costs of such operation as provided in Article IV of this Agreement. DMWW’s operation shall be at the sole risk of Waukee and Xenia and such parties shall have sole responsibility for any liability arising therefrom, except as provided in Article VII, Section 1 of this Agreement, and shall bear all risk of loss to such facilities.

7. Connection to DMWW Core Network. The Waukee/Xenia booster station has an existing connection, to DMWW’s Core Network transmission main. This connection is expected to remain in use following transfer of capacity as provided herein. A new metered connection to Waukee off the West Hickman Road Main will be needed and shall be constructed by Waukee at its sole cost and expense. A new metered connection to Xenia off the West Hickman Road Main will be needed and shall be constructed by Waukee at its sole cost and expense. Flows from these meters will be billed directly to each entity by DMWW.

Article III – Ownership and Use of Facilities

1. Shared Ownership. Xenia and Waukee shall have, and shall maintain, shared ownership of the existing facilities as set forth in Part 1 and Part 2, with capacity rights as allocated in Section 2 and 3 of Article III of this Agreement. Facilities constructed under Part 3 will include a chloramination facility, flow meter and control valve located at 1512 W. Hickman Road which

will be wholly owned by Xenia and a control valve and a flow meter also located at 1512 W. Hickman Road which will be owned by Waukee. Waukee's ownership interest shall be equal to 4% of the West Hickman Main and 12% of the Waukee/Xenia booster station located at the L.P. Moon Site. Xenia and Waukee shall bear all risk of loss to the Waukee/Xenia Service Facilities and shall insure or self-insure such interests separately or jointly as they may separately determine. DMWW shall have no ownership interests in such facilities and no liability for operation or loss thereof, except as otherwise provided herein.

2. Xenia Capacity Rights. Xenia shall have the right to use up to 9.68 million gallons per day, or an average of 6,722 gallons per minute, of the capacity in the existing 24" West Hickman Road Main. Xenia shall have the right to use up to 2.9 million gallon per day, or an average of 2,014 gallons per minute in the Xenia booster station located at the L.P. Moon Site.

3. Waukee Capacity Rights. Waukee shall have the right to use up to 400,000 gallon per day, or an average of 278 gallons per minute, of the capacity in the existing West Hickman Road Main and the Xenia booster station located at the L.P. Moon Site.

4. Documentation. The capacity rights of Waukee and Xenia under this Agreement shall be documented by this Agreement. All rights shall be transferred free and clear of all liens and encumbrances.

Article IV – Payment for Capacity, Improvements, and Operation and Maintenance Costs.

1. Sale of Capacity under Part 1 and Part 2. Waukee shall pay Xenia \$121,216.67 for 400,000 gallons per day of capacity in the existing 24" West Hickman Road Main and \$135,686.11 for 400,000 gallons per day of capacity in the Xenia booster station located at the L.P. Moon Site as provided herein. Such Payment shall be made within thirty (30) days of the Effective Date.

2. Costs under Part 3 and Part 4. Waukee shall incur and pay the full costs of the Part 3 improvements. DMWW shall incur the costs of the Part 4 work and improvements as provided in Exhibit B-4. Waukee shall pay DMWW for the full actual costs incurred by DMWW for the improvements constructed by DMWW. Full actual costs to include design, materials, equipment contractor work, and fully loaded labor directly provided by DMWW as reflected in DMWW's final accounting. The preliminary engineer's estimate of the cost for Part 3 and 4 of the Waukee/Xenia Joint System Facilities is \$1,505,000 in new infrastructure, plus, \$256,902.78 in additional costs for transfer of capacity rights, further broken down as outlined in Exhibits B-1 through B-4. The amounts shown are estimates only. The actual costs incurred as provided herein shall govern the required payments, rather than any existing or subsequent engineering estimate. DMWW will issue invoices to Waukee for the actual costs it incurs and Waukee shall pay such invoices within thirty (30) days of receipt.

3. Documentation. Waukee and DMWW will provide documentation to Xenia evidencing the contract awards, project work progresses, and when the Part 3 and Part 4 projects are completed.

4. Future Expansion. The cost of any future expansions to meet increased capacities beyond the current capacities of the Waukee/Xenia Joint System Facilities shall be borne by Waukee and/or Xenia based on their proportionate share of the needed expansion.

5. Ongoing Operation and Maintenance of Booster Pump Station. The costs of operation, maintenance, and any future improvements of the Waukee/Xenia booster station located at the L.P. Moon Site, shall be borne by Waukee and Xenia based on their proportionate use of the facility at the time of the expense. These costs will be initially incurred and tracked by DMWW and aggregated quarterly. DMWW will invoice Waukee and Xenia quarterly for its proportionate costs and such parties shall pay such invoice by the due date identified on the invoice.

6. Ongoing Operation and Maintenance of West Hickman Road Main. DMWW shall operate and maintain the West Hickman Road Main. Any such costs, including costs incurred for main breaks will be initially incurred and tracked by DMWW and aggregated quarterly. DMWW will invoice Waukee and Xenia quarterly for their proportionate share of any such costs based on their capacity in the main and Waukee and Xenia shall pay such invoices by the due date identified on the invoice.

7. Ongoing Operation and Maintenance of Waukee Meter Pit and Control Valve. DMWW shall operate and maintain the Waukee meter pit and control valve. The costs of operation and maintenance will be initially incurred and tracked by DMWW and aggregated quarterly. DMWW will invoice Waukee quarterly for those costs and Waukee shall pay such invoices by the due date identified on the invoice.

Article V – Financing

1. Funding Sources. Funding hereunder shall be provided by the regular sources of revenue and financing of the parties as required for each party to meet its obligations hereunder, and all such funding shall be separately included within the respective regular budgets of Waukee, Xenia, and DMWW.

2. Responsibility. Except as otherwise explicitly provided in Article IV, Sections 1 and 2 of this Agreement as to contract payments by Waukee to Xenia and DMWW, and Article IV, Section 4 of this Agreement as to Ongoing Operations and Maintenance, each party shall be solely responsible for funding its own operations hereunder.

Article VI –Term and Termination of Agreement

1. This Agreement shall commence on the Effective Date and shall terminate on the date of the termination of the 2005 Wholesale Master Agreement. This agreement may be extended by and for any party that agrees to an extension.

2. Termination. In the event any party determines that the other has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall

have 30 business days from the date of its receipt of the notice of default to correct the default. If at the end of said 30-day period, the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided herein. In the event of default by one party in the performance of any material provision of this Agreement, the other party may, at its option, after declaring default and giving notice thereof, terminate this Agreement with prospective effect or seek specific performance of its provisions. A party seeking termination of this Agreement due to a default in performance by the other party shall also be entitled to seek damages for such default.

Article VII- General Provisions.

1. **Liability; Indemnification.** Each party (“Indemnifying Party”), to the fullest extent permitted by law, hereby agrees to indemnify, defend, pay on behalf of, and hold harmless the other party, and its elected officials, its appointed officials, agents, employees and volunteers, and others working on behalf of such party (“Indemnitees”), against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys’ fees and court costs, that may be asserted or claimed against, recovered from or suffered by the Indemnitees by reason of any injury or loss arising out of any wrongful act or omission of the Indemnifying Party, including, but not limited to, bodily injury or death, property damage, including loss of use thereof, and economic damages that arise out of or are in any way connected to this Agreement. No party shall have any right of indemnity for damages or claims proximately caused by its own negligent or intentionally wrongful acts. Each party’s agreements and obligations as set forth in this Paragraph are applicable for the duration of and following expiration or termination of this Agreement, regardless of the manner of termination, and notwithstanding other provisions of this Agreement.

2. **Insurance.** Each party shall procure and maintain its own insurance. Waukee shall require all contractors and subcontractors to have and maintain bonds and insurance as set forth in applicable contract documents.

3. **Notices and Invoices.** All notices, invoices and reimbursement requests which the parties are authorized or required to give one another pursuant to this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices and invoices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed:

Notices to Waukee:

Public Works Director
City of Waukee
805 University Avenue
Waukee, Iowa 50263

Notices to Xenia:

CEO/General Manager
Xenia Rural Water District
23998 141st Street
PO Box 39
Bouton, Iowa 50039

Notices to DMWW:

General Manager and Chief Executive Officer
Des Moines Water Works
2201 George Flag Parkway
Des Moines, IA 50321-1190

4. Interpretation. If any section, provision or article of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or article thereof not found to be invalid or unconstitutional.

5. Dispute Resolution.

(a) The parties agree that any disputes arising between them with regard to the design of project improvements, with regard to the final acceptance of project improvements, or with regard to the final payment to a project contractor, as hereinabove more particularly provided, shall be submitted to arbitration. A request for arbitration must be in the form of a written notice requesting arbitration. Such notice shall identify each disputed matter to be submitted to arbitration. In the absence of agreement by the parties to the contrary, the question or questions to be arbitrated shall be those specified in the notice requesting arbitration.

(b) If the parties agree, there may be one arbitrator. If they fail to agree on a single arbitrator, there shall be three arbitrators, one named in writing by the party requesting arbitration, one named in writing by the other party, and the third chosen by the first two arbitrators so chosen.

(c) The party requesting arbitration shall choose an arbitrator within ten business days following its demand. Its failure to do so shall be deemed a waiver of its request for arbitration. The other party shall name its arbitrator within ten business days following the receipt of notice of the naming of the requesting party's arbitrator. The two arbitrators first chosen shall name the third arbitrator within ten business days following the selection of the second arbitrator. Should the two arbitrators first chosen fail to appoint a third arbitrator, application shall be made to the President of the Dallas County Bar Association by the party requesting arbitration to name such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing by the arbitrators, the arbitrators are empowered to proceed ex parte.

(d) No one shall be qualified to act as an arbitrator if service in such role would create a conflict of interest. Each arbitrator selected shall be qualified by experience and knowledge of the matter to be submitted to arbitration.

(e) If there be one arbitrator, the decision shall be binding; if three, the decision of any two shall be binding. The decision may be impeached only for fraud or mistake. Such decision shall be a condition precedent to any right of legal action.

(f) The costs of arbitration shall be paid by the party requesting arbitration if it does not prevail in said arbitration proceedings. If the party requesting arbitration prevails in the arbitration proceedings, the cost of arbitration shall be shared equally by the parties.

(g) The decision of the arbitrators shall be in writing and it shall not be open to objection on account of the form of the proceeding or the award.

6. Entire Agreement. This Agreement and the other 28E Agreements referred to herein supersede all oral or written proposals and communications related to this Agreement between the parties. Each party acknowledges that such party has not been induced to enter this Agreement by any representations or statements oral or written, not contained in this Agreement. This Agreement may only be amended by a written instrument signed by authorized representatives of both parties.

7. Governing Law. This Agreement shall be construed, both as to validity and performance, and shall be enforced in accordance with, and governed by, the laws of the State of Iowa.

8. No Partnership, Joint Venture or Joint Authority. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture or any kind or agent/principal relationship between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, the other party to this Agreement.

9. Force Majeure. No party shall be liable for any failure to perform any or all of the provisions of this Agreement if and to the extent that performance has been delayed or prevented by reason of any cause beyond the reasonable control of such party. The expression "cause beyond the reasonable control" shall be deemed to include, but not be limited to: acts, regulations, laws, or restraints imposed by any governmental body; wars, hostilities, sabotage, riots, or commotions; acts of God; or fires, frost, storms, or lightning.

10. No Waiver. No waiver of any breach of any one of the agreements, terms, conditions or covenants of this Agreement by any party shall be deemed to imply or constitute a waiver of any other agreement, term, condition, or covenant of this Agreement. The failure of any party to insist on strict performance of any agreement, term, condition, or covenant, herein set

forth, shall not constitute or be construed as a waiver of the rights thereafter to enforce any other default of such agreement, term, condition, or covenant.

11. No Assignment. Except as otherwise provided herein, this Agreement shall not be sold, assigned, transferred or conveyed in any respect by either party without prior written approval of the other parties. This Agreement shall remain binding upon the successors of the parties.

12. Headings. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

13. Partial Invalidity. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which so executed shall be deemed to be an original.

15. Receipt of Copy. Each of the parties to this Agreement acknowledges receipt of a fully executed copy of this Agreement and all attachments thereto.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed in counterparts, each of which shall be considered an original.

[SIGNATURE PAGES TO FOLLOW]

CITY OF WAUKEE, IOWA

By: _____
William F. Peard, Mayor

Attest: _____
Rebecca D. Schuett, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 2019 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, and, who, being by me duly sworn, did say that they are _____ and _____, respectively of the CITY OF WAUKEE, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the City, and that the instrument was signed and sealed on behalf of the City, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Roll Call No. _ of the City Council on the day of _____, 2019, and that _____ and _____ acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City by it voluntarily executed.

Notary Public in and for the State of Iowa

XENIA RURAL WATER DISTRICT

By: _____
Troy Wilson, Vice Chair

Attest: _____
Michael Schrum, Secretary

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 2019 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Troy Wilson and Michael Schrum, to me personally known, and, who, being by me duly sworn, did say that they are Board Vice Chair and Board Secretary, respectively of XENIA RURAL WATER DISTRICT; that the seal affixed to the foregoing instrument is the corporate seal of Xenia, and that the instrument was signed and sealed on behalf of Xenia, by authority of the Board of Xenia Rural Water district, as contained in the Resolution adopted by the Board, under Motion # _____ of the Board on the day of _____, 2019, and that Troy Wilson and Michael Schrum acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the Board by it voluntarily executed.

Notary Public in and for the State of Iowa

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

By: _____
Diane C. Munns, Board Chairperson

Attest: _____
William G. Stowe, General Manager and CEO

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 2019, before me, a Notary Public in and for the State of Iowa, personally appeared Diane C. Munns and William G. Stowe, to me personally known, and, who being by me duly sworn, did say that they are the Board Chairperson and the Chief Executive Officer and General Manager of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, that no seal has been procured by the entity; that the instrument was signed on behalf of the entity by authority of its Board as contained in the resolution adopted by the Board on the ____ day of _____, 2019, and that Diane C. Munns and William G. Stowe acknowledged the execution of the instrument to be the voluntary act and deed of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

Exhibit A MAP

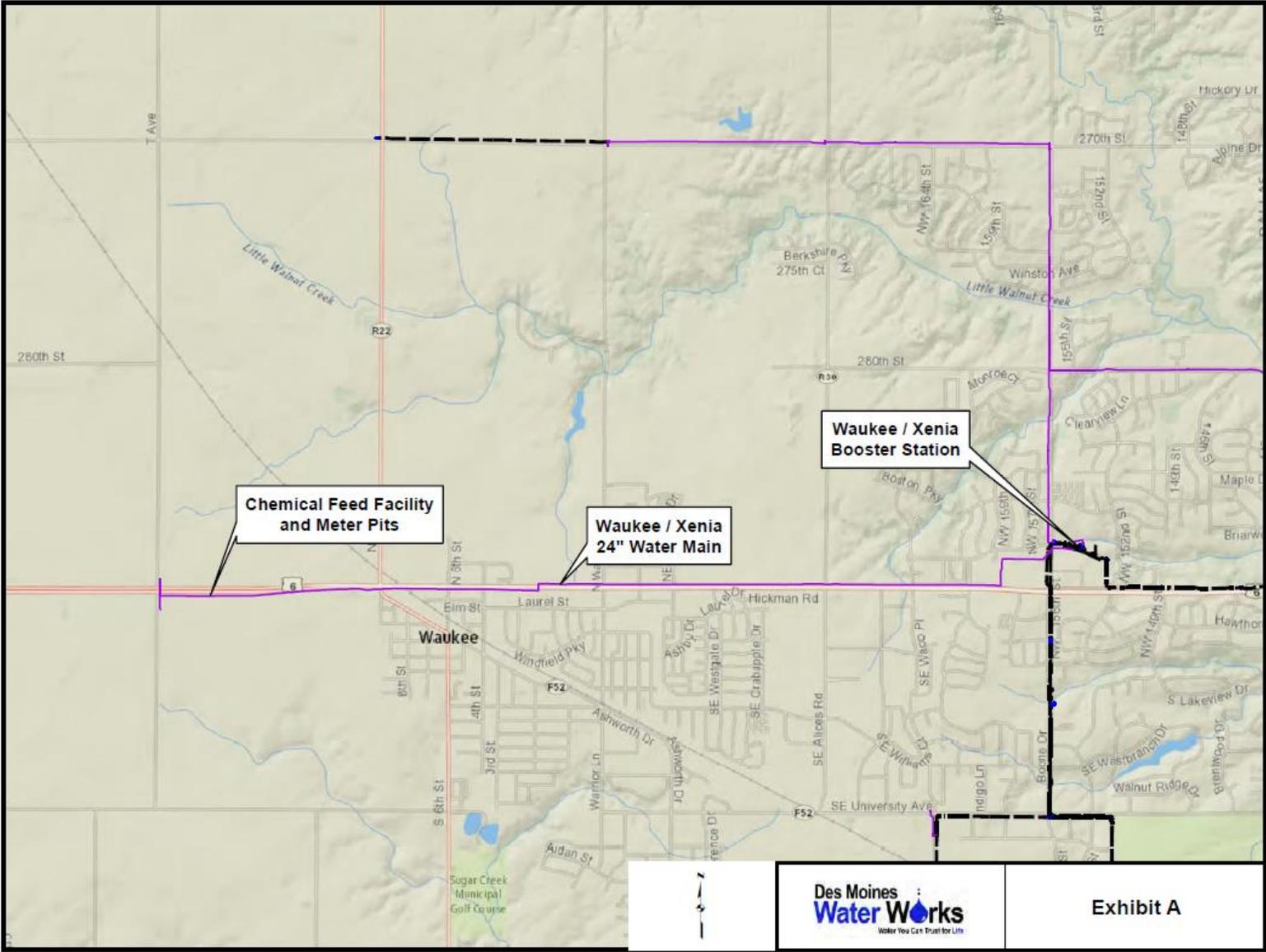


Exhibit B-1

Part 1 – West Hickman Road Water Main Capacity Sale and Percent Ownership

Xenia shall provide 400,000 gallons per day of capacity rights in the existing 24" water main along West Hickman Road from the booster station located at the L.P. Moon Site to T Avenue to Waukee.

Flow Capacity of 24-inch Pipe:	7,000 gpm
Revised 24" water main value	\$3,054,628.45

Project Timing: Construction anticipated to begin Q1 of 2019 and be completed Q2 2019

	Gallons Per Minute (gpm)	Share of Ownership	Cost
Waukee	278	4%	\$121,216.67
Xenia	6,722	96%	\$2,933,411.78
Totals	7,000	100%	\$3,054,628.45

Exhibit B-2

Part 2 – Waukee/Xenia Booster Station Capacity Sale and Percent Ownership

Xenia shall provide 400,000 gallons per day of capacity rights in the booster station located at the L.P. Moon Site to Waukee

Current Booster Station Capacity	2,300 gpm
Revised Booster Station Value	\$1,123,479.82

Project Timing: Construction anticipated to begin Q1 of 2019 and be completed Q2 2019

	Gallons Per Minute (gpm)	Share of Ownership	Cost
Waukee	278	12%	\$135,686.11
Xenia	2,022	88%	\$987,793.71
Totals	2,300	100%	\$1,123,479.82

Exhibit B-3

Part 3 – Chemical Feed Facility and Meter Pits Waukee/Xenia Joint System Facilities

Waukee shall design and construct all new facilities required to make the Waukee/Xenia Joint System operate including, chloramination and chemical feed facility, a new control valve to control flow into Waukee, a new meter pit for metering water into Waukee, a new control valve to control flow to Xenia, a new meter pit for metering of water to Xenia, along with analyzers, telemetry and controls at these facilities.

	Share of Cost	Estimated Cost
Waukee	100%	\$1,395,000.00
Xenia	0%	\$0
Totals	100%	\$1,395,000.00

Exhibit B-4

Part 4 – Chemical System at L.P. Moon Waukee/Xenia Joint System Facilities

Xenia shall mothball the current chemical feed systems in the Clive Booster Station. DMWW shall design and construct a chlorine feed system from the L. P. Moon Pump Station that will be piped over to the Waukee/Xenia booster station to provide the opportunity to control the chlorine residual leaving the Waukee/Xenia booster station. Waukee pay costs associated with these improvements.

	Share of Cost	Cost of Part 3
Waukee	100%	\$110,000.00
Xenia	0%	\$0
Totals	100%	\$110,000.00

Exhibit C
Supplement Number 2 to Adoption Annex

This Supplement Number 2 to Adoption Annex is executed effective as of _____, 2019, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and the City of Waukee (“Waukee”), and shall form a part of the Water Service Agreement dated July 26, 2005, among DMWW and Waukee (the “Wholesale Water Service Master Agreement”) for the purpose of adopting by reference the terms and conditions whereby DMWW operates and maintains the jointly owned booster station and feeder main as outlined in a 28E Agreement dated _____, 2019 among Waukee, Xenia, and Des Moines Water Works.

This Supplement No. 2 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

CITY OF WAUKEE, IOWA

By: _____
Diane C. Munns, Chairperson

By: _____

ATTEST: _____
William G. Stowe, CEO and General Manager

ATTEST: _____

Exhibit D
Supplement Number 4 to Adoption Annex

This Supplement Number 4 to Adoption Annex is executed effective as of _____, 2019, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and Xenia Rural Water District (“Xenia”), and shall form a part of the Water Service Agreement dated July 26, 2005, among DMWW and Xenia (the “Wholesale Water Service Master Agreement”) for the purpose of adopting by reference the terms and conditions whereby DMWW operates and maintains the jointly owned booster station and feeder main as outlined in a 28E Agreement dated _____, 2019 among Waukee, Xenia, and Des Moines Water Works.

This Supplement No. 4 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: _____
Diane C. Munns, Chairperson

By: _____
Troy Wilson, Vice Chair

ATTEST: _____
William G. Stowe, CEO and General Manager

ATTEST: _____
Michael Schrum, Secretary