

**MEMORANDUM**

DATE: July 6, 2017  
TO: William Stowe, CEO and General Manager  
FROM: Danny J. Klopfer, P.E., Engineering Services Manager  
SUBJECT: Norwalk-Cumming Joint Project

Des Moines Water Works has provided water service to the City of Norwalk (Norwalk) since 1969 and the City of Cumming (Cumming) since 1978. Norwalk operated Cumming's water system for a number of years through a connection to Norwalk, providing Des Moines Water Works' (DMWW's) water to them.

On January 1, 2007, Cumming became a total service customer of DMWW and water continued to be provided to them through the Norwalk water distribution system via a connection at Hwy G14 and Orilla Road.

Currently, Norwalk obtains all its water from DMWW through one connection at SW 42<sup>nd</sup> Street and County Line Road at the north edge of Norwalk. This connection has been maximized and an additional connection is needed for future growth in Norwalk.

Engineering staff has been working with Norwalk city officials to propose a second connection to their city in order to increase the water available to Cumming through a joint project. We first met with both cities during the last quarter of 2015 to discuss options. Initially, three options were evaluated with Norwalk and Cumming which included:

- Wheeling water through West Des Moines Water Works and connecting at Orilla Road (Option 1)
- Creating a connection from Maffitt Treatment Plant and Maffitt Park to Cumming Road, then on to Norwalk (Option 2)
- Creating a connection off 56<sup>th</sup> Avenue on the east side of Norwalk (Option 3)

Cost estimates for each of these options were prepared and shared with the involved parties. Less than one month after the options were shared, Cumming asked us to determine a way to provide water for potential development west of I-35 and south of Cumming Road (Option 4). The City of West Des Moines also requested water from us for another Microsoft project to be located west of I-35.

Over the following several months, Microsoft continued with plans to develop their site in West Des Moines, and West Des Moines Water Works became very interested in making this a three-way project (Option 5). A significant amount of effort was placed into this option.

The details of Option 5 were shared with Cumming staff and their City Council and a presentation was made to Norwalk staff in October of 2016. Following the staff presentation, Norwalk had great concern with financing their portion of the project.

Engineering staff continued to push the need for providing additional water to Norwalk. A presentation of a less expensive option (much like Option 1 that was shared in 2015) was presented to Norwalk staff and their City Council on March 30, 2017. Following a lengthy evaluation of this option, yet another option was developed and cost estimates were evaluated. This option, suggested by Norwalk staff, was a phased approach to Option 5 and meets the urgent needs of Norwalk and Cumming. West Des Moines Water Works is still considering their involvement in the project.

Cumming's City Clerk and Mayor, Norwalk's staff, and Norwalk's Utility Committee have all agreed to move forward with this project which includes the design and construction of the following:

- 16-inch water main from Maffitt Treatment Plant through Maffitt Park to Adams Street
- Pumping Station in Maffitt Park just north of Adams Street
- 16-inch water main in Adams Street west of I-35 to 20<sup>th</sup> Avenue (N 50<sup>th</sup> Street), south down 20<sup>th</sup> Avenue to Hwy G14, then east from 20<sup>th</sup> Avenue to N 43<sup>rd</sup> Street.

A final draft of the 28E Agreement has been prepared by DMWW staff to design and construct the facilities described above for an estimated cost of \$4,165,933.23. This agreement has been reviewed by DMWW's legal counsel. It has also been sent to Norwalk and Cumming for review and approval by their respective City Councils. The 28E Agreement will be brought to the Board of Water Works Trustees meeting on July 25<sup>th</sup>, with a goal of having the agreement signed by all parties by the end of July.

The 28E Agreement does not include West Des Moines Water Works, but includes language to allow them to join the project if they notify us of such interest prior to us beginning the design in early August.

Attachment: Draft 28E Agreement

**CHAPTER 28E AGREEMENT BY AND BETWEEN  
THE CITY OF NORWALK, IOWA  
THE CITY OF CUMMING, IOWA  
IOWA AND THE BOARD OF WATER WORKS TRUSTEES OF THE  
CITY OF DES MOINES, IOWA**

THIS CHAPTER 28E AGREEMENT (hereinafter "this Agreement") made and entered into by and among the CITY OF NORWALK, IOWA ("Norwalk"), CITY OF CUMMING, IOWA ("Cumming"), 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 (2014), to cause, and to undertake, water-related projects as hereinafter described in order to provide a second wholesale service connection from DMWW to Norwalk and to provide a direct connection from DMWW to Cumming's distribution system such that water does not have to be wheeled through Norwalk's system; and to upgrade the capacity of the water supply infrastructure needed to support development in each party's respective service areas; and

**WHEREAS**, Norwalk and DMWW have previously entered into a Wholesale Water Service Master Agreement dated June 10, 2005, with related Adoption Annex executed effective July 26, 2005 (the "2005 Wholesale Master Agreement") and Supplement Number 1 to Adoption Annex dated January 16, 2014 which shall continue to govern the wholesale supply of water by DMWW to Norwalk; and

**WHEREAS**, Cumming and DMWW have previously entered into a Total Service Chapter 28E Agreement dated January 1, 2007 which shall continue to govern the provision of water and operation of Cumming's water system by DMWW, and the Wholesale Water Service Master Agreement dated June 10, 2005, with related Adoption Annex executed effective September 12, 2005 (the "2005 Wholesale Master Agreement"), Supplement Number 1 to Adoption Annex dated January 13, 2014, and Supplement Number 2 to Adoption Annex dated January 13, 2014, the latter of which outlines Cumming has no further purchased capacity under the Master Agreement as of that date; and

**WHEREAS**, to meet the objectives stated above, the parties have a need for a new 16-inch main from DMWW's L.D. McMullen Water Treatment Plant to a future new pump station facility near the existing Warren Water District pump station on Adams St. near Interstate 35; a new pump station near the existing Warren Water District pump station on Adams St. near Interstate 35; a new 16-inch main from the newly constructed pump station to Hwy G14 and 20<sup>th</sup> Ave (N. 50<sup>th</sup> St.); a new 16-inch main along Hwy G14 from 20<sup>th</sup> Ave. (N. 50<sup>th</sup> St.) to N 43<sup>rd</sup> St; and

**WHEREAS**, the parties desire to share in the cost and capacity of system improvements and infrastructure and to proceed with design, bidding and construction as provided herein;

**NOW THEREFORE**, in consideration of the mutual undertakings hereby provided, Norwalk, Cumming, and DMWW do hereby agree as follows:

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

1. **Purpose.** Pursuant to Chapter 28E, Code of Iowa (2014), the parties agree that the purposes of this Agreement are to provide for: (i) the joint design, construction, and financing of certain water utility facilities as illustrated in Exhibit A at an estimated cost as set forth in Exhibit B (hereinafter referred to collectively as the "DMWW Water Utility Improvements"); and (ii) the ongoing ownership, operation, use and maintenance of the DMWW Water Utility Improvements. The parties further agree that a further purpose of this Agreement is to jointly exercise their respective powers as required for construction, ownership and use of the DMWW Water Utility Improvements and related matters.

2. **Scope.** The DMWW Water Utility Improvements shall consist of the facilities generally described below and illustrated in Exhibit A:

**Phase 1** - a new 16-inch main from the L.D. McMullen Water Treatment Plant to a future new pump station facility near the existing Warren Water District pump station on Adams St. near Interstate 35

**Phase 2** - a new pump station near the existing Warren Water District pump station on Adams St. near Interstate 35.

**Phase 3** - a new 16-inch main from the newly constructed pump station to Hwy G14 and 20<sup>th</sup> Ave. (N. 50<sup>th</sup> St.)

**Phase 4** - a new 16-inch main along Hwy G14 from 20<sup>th</sup> Ave. (N. 50<sup>th</sup> St.) to N 43<sup>rd</sup> St.

The water system facilities shall create infrastructure intended to support the needs of Norwalk, Cumming, and DMWW with ownership, use, and costs allocated as provided herein. The DMWW Water Utility Improvements shall be owned as provided in Part II, but the costs thereof shall be fully paid by the parties as outlined in Exhibit B. Norwalk and Cumming shall construct at their own sole cost and expense any other improvements to their system to facilitate the efficient use and implementation of the DMWW Water Utility Improvements described herein.

3. **28E Finding.** The parties agree that the DMWW Water Utility Improvements reflect appropriate regional planning, and, in conformity with Section 28E.18, Code of Iowa (2014) that there are no suitable facilities available for rent or sharing in lieu of the DMWW Water Utility Improvements.

4. Effective Date. Pursuant to Section 28E.5 of the Code of Iowa (2014), 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. Designated Administrator. The parties agree that the CEO and General Manager of DMWW (hereinafter "the DMWW General Manager") shall be designated as the sole administrator of this Agreement for purposes of the design and construction of the DMWW Water Utility Improvements, as provided by Section 28E.6 of the Code of Iowa. Each party shall otherwise separately administer its own activities.

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

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 as between DMWW and Norwalk and the Total Service 28E Agreement between DMWW and Cumming shall remain in effect, but a Supplement to Adoption Annex shall be executed by Norwalk and DMWW to conform to the provisions hereof in the form of Exhibit D.

## **Part II - Responsibilities.**

1. DMWW Responsibilities. DMWW shall be responsible for the design of the DMWW Water Utility Improvements in conformance with DMWW's current standard specifications and for obtaining all required easements, permits, permissions and other things required for the proper construction of such projects. Such design may provide for such number of separate contracts as DMWW shall determine in its sole discretion shall best provide for the efficient construction of the DMWW Water Utility Improvements and shall include detailed Plans and Specifications and an Engineer's cost estimate for each project included within the DMWW Water Utility Improvements. Such Plans and Specifications may provide for DMWW to procure and supply materials or equipment to the contractor. If, at any time, the total of the Engineer's cost estimates for all projects is expected to exceed the total cost set forth in Exhibit B, as adjusted on a project by project basis by any material increase in the Engineering News Record Construction Cost Index (ENR CCI) after June 2017, then DMWW shall consult with Norwalk and Cumming respecting costs before proceeding further to advertise for bids and letting contracts.

2. Contract Administration. DMWW shall contract, in its sole name, for the construction of the DMWW Water Utility Improvements as provided by law for public improvements, including a public bidding process in accordance with law. DMWW agrees to notify Norwalk and Cumming of the bid opening date for all work for which DMWW will take bids

in connection with the DMWW Water Utility Improvements. Norwalk and Cumming may designate a representative to attend such bid openings. If costs set forth in the bids for any contract are such that the expected contract price exceeds the engineer's cost estimate for the project by more than twenty-five percent (25%), DMWW shall give notice to Norwalk and Cumming of such fact, and DMWW shall not proceed to award a contract unless the parties give approval to proceed at the bid price. Failure by the Norwalk or Cumming to respond to DMWW's notice within five (5) business days of its date shall be construed as approval to proceed. DMWW shall be solely responsible for execution of the underlying contracts, and for contract administration, supervision and inspection. If requests by contractor(s) for change orders exceed the contract price by an amount in excess of twenty-five percent (25%), DMWW shall notify Norwalk and Cumming of such requests, and DMWW shall not proceed to issue change orders for any excess amount unless the parties give approval to such change orders. Failure by Norwalk or Cumming to respond to DMWW's notice within five (5) business days of its date shall be construed as approval to issue the change order. DMWW shall not be responsible for not meeting project completion deadlines as a result of delays caused by obtaining the parties' approval of contract price and change order costs in excess of Project Engineer's estimates. Upon request by DMWW's contractor(s) for final acceptance of improvements for the DMWW Water Utility Improvements and for final payment, DMWW agrees to forward the contractor's request for final acceptance and for final payment, together with all supporting detail, to Norwalk and Cumming. DMWW will thereafter conduct a final inspection of such improvements and develop a punch list of items for completion, if any. DMWW agrees that it will not accept such improvements as complete, or authorize final payment of any contractor, without affording qualified personnel designated by Norwalk and Cumming the opportunity to participate in such inspection and to comment and offer suggestions regarding the punch list of items for completion. In the event that Norwalk or Cumming objects to the acceptance of such improvements or to final payment to the contractor, Norwalk or Cumming shall notify DMWW of its specific objections in writing not more than fifteen (15) business days after receipt of the final payment request. If the objections cannot be resolved within 30 business days thereafter, either party may cause the matter to be submitted to binding arbitration as provided in Part VIII, Section 5 hereof.

3. Connection to DMWW Core Network. Norwalk and Cumming are responsible for designing and installing a connection facility, including all related piping and appurtenances, to DMWW's Core Network transmission main, at no cost or responsibility of DMWW, in order to directly serve their respective service areas.

4. Project Implementation. The DMWW Water Utility Improvements will be completed in four (4) phases, identified herein as Phases 1 – 4, with estimated costs and timing as outlined in Exhibit B. DMWW shall be responsible for providing capacity as outlined herein. DMWW shall not be responsible for failure to provide capacity adequate to meet the goals of this Agreement for reasons beyond its control, including but not limited to lack of funding by either Norwalk or Cumming or unforeseeable construction delays.

### **Part III – Ownership and Use of DMWW Water Utility Improvements**

1. DMWW Ownership. DMWW shall have and shall maintain ownership of the DMWW Water Utility Improvements described in Phases 1 through 4 during the term of this Agreement and thereafter, except as to the items to be owned by Norwalk and Cumming as provided

in Section 2 and Section 3 of this Part III. DMWW shall have sole responsibility for maintenance, repair, improvements, and the costs thereof to operate the facilities which it owns during the period of its ownership, except as stated in Part IV, Section 6 herein.

2. Norwalk Ownership. Upon payment of its cost share, Norwalk shall have and maintain ownership of its meter pit and connections to DMWW's Core Network transmission main located in Hwy G14, including all piping and appurtenances, but not including the meters therein which shall be provided by and owned by DMWW. After transfer of ownership, Norwalk shall have sole responsibility for maintenance, repair, improvements and costs thereof to operate facilities which they own.

3. Cumming Ownership. While the Cumming Total Service 28E defined herein is in effect between Cumming and DMWW, Cumming shall no longer have the need for a master meter pit, and its meter pit and connections to DMWW's Core Network shall be removed as part of the DMWW Water Utility Improvements. Cumming shall have no ownership in the DMWW Water Utility Improvements as described herein.

4. Norwalk Capacity Rights. Norwalk shall have the right to use up to 2.0 million gallons per day ("MGD"), or an average of 1,389 gallons per minute, of the capacity of the DMWW Water Utility Improvements, subject to all terms and provisions in the 2005 Wholesale Master Agreement, which shall continue to govern the term of the wholesale supply of water by DMWW to Norwalk in all respects.

5. Cumming Capacity Rights. Until such time that Cumming purchases additional capacity in the DMWW Water Utility Improvements pursuant to Part V, Section 3, Cumming shall have the right to use up to 1,000 gallons per minute of the capacity of the DMWW Water Utility Improvements for emergency fire flows. Cumming shall have the right to use up to 0.31 MGD for domestic flows, or an average of 213 gallons per minute, of the capacity of the portion of the DMWW Water Utility Improvements described as Phases 1 – 3 in Part I, Section 2, and 0.20 MGD for domestic flows, or 138 gallons per minute, of the capacity of the portion of the DMWW Water Utility Improvements described as Phase 4 in Part I, Section 3, subject to all terms and provisions of the 2007 Total Service 28E Agreement and 2005 Wholesale Master Agreement, which shall continue to govern the terms of the supply of water by DMWW to Cumming in all respects.

6. Norwalk Use of Cumming Main. Cumming shall permit the wheeling of water by DMWW to Norwalk delivered at the Norwalk connection as described herein, through the portion of Cumming's existing 8" main along Hwy G14 between N. 43<sup>rd</sup> St. and S. Orilla Rd. (County Road R45)) at no cost, until such time Cumming and Norwalk undertake a joint project to upgrade the existing 8-inch main to a 16-inch main in this area.

7. Documentation. The rights of ownership and use as provided in this Part III shall be documented by this Agreement and by execution of a Supplement No. 3 to Adoption Annex to the 2005 Wholesale Master Agreement between DMWW and Norwalk as provided in Exhibit D hereof.

## **Part IV – Participation and Cost Reimbursement.**

1. **Cost Share and Cost Reimbursements.** Norwalk and Cumming agree to pay DMWW their respective share of the costs of the DMWW Water Utility Improvements based on participation percentages as outlined in Exhibit B hereunder as applied to contractor progress payment requests submitted by the contractor, generally at the same frequency as payment requests submitted by the contractor, and within seven (7) days of DMWW submitting any progress payment request to the parties. Additionally, Norwalk and Cumming agree to reimburse DMWW upon request, but not more frequently than quarterly and within 30 days of receipt of such reimbursement request, for their proportionate share of the cost of design, materials, equipment, and fully loaded labor (“DMWW Direct Costs”) directly provided by DMWW as reflected in DMWW’s final accounting. The “Actual Cost” of the DMWW Water Utility Improvements shall be the sum of these contractor progress payments and DMWW Direct Costs.

2. **Participation.** The preliminary engineer’s estimate of the cost for Phases 1 - 4 of the DMWW Water Utility Improvements is \$4,165,933.23 in total, further broken down by party as outlined in Exhibit B. The amounts shown are estimates only and are not guaranteed by DMWW. The Actual Cost incurred as provided herein shall govern the required payments to DMWW, rather than any existing or subsequent engineering estimate.

3. **Future Participation.** The parties understand and agree that the West Des Moines Water Works may join as an additional future party to this Agreement, provided its interest is formally expressed in writing prior to the commencement of design of the DMWW Water Utility Improvements, and the terms of its participation are consistent with the terms of this Agreement, and do not unfavorably affect the parties’ allocated capacities or costs. Such participation shall be documented by Amendment to this Agreement executed by the parties and West Des Moines Water Works.

4. **Documentation.** DMWW will forward to Norwalk and Cumming documentation evidencing the contract award amount, contractor progress reports, and DMWW Direct Costs as construction is completed.

5. **Invoices.** DMWW shall forward to Norwalk and Cumming documentation evidencing costs by contractors and DMWW Direct Costs, both of which shall be reimbursed to DMWW. Norwalk and Cumming agree to make payment for contractor progress payment reports within seven (7) days of receipt of the request, and within thirty (30) days of receipt of invoices related to DMWW Direct Costs. After final acceptance by DMWW of the DMWW Water Utility Improvements, and final payment to its contractors for such improvements, DMWW will provide to Norwalk and Cumming a full accounting of project costs, including documentation evidencing DMWW’s payments to contractors.

6. **Improvements and Ongoing Operation and Maintenance of Pump Station.** The costs of improvements and operation and maintenance of the DMWW Water Utility Improvements described as the pump station, Phase 2 in Part I, Section 2, shall be borne by the Parties based on their proportionate share of capacity of the facility at the time of the expense, and initially as

delineated in Exhibit B-2. These costs will be initially incurred and tracked by DMWW and aggregated quarterly. DMWW will invoice Norwalk quarterly for its proportionate costs. While the Cumming Total Service 28E defined herein is in effect between Cumming and DMWW, Cumming's costs shall be paid by DMWW but charged against the Cumming cost of service. If the Cumming Total Service 28E is discontinued, DMWW will invoice Cumming quarterly for its costs.

### **Part V – Financing and Rates**

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 Norwalk and Cumming, except as stated in Part V, Section 3 herein.

2. **Responsibility.** Except as otherwise explicitly provided in Part IV, Section 1 as to contract payments and reimbursement by the parties to DMWW and Part V, Section 3 herein as to Cumming purchasing from Norwalk additional capacity in the DMWW Water Utility Improvements at a future date, each party shall be solely responsible for funding its own operations hereunder.

3. **Cumming Purchasing Additional Fire Capacity from Norwalk.** Cumming shall initially have a right to capacity of up to 1,000 gpm for emergency fire flows in the DMWW Water Utility Improvements. Cumming agrees to purchase from Norwalk an additional 1,000 gpm of emergency capacity in the DMWW Water Utility Improvements: 1) as commercial development necessitates in order to provide adequate fire protection, or 2) on the date which is ten (10) years from the effective date of this agreement, whichever shall occur first. DMWW, as total service provider for Cumming's water system, and in its capacity of performing engineering review of new commercial connections to Cumming's system, shall notify both Cumming and Norwalk when proposed development necessitates the purchase of additional capacity in the DMWW Water Utility Improvements. Commercial connections will not be approved by DMWW until the appropriate payment has been made by Cumming to Norwalk to purchase the capacity required to provide adequate fire flows of 2,000 gpm. The estimated additional amount Cumming will owe Norwalk for the additional 1,000 gpm for emergency fire flows based on estimated June 2017 costs is \$544,809.58 as shown in Exhibit C; however, actual payment will be calculated based on the difference between the actual costs paid by Cumming for a capacity of 1,000 gpm, and Cumming's portion of the actual cost of the DMWW Water Utility Improvements for each Phase 1 through 4 at 2,000 gpm for emergency fire flows, as adjusted by any increase in the Engineering News Record Construction Cost Index (ENR CCI) in effect since the month each contract was accepted. Future transfer of capacity in the DMWW Water Utility Improvements shall be documented by an Amendment to this 28E.

### **Part VI - Conveyance of Ownership**

After completion and final acceptance of the improvements and payment in full of the costs by Norwalk ~~and Cumming~~ to DMWW, DMWW will execute and deliver to Norwalk ~~and Cumming~~

instruments of conveyance of ownership in form satisfactory to Norwalk ~~and Cumming~~ for the portion thereof to be owned by each party as set forth in Part III herein.

### **Part VII – Term and Termination of Agreement**

1. This Agreement shall commence on the Effective Date and shall terminate on the date of the last to occur of the following: (i) the DMWW Water Utility Improvements have been constructed and accepted by DMWW; (ii) DMWW shall be fully reimbursed by Norwalk and Cumming for its costs as provided herein; and (iii) the instruments required by Part VI hereof shall have been executed by DMWW and delivered to Norwalk and Cumming; and (iv) March 31, 2045, the termination date of the Wholesale Water Service Master Agreement.

2. Termination. In the event that either 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 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.

### **Part VIII- 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 (“Indemnities”), 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 Indemnities 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. DMWW 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 Norwalk:

City Administrator  
City of Norwalk  
705 North Ave.  
Norwalk, Iowa 50211

Notices to Cumming:

City Clerk  
City of Cumming  
PO Box 100  
649 North 44<sup>th</sup> St.  
Cumming, Iowa 50061

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, may be submitted to arbitration with the consent of the parties to the dispute. 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 Polk 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 represents the entire agreement between the parties related to the DMWW Water Utility Improvements. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly approved and executed amendment to this Agreement.

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

8. Partnership Disclaimer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing a partnership between the parties hereto, or as constituting either party as an agent or representative of the other for any purpose or in any manner, other than as specified herein.



On this \_\_\_\_\_ day of \_\_\_\_\_, 2017 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 NORWALK, 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 \_\_\_\_\_, 2017, 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

STATE OF IOWA            )  
  ) SS:  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017 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 CUMMING, 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 \_\_\_\_\_, 2017, 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

STATE OF IOWA        )  
  )        SS:  
COUNTY OF POLK    )

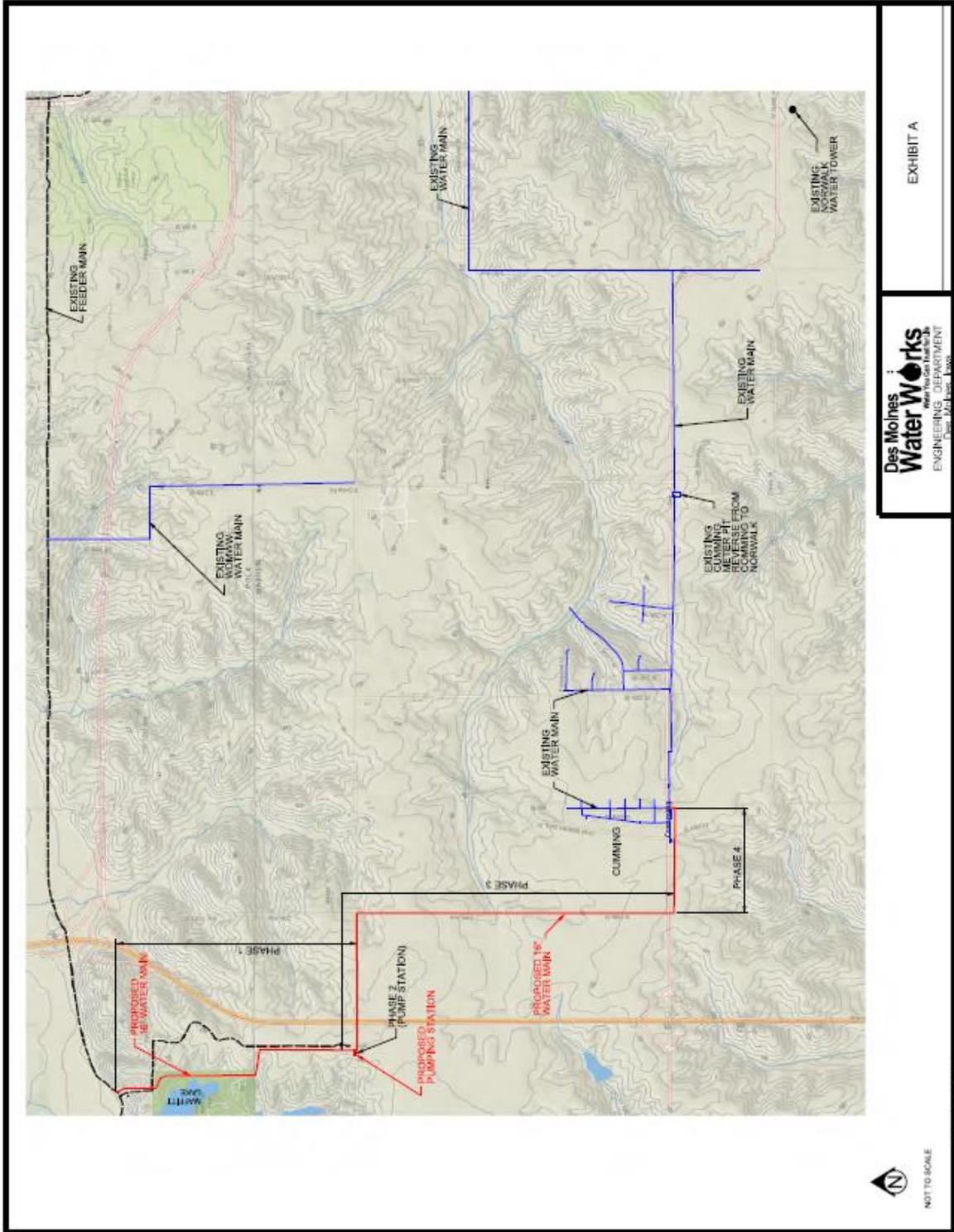
On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public in and for the State of Iowa, personally appeared Susan R. Huppert and William G. Stowe, to me personally known, and, who being by me duly sworn, did say that they are the Board Chairperson and the Chief Executive Officer and General 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 \_\_\_\_\_, 2017, and that Susan R. Huppert 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.

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Notary Public in and for the State of Iowa

# Exhibit A MAP



Des Moines  
**Water Works**  
ENGINEERING DEPARTMENT  
Des Moines, Iowa

EXHIBIT A

# Exhibit B - 1 Cost Estimates

## Phase 1

Flow capacity of 16-inch pipe (gpm) 3,133  
 Engineer's Estimate for 16-inch pipe \$ 999,685.98

Projected Timing: Construction anticipated to begin Q3 2017, completed Q2 2018

| Phase 1 Flow Demand |                 | Gallons Per Day<br>(GPD) | Million<br>Gallons<br>per Day<br>(MGD) | Allocated<br>Share of<br>Flow | Allocated Cost of<br>Phase 1 |
|---------------------|-----------------|--------------------------|--|-------------------------------|------------------------------|
| Cumming             | Domestic        | 306,720                  | 0.31                                   | 12.37%                        |                              |
|                     | Fire (1000 gpm) | 173,280 <sup>1</sup>     | 0.17                                   | 6.99%                         |                              |
|                     |                 |                          |  | 19.35%                        | \$ 193,487.61                |
| Norwalk             | Dom & Fire      | <u>2,000,000</u>         | <u>2.00</u>                            | 80.65%                        | \$ 806,198.37                |
| Totals              |                 | 2,480,000                | 2.48                                   | 100.00%                       | \$ 999,685.98                |

Notes

<sup>1</sup> [(1,000 gpm \* 24 hours \* 60 minutes) \* 1/3 fire ratio] - 306,720 gpd domestic requirement

## Exhibit B - 2 Cost Estimates

### Phase 2

Engineer's Estimate                   \$ 1,389,440.00

Projected Timing: Construction anticipated to begin Q3 2017, completed Q4 2018

|         |                 | <b>Phase 2<br/>Gallons Per Day<br/>(GPD)</b> | <b>Million<br/>Gallons<br/>per Day<br/>(MGD)</b> | <b>Allocated<br/>Share of<br/>Flow</b> | <b>Allocated Cost of<br/>Phase 2</b> |
|---------|-----------------|--|--|--|--------------------------------------|
| Cumming | Domestic        | 306,720                                      | 0.31   | 12.37%                                 |                                      |
|         | Fire (1000 gpm) | 173,280 <sup>1</sup>                         | 0.17   | 6.99%                                  |                                      |
|         |                 |  |  | 19.35%                                 | \$ 268,923.87                        |
| Norwalk | Dom & Fire      | 2,000,000                                    | 2.00   | 80.65%                                 | \$ 1,120,516.13                      |
| Totals  |                 | 2,480,000                                    | 2.48   | 100.00%                                | \$ 1,389,440.00                      |

<sup>1</sup> [(1,000 gpm \* 24 hours \* 60 minutes) \* 1/3 fire ratio] - 306,720 gpd domestic requirement

## Exhibit B - 3 Cost Estimates

### Phase 3

Engineer's Estimate                   \$ 1,407,764.79

Projected Timing: Construction anticipated to begin Q3 2017, completed Q3 2018

|         |                 | <b>Phase 3<br/>Gallons Per Day<br/>(GPD)</b> | <b>Million<br/>Gallons<br/>per Day<br/>(MGD)</b> | <b>Allocated<br/>Share of<br/>Flow</b> | <b>Allocated Cost of<br/>Phase 3</b> |
|---------|-----------------|--|--|--|--------------------------------------|
| Cumming | Domestic        | 306,720                                      | 0.31   | 12.37%                                 |                                      |
|         | Fire (1000 gpm) | 173,280 <sup>1</sup>                         | 0.17   | 6.99%                                  |                                      |
|         |                 |  |  | 19.35%                                 | \$ 272,470.60                        |
| Norwalk | Dom & Fire      | <u>2,000,000</u>                             | <u>2.00</u>                                      | 80.65%                                 | <u>\$ 1,135,294.19</u>               |
| Totals  |                 | 2,480,000                                    | 2.48   | 100.00%                                | \$ 1,407,764.79                      |

<sup>1</sup> [(1,000 gpm \* 24 hours \* 60 minutes) \* 1/3 fire ratio] - 306,720 gpd domestic requirement

## Exhibit B - 4 Cost Estimates

### Phase 4

Engineer's Estimate                      \$    369,042.47

Projected Timing: Construction anticipated to begin Q3 2017, completed Q3 2018

|         |                 | <b>Phase 4<br/>Gallons Per Day<br/>(GPD)</b> | <b>Million<br/>Gallons<br/>per Day<br/>(MGD)</b> | <b>Allocated<br/>Share of<br/>Flow</b> | <b>Allocated Cost of<br/>Phase 4</b> |
|---------|-----------------|--|--|--|--------------------------------------|
| Cumming | Domestic        | 198,720                                      | 0.20   | 8.01%                                  |                                      |
|         | Fire (1000 gpm) | 281,280 <sup>1</sup>                         | 0.28   | 11.34%                                 |                                      |
|         |                 |  |  | 19.35%                                 | \$        71,427.57                  |
| Norwalk | Dom & Fire      | 2,000,000                                    | 2.00   | 80.65%                                 | \$    297,614.90                     |
| Totals  |                 | 2,480,000                                    | 2.48   | 100.00%                                | \$    369,042.47                     |

#### Notes

<sup>1</sup>[(1000 gpm \* 24 hours \* 60 minutes) \* 1/3 fire ratio] - 198,720 gpd domestic requirement

## Exhibit B - 5 Cost Estimates

### Estimated Total Costs by Entity

|              | Phase 1              | Phase 2                | Phase 3                | Phase 4              | Subtotal               |
|--------------|----------------------|------------------------|------------------------|----------------------|------------------------|
| Cumming      | \$ 193,487.61        | \$ 268,923.87          | \$ 272,470.60          | \$ 71,427.57         | \$ 806,309.66          |
| Norwalk      | \$ 806,198.37        | \$ 1,120,516.13        | \$ 1,135,294.19        | \$ 297,614.90        | \$ 3,359,623.57        |
| <b>Total</b> | <b>\$ 999,685.98</b> | <b>\$ 1,389,440.00</b> | <b>\$ 1,407,764.79</b> | <b>\$ 369,042.47</b> | <b>\$ 4,165,933.23</b> |

Projected that Payment

Will be Requested:

|         |         |         |         |
|---------|---------|---------|---------|
| Q4 2017 | Q4 2017 | Q4 2017 | Q4 2017 |
| Q1 2018 | Q1 2018 | Q1 2018 | Q1 2018 |
| Q2 2018 | Q2 2018 | Q2 2018 | Q2 2018 |
|         | Q3 2018 | Q3 2018 | Q3 2018 |
|         | Q4 2018 | Q4 2018 | Q4 2018 |

## Exhibit C

(Reference Part V Section 3)

### Estimated Additional Amounts Cumming Will Pay Norwalk Based on Difference Between Fire Flow Capacities of 1000 gpm and 2000 gpm

|   | Phase 1       | Phase 2       | Phase 3       | Phase 4       | Subtotal        |
|---|---------------|---------------|---------------|---------------|-----------------|
| 1000 gpm fire flow  | \$ 193,487.61 | \$ 268,923.87 | \$ 272,470.60 | \$ 71,427.57  | \$ 806,309.66   |
| 2000 gpm fire flow  | \$ 324,222.48 | \$ 450,629.19 | \$ 456,572.36 | \$ 119,689.45 | \$ 1,351,113.48 |
| <hr/>   |               |               |               |               |                 |
| Estimated Cost of Additional Fire<br>Flow Capacity Stated in June 2017<br>Costs | \$ 130,734.87 | \$ 181,705.32 | \$ 184,101.76 | \$ 48,261.87  | \$ 544,803.82   |

Actual amount to be paid will be based on Actual Costs of Water Utility Improvements, adjusted by difference in ENR CCI in month additional capacity is purchased and ENR CCI at the time each contract was accepted.

**Exhibit D**  
**Supplement Number 3 to Adoption Annex**

This Supplement Number 3 to Adoption Annex is executed effective as of \_\_\_\_\_, 2017, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa (“DMWW”) and the City of Norwalk (“Norwalk”), 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, Norwalk, and other Participants (the “Wholesale Water Service Master Agreement”) for the purpose of designating an additional Connection Point and up to 2 MGD of capacity in a 16” feeder main and a new pump station near the existing Warren Water District pump station on Adams St. near Interstate 35, constructed as Phases 1 through 4 of DMWW Water Utility Improvements, as outlined in a 28E Agreement dated \_\_\_\_\_, 2017 between Norwalk, Cumming, and Des Moines Water Works.

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

CITY OF NORWALK, IOWA

By: \_\_\_\_\_  
Susan R. Huppert, Chairperson

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

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

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