CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 5, 2014

ITEM: Resolution approving Chapter 28E Agreement between the West Des Moines Water Works, the City of West Des Moines and the Board of Water Works Trustees of the City of Des Moines regarding the funding and operation of an Aquifer Storage and Recovery Facility

FINANCIAL IMPACT: Unknown at this time

BACKGROUND: Operation of the Microsoft Alluvion Data Center will require a reliable source of water and one that will provide the data center significant amounts during specific times of the year. As development occurs south of the Raccoon River, demand will also increase on the West Des Moines Water Works to maintain a significant water supply. To address these demands, representatives of the City and West Des Moines Water Works have negotiated a 28E Agreement with the Des Moines Water Works in which the City will provide tax increment funding from the Alluvion Urban Renewal District for the construction by Des Moines Water Works of an Aquifer Storage and Recovery facility ("ASR"). The ASR facility, which will be located on Des Moines Water Works property, will have a daily capacity of 3 million gallons and will provide the data center a reliable source of water. West Des Moines Water Works will also construct at its sole cost improvements that will enable it to access up to 3 million gallons of water a day from the ASR during its seasonal peak use period.

Upon completion of the ASR facility, Des Moines Water Works will own and be responsible for the operation of the ASR subject to the terms of this 28E Agreement and the 2005 Wholesale Master Agreement between the Des Moines Water Works and West Des Moines Water Works.

The 28E Agreement was approved by the West Des Moines Water Works Board of Trustees on April 20, 2015 and by the Des Moines Water Works Board of Trustees on April 28, 2015

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Approve the Chapter 28E Agreement between the West Des Moines Water Works, the City of West Des Moines and the Board of Water Works Trustees of the City of Des Moines regarding the funding and operation of an Aquifer Storage and Recovery Facility

Lead Staff Member: Richard J. Scieszinski RJS

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation			

RESOLUTION NO._____

RESOLUTION AUTHORIZING APPROVAL OF A CHAPTER 28E AGREEMENT BETWEEN THE WEST DES MOINES WATER WORKS, THE CITY OF WEST DES MOINES AND THE BOARD OF TRUSTEES OF THE CITY OF DES MOINES REGARDING THE FUNDING AND OPERATION OF AN AQUIFER STORAGE AND RECOVERY FACILITY

WHEREAS, the City of West Des Moines, the West Des Moines Water Works and the Des Moines Water Works have negotiated an agreement in which Des Moines Water Works will design and construct an Aquifer Storage Recovery Facility, the City will provide funding for its design and construction, and West Des Moines Water Works will construct improvements to access the Facility for the provision of water to areas within the City of West Des Moines; and

WHEREAS, all parties to the agreement will benefit from the construction and operation of the Facility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The Chapter 28E Agreement by and between West Des Moines Water Works, the City of West Des Moines and the Board of Water Works Trustees of the City of Des Moines is hereby approved.

2. The Mayor is authorized to sign the 28E Agreement and the City Clerk is directed to attest to the Mayor's signature.

3. Upon execution, the 28E Agreement shall be recorded by the Iowa Secretary of State and a copy of the 28E Agreement shall be provided to each party to the 28E Agreement.

PASSED AND ADOPTED this 4th day of May, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

WEST DES MOINES WATER WORKS
BOARD OF TRUSTEES MEETING COMMUNICATION

DATE: April 20, 2015

ITEM:

5. Recommendation from Committee
   d. Planning
      1. Resolution – Approve 28E Agreement Between West Des Moines Water Works, the City of West Des Moines, and Des Moines Water Works for a Water System Improvement Project

FINANCIAL IMPACT: N/A

SUMMARY:

The following 28E Agreement details the responsibilities for design, construction, maintenance and operation of an Aquifer Storage and Recovery well and supporting infrastructure to serve current and future development within the South Area of West Des Moines. The 28E provides for West Des Moines Water Works (WDMWW) to obtain up to 3 million gallons per day of additional water during the seasonal peak use period (June 15 – September 15). This additional capacity is entitled "Regional Capacity Credit" and will be billed at a rate equivalent to the annual Purchase Capacity rate. The 28E contains in Exhibit C the Supplement Number One (1) to the Adoption Annex of the 2005 Wholesale Master Agreement, which documents the rights and terms of Purchased Capacity and Regional Capacity Credit between WDMWW and Des Moines Water Works (DMWW).

BACKGROUND:

The Microsoft/Alluvion project in the South Area of West Des Moines requires development of additional treated water to serve the large seasonal demands of the data center. Several project concepts were explored, with the most economical and local and regional benefit obtained from a joint Aquifer Storage and Recovery (ASR) well project between WDMWW, City of West Des Moines (City), and DMWW.

This agreement is being considered by DMWW at their Board of Trustees meeting on April 28th. The City Council will consider the 28E at the May 4th meeting.

RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:

To concur with the recommendation of the Planning Committee and adopt the Resolution to Approve the 28E Agreement Between West Des Moines Water Works, City of West Des Moines, and Des Moines Water Works for a Water System Improvement Project.

Prepared by: A Wilson

Approved for Content by: A Wilson

RESOLUTION

A RESOLUTION APPROVING A CODE OF IOWA CHAPTER 28E AGREEMENT BETWEEN WEST DES MOINES WATER WORKS THE CITY OF WEST DES MOINES AND DES MOINES WATER WORKS FOR A WATER SYSTEM IMPROVEMENT PROJECT

WHEREAS, management and control of the West Des Moines Water Works is vested in The Board of Trustees, and

WHEREAS, this Board of Trustees believes that it is appropriate, necessary and in the public interest to set forth requirements for the design, construction, operation, and financing of a joint Aquifer Storage and Recovery (ASR) well project between the City of West Des Moines, Des Moines Water Works and West Des Moines Water Works to increase seasonal water production capacity, and

WHEREAS, this Board of Trustees believes that the mutual promises, covenants and considerations set forth in the Code of Iowa Chapter 28E Agreement, including Supplement Number One (1) to the Wholesale Water Service Master Agreement Adoption Annex, attached hereto are for the betterment of the services provided the public by each entity.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE WEST DES MOINES WATER WORKS, AS FOLLOWS:

That the Code of Iowa 28E Agreement attached to this Resolution is hereby approved.

PASSED AND APPROVED this 20th day of April, 2015

THE BOARD OF TRUSTEES, WEST DES MOINES WATER WORKS

_____
Karen Novak Swalwell
Chair

Attest:

_____
Diana J. Wilson, P.E.
Secretary

CHAPTER 28E AGREEMENT BY AND BETWEEN WEST DES MOINES WATER WORKS, THE CITY OF WEST DES MOINES, 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 BOARD OF WATER WORKS TRUSTEES OF THE WEST DES MOINES WATER WORKS ("WDMWW"), CITY OF WEST DES MOINES, IOWA ("City"), 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, WDMWW, City and DMWW 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 upgrade the capacity of the water supply infrastructure needed to support development in certain areas of the City, including support of a specific project for Microsoft Corporation which has a very high peak demand requirement that cannot be met without such upgrades; and

WHEREAS, WDMWW and DMWW have previously entered into a Wholesale Water Service Master Agreement dated June 10, 2005, with related Adoption Annex executed effective June 13, 2005 (the "2005 Wholesale Master Agreement") which shall continue to govern the wholesale supply of water by DMWW to WDMWW; and

WHEREAS, to meet the objective stated above WDMWW needs to increase its capacity to serve current and future customers within the area that it defines as the "South Area Pressure Zone" ("South Pressure Zone"); and

WHEREAS, to meet the objective stated above DMWW needs to design and construct an Aquifer Storage and Recovery ("ASR") facility as Core Network improvements to meet water demands of its customers, including WDMWW; and

WHEREAS, the City desires to provide economic incentives in support of general development in the South Area Pressure Zone within the City, and in support of the specific current project described above; 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, WDMWW, City 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 generally described in Exhibit A at an estimated cost as set forth in Exhibit B (hereinafter referred to collectively as the "DMWW Water Utility Improvements"); (ii) the ongoing ownership, operation, use and maintenance of said DMWW Water Utility Improvements; and (iii) the initial construction, financing, ongoing ownership, operation, use and maintenance of specific WDMWW Water Utility Improvements. All of the foregoing shall provide water to support development in certain areas of the City including, but not limited to, support of a specific project for Microsoft Corporation. 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 an ASR facility with a designed capacity of 3.0 million gallons per day (MGD) as generally described in Exhibit A. The ASR facility shall create infrastructure intended to support the needs of both DMWW and WDMWW, with ownership, use, and costs allocated as provided herein. The DMWW Water Utility Improvements shall be constructed and owned by DMWW as provided in Part II, but the costs thereof shall be fully paid by City. WDMWW shall construct at its own sole cost and expense certain improvements to its system as set forth in Part II to facilitate the efficient use and implementation of the DMWW Water Utility Improvements.

3. 28E Finding. The parties agree that the Sponsored Project is a facility that reflects 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 Sponsored Project.

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 their own activities and the activities of their 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 their 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 WDMWW shall remain in effect except as outlined in Part III, Section 5 herein, but a Supplement to Adoption Annex shall be executed by WDMWW and DMWW to conform to the provisions hereof in the form of Exhibit C. Additionally, the 2012 Agreement for West Des Moines Water Works Connection to Des Moines Water Works Transmission Main at Army Post Road and S. 22nd Street shall be, without further action of the parties deemed to be modified to conform to the provisions hereof.

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 Specification 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 December 2014, then DMWW shall consult with City and WDMWW respecting costs before proceeding further to advertise for bids and letting contracts.

2. Construction of DMWW Water Utility Improvements. 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 City and WDMWW of the bid opening date for all work for which DMWW will take bids in connection with the DMWW Water Utility Improvements. City and WDMWW 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 fifteen percent (15%), DMWW shall give notice to WDMWW and the City of such fact, and DMWW shall not proceed to award a contract unless the City gives its approval to proceed at the bid price. Failure by the City 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 fifteen percent (15%), DMWW shall notify the City of such requests, and DMWW shall not proceed to issue change orders for any excess amount unless the City gives its approval to such change orders. Failure by the City 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 City 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 WDMWW and the City. 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 WDMWW and the City 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 City or WDMWW objects to the acceptance of such improvements or to final payment to the contractor, City or WDMWW 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 VII, Section 5 hereof.

3. ASR Site. DMWW will provide, at no cost to WDMWW or City, a 5.28 acre parcel of land to be used as the site of the ASR facility located east of Willow Creek Golf Course, within the Des Moines city limits (Polk County District Parcel No 120/07535-103-004). DMWW asserts such site is suitable in all respects for the construction of an ASR facility, including but not limited to, the availability of all necessary utilities and adequate stormwater and sanitary sewer facilities to accommodate discharge water. Such property will remain titled to "City of Des Moines, Iowa, for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa."

4. WDMWW Connection. WDMWW is responsible for designing and installing a connection facility, including all related piping and appurtenances, to DMWW's Core Network transmission main in order to directly serve WDMWW's service area. WDMWW will not proceed with the award of any contract prior to DMWW's concurrence that the design and construction of the connection and water main properly address applicable engineering issues affecting DMWW operations, including, but not limited to, potential pressure transients.

5. WDMWW Booster Station. City and WDMWW are responsible, at no cost or responsibility of DMWW, for the construction of a booster station connected to the Core Network in order to deliver adequate fire flow and water pressure to customers within the South Pressure Zone. Such booster station will be located in the general vicinity of the "old" Army Post Road and Veterans Parkway intersection, with final location to be determined by City and WDMWW.

6. WDMWW Relocation of Customer Connections. WDMWW is responsible, at its sole expense, for relocating to its newly installed main by December 31, 2016, an existing WDMWW customer connection currently served directly from DMWW's Core Network Transmission main, known as Willow Creek Baptist Church located at 920 Army Post Road.

7. Project Implementation. The Microsoft Project will be completed in four phases as outlined in Exhibit D. 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, unreasonable delays by DNR in permitting the improvements, unforeseeable construction delays, changed Microsoft construction schedule, or necessary utilities serving the ASR site.

Part III – Ownership and Use of DMWW Water Utility Improvements and Other Facilities.

1. DMWW Ownership. DMWW shall have and shall maintain all ownership of the DMWW Water Utility Improvements and water supply contained therein during the term of this Agreement and thereafter. 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. As such, DMWW shall have the right to operate the ASR facility, in its sole discretion, to serve other non-WDMWW customers.

2. WDMWW Ownership. WDMWW shall have and maintain all ownership of the booster station, meter pits, and connection to DMWW's Core Network transmission main located in Army Post Road, including all piping and appurtenances, but not including the meters therein which shall be provided by, and owned by DMWW. WDMWW shall have sole responsibility for maintenance, repair, improvements and costs thereof to operate the facilities which it owns.

3. WDMWW Capacity Rights. WDMWW shall have the right to use up to three million gallons per day (3.0 MGD) of the ASR facility owned by DMWW 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 WDMWW in all respects, except as set forth herein in Part V, Section 3.

4. Documentation. The rights of ownership and use as provided in this Part III shall be deemed documented of record by this Agreement and by the execution of a Supplement to Adoption Annex to the 2005 Wholesale Master Agreement.

5. Other Improvements. Nothing contained herein shall limit DMWW's or WDMWW's ability in any service area to increase future water distribution or production assets, including construction of additional ASR(s), river crossings to connect pressure zones, or the installation of pipes, valves, equipment, devices, appliances or other fixtures or appurtenances. WDMWW and DMWW will make good faith attempts to coordinate planning and design activities in the event additional assets are proposed to be constructed, such that improvements of one utility do not adversely impact the other.

Part IV – Participation and Cost Reimbursement.

1. WDM Cost Share. The City agrees to reimburse DMWW 100% of the "Actual Cost" of the DMWW Water Utility Improvements. The "Actual Cost" shall be the sum of all payments made by DMWW to contractors for design, construction of project improvements, and any related work, plus the total cost to DMWW of materials, equipment and labor directly provided by DMWW, as reflected in DMWW's final accounting. Actual cost shall not include the cost of the

site provided by DMWW, but Actual Costs shall include the costs of site preparation and the costs of bringing utilities to the site, including acquisition of any required off site easements.

2. Estimates. The preliminary engineer's estimate of the cost to the City of the DMWW Water Utility Improvements is $3,591,132 as shown in Exhibit B. The amounts shown are estimates only and are not guaranteed by DMMW. The Actual Cost incurred shall govern the reimbursement by the City to DMWW, rather than any existing or subsequent engineers estimate.

3. Invoices. DMWW will forward to WDMWW and the City documentation evidencing contractor requests for progress payments and will invoice the City for progress payments. After final acceptance by DMWW of the DMWW Water Utility Improvements, and final payment to its contractors for such improvements, DMWW will invoice the City for final payment supported by documentation evidencing acceptance and payment, and a full accounting for City's share of Actual Costs. City agrees to make payment of each invoice within 30 business days of receipt of the invoice.

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. All such funding shall be separately included within the respective regular budgets of WDMWW, DMWW and the City.

2. Responsibility. With respect to reimbursement by and between WDMWW and City for ASR construction costs, each party shall be solely responsible for funding its own operations and activities hereunder, or shall enter separate negotiations to determine responsibility for project costs.

3. Wholesale Rates. In exchange for payment of the costs of the DMWW Water Utility Improvements, the wholesale water meters serving WDMWW's South Pressure Zone will be billed to WDMWW at a rate established annually as the "Purchased Capacity Rate" under the Wholesale Water Service Master Agreement, subject to any applicable adjustment for "Consumption Above Purchased Capacity" as defined in Sections 18 and 19 of the Wholesale Water Service Master Agreement. From June 15th through September 15th of each year when the ASR facility is presumed to be in production mode, it is understood that WDMWW's consumption of up to 3.0 MGD in the South Pressure Zone will be considered a "Regional Capacity Credit" and, as such, shall be excluded for purposes of calculating "Consumption Above Purchased Capacity" as defined in Sections 18 and 19 of the Wholesale Water Service Master Agreement both for wholesale service generally and for service to WDMWW's South Area Pressure Zone. It is understood that the 3.0 MGD would still be available to WDMWW during times the ASR facility is down for any reason during the typical withdrawal period, provided DMWW does not experience a water shortage per sections 24 and 33 of the Wholesale Water Service Master Agreement. For purposes of this Agreement, WDMWW's South Area Pressure Zone shall include any future expansions of such area, but only to the extent such expansion does not go beyond a territory bordered approximately by the Raccoon River to the

north, Highway 28 to the east, approximately 6 miles west of I35, or the distance to the City western corporate boundary south of the Raccoon River to the west, and the city limits to the south.

4. CIRDWC Regional Water Production and Governance Feasibility Study. It is understood by the parties that the Central Iowa Regional Drinking Water Commission ("CIRDWC") is currently engaged in a feasibility study evaluating a regional water production utility. In the event recommendations from the CIRDWC feasibility study are implemented, this Agreement shall be modified as necessary by further agreement of the parties to the extent required by such implementation. It is further understood WDMWW shall receive recognition for the payment of costs of the DMWW Water Utility Improvements and DMWW shall receive recognition of payment for the site and any improvements, in a manner consistent with how other payments by participating entities for facilities owned by DMWW are recognized in the consultants' recommendations.

Part VI –Term and Termination of Agreement

1. Term. This Agreement shall commence on the Effective Date and shall terminate on March 31, 2045, the termination date of the Wholesale Water Service Master Agreement. If the term of Wholesale Water Service Master Agreement is at any time, or from time to time, extended beyond March 31, 2045, then the term of this Agreement shall be extended automatically, and without further action by any party, to continue until expiration of the term of the Wholesale Water Service Master Agreement as so extended. The parties agree to document any such extensions of this Agreement, by means of execution and filing of extension agreements, but no failure to execute and file any such document will be deemed to cause the termination of this Agreement prior to the expiration 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 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 ("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 WDMWW:

General Manager
West Des Moines Water Works
4200 Mills Civic Pkwy
Suite 1D
West Des Moines, Iowa 50265-0320

Notices to the City:

City Manager
City of West Des Moines
PO Box 65320
4200 Mills Civic Pkwy
West Des Moines, Iowa 50265-0320

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 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.

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

10. No Assignment. Neither of the parties shall assign this Agreement without the consent of the other party, which consent shall not be unreasonably withheld.

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

CITY OF WEST DES MOINES, IOWA

By: _____
Steven K. Gaer, Mayor

Attest: _____
Tom Hadden, City Manager

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

By: _____
Karen Novak Swalwell, Chair

Attest: _____
Diana Wilson, General Manager

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

By: _____
Graham R. Gillette, Board Chairperson

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

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 2015 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven K. Gaer and Tom Hadden, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF WEST DES MOINES, 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 _____ _____, 2015, and that Steven K. Gaer and Tom Hadden 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 20th day of April, 2015, before me, a Notary Public in and for the State of Iowa, personally appeared Karen Novak Swalwell and Diana Wilson, to me personally known, and, who being by me duly sworn, did say that they are the Chair and the General Manager of the BOARD OF WATER WORKS TRUSTEES OF THE WEST DES MOINES WATER WORKS, WEST 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 20th day of April, 2015, and that Karen Novak Swalwell and Diana Wilson acknowledged the execution of the instrument to be the voluntary act and deed of the BOARD OF Water Works TRUSTEES OF THE CITY OF THE WEST DES MOINES WATER WORKS, WEST DES MOINES, IOWA, by it and by them voluntarily executed.

Jenna Yates
Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA
JENNA YATES
Commission Number 787154
My Commission Expires
November 24, 2017

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 2015, before me, a Notary Public in and for the State of Iowa, personally appeared Graham R. Gillette 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 _____, 2015, and that Graham R. Gillette 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
General Description of Project

Following is a general description of the Aquifer Storage and Recovery (ASR) facility portion of the DMWW Water Utility Improvements:

1. Develop a 5.28 acre parcel of land located in the northeast quarter (NE ¼) of Section 35 and the northwest quarter (NW ¼) of Section 36, all in Township 78 North, Range 25 West of the 5th Principal Meridian (Polk County District Parcel No. 120/07535-103-004) for installation of Aquifer Storage and Recovery (ASR) facilities described below. Development of the site includes clearing and grading, slope stabilization, construction of access road, and establishing security for the site and facilities.

2. Design, obtain permits, prepare and award contracts, and oversee construction, yield maximization, and commissioning of an ASR well system, located on the same parcel described in 1, above. The ASR facility will:

    a. Inject 2.5 million gallons of potable water per day in to the Jordan Aquifer at a depth of approximately 2,600 feet below the ground surface.
    b. Store approximately 300 million gallons of potable water in the Jordan Aquifer.
    c. Recover, disinfect, and adjust the pH for 3 million gallons of water per day up to the capacity of water stored.
    d. Connect to and pump potable water recovered from the ASR well system into DMWW's Core Network.

Exhibit B
Cost Estimate

Period		Cost[1]	Activity
2015 - 1st Quarter	$	100,500	Design, Permitting, Plans and Specifications
2nd Quarter	$	536,092	Design, Permitting, Plans and Specifications, Well Construction, 16" Water Main
3rd Quarter	$	904,346	Well Construction
4th Quarter	$	908,686	Well Construction, Well Testing, Submersible Pump System, Well House and Piping
2016 - 1st Quarter	$	827,846	Submersible Pump System, Well House and Piping
2nd Quarter	$	304,644	Submersible Pump System, Pump House and Piping, Well Pump and System Piping Testing, Well Cycle Testing
3rd Quarter	$	9,018	Well Cycle Testing
4th Quarter	$	0	
Project Total		**$3,591,132**	

1 Cost estimates are based on December 2014 ENR CCI and include engineering design and inspection costs

Exhibit C
Supplement Number 1 to Adoption Annex

This Supplement Number 1 to Adoption Annex is executed effective as of _____, 2015, on behalf of the Board of Water Works Trustees of the City of Des Moines, Iowa ("DMWW") and the Board of Water Works Trustees of the West Des Moines Water Works, West Des Moines Iowa, and shall form a part of the Adoption Annex dated June 13, 2005 (the "Adoption Annex"), and the Wholesale Water Service Master Agreement dated June 10, 2005 , among DMWW, West Des Moines Water Works, and other Participants (the "Wholesale Water Service Master Agreement") for the purpose of documenting the City of West Des Moines' payment to construct a new Aquifer Storage and Recovery ("ASR") facility to serve Microsoft Corporation and other existing and future customers within West Des Moines Water Works' South Area Pressure Zone under the terms of a 28E Agreement by and among West Des Moines, DMWWW and the City of West Des Moines (the "28E Agreement").

1. Effective as of this date, the Purchased capacity of West Des Moines shall remain 8.973 MGD, calculated as follows:

1996 Purchased Capacity:	6.323 MGD
Converted Off-Peak Capacity:	0.650 MGD
2005 Purchased Capacity:	2.000 MGD
TOTAL:	8.973 MGD

2. In exchange for payment of the costs of the DMWW Water Utility Improvements, the wholesale water meters serving WDMWW's South Pressure Zone will be billed to WDMWW at a rate established annually as the "Purchased Capacity Rate" under the Wholesale Water Service Master Agreement, subject to any applicable adjustment for "Consumption Above Purchased Capacity" as defined in Sections 18 and 19 of the Wholesale Water Service Master Agreement. From June 15th through September 15th of each year when the ASR facility is presumed to be in production mode, it is understood that WDMWW's consumption of up to 3.0 MGD in the South Pressure Zone will be considered a "Regional Capacity Credit" and, as such, shall be excluded for purposes of calculating "Consumption Above Purchased Capacity" as defined in Sections 18 and 19 of the Wholesale Water Service Master Agreement both for wholesale service generally and for service to WDMWW's South Area Pressure Zone. It is understood that the 3.0 MGD would still be available to WDMWW during times the ASR facility is down for any reason during the typical withdrawal period, provided DMWW does not experience a water shortage per sections 24 and 33 of the Wholesale Water Service Master Agreement. For purposes of this Agreement, WDMWW's South Area Pressure Zone shall include any future expansions of such area, but only to the extent such expansion does not go beyond a territory bordered approximately by the Raccoon River to the north, Highway 28 to the east, approximately 6 miles west of I35, or the distance to the City western corporate boundary south of the Raccoon River to the west, and the city limits to the south.

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, as supplemented, and the Wholesale Water Service Master Agreement from and after such date.

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

By:_____
Graham R. Gillette, Chairperson

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

BOARD OF WATER WORKS TRUSTEES
OF WEST DES MOINES WATER WORKS

By:_____
Karen Novak Swalwell, Chair

ATTEST:_____
Diana Wilson, General Manager

Exhibit D
Microsoft Project implementation Phases

Phase	Date of Operation	Peak Phase Domestic Water Demand (gpm)	Total Domestic Demand (gpm)	Fire Flow (gpm)	Total Peak Flow Requirement (gpm)
DSM 05	10/1/2015	721	721	2,000	2,721
DSM 06	8/1/2016	582	1,303	2,000	3,303
DSM 07	12/1/2017	582	1,885	2,000	3,885
DSM 08	7/1/2018	582	2,467	2,000	4,467

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