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May 5, 2008

**AUTHORIZATION AND APPROVAL OF A
FIRST AMENDMENT TO THE CHAPTER 28E AGREEMENT WITH
THE CITY OF DES MOINES AND THE CITY OF NORWALK FOR
LOAN OF WASTEWATER TREATMENT PLANT OPERATOR**

WHEREAS, in 2003, the City of Norwalk had a vacancy on the staff of its Grade III Treatment Plant and had an ongoing need for a licensed Wastewater Operator to meet the operational requirements for its Plant; and

WHEREAS, the City of Des Moines, in its capacity as the Operating Contractor for the Des Moines Metropolitan Wastewater Reclamation Authority (hereinafter the "WRA"), operates the WRA's Wastewater Reclamation Facility (hereinafter the "WRF") and has employees duly licensed as Wastewater Operators who would be qualified to assist Norwalk in its need; and

WHEREAS, on August 25, 2003, by Roll Call No. 03-2031, upon the approval and authorization of the WRA Management Agency, the City Council of the City of Des Moines, Iowa approved a 28E Agreement for Loan of Personnel and Equipment Between the City of Des Moines, Iowa and the City of Norwalk, Iowa, providing for the loan of WRF personnel for the operation of Norwalk's Wastewater Treatment Plan; and

WHEREAS, that Agreement provided it was in effect until June 30, 2006; and

WHEREAS, the WRA Agreement provides for the WRA to take out of commission the Norwalk Wastewater Treatment Plant with the Southwest Diversion- Phase 22, Segment 6 Project in approximately June 2009; and

WHEREAS, a First Amendment extending the 28E Agreement with Norwalk through June 30, 2009 has been negotiated and approved by Norwalk; and

WHEREAS, on February 5, 2008, by Resolution No. 08-26, the WRA Board approved and authorized the City of Des Moines as Operating Contractor, to execute the First Amendment to the Chapter 28E Agreement with the City of Des Moines and the City of Norwalk; and

WHEREAS, it is now requested that the City Council of the City of Des Moines authorize and approve a First Amendment to the 28E agreement with Norwalk for the loan of WRF personnel to Norwalk.

(Continued on Page 2)

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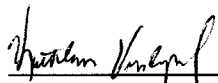
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NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES:

1. That it hereby approves the First Amendment to the Chapter 28E Agreement with the City of Des Moines and the City of Norwalk.
2. That the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, to said Chapter 28E Agreement for and on behalf of the city of Des Moines.
3. That the City Clerk is authorized and directed to file the executed First Amendment with the Secretary of State and Polk County Recorder.

Moved by _____ to adopt.

APPROVED AS TO FORM:



 Kathleen Vanderpool
 Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLUSSIS				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

FIRST AMENDMENT TO 28E AGREEMENT FOR LOAN OF PERSONNEL AND EQUIPMENT BETWEEN THE CITY OF DES MOINES, IOWA AND THE CITY OF NORWALK, IOWA

THIS FIRST AMENDMENT TO 28E AGREEMENT FOR LOAN OF PERSONNEL AND EQUIPMENT BETWEEN THE CITY OF DES MOINES, IOWA AND THE CITY OF NORWALK, IOWA (hereinafter referred to as "First Amendment"), entered into this _____ day of _____, 2008, by and between the City of Norwalk, Iowa, a municipal corporation organized and existing under and by virtue of the laws of the State of Iowa (hereinafter referred to as "Norwalk") and the City of Des Moines Iowa, a municipal corporation organized and existing under and by virtue of the laws of the State of Iowa (hereinafter referred to as "Des Moines", in its capacity as the Operating Contractor for the Des Moines Metropolitan Wastewater Reclamation Authority, and the City of Norwalk, Iowa.

Introduction

WHEREAS, the City of Norwalk (hereinafter, "Norwalk") has a vacancy on the staff of its Grade III Wastewater Treatment Plant (hereinafter, the "Norwalk WWTP" or the "WWTP") and has an ongoing need for a licensed Wastewater Operator to meet the operational requirements for its Plant; and

WHEREAS, the City of Des Moines (hereinafter "Des Moines"), in its capacity as the Operating Contractor for the Des Moines Metropolitan Wastewater Reclamation Authority (hereinafter the "WRA"), operates the WRA's Wastewater Reclamation Facility (hereinafter the "WRF") and has employees duly licensed as Wastewater Operators who would be qualified to assist Norwalk in its need; and

WHEREAS, Norwalk has requested Des Moines to loan it an operator until such time as Norwalk obtains a replacement operator for its WWTP; and

WHEREAS, the parties entered into a 28E Agreement on August 25, 2003 providing for the loan of WRF personnel to Norwalk which provided for a term through June 30, 2006; and

WHEREAS, the original 28E Agreement was filed with the Secretary of State on September 8, 2003; and

WHEREAS, the parties now wish to extend that 28E Agreement through June 30, 2009; and

WHEREAS, the WRA has approved the loan of WRF personnel to Norwalk, and has authorized Des Moines to enter into an agreement with Norwalk for that purpose; and

WHEREAS, Des Moines and Norwalk have negotiated the terms of an extension to the Chapter 28E Agreement providing for the loan of WRF personnel for the operation of Norwalk's WWTP; and

NOW, THEREFORE, for and in consideration of the covenants and promises contained herein and of said original 28E Agreement as amended, Norwalk and Des Moines agree that the following change shall be made to the 28E Agreement retroactively effective on July 1, 2006:

1. PART I: JOINT EXERCISE OF POWERS, Paragraph 2 is hereby amended to read as follows:

2. **Term.** This Agreement shall have two originals and shall be effective upon its execution by both Parties and it shall remain in effect through June 30, 2009.

2. The title for PART III: CHARGES FOR PERSONNEL AND EQUIPMENT is hereby amended to read as follows:

PART III: CHARGES FOR PERSONNEL, SERVICES AND EQUIPMENT

3. PART III: CHARGES FOR PERSONNEL, SERVICES AND EQUIPMENT, Paragraph 11 is hereby amended to read as follows:

11. **Personnel Charges.** From July 1, 2003, Norwalk shall pay the City of Des Moines for the services of the loaned WRF employee at the hourly rate as established by the City of Des Moines for a Senior Plant Operator plus five (5%) multiplied by the City's overhead rate for benefits. Norwalk agrees to pay all wage increases for that job classification when effective by the City of Des Moines through the duration of this Agreement. The City of Des Moines shall bill Norwalk for such services monthly and such amounts shall be due and payable upon monthly billing. Charges for other WRF personnel shall be their current hourly rate multiplied by the City's overhead rate for benefits.

4. PART III: CHARGES FOR PERSONNEL, SERVICES AND EQUIPMENT, Paragraph 12 is hereby amended to read as follows:

12. **Equipment and Services Charges.** Norwalk shall pay the City of Des Moines for the use of any WRF vehicle used to transport personnel pursuant to this Agreement at the IRS allowable mileage rate at the time traveled per mile traveled. Time and mileage charges shall accrue when WRF personnel and vehicles leave the WRF and continue until returned to the WRF. For purposes of this Agreement, it is agreed that it is a 45-mile trip from the WRF to the Norwalk Treatment Plant and back to the WRF. Charges for other services provided and other WRF equipment shall accrue pursuant to agreement of the Norwalk Community Services Director and the Des Moines' Public Works Director or the Public Works Director's designee. Charges for laboratory services shall be billed as set out in Chapter 118, Article III, Division 2 of the Municipal Code of the City of Des Moines, Iowa. Such amounts shall be billed and due in the same manner as described in Paragraph 13 below.

5. PART III. CHARGES FOR PERSONNEL, SERVICES AND EQUIPMENT, Paragraph 13 is hereby amended to read as follows:

13. **Billing and Payment.** Des Moines will bill Norwalk monthly for personnel, services and equipment loaned to Norwalk pursuant to this Agreement. Norwalk agrees to pay amounts so billed to it within 30 days of its receipt of each billing statement.

All other provisions of the Agreement remain the same.

IN WITNESS WHEREOF, the City of Des Moines and the City of Norwalk hereto have caused this First Amendment to be executed by their proper officers, duly authorized therefore.

CITY OF DES MOINES

By _____
T.M Franklin Cownie, Mayor

ATTEST:

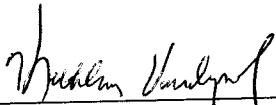
Diane Rauh, City Clerk

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted under Roll Call _____, Agenda Item _____, dated _____ and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public in the State of Iowa

APPROVED AS TO FORM:

By: 

Kathleen Vanderpool
Deputy City Attorney

CITY OF NORWALK

By *Newton Standridge*
Newton Standridge, Mayor

ATTEST:

Jodi Powers
Jodi Powers, City Clerk

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 8 day of Jan, 2007, before me, the undersigned, a Notary Public, personally appeared NEWTON STANDRIDGE and JODI POWERS, to me personally known, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Norwalk, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution under Roll Call 40, Agenda Item 07284, dated October 18, 2007 and that Newton Standridge and Jodi Powers acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Dean C Yordi
Notary Public in the State of Iowa

APPROVED AS TO FORM:

By: *Jim Dougherty*
Jim Dougherty
City Attorney

