

**REVISED DRAFT  
NOVEMBER 17, 2023**

**WATER SUPPLY FACILITY OPERATING CONTRACT**

**Between**

**CENTRAL IOWA WATER WORKS (“CIWW”)**

**And**

**BOARD OF WATER WORKS TRUSTEES OF THE CITY OF WEST DES MOINES, IOWA (“WDMWW”)**

For Operation, Maintenance and Management of  
Drinking Water Source, Treatment and Transmission System Facilities

EFFECTIVE AS OF THE CIWW OPERATIONAL COMMENCEMENT DATE

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**THIS CONTRACT** is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2024 by and between Central Iowa Water Works ("CIWW"), a joint and cooperative legal entity organized and existing under Iowa Code Chapters 28E and 28F, and the Board of Water Works Trustees of the City of West Des Moines, Iowa Works ("WDMWW"), a municipal utility organized and existing under Iowa Code Chapter 388 (hereinafter sometimes jointly referred to as "the Parties" or either referred to individually as a "Party").

**WHEREAS** CIWW is a regional water wholesale production and supply entity created and governed by the Central Iowa Water Works 28E/28F Agreement executed by and among its Founding Agencies and filed with the Iowa Secretary of State as Agreement No \_\_\_\_\_ ("the CIWW 28E-28F Agreement");

**WHEREAS**, CIWW has the right and duty to create and supply treated water to its Member Agencies, and for this purpose CIWW will acquire the water supply facilities of WDMWW and other Water Producing Member Agencies of CIWW as of the Operational Commencement Date of CIWW;

**WHEREAS** WDMWW is a Water Producing Member of CIWW and the current owner and operator of certain Designated Water Supply Facilities as defined in the CIWW 28E-28F Agreement (the "WDMWW Designated Water Supply Facilities");

**WHEREAS**, CIWW and WDMWW desire to implement the water facility operation provisions contemplated by the CIWW 28E-28F Agreement during the Term of this Contract by providing that WDMWW shall be engaged as the contract operator of the WDMWW Designated Water Supply Facilities acquired by CIWW for twenty years from the Operational Commencement Date of CIWW on the terms provided in this Contract.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each Party to the other as provided in this Contract, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, CIWW and WDMWW hereby agree as follows:

**ARTICLE I. SCOPE AND TERM OF CONTRACT**

Section 1. Scope. This Contract shall govern the relationship between CIWW and WDMWW under the CIWW 28E-28F Agreement with respect to the operation and maintenance of the WDMWW Designated Water Supply Facilities by WDMWW as contract operator from the Effective Date and during the Term of this Contract. As used in this Contract, except as the context may otherwise require, the WDMWW Designated Water Supply Facilities shall include all modifications, improvements, updates and expansion thereto during the Term of this Contract.

This Contract shall not govern the purchase of water from CIWW by WDMWW and shall not govern any provision for administrative support by WDMWW to CIWW or other services provided by and between the Parties. The Parties may enter into other separate Contracts respecting such matters.

Section 2. Effective Date. The "Effective Date" of this Contract shall be the Operational Commencement Date as defined in the CIWW 28E-28F Agreement.

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Section 3. Term. The term of this Contract, subject to the termination provisions herein, shall be twenty years from its Effective Date (the “Term”). Provided, however, such term shall automatically be extended for successive five year periods thereafter unless either party shall, not less than three years prior to the expiration of the first twenty year period hereunder or any subsequent renewal period, give notice in writing to the other party of Its intention to terminate such Term. Nothing shall prevent WDMWW and CIWW from agreeing to an earlier termination or to an extension of the Term by further agreement in writing.

Section 4. Supplement to CIWW 28E-28F Agreement. This Contract shall be a supplement to the CIWW 28E-28F Agreement and shall be filed as such with the Iowa Secretary of State after its execution by the Parties. This Contract shall govern certain matters between the Parties hereto under the CIWW 28E-28F Agreement. Except as otherwise defined in this Contract, the capitalized terms used herein that are defined in the CIWW 28E-28F Agreement shall have the meanings as defined in the CIWW 28E-28F Agreement. As used herein, the term CIWW 28E-28F Agreement shall not be construed to mean or include any subsequently adopted amendment to such Contract, except to the extent WDMWW shall expressly agree in writing to accept any such amendment as applying to this Contract. In the event of a conflict between this Contract and the CIWW 28E-28F Agreement, the terms of this Contract shall control.

**ARTICLE II. THE RELATIONSHIP BETWEEN CIWW AND WDMWW**

Section 1. Nature of Relationship. WDMWW shall be, and hereby is, engaged by CIWW as the sole operator of the WDMWW Designated Water Supply Facilities acquired by CIWW. In such capacity, WDMWW shall provide all labor, services, materials, and supplies necessary to CIWW’s production and delivery of finished drinking water under this Contract, including all operations, maintenance, repairs, planning, engineering (whether staffed or contracted), capital improvements, residuals removal, and procurements required to effectively operate, maintain, and manage the WDMWW Designated Water Supply Facilities to their full capacity under prevailing conditions as they exist from time to time, including capital and technical upgrades as needed. WDMWW shall supply labor and services through its own staff or under contract with others, in its discretion.

Section 2. Operation Obligations. WDMWW’s obligations under this Contract shall be to operate and maintain the WDMWW Designated Water Supply Facilities on behalf of CIWW with a level of care, effort, and diligence as may be reasonably expected to enable CIWW to meet the service obligations of CIWW to its Member Agencies as set forth in Schedule IV-6 of the CIWW 28E-28F Agreement, to the extent possible in view of the actual capacities and limitations of the WDMWW Designated Water Supply Facilities under prevailing source water and other conditions. WDMWW operations shall be deemed reasonable to the extent consistent with its existing practices and procedures as of the Effective Date with any changes required by changes in prevailing conditions, law or regulation.

Section 3. Independent Contractor. The relationship of WDMWW to CIWW under this Contract shall at all times be that of independent contractor. Services under this Contract shall be performed in accordance with good and accepted industry practices for operators similarly situated. However, any such services shall not be considered engineering services, and nothing herein is intended to imply that WDMWW is to supply professional engineering services to CIWW, unless specifically stated in this Contract or specifically hereafter agreed by the Parties to the contrary. This provision shall not, however, preclude WDMWW from

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providing any services under this Contract by means of professional engineers employed by WMDWW on its staff.

Section 4. Individual Ownership and Responsibility. Except as otherwise explicitly provided in this Contract, 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. 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. Nothing in this Contract shall be deemed to supersede, replace, impair or limit any collective bargaining agreement between WDMWW and any bargaining unit now existing or hereafter arising.

**ARTICLE III. OPERATIONAL PROVISIONS**

Section 1. WDMWW General Authority. WDMWW shall at all times during the Term of this Contract have the power and authority to operate and maintain the WDMWW Designated Water Supply Facilities to meet applicable provisions of law.

Section 2. Permits and Regulatory Compliance. WDMWW shall have and maintain all licenses and permits, including but not limited to Water Use and Water Supply Operations permits, which are required to be obtained by it from State or Federal regulatory agencies for ongoing operation of the WDMWW Designated Water Supply Facilities. Unless otherwise required by law or the CIWW 28E-28F Agreement, all such permits shall be obtained and held in the name of WDMWW. WDMWW shall be responsible for regulatory compliance as outlined in these permits. CIWW shall have and maintain such licenses and permits, if any, to the extent required by applicable law or the CIWW 28E-28F Agreement to allow the Parties to perform their respective obligations under this Contract.

Section 3. Sampling and Laboratory Testing. WDMWW will provide, through staff or contract, sampling and laboratory testing necessary to monitor water treatment plant performance in addition to sampling and laboratory testing required to meet regulatory requirements set forth in water supply operations permits, NPDES permits, and/or any federal, state or local laws, rules and regulations, local ordinances, permit or license requirements.

Section 4. Periodic Reporting. WDMWW shall prepare and make such periodic reports for the WDMWW Designated Water Supply Facilities as are required by applicable laws, rules, regulations or orders, and shall submit them directly to the appropriate regulatory agencies with copies to the CIWW Executive Director as submitted. WDMWW shall assist CIWW in meeting any regulatory reporting requirements that it has as to CIWW facilities operated by WDMWW.

Section 5. Other Information. WDMWW shall make available to CIWW all such reasonably accessible information, schedules, and analysis concerning the WDMWW Designated Water Supply Facilities and their operation as CIWW may request.

Section 6. Operation in Accordance with Budgets. WDMWW shall operate, maintain, and manage the WDMWW Designated Water Supply Facilities in accordance with the budget established as provided in Section 3 of Article VI of this Contract to the extent possible, subject to such unforeseen changes and contingences as may arise in the ordinary course of business, and subject to emergencies or other circumstances that require deviation from the budgets.

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Section 7. WDMWW's Authority to Act in an Emergency. In any emergency affecting the safety of persons, property or water quality, WDMWW shall act, at its discretion, and without prior CIWW authorization, but with reasonable notification under the circumstances to the CIWW Executive Director, to prevent threatened damage, injury or loss notwithstanding any provision in this Contract or any previously approved budget and CIWW shall have financial responsibility to reimburse WDMWW for the full costs thereof.

Section 8. Ownership of Distribution Facilities. Each CIWW Member Agency, including WDMWW, shall exclusively own, operate, maintain, and be responsible, for its own Water Distribution Facilities, including its own Connection Facilities as defined in Section 10 of this Article III.

Section 9. Connection Points. The "Connection Points" at which water is delivered by CIWW to CIWW Member Agencies. Including WDMWW, shall be as follows:

- (a) In the case of water sold by CIWW to a specific CIWW Member Agency with a metered point of connection, the Connection Point shall be the point of delivery to the tee or main tap connected to the meter.
- (b) In the case of water produced by the WDMWW Designated Water Supply Facilities and sold by CIWW to WDMWW for delivery to any retail or wholesale customer of WDMWW for which there is no metered point of connection, the Connection Points shall be the points at which the WDMWW Water Distribution Facilities connect to the Water Supply Facilities owned by, or dedicated to, CIWW under the CIWW 28E-28F Agreement.

Section 10. Connection Facilities. As used herein "Connection Facilities" shall mean any taps, pipes, corporations, pumps, or other facilities required by any CIWW Member Agency to connect to, or receive water from the WDMWW Designated Water Supply Facilities or to meter the water delivered to such Member Agency. WDMWW shall have no obligation to supply or maintain the Connection Facilities, including any metering facilities of any other Member Agency. All new wholesale metering facilities that are part of any Connection Facilities shall be constructed and installed in accordance with drawing, plans and specification approved by CIWW, WDMWW and affected Member Agency. Any new Connection Facilities established after the Effective Date shall include such device or devices as may be reasonably required to prevent reverse flow.

Section 11. Dual Use Facilities. The Parties recognize that some facilities and equipment, including certain valves and control systems that may be owned by either CIWW and WDMWW after Asset Transfer under the CIWW 28E-28F Agreement will be used or usable for both Water Supply Activity on behalf of CIWW and for the Water Distribution Activity of WDMWW("Dual Use Facilities"). WDMWW is authorized to utilize all Dual Use Facilities for both purposes. The costs of operation, maintenance, repair and replacement of Dual Use Facilities shall be reasonably allocated between CIWW and WDMWW based on benefit to each of such use by application of such allocation methods as the Parties may agree upon from time to time. Any dispute as to such allocation shall be resolved under the dispute resolution provisions of the CIWW 28E-28F Agreement.

Section 12. Supply Coordination. CIWW shall assist WDMWW and other Water Producing Member Agencies in planning to meet the requirements of all CIWW Member Agencies and shall cause each

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CIWW Member Agency taking water from the WDMWW Designated Water Supply Facilities to keep WDMWW advised of its requirements and changing requirements. CIWW shall establish a staff-level working group consisting of a single authorized representative from each of the Member Agencies, each to individually serve as an ongoing contact point and coordinator with WDMWW to facilitate and optimize water supply operations by WDMWW. Such working group shall meet collectively when needed on call from WDMWW to coordinate and plan for WDMWW operations.

**ARTICLE IV. WARRANTIES, EXCLUSION OF WARRANTIES AND DISCLAIMERS**

Section 1. Warranty and Exclusion of Implied Warranties. WDMWW warrants that its operation of the WDMWW Designated Water Supply Facilities shall be reasonable under prevailing source water and other conditions. **WDMWW MAKES NO OTHER WARRANTY OF ANY PARTICULAR RESULTS OR OUTCOME FROM ITS OPERATION OF THE WDMWW DESIGNATED WATER SUPPLY FACILITIES.**

Section 2. Disclaimers. CIWW agrees that the WDMWW Designated Water Supply Facilities of WDMWW are special purpose facilities and the performance of such facilities are affected by external conditions over which WDMWW has no control. WDMWW neither warrants nor guarantees that its facilities existing as of the date of this Contract or that its operation of such facilities will function efficiently or accomplish any specific results under this Contract. CIWW acknowledges that no representations or warranties have been provided to CIWW regarding the WDMWW Designated Water Supply Facilities or the ability of WDMWW to deliver any particular results in the operation of such facilities. WDMWW agrees to cooperate in good faith with CIWW and its Member Agencies to exercise diligence in performing its obligations hereunder, and to use its best efforts to carry out the provisions of this Contract but makes no guarantee of any particular results.

Section 3. Quality and Quantity. WDMWW shall use reasonable diligence and efforts to produce finished drinking water and to operate, maintain and manage the WDMWW Designated Water Supply Facilities to produce finished drinking water which is (i) in compliance with applicable State and Federal drinking water quality regulations; (ii) in compliance with all applicable water supply operation permits; (iii) delivered in adequate quantity and at adequate pressure to meet the needs of CIWW to supply the customers of CIWW. **WDMWW MAKES NO REPRESENTATION OR WARRANTY THAT SUCH OBJECTIVES WILL ALWAYS BE MET UNDER THIS CONTRACT.**

Section 4. Shortages of Water. It is understood that this Contract does not constitute any warranty or assurance by WDMWW that water in the quantity required by CIWW and CIWW Member Agencies will always be available or that water quality requirements will always be able to be met.

Section 5. Variation in Quantity and Quality. All Parties acknowledge and agree that there may be fluctuations in the quantity and quality of finished drinking water produced or delivered under this Contract as a result of prevailing source water, operating conditions, and other conditions and that such variations are acceptable under this Contract.

**ARTICLE V. CAPITAL PROJECTS**

Section 1. Non-expansion Capital Projects. During the Term of this Contract, WDMWW shall plan and execute such non-expansion capital projects as WDMWW shall deem necessary and proper to enable WDMWW to meet its obligations under this Contract. Planning for such projects shall be coordinated

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with the CIWW Technical Committee. Such projects may be designed by staff of WDMWW or by consultants selected and engaged by WDMWW, or both. Execution of such projects shall be under the sole supervision of WDMWW, but shall be subject to the review and approval of the CIWW Board as part of the CIWW Budget process, except for projects executed under WDMWW's emergency authority provided by Section 7 of Article III. CIWW shall be responsible to pay for the costs of such projects as provided under the CIWW 28E-28F Agreement.

Section 2. Expansion of Capacity. Under the CIWW 28E-28F Agreement CIWW is responsible for planning, engineering, financing, and construction of all new drinking water source, treatment and transmission system facilities needed to expand the capacity of CIWW to meet the requirements of its customers. Such new facilities are referred to herein as "Expansion Facilities", and may include, in CIWW's discretion, facilities constructed or installed to increase the capacity of the WDMWW Designated Water Supply Facilities. WDMWW shall cooperate and assist CIWW in planning for and constructing any Expansion Facilities that affect the WDMWW Designated Water Supply Facilities.

Section 3. Capital Improvement Program. WDMWW shall, in coordination with the CIWW Technical Committee, provide data and recommendations to the engineering consultant selected by CIWW, to aid the engineering consultant in developing a multi-year Capital Improvements Program ("CIP") for the WDMWW Designated Water Supply Facilities, based on performance and needs assessments as provided in Section 4 of this Article V. CIWW shall provide the capital required for such projects, and WDMWW shall cooperate with CIWW in the execution of projects under the CIP for the WDMWW Acquired Facilities with WDMWW reimbursed by CIWW for the costs incurred for its efforts.

Section 4. Continuous Performance Monitoring and Needs Assessment. WDMWW shall, in consultation with the CIWW Technical Committee, the engineering consultant selected by CIWW, and CIWW staff:

- (a) Continuously monitor and assess the WDMWW Designated Water Supply Facilities to determine if they are performing optimally;
- (b) Identify and implement operational strategies to optimize the performance of the WDMWW Designated Water Supply Facilities;
- (c) Identify facility improvements needed to optimize performance of the WDMWW Designated Water Supply Facilities and to keep them in compliance with evolving regulatory requirements, source water quality threats, and evolving technical and operational best practices for facilities of such kind;
- (d) Continuously monitor and assess the use of the WDMWW Designated Water Supply Facilities by CIWW Member Agencies to determine if their needs are being optimally met

**ARTICLE VI. COMPENSATION TO WDMWW**

Section 1. Compensation. WDMWW shall be compensated in amounts equal to the actual full cost incurred by WDMWW of providing materials and services under this Contract, plus 2%, with such amounts to be computed and paid as provided in the CIWW 28E-28F Agreement and Section 2 of this Article VI.



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Section 2. CIWW Payment to WDMWW. CIWW shall pay WDMWW for operation, materials, supplies, and services supplied under this Contract on a cost plus basis, based on the cost and payment principles set forth in Schedule V-2 to the CIWW 28E-28F Agreement. Such amounts shall be paid in seasonally adjusted monthly installments with an Annual true-up as set forth in such Schedule. For the avoidance of doubt, it is the intent of this Contract that WDMWW be paid its full actual costs, plus a fixed percentage of 2%, after such costs are fully incurred and determined.

Section 3. Operation, Maintenance, and Management (“OM&M”) Budget. For each calendar year beginning on or after the Operational Commencement Date, WDMWW shall prepare and submit to CIWW a proposed OM&M budget for the next calendar year on such time schedule as may be required to permit the annual budget process of CIWW to proceed pursuant to the terms of the CIWW 28E-28F Agreement.

The proposed OM&M budget shall govern WDMWW’s expenditures for the budget year and shall include:

- (a) A projection of the anticipated reimbursable expenditures that will be incurred by WDMWW for production of water in the budget year;
- (b) A comparison of budgeted expenditures for the budget year to the actual expenditures for the prior budget year;
- (c) The insurance and risk management coverages to be in place for the budget year and the expected costs thereof that are chargeable to CIWW; and
- (d) Any additional information requested by the CIWW in advance of WDMWW’s budget process commencement.

The Board of CIWW shall conduct a budget hearing on the proposed OM&M budget at its next regular meeting following receipt of the proposed budget. If the proposed budget is not approved by the CIWW Board, CIWW shall provide a detailed statement to WDMWW of its objections. Any CIWW objections will be resolved by negotiation between the Parties if possible, but if no approved budget is reached, then WDMWW shall operate under its proposed budget, subject to the right of CIWW to challenge any expenditure to which objection is made by claim in arbitration commenced not later than 180 days after the budget was first submitted to CIWW.

Section 4. Information and Input to be Provided by WDMWW. Upon the request of CIWW or any CIWW Member Agency, WDMWW shall make available such reasonably accessible information, schedules, comparisons and analysis as may be deemed reasonably necessary in order to fully analyze the proposed OM&M budget. WDMWW shall cause such members of its staff to be present at the budget hearing established by CIWW as are necessary to explain the proposed budget and respond to inquiries made concerning same.

**Article VII. OBLIGATIONS OF CIWW**

Section 1. Financial Obligations. CIWW shall promptly satisfy all of its financial obligations to WDMWW hereunder, including without limitation, funding under Article V for capital projects. Any loss, damage, or injury resulting from the failure of CIWW to provide funding for capital projects, when reasonably requested by WDMWW, shall be the sole responsibility of CIWW.

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Section 2. CIWW Rates and Charges. CIWW shall at all times set, impose, and collect rates and charges to its Member Agencies that produce revenues at least sufficient to pay the expenses of operation of CIWW, including obligations to WDMWW, and all other obligations including principal and interest of bonds and other debt obligations as they become due.

Section 3. Taxes. CIWW shall pay all sales, excise, ad valorem, property, or other taxes, if any, associated with sales or operations under this Contract or assessed against CIWW property.

Section 4. Cooperation and Support. CIWW shall reasonably cooperate in good faith with WDMWW in the performance of its obligations under this Contract, and shall all times govern and manage its affairs consistent with the terms of the CIWW 28E-28F Agreement so as to enable and support WDMWW's ability to fully perform its obligations under this Contract.

**ARTICLE VIII. TERMINATION PROVISIONS**

Section 1 Automatic Termination. This Contract shall automatically terminate upon the termination of existence of CIWW for any reason. Such termination shall be effective upon reversion of assets including any dual purpose assets to WDMWW as provided in the CIWW 28E-28F Agreement, with the intent that there shall be no interruption of water production upon termination of the existence of CIWW.

Section 2 Termination for Default. In the event that either Party determines that the other Party 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 provisions of the Contract involved, and shall specify what action is required of the defaulting Party to correct the default.

The defaulting Party shall have 180 days from the date of its receipt of the notice of default to correct the default. If at the end of said 180-day period the default has not, in the opinion of the aggrieved Party, been corrected, and if such default shall constitute a material breach of this Contract, the aggrieved Party may thereupon terminate the Contract for material breach by giving 60 days written notice of termination. Termination of this Contract shall be effective at the end of said 60-day period unless judicial proceedings are initiated by either Party in a court of competent jurisdiction to determine if a material breach has occurred.

Upon termination of this Contract by the either Party, or upon entry of a court order terminating this Contract, WDMWW shall assist CIWW in assuming operation of the WDMWW Designated Supply Facilities. CIWW shall pay WDMWW the costs of such assistance within thirty (30) days of its receipt of an invoice for such costs.

Any disputes arising under this Section shall not be subject to mandatory arbitration.

**ARTICLE IX. LIABILITY, INDEMNITY, INSURANCE, AUDIT, AND GENERAL TERMS**

Section 1. No Liability. WDMWW shall not be liable to CIWW, to any Member Agency or to any of their

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customers by reason of any interruption or failure to provide any water supplied or for services contemplated by this Contract, or for any error of judgment by WDMWW or its staff, except for any bad faith, willful misconduct, or willful disregard for the terms of this Contract.

Section 2. Non-Liability for Main Breaks. WDMWW shall have no liability to any person for direct or indirect damage caused by water main breaks of CIWW or any other party. CIWW shall indemnify WDMWW from any such claimed liabilities, and hold WDMWW harmless from all such claims, including all attorney fees and other costs of defense.

Section 3. Limitations of Liability. NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS CONTRACT FOR ANY CLAIM FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE OR THE LOSS OF USE OF EITHER, OR COSTS OF REPLACEMENT CAPITAL, EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT.

Section 4. Indemnification. WDMWW and CIWW to the fullest extent permitted by law, each hereby agrees to indemnify, defend, pay on behalf of, and hold harmless the other and their respective elected officials, 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 Contract. 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 Contracts and obligations as set forth in this Section are applicable for the duration of and following expiration or termination of this Contract, regardless of the manner of termination, and notwithstanding other provisions of this Contract.

Section 5. Insurance. The Parties shall each separately, or jointly, establish and maintain insurance and risk management programs with respect its own properties and liabilities within the scope of this Contract. Each Party waives subrogation against the other Party with respect to losses covered by such Party's insurance. WDMWW shall adopt insurance and risk management programs to cover risks arising under this Contract that meet or exceed minimum insurance coverage requirements established by the Board of CIWW from time to time, and that are otherwise consistent with: (i) the insurance and risk management programs pertaining to WDMWW's other properties and operations; and (ii) the approved annual OM&M Budget hereunder. The respective assets of WDMWW and CIWW shall be insured as their interests may appear and except as they may otherwise agree, WDMWW and CIWW shall each name the other, and their respective officers, officials, employees, and volunteers, as an additional insured under their respective policies of insurance with respect to their respective insurable risks arising under this Agreement.

Section 6. Audit. CIWW may by notice in writing request access to WDMWW's records for purposes of conducting an independent audit of WDMWW's financial records relation to compensation or other amounts paid or payable by CIWW to WDMWW. Such notice shall identify the records sought for audit, and WDMWW shall provide access to the records sought for audit within 30 days after receipt of the

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notice requesting audit. Such audit shall be conducted by a certified public accounting firm retained by CIWW and it CIWW's sole cost. The audit findings shall be promptly provided to WDMWW. In the event that such audit reveals that any overpayment or under payment to WDMWW, the Parties shall make such adjustments to balances paid or payable between them as the audit determines are proper, with such adjustments to be made within 30 days of the issuance of the audit report. In the event that either Party disputes the findings of the audit, it may notify the other Party of its objection thereto and request binding arbitration to resolve the matter.

Section 7. Assignment of Contract. Neither Party may assign this Contract to a third party without the written consent of the other Party.

**Article X. GENERAL TERMS**

Section 1. Provisions to be Severable. If any provision of this Contract is held to be invalid by a court of competent jurisdiction, the invalidity of any such provision shall not affect the other provisions of this Contract that can be given effect without the provision determined to be invalid, and to that end, the provisions of this Contract are severable.

Section 2. Notices. Notices which WDMWW or CIWW are authorized or required to give one another pursuant to this Contract shall be in writing and may be personally delivered, may be or sent by ordinary mail or delivery service to the addresses for such party reflected in the records of CIWW or WDMWW, or may be sent by electronic means, including email. Notice by personal delivery, by delivery service, or by electronic means shall be effective upon actual receipt. Mailed notices shall be effective and deemed to be received by the party to whom directed when they are postmarked.

Section 3. Arbitration.

- (a) CIWW and WDMWW agree that any disputes and any claims for money damages arising between or among them with regard to matters within the scope of this Contract shall be submitted to mandatory, binding arbitration at the request of any party. 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 or parties requesting arbitration, one named in writing by the adverse party or parties, and the third chosen by the first two arbitrators so chosen.
- (c) The party or parties requesting arbitration shall choose an arbitrator within ten (10) days following the parties' decision that they will not agree to use one arbitrator. Failure to do so shall be deemed a waiver of its request for arbitration. If the adverse party or parties

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desire to appoint a different arbitrator, they shall name their arbitrator within ten (10) days following the receipt of notice of the naming of the first arbitrator. The two arbitrators first chosen shall name the third arbitrator within ten (10) days following the selection of the second arbitrator. Extensions of the time periods to select arbitrators shall not be unreasonably withheld if requested prior to the original deadlines above. Should any party refuse or neglect to supply the arbitrators with any papers or information requested in writing by the arbitrators, the arbitrators are empowered to proceed ex parte. The parties shall agree on the rules to govern the conduct of the arbitration, but in the absence of such an agreement, the most recently published commercial arbitration rules of the American Arbitration Association shall be deemed to apply. The arbitrator or arbitrators must provide a minimum of thirty (30) days' notice before the date set for any hearing on the merits of the dispute.

- (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. Conflicts of interest include, but are not limited to: (i) current service on the board, commission, council, or other governing body of CIWW or any Member Agency of CIWW; (ii) current employment, either as an employee or independent contractor, by any CIWW or any Member Agency of CIWW; (iii) employment, either as an employee or independent contractor, within the last five (5) years by CIWW or any Member Agency of CIWW; (iv) any prior participation in negotiations related to the dispute; (v) any direct involvement in the dispute, including as a witness to relevant facts; and (vi) other circumstances that would materially impair the ability of the individual to serve as a neutral arbitrator.
- (e) If there is one arbitrator, the award of the sole arbitrator shall be binding; if three, the agreed upon award of any two shall be binding. The award may be set aside only for reasons permitted under Iowa law.
- (f) The award of the arbitrator or arbitrators shall be in writing and separately state the factual and legal analysis relied upon to reach the decision, and it shall not be open to objection on account of the form of the proceeding or the award.
- (g) The arbitrator or arbitrators may retain special counsel for the purpose of conducting the arbitration proceedings and preparing the arbitration award. In selecting special counsel, the arbitrator or arbitrators may not retain any attorney who has represented CIWW or a WDMWW within the last five (5) years.
- (h) The costs of arbitration and reasonable attorneys' fees for both parties 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. Costs of the arbitration, include, but are not limited to, fees to the arbitrator or arbitrators, special counsel fees, and any other costs of the proceeding, but excluding reasonable attorneys' fees. If the party requesting arbitration prevails, each party shall be responsible for its own attorneys' fees. (i) CIWW and WDMWW consent that any award granted through arbitration will be confirmed in the Iowa

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District Court for Polk County.

Section 4. Specific Performance. In addition to any other remedies available under applicable law, CIWW and WDMWW shall have the right to the equitable remedy of specific performance to enforce compliance with any provision of this Contract.

Section 5. Actions in Court. Except for disputes covered by Section 3 of this Article X requiring arbitration, either CIWW or WDMWW may bring an action in Court for declaratory relief, for specific performance, or for any equitable remedy. Any such action shall be brought in the Iowa District Court in Polk County. EACH PARTY WAIVES TRIAL BY JURY IN ANY SUCH ACTION.

Section 6. Duty to Mitigate. CIWW and WDMWW each agrees that it has a duty to mitigate damages under this Contract and covenants that it will use reasonable efforts to minimize any damages it may incur as a result of an Event of Default involving any other party.

Section 7. No Third Party Benefit and Limitation. No provision of this Contract shall inure to the benefit of any other entity, or any individual resident, taxpayer, or ratepayer of any Member Agencies of CIWW. This Contract may be the basis of a claim or cause of action on behalf of any other person or entity against CIWW, WDMWW or any Member Agency of CIWW or any of their respective residents, taxpayers, or ratepayers.

Section 8. Entire Contract. This Contract and the CIWW 28E-28F Agreement as in force on the Effective Date hereof shall be construed to form a single agreement, and are the entire agreement between the parties respecting the matters within the scope of this Contract. Any subsequent change or modification to the terms of this Contract shall be in the form of a duly approved and executed written amendment to this Contract.

Section 9. Governing Law. This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

Section 10. Partnership Disclaimer. Nothing in this Contract is intended or shall be construed as in any way creating or establishing a partnership between the parties hereto, or as constituting any party as an agent or representative of the other for any purpose or in any manner, other than as specified herein.

Section 11. Counterparts. This Contract may be executed in multiple counterparts, each of which so executed shall be deemed to be an original.

Section 12. Force Majeure. No party shall be liable for any failure to perform any or all of the provisions of this Contract if and to the extent performance has been delayed or prevented by reason of any cause beyond the reasonable control of such party. The expression "cause beyond the reasonable control" and the term "Force Majeure" as used in this Contract shall mean and be deemed to include, but not be limited to acts, regulations, laws, or restraints imposed by any governmental official or body; wars, hostilities, sabotage, riots, or commotions; acts of God; pandemic; or fires, floods, storms, or lightning.

**Article XI. EXECUTION OF CONTRACT**

**REVISED DRAFT  
NOVEMBER 17, 2023**

Section 1. Passage of Resolution. This Contract shall not go into effect unless approved by resolution of the governing boards of WDMWW and CIWW.

Section 2. Signature Pages. Each party shall execute the separate signature page provided for it, and the Parties hereto authorize their counsel to assemble the signature pages of all signatory Parties and to append such signature pages to copies of this Contract for filing with the Iowa Secretary of State.

**[Signature Pages Follow]**

CENTRAL IOWA WATER WORKS

By: \_\_\_\_\_  
\_\_\_\_\_, Board Chairperson

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Board Secretary

STATE OF IOWA        )  
                              )        SS:  
COUNTY OF POLK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, 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 the Board Chairperson and Board Secretary of CENTRAL IOWA WATER WORKS that no seal has been procured by the entity; that the attached instrument was signed on behalf of the said entity by authority of its Board as contained in the resolution adopted by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2024, and that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the CENTRAL IOWA WATER WORKS, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa



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

By: \_\_\_\_\_  
\_\_\_\_\_, Board Chairperson

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, General Manager

STATE OF IOWA        )  
                              )        SS:  
COUNTY OF POLK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, 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 the Board Chairperson and the General Manager of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF WEST DES MOINES, IOWA, that no seal has been procured by the entity; that the attached instrument was signed on behalf of the said entity by authority of its Board as contained in the resolution adopted by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2024, and that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be their voluntary act and deed of the BOARD OF WATER WORKS TRUSTEES OF THE CITY OF WEST DES MOINES, IOWA, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa