

## **CENTRAL IOWA REGIONAL DRINKING WATER COMMISSION**

### **AMENDED AND RESTATED 28E AGREEMENT**

**THIS AMENDED AND RESTATED 28E AGREEMENT**, is established by and among the counties, cities, municipal utilities and water districts that have executed an acceptance of this Amended and Restated 28E Agreement (each individually a “Party” and all collectively the “Parties”).

**WHEREAS**, the Parties are duly organized public agencies in the State of Iowa, that have jointly exercised certain powers, privileges or authorities under the provisions of Chapter 28E of the Code of Iowa and executed and filed a 28E Agreement so providing with the Iowa Secretary of State, on December 26, 2002, filing number M021408 (the “Existing 28E Agreement”) whereby the Central Iowa Regional Drinking Water Commission was created and has been existing, with membership as of July 1, 2010 as listed in Exhibit A attached hereto.

**WHEREAS**, the Parties desire to amend and restate the Existing 28E Agreement among them whereby the Central Iowa Regional Drinking Water Commission has been created and has been existing, with such Amended and Restated Agreement having been duly and lawfully adopted by the process specified in the Existing 28E Agreement and the duly adopted Rules and Bylaws of such entity, and has been approved by each of the Parties executing an Acceptance herein in the form set forth in Exhibit B attached hereto.

**NOW, THEREFORE, BE IT REMEMBERED** that the Existing 28E Agreement shall be, and hereby is, amended and restated as of the Effective Date as set forth below, and that for the mutual promises, covenants, and considerations herein contained the Parties have entered into the following agreement under the provisions of Chapter 28E of the Code of Iowa to provide for the joint exercise of powers, to wit:

#### A. General Provisions

1. The foregoing recitals are a part of this agreement and shall be so construed.
2. The purposes of this Amended and Restated 28E Agreement are to: (1) enable the Parties to jointly plan and coordinate implementation for water supply, treatment, distribution and storage facilities for the benefit of the Parties and their respective customers, (2) enable the Parties to jointly address source water issues, which may include but are not limited to, monitoring, protection, and preservation of ground water, surface water, and watersheds, (3) enable the Parties to jointly provide services in a cost-effective manner to each other and (4) enable the Parties to undertake joint or coordinated procurement of goods and services.

3. Nothing in this Amended and Restated 28E Agreement shall be construed so as to limit or supersede the powers and authority of any of the Parties.
4. Nothing in this Amended and Restated 28E Agreement shall be construed so as to limit, supersede or in any other manner affect any type of agreement between any of the Parties, or between one or more of the Parties and any other entity.

#### B. Central Iowa Regional Drinking Water Commission

1. There is hereby created the “Central Iowa Regional Drinking Water Commission” (the “Commission”), which shall provide planning activities for water supply, treatment, distribution and storage facilities when the location, extent and type of such facilities shall, in general, impact two or more of the Parties.
2. The Commission shall also address source water issues that impact two or more of the Parties, and may establish programs related to monitoring, protection, and preservation of ground water, surface water, and watersheds that impact the source water of two or more of the Parties.
3. The Commission may establish procedures and facilities, including standardized specifications, terms and conditions whereby members may jointly exercise their respective powers in the following respects and particulars:
  - (a) By contracting among themselves on an efficient, consistent and standardized basis for the provision of goods and services among them; and
  - (b) By joint or coordinated procurement of goods and services.
4. The Commission may provide such other services to one or more of the Parties as the Parties from time to time may request or accept, upon offer by the Commission, without limitation.

#### C. Governance of the Commission

1. The members of the Commission shall consist of all of the Parties, whether dues paying or not, that have executed an acceptance of this Amended and Restated 28E Agreement in the form of Exhibit B on or before December 31, 2010, together with such other counties, cities, municipal utilities and water districts as may be approved by the Governing Board for membership and that execute an

acceptance in the form of Exhibit B of this Amended and Restated 28E Agreement, as it may be amended from time to time. Entities executing such an acceptance shall be deemed to be "Parties" from the date of such acceptance. However, only dues paying members shall be entitled to be represented by voting representation on the governing board of the Commission as provided in Subsection 2 of this Section C ("Governing Board"). A Party that has paid all dues assessed as provided herein at any time shall be deemed to be a Governing Member. A Party that has not paid all dues assessed as provided herein at any time shall be deemed to be a Non-Governing Member. A Non-Governing Member may become a Governing Member at any time by paying dues for the then current fiscal year plus any unpaid dues for the immediately prior fiscal year.

2. The Commission shall be governed by a Governing Board, consisting of one representative of each of the Parties, or his or her duly appointed alternate representative in the absence of the representative. Each representative and alternate representative of each of the Parties may fully participate at all meetings of the Governing Board, but only the representatives of Governing Members, or their respective alternates in the case of absence of the representative, shall be entitled to vote on any matter coming before any meeting of the Governing Board. Each Party may choose its representative and its alternate representative in any manner not prohibited by the laws of the State of Iowa, and may remove or replace such person at any time in its discretion. Each representative and alternate shall be a duly elected or appointed official of a Party, or may be any interested citizen, residing within the service area of a Party, whom a Party may choose to be its representative. The term of office of each representative and alternate representative shall commence upon his or her appointment, and shall continue until his or her resignation, removal by his or her appointing Party, or other termination of office as provided in the Rules and Bylaws of the Commission (the "Rules and Bylaws").
3. The Governing Board shall select a Chair, a Vice Chair and a Secretary/Treasurer to serve as officers of the Commission with authority as set forth in the Rules and Bylaws. The Governing Board shall select such other officers having such authority as may be provided in the Rules and Bylaws. The Chair, Vice Chair and Secretary/Treasurer shall constitute the Executive Committee of the Commission under the Rules and Bylaws.

4. Actions of the Governing Board shall be determined by a simple majority of the representatives of the Governing Members, or their alternates, present at a meeting at which a quorum is present. A quorum shall be present if at least thirty-three per cent (33%) of the Governing Members are represented by their representative or alternate.
5. The Governing Board shall establish, and may amend from time to time; specific Rules and Bylaws under which it and the Commission will operate which Rules and Bylaws shall be in consonance with this Amended and Restated 28E Agreement and laws of the State of Iowa. The Rules and Bylaws may provide for termination of membership of any Party.
6. Each Party shall be entitled to appoint one ex-officio, non-voting member to the Governing Board and an alternate thereto. The ex-officio, non-voting member of the Governing Board, and the alternate, shall each be a full-time employee of the appointing Party.

#### D. Methods for Completing Tasks of the Commission

1. The Commission may employ such resources as it shall deem necessary to complete the purposes enumerated herein and such tasks as the Parties may, from time to time, request or the Commission may elect to offer to the Parties.
2. The Commission may procure staff-type resources through agreement with one or more of the Parties, through agreement with other area governmental entities, through usual employment practices resulting in individuals becoming full or part-time employees, hiring one or more firms or individuals on a consulting basis or by other means as shall be determined by the Governing Board. Combinations of any of these methods may also be utilized.
3. The Commission may procure office space, equipment and supplies in any manner authorized by the Code of Iowa, except that it shall not exercise any power of eminent domain.

#### E. Financing

1. The Governing Board shall cause to be prepared an annual budget which shall be approved by the Governing Board. Such budgets shall be for fiscal years beginning on July 1 of a year and shall be adopted by the Board prior to April 1 of the year preceding the year covered by the budget.

2. The initial dues of those Parties desiring to be Governing Members shall be a flat rate of one hundred dollars (\$100.00) per Governing Member plus one cent per year per retail customer of the Governing Member, using the most recent customer data available. Such dues shall be due and payable within sixty (60) days of the Effective Date of this Amended and Restated 28E Agreement, and on or before each July 30 thereafter. The flat rate of dues per Governing Member and the dues rate per retail customer shall be reviewed and revised annually as part of the budget process with the intent to limit the amounts collected to actual anticipated expenditures plus a reasonable reserve for contingencies.
3. Dues shall cover the regular costs of operation of the Commission, but to the extent any Party may receive any direct services from the Commission other than the general benefits provided to the Parties collectively, the Commission may charge such Party for such services in an amount that shall be computed so as fully cover the cost of providing the service plus an overhead allowance as determined by the Governing Board.
4. The Parties intend that the Commission be self-supporting, not relying upon any source of revenue, other than those listed above, interest received from its investments and revenue bonds issued in accordance with the provisions of Chapter 28E or 28F of the Code of Iowa.
5. Funds of the Commission shall be invested and shall be secured as provided for by the Code of Iowa, including but not limited to the provisions of Iowa Code Section 12B.10 and Section 12B.10A through 12B.10C. The Commission may appoint a Party as its fiscal agent for purposes of collecting, disbursing, investing and securing funds.

#### F. Term of this Amended and Restated 28E Agreement

1. Any Party may terminate its participation in this Amended and Restated 28E Agreement by vote of its governing body. Such decision shall be communicated to the Governing Board in writing on or before January 1 of a year for a termination to become effective as of the following July 1. Terminations shall not be effective at any other time. No monetary refund of any kind shall be given for dues or any other charges.

2. This Amended and Restated 28E Agreement shall be binding upon the successors and assigns of the Parties.
3. This Amended and Restated 28E Agreement shall terminate on July 1, 2101, or earlier, if the total number of Parties hereto drops to two as of an earlier July 1.

#### G. Amendments

This Amended and Restated 28E Agreement may be further amended by amendment approved by the Governing Board and approved and accepted in the form of Exhibit B attached hereto or its equivalent by at least a majority of the Members at the time of the amendment, with such amendment to be approved, executed and filed as provided by law and in the manner set forth in the Rules and Bylaws.

#### H. New Members

New members may become Parties hereto upon approval by the Governing Board and the execution by such Party of an Acceptance of this Amended and Restated 28E Agreement, as further amended as of the date of the Acceptance, with such Acceptance in the form of Exhibit B attached hereto or its equivalent.

#### I. Ownership of Assets

Except for assets procured by the Commission through the normal course of business, all assets of the Parties shall remain with the Parties.

#### J. Disposition of Assets upon Termination of this Amended and Restated 28E Agreement

1. Upon termination of this Amended and Restated 28E Agreement, all assets of the Commission shall be sold at public auction to the highest bidders and the proceeds of such sale shall be divided among and returned to each of the Parties existing as of the date of the auction.
2. Payments to the Parties from the proceeds of such auction shall be allocated on the basis of the total amount of funds paid to the Commission by each such Party during the five full fiscal years immediately preceding such auction.

K. Existing 28E Agreement, Effective Date of this Amended and Restated 28E Agreement, and Transition.

1. This Amended and Restated 28E Agreement shall be effective upon its approval as provided in the Existing 28E Agreement and the Rules and Bylaws, and the execution of an Acceptance of this Amended and Restated 28E Agreement in the form of Exhibit B or its equivalent by not less than a majority of the Parties listed in Exhibit A, and its subsequent filing with the Iowa Secretary of State. Its "Effective Date" shall be the date of filing with the Iowa Secretary of State.

2. The Existing 28E Agreement shall remain in full force and effect until the Effective Date. The Existing 28E Agreement shall be deemed amended and restated as of the Effective Date as set forth herein. The Parties listed in Exhibit A shall be deemed Parties to this Amended and Restated 28E Agreement from the Effective Date if they execute an Acceptance on or before December 31, 2010, but shall be deemed to have terminated their membership in the Commission if they fail to execute an Acceptance by that date.

**IN WITNESS WHEREOF**, the Chair and the Secretary/Treasurer hereby certify that this Amended and Restated 28E Agreement has been duly and lawfully approved pursuant to, and as provided in, the Existing 28E Agreement and existing Rules and Bylaws of the Commission and has been approved and accepted by the Parties that have executed an Acceptance as attached hereto.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary/Treasurer

## EXHIBIT "A"

### Central Iowa Regional Drinking Water Commission Members as of July 1, 2010.

Board of Directors for the Warren Water District  
Board of Directors for the Xenia Rural Water District  
Board of Supervisors for Polk County, Iowa  
Board of Water Works Trustees of the City of Des Moines, Iowa  
Board of Water Works Trustees of the City of Indianola, Iowa  
Board of Water Works Trustees of the City of Urbandale, Iowa  
Board of Water Works Trustees of the City of West Des Moines, Iowa  
City of Altoona, Iowa  
City of Ankeny, Iowa  
City of Bondurant, Iowa  
City of Carlisle, Iowa  
City of Clive, Iowa  
City of Cumming, Iowa  
City of Johnston, Iowa  
City of Mitchellville, Iowa  
City of New Virginia, Iowa  
City of Norwalk, Iowa  
City of Panora, Iowa  
City of Pleasant Hill, Iowa  
City of Polk City, Iowa  
City of St. Charles, Iowa  
City of Waukee, Iowa  
City of Windsor Heights, Iowa



**EXHIBIT "B"**  
**ACCEPTANCE OF**  
**CENTRAL IOWA REGIONAL DRINKING WATER COMMISSION**  
**AMENDED AND RESTATED 28E AGREEMENT**

The public agency named below hereby approves, accepts and agrees to be bound by the terms and conditions of the Central Iowa Regional Drinking Water Commission Amended and Restated 28E Agreement in the form to which this acceptance is attached, and as it may be subsequently amended as provided in such Agreement and in the Rules and Bylaws adopted thereunder.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010.

Name of Party: \_\_\_\_\_

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

Attest: \_\_\_\_\_

STATE OF IOWA            )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

[Insert form of Acknowledgment]

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