

INITIAL OPERATING CONTRACT

BETWEEN

**THE DES MOINES METROPOLITAN
WASTEWATER RECLAMATION AUTHORITY (WRA)**

AND

**THE CITY OF DES MOINES, IOWA,
AS OPERATING CONTRACTOR,**

**FOR OPERATION, MAINTENANCE AND MANAGEMENT
OF THE WRA WASTEWATER COLLECTION
AND TREATMENT SYSTEM**

EFFECTIVE JULY 1, 2004

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THIS CONTRACT is made and entered into as of the 1st day of July, 2004, by and between the Des Moines Metropolitan Wastewater Reclamation Authority (hereinafter "the WRA"), a special purpose legal entity organized and existing under Chapters 28E and 28F of the Iowa Code, and the City of Des Moines, Iowa (hereinafter the "Operating Contractor") (hereinafter sometimes jointly referred to as "the Parties" or either referred to individually as a "Party").

RECITALS

WHEREAS, pursuant to the Amended and Restated Agreement for the Des Moines Metropolitan Wastewater Reclamation Authority (hereinafter "the WRA Agreement"), the WRA owns, operates and maintains a wastewater system for the collection, transportation and treatment of wastewater, and for the associated treatment, transport and disposal of biosolids, and for the administration and enforcement of an industrial pretreatment program (hereinafter referred to collectively as "the WRA System" or "the System"); and

WHEREAS, the Participating Communities of the WRA have determined to engage the City of Des Moines, Iowa, as Operating Contractor, to provide certain operation, maintenance and management services (hereinafter "the Services") in accordance with the terms, conditions and provisions of this Contract; and

WHEREAS, the City of Des Moines, Iowa, as Operating Contractor, desires to perform such Services as herein provided for and on behalf of the WRA.

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, the WRA and the City of Des Moines, Iowa as Operating Contractor do hereby agree as follows:

ARTICLE I. DEFINITIONS.

- Section 1.1 "Annual Financial Report" means a combination of basic financial statements and note disclosures required for fair presentation in conformity with Generally Accepted Accounting Principles in the United States of America.
- Section 1.2 "Board" shall mean the Board functioning as the governing body of the WRA, as established and empowered pursuant to the WRA Agreement.
- Section 1.3 "Capital Project" means any project for the purchase of any new equipment, for the repair or maintenance of any equipment, building or facility, or for the construction of any WRA Improvement, the estimated cost of which is in excess of the amount which requires the solicitation of competitive bids under the Iowa competitive bidding law.

- Section 1.4 "Capital Improvement Program" (CIP) means the plan and program describing the systematic construction and maintenance of, improvements and additions to, and replacement of the WRA System, and shall include the capital financing plan necessary to fund construction of improvements, additions and replacements.
- Section 1.5 "Clean Water Act" means Public Law 92-500, codified at 33 U.S.C. 1251 et. seq., and amendments thereto enacted since initial enactment of the Clean Water Act in 1972.
- Section 1.6 "CSO" means combined sewer overflows into rivers or streams from combined storm and sanitary sewers, which overflows are generated by the surcharge of such sewers during heavy precipitation events and/or during periods of high groundwater.
- Section 1.7 "Direct Cost" means the actual cost incurred for the direct benefit of the WRA System including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, professional services, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.
- Section 1.8 "Maintenance" means those routine and/or repetitive activities required to maximize the service life of the equipment, sewer, vehicles and facilities.
- Section 1.9 "NPDES Permit" means the permits required under the National Pollutant Discharge Elimination System Program under sections 318, 402, and 405 of the Clean Water Act, Public Law 92-500, codified at 33 U.S.C. 1251 et. seq., and amendments thereto enacted since initial enactment of the Clean Water Act in 1972.
- Section 1.10 "Indirect Cost" means the cost of services provided to the WRA by the Operating Contractor's central administration as calculated and determined in accordance with Federal OMB Circular A-87 and its revisions and amendments, or in accordance with the policy adopted by the Board or by its predecessor, the WRA Management Agency.
- Section 1.11 "Operating Contractor" means the City of Des Moines and its directors, officers, employees and agents.
- Section 1.12 "Operations, Maintenance and Management (OM&M) services" means and includes the provision of personnel services and the procurement of all goods and contract services (exclusive of professional services for the design of WRA Improvements) by the Operating Contractor as necessary for the operation, maintenance and management of the WRF and of the WCCS.
- Section 1.13 "Participating Communities" means the Cities of Altoona, Ankeny, Bondurant,

Clive, Des Moines, Johnston, Norwalk, Pleasant Hill and West Des Moines, and Polk County, Warren County, the Urbandale Sanitary Sewer District, the Urbandale-Windsor Heights Sanitary District and the Greenfield Plaza/Hills of Coventry Sanitary District, together with any other cities, counties, or sanitary districts that become Participating Communities under the provisions of the WRA Agreement.

- Section 1.14 "PILOT charge" means the charge made to the WRA by the City of Des Moines or any other Participating Community for the provision of police and fire protection services, calculated annually in accordance with the policy adopted by the Board or by its predecessor, the WRA Management Agency.
- Section 1.15 "Regulatory agencies" means the Iowa Department of Natural Resources (IDNR) and the United States Environmental Protection Agency (EPA).
- Section 1.16 " Renewal and Replacement Fund" or "R&R fund" means the reserve fund maintained by the WRA Board to pay the costs of extraordinary expenses or repairs, renewals and replacement not included in the annual WRA budget, payments due for any property purchased as part of the WRA System, and for capital improvements to the WRA System, which fund is to be funded and maintained in the amount determined by the Board.
- Section 1.17 "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- Section 1.18 "Small Capital Project" means any project for the purchase of any new equipment, for construction of any new building or facility, or for the repair or maintenance of any equipment, building or facility, constituting a "public improvement" as that term is defined under the Iowa competitive bidding law, the estimated cost of which improvement is less than the amount which requires the solicitation of competitive bids.
- Section 1.19 "Wastewater Collection and Conveyance System" or "WCCS" means the WRA sanitary sewer interceptors and extensions to same, detention basins, equalization basins, storage facilities, pumping stations, force mains and all related property and improvements.
- Section 1.20 "Wastewater Reclamation Authority" or "WRA" means the Des Moines Metropolitan Wastewater Reclamation Authority, an entity organized and existing under Chapters 28E and 28F of the Iowa Code, and established pursuant to the WRA Agreement. The term "WRA" means and includes the representatives of the Participating Communities on the WRA Board, and the officers and employees of the WRA.

- Section 1.21 "Wastewater Reclamation Facility" (WRF) shall mean the wastewater treatment plant located generally at 3000 Vandalia Road, Des Moines, Iowa, as the same may be expanded or improved in the future.
- Section 1.22 "WRA Agreement" shall mean the Amended and Restated Agreement for the Des Moines Metropolitan Wastewater Reclamation Authority approved by the ICA Management Agency at its meeting on April 6, 2004, and thereafter approved and executed by the governing bodies of the Participating Communities.
- Section 1.23 "WRA Improvement" or "Improvement" shall mean any new building or facility, comprising a "public improvement" as that term is defined under the Iowa competitive bidding law, the estimated cost of which improvement is in excess of the amount which requires the solicitation of competitive bids.
- Section 1.24 "WRA Improvement Project" shall mean any project undertaken at the direction of the WRA Board for the construction of any new building or facility, comprising a "public improvement" as that term is defined under the Iowa competitive bidding law, the estimated cost of which improvement is in excess of the amount which requires the solicitation of competitive bids.
- Section 1.25 "WRA System" or "System" shall mean and include the WRF, the WCCS, satellite wastewater and CSO treatment facilities hereafter constructed, all real and personal property of every nature hereinafter owned by the WRA and comprising part of or used as a part of the WRA System, and all appurtenances, contracts, leases, franchises and other intangibles of the WRA.

ARTICLE II. OPERATING CONTRACTOR DUTIES AND SCOPE OF SERVICES

Division 1 Operation, Maintenance and Management of the WRF, including Industrial Pretreatment Program.

Section 2.1. Operating Contractor to Use Best Efforts to Operate WRF in Conformance with Applicable Laws. The Operating Contractor agrees to use its best efforts to operate, maintain and manage the WRF so that effluent discharged therefrom is in conformance with the NPDES permit, the Clean Water Act, and/or any other applicable federal, state or local laws, rules or regulations, permit or license requirements, or judicial and regulatory orders or decrees.

Section 2.2. Operating Contractor's Authority to Act in Emergency. In any emergency affecting the safety of persons or property, Operating Contractor shall act, at its discretion and without prior Board authorization, to prevent threatened damage, injury or loss. If the cost of such work cannot be covered within the existing operating budget, the Operating Contractor may utilize R&R funds budgeted in the CIP budget, and may if necessary postpone other work in the CIP to cover the cost of such emergency work. The Operating Contractor shall notify the Board of any such emergency within five (5) days of its occurrence, excluding weekends and holidays. The Operating Contractor shall thereafter notify the Board of the corrective action taken or

proposed to be taken by the Operating Contractor to address such emergency. If such corrective action is taken immediately upon discovery of the emergency, such notification shall be given within five (5) days after taking the corrective action, excluding weekends and holidays. If such corrective action is not immediately determined or is to be deferred, but not beyond the next regular Board meeting, the Operating Contractor shall notify the Board of the proposed corrective action within five (5) days after determining the proposed course of action.

Section 2.3. Periodic Performance Reports. Operating Contractor shall prepare such periodic performance reports for the WRF as are required by applicable laws, rules, regulations or orders, and shall submit them directly to the appropriate regulatory agencies. Operating Contractor shall assist the WRA in preparing the Consumer Confidence Report and Air Quality Permit.

Section 2.4. Laboratory Testing and Sampling. Operating Contractor will provide laboratory testing and sampling required by plant performance sections of the NPDES permit, the Clean Water Act, and/or any federal, state or local laws, rules and regulations, local ordinances, permit or license requirements or judicial and regulatory orders and decrees.

Section 2.5. Compliance with NPDES Permit. Within the design capacity and capabilities of the WRF, Operating Contractor will manage, operate and maintain the WRF so that effluent discharged from the WRF's outfalls will meet the requirements specified in the NPDES permit.

Section 2.6. Administration of Industrial Pretreatment Program. Operating Contractor shall be responsible for administration of the State approved Industrial Pretreatment Program, directed at monitoring and controlling the introduction of pollutants into the WRF by commercial and industrial wastewater contributors located in the Participating Communities, as required by state and federal law and regulation. The Industrial Pretreatment Program shall consist of and include the identification of commercial and industrial firms whose wastewater effluent involves the discharge of pollutants to the WRA System; the issuance of industrial pretreatment permits to firms so identified, including the imposition of permit conditions and/or discharge limits when appropriate; the periodic inspection of pretreatment facilities and sampling and testing of wastewater discharges by pretreatment permittees to determine compliance with permit conditions and discharge limitations; laboratory analysis and compliance calculations; compliance investigation and compliance enforcement; billing and collection of pretreatment surcharges; and development of necessary reports.

Section 2.7 Industrial Pretreatment Ordinance. Operating Contractor shall develop and periodically update, as needed, the form of industrial pretreatment ordinance, and shall submit same to the Board for its review and approval.

Section 2.8 Obtaining Required Permits for the WRF. Operating Contractor is authorized to apply for, negotiate the terms of and obtain, on behalf of the WRA, all permits, including but not limited to the NPDES permit, which are required to be obtained from State or Federal regulatory agencies for ongoing operation of the WRF or other WRA facilities. All such permits shall be obtained and held in the name of the WRA. Upon issuance of a new NPDES permit for the WRF, the Operating Contractor shall present such permit to the Board for its review and approval. Other permits for the WRF, such as the Air Quality Permit and the NPDES

stormwater pollution permit, shall be signed by an appropriate representative of the Operating Contractor.

Section 2.9 Budgeting and Funding of OM&M Costs for WRF. The WRA has adopted as its initial goal the maintenance of an operating reserve equal to 35% of the WRA Operating Budget. The costs of OM&M services for the WRF, including salary and benefit costs of Operating Contractor's operations, supervisory and management personnel, including the cost of procuring goods and services (exclusive of professional services for the design of Improvements to said System), and including such reserve for the WRF portion of the WRA Operating Budget, shall be budgeted and funded as provided in Article IV, Section 4.4(a).

Division 2 Operation, Maintenance and Management of Wastewater Collection and Conveyance System (WCCS).

Section 2.10 Operating Contractor to Use Best Efforts to Operate WCCS in Conformance with Applicable Laws. The Operating Contractor agrees to use its best efforts to operate, maintain and manage the WRA WCCS in compliance with all applicable federal, state or local laws, rules or regulations, permit or license requirements, or judicial and regulatory orders or decrees. Such service shall include the performance of routine cleaning, maintenance and repair as necessary to maintain an obstruction free System and to maintain designed flow capacities in the System.

Section 2.11 Operating Contractor's Authority to Act in Emergency. In any emergency affecting the safety of persons or property, Operating Contractor shall act, at its discretion and without prior Board authorization to prevent threatened damage, injury or loss. If the cost of such work cannot be covered within the existing operating budget, the Operating Contractor may utilize R&R funds budgeted in the CIP budget, and may if necessary postpone other work in the CIP to cover the cost of such emergency work. The Operating Contractor shall notify the Board of any such emergency within five (5) days of its occurrence, excluding weekends and holidays. The Operating Contractor shall thereafter notify the Board of the corrective action taken or proposed to be taken by the Operating Contractor to address such emergency. If such corrective action is taken immediately upon discovery of the emergency, such notification shall be given within five (5) days after taking the corrective action, excluding weekends and holidays. If such corrective action is not immediately determined or is to be deferred, but not beyond the next regular Board meeting, the Operating Contractor shall notify the Board of the proposed corrective action within five (5) days after determining the proposed course of action.

Section 2.12 Periodic Performance Reports. As required by law, permit or order, Operating Contractor will prepare periodic performance reports for the WCCS and submit them directly to the appropriate agencies.

Section 2.13 Budgeting and Funding of OM&M Costs for WCCS. The costs of OM&M services for the WCCS, including salary and benefit costs of Operating Contractor's operations, supervisory and management personnel, and including the costs of procuring goods and services (exclusive of professional services for the design of Improvements to said System), and including the operating reserve for the WCCS portion of the WRA Operating Budget, shall be budgeted and funded as provided in Article IV, Section 4.4(b).

Division 3 Preparation of Proposed Annual Operating Budget, including Allocation of Capital and Operating Costs.

Section 2.14 Fiscal Year. The Operating Contractor shall operate on the same fiscal year as a city under Iowa law.

Section 2.15 Budget Preparation by Operating Contractor. The Operating Contractor shall, on behalf of the Board, cause to be prepared and submitted to the Board and to the Participating Communities a proposed preliminary WRA budget for the next fiscal year. The preliminary WRA budget shall include, among other things, (i) a projection of the anticipated expenditures that will be made by the Operating Contractor on behalf of the WRA in the next fiscal year, including but not limited to administrative expense; flow monitoring; industrial pretreatment; debt service and the reserve for renewal, replacement and upgrade of the WRF and other WRA System facilities; (ii) a calculation of the PILOT charges for the provision of police and fire protection; (iii) a projection of the anticipated revenues that will be received by the Operating Contractor on behalf of the WRA in the next fiscal year; (iv) a comparison of the budgeted and actual WRA expenditures for the current fiscal year, (v) a calculation of the annual cost shares to be allocated to each Participating Community in the next fiscal year; (vi) a calculation of actual revenue and expenditures for the current fiscal year and the two prior fiscal years; and (vii) any additional information requested by the Board. The WRA budget shall be prepared utilizing a chart of accounts conforming to the Operating Contractor's budgeting process, including major cost and revenue categories thereunder. The Operating Contractor may make such changes in its chart of accounts as it determines is necessary, provided that changes to major cost and revenue categories shall be presented to the Board for its consideration and approval prior to December 1st of any year prior to the fiscal year in which it intends to implement such changes. Upon request by the Board made prior to December 1st of any year, the Operating Contractor shall make such changes in major cost and revenue categories in the budget as it can accommodate in the next fiscal year's budget, consistent with its established chart of accounts.

Section 2.16 Calculation of Indirect Cost Charge. The indirect cost charge reflected in each year's budget shall be calculated by the Operating Contractor in accordance with Federal OMB Circular A-87 and its revisions and amendments, or in accordance with the policy adopted by the Board or by its predecessor, the WRA Management Agency.

Section 2.17 Calculation of Annual Cost Shares by Operating Contractor. The Operating Contractor shall prepare the allocation of budgeted cost shares as provided and directed in the WRA Agreement.

Section 2.18 Information and Input to be Provided by Operating Contractor. Upon the request of any Participating Community, or at the direction of the Board, the Operating Contractor shall make available such reasonably accessible information, schedules, comparisons and analysis as may be deemed reasonably necessary by such Participating Community in order to fully analyze the proposed WRA budget. The Operating Contractor shall cause such members of its staff, and such staff of its Finance Department, to be present at the budget hearing established by the Board as are necessary to explain the proposed budget and respond to inquiries made concerning same.

Section 2.19 Operating Contractor's Role in Budget Arbitration. When arbitration of a proposed budget is requested by a Participating Community as provided in the WRA Agreement, the Operating Contractor shall respond to the arbitration request and shall cause such members of its staff, and such staff of its Finance and Legal Departments, to be present at the arbitration hearing as are necessary to explain and defend the proposed budget.

Section 2.20 Budgeting and Funding of Budget Preparation Costs. The costs of budget preparation services provided by the Operating Contractor shall be budgeted and funded as provided in Article IV, Section 4.4(c). The costs of budget preparation services provided by the Operating Contractor through the City Finance Department shall be budgeted and funded as provided in Article IV, Section 4.4(c).

Division 4 Upgrading and Development of WRA System, including (a) Preparation of Capital Improvement Program; (b) Provision or Procurement of Professional Engineering Services for WRA Improvement Projects; (c) Procurement of Construction Contracts for WRA Improvement Projects; and (d) Acquisition of Property for WRA Improvement Projects. Assumption of Outstanding Engineering Design and Construction Contracts.

Section 2.21 Performance Monitoring and Needs Assessment. The Operating Contractor shall, in consultation with the Technical Committee, the engineering consultant, if any, selected by the Board, and Board staff, continuously monitor and assess the WRA System and its component facilities to determine if they are performing optimally, shall identify and implement operational strategies to optimize the performance of the System and of its individual facilities, and shall identify System and facility improvements needed to optimize performance. The Operating Contractor shall, in consultation with the Technical Committee, the engineering consultant, if any, selected by the Board, and Board staff, continuously monitor and assess the use of WRA System facilities by the Participating Communities to determine if their needs are being met and to identify growth and development trends implicating a future increase in such needs, shall identify operational strategies to more effectively and efficiently meet the existing needs of Participating Communities, and shall identify operational strategies and recommend the construction of improvements necessary to meet increasing needs associated with growth and development.

Section 2.22 Preparation of Capital Improvement Program. The Operating Contractor shall, in consultation with the Technical Committee and the engineering consultant, if any, selected by the Board, develop a multi-year Capital Improvements Program (CIP) for the WRA System, based on performance and needs assessments as provided in Section 2.21, and shall each year prepare and submit to the Board, in conjunction with the preparation and submission of the operating budget as provided in Division 3 of this Article, an updated Capital Improvements Program and a Capital Improvements Program Budget for the upcoming fiscal year, identifying proposed WRA System improvements, the estimated costs and scheduling thereof and the proposed funding therefor. The Operating Contractor shall, in consultation with the Technical Committee, include in the Capital Improvements Program any project requested by a Participating Community and shall make a recommendation thereon.

Section 2.23 Assistance in Capital Financing Activities. The Operating Contractor is authorized to procure proposals for all necessary consultant and advisory services related to capital financing, and upon Board approval thereof to utilize such services and provide information or participate in discussions related to capital financing activities, including planning and preparation for bond issues, ratings presentations and ongoing updates.

Section 2.24 Provision or Procurement of Professional Engineering Services for WRA Improvement Projects. Pursuant to the Capital Improvements Program adopted by the Board, the Operating Contractor shall, at the Board's direction as expressed in a Board resolution, undertake the design of improvements to the WRA System, or shall procure proposals from qualified engineering consulting firms for the design of such improvements, utilizing the procedures provided in the WRA Policy Regarding the Provision or Procurement of Design, Construction and Property Acquisition Services for WRA Improvements adopted by the Board or by its predecessor, the WRA Management Agency.

Section 2.25 Procurement of Construction Contracts for WRA Improvement Project. Upon completion of the preliminary design of a WRA Improvement, the Operating Contractor shall present the project design to the Board for its consideration. Upon Board direction to proceed with construction of the improvement, the Operating Contractor shall procure competitive proposals for the construction of said improvement, utilizing the procedures provided in the WRA Policy Regarding the Provision or Procurement of Design, Construction and Property Acquisition Services for WRA Improvements adopted by the Board or by its predecessor, the WRA Management Agency.

Section 2.26 Obtaining Required Permits for WRA Construction Projects. The Operating Contractor or the design consultant selected to design WRA Improvements is authorized to apply for all permits required for such projects, and to obtain and execute such permits in the name of the WRA, including but not limited to the DNR construction permit, the NPDES stormwater permit for construction, if required, and the building permit from the local building authority, if required.

Section 2.27 Assumption of Outstanding Engineering and Construction Contracts.

(a) The parties agree that contracts for the provision of engineering services for WRA Capital Projects or Small Capital Projects, entered into by the City of Des Moines in its prior role as Operating Agency, existing and in force and effect at 11:59 p.m. on June 30, 2004, including those contracts listed in Exhibit A on part 1 thereof, shall remain in full force and effect during the term of this Operating Contract and until completed, as determined by the Board.

(b) The parties agree that contracts for the construction of WRA Capital Projects or Small Capital Projects, entered into by the City of Des Moines in its prior role as Operating Agency, existing and in force and effect at 11:59 p.m. on June 30, 2004, including those contracts listed in Exhibit A on part 2 thereof, shall remain in full force and effect during the term of this Operating Contract and until completed, as determined by the Board.

Section 2.28 Board May Assign Performance of Services to a Participating Community. In lieu of the Operating Contractor providing design services or procuring proposals for design services,

procuring competitive proposals for construction, procuring proposals for appraisal services, and providing property acquisition services for a WRA Improvement Project to be undertaken in whole or in part within a particular Participating Community other than Des Moines, the Board may itself perform those functions, or may assign the performance of some or all of those functions to that Participating Community, provided that said services shall be performed by such Community in the manner set forth in the WRA Policy Regarding the Provision or Procurement of Design, Construction and Property Acquisition Services for WRA Improvements adopted by the Board or by its predecessor, the WRA Management Agency. A Participating Community performing some or all of such services pursuant to Board authorization shall provide documentation of its actual costs of providing such services, and the Operating Contractor shall, upon verification of such costs, compensate such Participating Community for the cost of providing said services from the appropriate WRA CIP account.

Section 2.29 Prior Board Authorization Required for Capital Projects, but not for Small Capital Projects. Neither the Operating Contractor nor any Participating Community shall undertake the design or construction of any project or improvement constituting a Capital Project as defined in Article I, without first obtaining the prior authorization of the Board. The foregoing notwithstanding, the Operating Contractor is authorized to undertake Small Capital Projects as defined in Article I without obtaining prior authorization of the Board.

Section 2.30 Budgeting and Funding of Costs of Support Services for Upgrading and Development of WRA System. The costs of support services for the upgrading and development of the WRA System shall be budgeted and funded as provided in Article IV, Section 4.5(a) - (d).

Division 5 Finance Support Services.

Section 2.31 Finance Support Services to be Provided by Operating Contractor. The Operating Contractor shall, through the City of Des Moines Finance Department, provide finance support services to the WRA, including the following specific services:

(a) WRA Accounting Services

- (1) Establish and maintain a system of WRA operating and capital accounts, for the purpose of recording and accounting for all funds received, and for the purpose of recording and accounting for the expenditure of WRA funds by the Operating Contractor.
- (2) Prepare quarterly statements for WRA comparing revenue/expense budget to actual revenues/expenses.
- (3) Calculate, invoice and monitor payments from Participating Communities.
- (4) Perform year-end accounting, including preparing year-end statements/ reports /WRA Annual Financial Report, journal entries, fund reconciliation, work papers, intergovernmental expense transfers, audit functions, etc.
- (5) Evaluate fund balances on a monthly basis for R&R, CIP, O&M, Pump Stations, etc.
- (6) Prepare monthly financial reports for operations staff.
- (7) CIP reconciliation (monthly transfers to projects & community contribution tracking).

- (8) Debt schedule reconciliation (semi-annual).
- (9) SRF billings to DNR.
- (10) Monitor expenditure budget-to-actual on a monthly basis.
- (11) Attend communication meetings with staff and teams.
- (12) Assist in preparation of WRA annual budget and amended WRA budgets, as required.
- (13) Preparation of budget cost allocations to Participating Communities in accordance with WRA Agreement.
- (14) Prepare CIP forecasts.
- (15) Calculate transfers to debt service funds.
- (16) Respond to miscellaneous requests from member communities, outside auditors, financial advisors, operations managers, etc.
- (17) Miscellaneous projects to ensure financial and accounting aspects of the WRA are handled fairly and efficiently.
- (18) Bill waste haulers monthly.
- (19) Allocate pump station expenses between WRA and Des Moines sewers.
- (20) Make periodic financial reports as requested by the Board.

(b) Internal City Accounting Services

- (1) Process weekly vendor payments.
- (2) Bill Participating Communities monthly, including any monthly adjustments.
- (3) Run and print monthly financial reports for operations staff.
- (4) Answer variety of accounting questions from the WRF/WRA staff.
- (5) Make periodic financial reports as requested by the Board.

(c) Treasury Services

- (1) Establish interest bearing accounts in the name of the WRA for the deposit of funds collected from all sources.
- (2) Deposit funds collected from Participating Communities into WRA accounts, or invest such funds, as appropriate, pursuant to the direction of the Board or pursuant to the deposit and investment policy adopted by the Board.
- (3) Manage funds deposited in WRA accounts, as well as funds invested on behalf of the WRA.
- (4) Act as paying agent for WRA debt.
- (5) Calculate arbitrage rebate for each bond and SRF loan.
- (6) Invest bond reserves and unspent bond proceeds.
- (7) Assist in preparation of debt work papers for the WRA Annual Financial Report.
- (8) Receipt revenue (community payments and customer invoices).
- (9) Make periodic reports as requested by the Board.

(d) Financial Planning Services

- (1) Procurement of proposals for all necessary consultant and advisory services related to capital financing for Board approval, and provision of information or participation in discussions related to capital financing activities, including

planning and preparation for bond issues, ratings presentations and ongoing updates.

Section 2.32 Standard for Provision of Finance Support Services. The services herein outlined shall be provided utilizing a system which includes internal audit controls and management oversight, as well as current technology and computer systems and shall be provided in such manner as to enable the WRA to function as a metro-wide utility.

Section 2.33 Budgeting and Funding of Costs of Finance Support Services. The costs of finance support services shall be funded as provided in Article IV, Section 4.4(d).

Division 6 Legal Support Services.

Section 2.34 Provision of Legal Support Services by Operating Contractor. The Operating Contractor shall, through the City of Des Moines Legal Department, make available and provide a full range of legal services to the WRA including, but not be limited to, the drafting and/or review of WRA contracts for Board action; legal review of real estate acquisition documents; initiation of eminent domain proceedings; provision of legal advice and representation, and issuance of legal opinions, regarding WRA operations and activities, including the effect of state and federal laws, rules and regulations thereon; defense or initiation of lawsuits involving the WRA; and provision of strategic legal advice, as requested by the Board. The Parties agree that the Operating Contractor shall provide legal services with respect to (a) human resources work involving Operating Contractor's employees; (b) workers compensation claims involving Operating Contractor's employees; (c) the acquisition of property for WRA Improvement Projects and (d) the design and construction of such projects. With respect to legal representation regarding (a) regulatory matters and proceedings under State of Iowa or Federal laws involving the operation of the WRF or the WCCS, including legal proceedings arising therefrom, (b) enforcement of pretreatment ordinance adopted by the Participating Communities, and (c) tort claims or other litigation involving Operating Contractor's employees or arising from the operation of the WRF or the WCCS, the Parties agree that the Operating Contractor shall provide representation of the WRA unless the Board determines that such representation would not be in the best interests of the WRA, in which case the Board and the Operating Contractor may each obtain their own respective legal representation.

Section 2.35 Board's Discretion to Obtain Legal Services from Alternate Source. Notwithstanding the foregoing, the Board reserves the right to obtain legal advice and representation from other sources in those instances in which it determines that it would be in the best interests of the WRA to do so, or in those instances in which it determines or is advised by the Operating Contractor that a conflict of interest or potential conflict of interest would exist in obtaining such services through the Operating Contractor.

Section 2.36 Operating Contractor to Advise Board Regarding Conflict of Interest. The Operating Contractor agrees to timely advise the Board with respect to claims asserted and causes of action brought against the WRA, and with respect to legal claims and causes of actions against third parties accruing to the WRA, which implicate a conflict of interest or potential

conflict of interest in the Operating Contractor's provision of legal services to the WRA.

Section 2.37 Operating Contractor to Advise Board Regarding Claims of Causes of Action over \$5,000; Operating Contractor's Settlement Authority. The Operating Contractor agrees to timely advise the Board with respect to claims asserted and causes of action brought against the WRA which involve claim amounts in excess of \$5,000. The WRA agrees that as to all claims and causes of action where the Operating Contractor provides legal representation to the WRA, the Operating Contractor, acting through the Des Moines Legal Department, shall have authority up to the amount of \$5,000 to settle or accept settlement thereof, and to sign settlement agreements and releases on behalf of the WRA.

Section 2.38 Budgeting and Funding of Costs of Legal Support Services. The costs of legal support services shall be funded as provided in Article IV, Section 4.4(d).

Division 7 Human Resources Support Services; Status of Employees Serving WRA System.

Section 2.39 Provision of Human Resources Services. The Operating Contractor shall, through the City of Des Moines Human Resources Department, provide human resources services to the WRA, both as to City of Des Moines employees providing OM&M services for the WRA, and, if requested by the Board, as to persons directly employed by the Board, if any. Human resources services shall include the administration of pay and benefits and of employment contracts for all such employees.

Section 2.40 Status of Existing City of Des Moines Employees; Collective Bargaining. The parties agree that existing City of Des Moines employees, who are employed in support of the WRA System on the effective date of this Contract, shall continue in such employment as employees of the City of Des Moines, and that all existing collective bargaining agreements for such employees shall thereafter remain in full force and effect. The City of Des Moines, as Operating Contractor, shall thereafter negotiate the terms of, and shall cause to be executed, any successor collective bargaining agreements with such employee bargaining groups as it determines necessary to continue operations under this Contract.

Section 2.41 Budgeting and Funding of Costs of Human Resources Support Services. The costs of human resources support services shall be funded as provided in Article IV, Section 4.4(d) hereof. The costs of employee services for City of Des Moines employees working directly at the WRF or on WCCS facilities, and the costs of employee services for those persons directly employed by the Board, including salary and benefits, shall be budgeted and funded as provided in Article IV, Section 4.4(d).

Division 8 Police and Fire Protection, Security, Hazardous Materials Response and Ambulance Services.

Section 2.42 Police and Fire Protection Services for WRA Facilities in Des Moines. As to WRA facilities located within Des Moines which require police and fire protection services, the

Operating Contractor shall provide such services through the Des Moines Police and Fire Departments.

Section 2.43 Security Services for WRA Facilities. As to WRA facilities located within Des Moines or any other Participating Community which require security services, the Operating Contractor shall provide such services utilizing its personnel or shall contract for the provision of such services.

Section 2.44 Hazardous Materials Response Services for WRA Facilities. As to WRA facilities located within Des Moines or any other Participating Community, the Operating Contractor shall pay for the provision of hazardous materials response services provided by the Des Moines Fire Department and billed to the WRA by Polk County.

Section 2.45 Ambulance Services for WRA Facilities in Des Moines. As to WRA facilities located within Des Moines, the Operating Contractor shall provide ambulance service, if and when required, through the Des Moines Fire Department.

Section 2.46 Budgeting and Funding of Costs of Police, Fire, Hazardous Materials Response and Ambulance Services. The costs of police and fire protection, hazardous materials response and ambulance services shall be budgeted and funded as provided in Article IV, Section 4.4(e) and (f).

Division 9 Procurement of Goods and Services; Assumption of Outstanding Contracts and Purchase Orders.

Section 2.47 Operating Contractor to Procure Goods and Services. The Operating Contractor shall, through the Procurement Division of the City of Des Moines Finance Department, provide procurement services to the WRA for the procurement of all goods and/or services, exclusive of professional engineering services for WRA Improvement Projects, for the operation, maintenance and management of the WRA System. The Operating Contractor shall procure such goods and/or services utilizing the established procurement procedures of the City of Des Moines, as provided in the City's Procurement Ordinance (Chapter 2, Article V, Division 3, Subdivision V of the Des Moines City Code, entitled "Procurement Division"), or in procurement policies adopted pursuant thereto. Consistent with the procurement provisions of the Des Moines City Code, the Parties agree (a) that the Operating Contractor shall have authority to procure goods and/or services having an annual cost of \$25,000 or less without the prior approval of the Board, (b) that all procurements of goods and/or services having an annual cost in excess of \$25,000 shall be subject to approval by the Board, and (c) that as to all such procurements in excess of \$25,000, the Board shall have and exercise the same powers as are assigned to the Des Moines City Council under said Procurement Ordinance. Should the above dollar amounts in the procurement provisions of the Des Moines City Code be adjusted, the dollar amounts set forth above shall, upon Board consultation, be adjusted accordingly.

Section 2.48 Procurement Services. Procurement services shall include, but not be limited to, the following:

- (a) Issuance of purchase orders to vendors for routine purchases;
- (b) Assistance in the development of requests for proposals for the procurement of goods and/or services when criteria in addition to cost will be used to evaluate competing proposals;
- (c) Identifying and securing annual contracts for high volume goods and services;
- (d) Disposal of surplus property by either transfer, auction, or advertised sale;
- (e) Resolution of billing discrepancies between purchase orders and invoices;
- (f) Securing necessary insurance certificates, bonds and/or warranties in connection with the procurement of goods and/or services.

Section 2.49 Existing Contracts and Purchase Orders to Remain in Effect. The parties agree that all contracts and purchase orders for the provision of goods and/or services in support of the WRA System, entered into by the City of Des Moines in its prior role as Operating Agency and existing and in force and effect at 11:59 p.m. on June 30, 2004, shall remain in full force and effect during the term of this Operating Contract or until such contracts or purchase orders expire according to their terms, whichever occurs first.

Section 2.50 Budgeting and Funding of Costs of Procurement Services. The costs of procuring goods and services to support the WRA System, and the costs of all goods and services so procured, shall be budgeted and funded as provided in Article IV, Section 4.4(g).

Division 10 Risk Management Services; Procurement of Insurance.

Section 2.51 Risk Management Program. The Operating Contractor shall, with the assistance of the City's Risk Manager and its insurance consultant, develop and maintain a risk management and insurance program on behalf of the WRA. The objectives of the risk management and insurance program are to (a) assess and identify all risks of damage, loss and liability which are inherent in WRA operations or associated with WRA property; (b) identify and initiate operational changes to mitigate such risks; (c) identify opportunities to contractually transfer such risks where appropriate; and (d) recommend insurance and reserve requirements to adequately financially cover such risks.

Section 2.52 Procurement of Insurance for WRA System Properties and Operations. The Operating Contractor shall procure, on behalf of itself and on behalf of the WRA, as appropriate, the insurance coverages as outlined in the WRA Insurance and Risk Management Program heretofore adopted by the WRA Management Agency, or in accordance with any revisions to that Program hereafter adopted by the Board. The Operating Contractor shall, with the assistance of the City's Risk Manager and its insurance consultant, periodically review the insurance coverages provided for in the WRA Insurance and Risk Management Program to determine (a) if such insurance is appropriately covering known risks to WRA System properties and operations, and (b) to determine if such insurance, when combined with established reserves, is providing an appropriate level of financial protection from such risks. The Operating Contractor, through the City's Risk Manager and its insurance consultant, shall make recommendations as to any needed changes in said insurance coverages, or as to any needed changes in the insurance coverage levels and reserve funds (a) to maintain appropriate coverage

levels, and (b) to most cost effectively insure those risks.

Section 2.53 WRA Responsible for Payment of Insurance Premiums, for Maintaining Reserves, and for Payment of Claims Not Covered by Insurance. The Operating Contractor, through the City's Risk Manager and insurance consultant, have proposed a WRA Insurance and Risk Management Program, recommending a combination of insurance and insurance reserves to cover all potential damage, loss and liability exposures associated with the management and operation of the WRA, including but not limited to property casualty, workers compensation, general liability including auto, public officials liability, pollution liability, crime and underground storage tanks. The WRA agrees to pay the premium costs associated with the insurance coverages it determines to purchase, and to fund the insurance reserves it determines to establish, pursuant to the WRA Insurance and Risk Management Program. The WRA further agrees to pay claims or cover losses which are not covered by such insurance or insurance reserve funds.

Section 2.54 Operating Contractor Authorized to Make Claims on Behalf of WRA; Operating Contractor's Settlement Authority. The WRA authorizes the Operating Contractor to make claims against insurance carriers as it deems appropriate to obtain insurance proceeds to cover damages or losses incurred by the WRA or by the Operating Contractor, or to secure payment of damage claims made by third parties against the WRA or the Operating Contractor, and the Operating Contractor agrees to advise the WRA as to all such claims which it makes against insurance carriers insuring the WRA or the Operating Contractor.

Section 2.55 Budgeting and Payment of Insurance Premium Costs; Budgeting and Payment of Participating Community Contributions Required for Creation and Maintenance of Insurance Reserves. (a) The premium cost of the insurance coverages authorized by the Board as set out in the WRA Insurance and Risk Management Program, shall be budgeted and funded as provided in Article IV, Section 4.4(h).

(b) Participating Community contributions required for creation or maintenance of insurance reserves authorized by the WRA Insurance and Risk Management Program shall be budgeted and funded as provided in Article IV, Section 4.4(h).

Section 2.56 Budgeting and Funding of Costs of Risk Management Services The costs of risk management services shall be funded as provided in Article IV, Section 4.4(h).

Division 11 Miscellaneous Support Services (Administrative / Secretarial Support Services to the WRA; Technical Support Services to Technical Committee; Information Technology Support Services; Printshop, Courier and Postal Services).

Section 2.57 Administrative / Secretarial Support Services to the WRA. The Operating Contractor shall provide administrative and secretarial support services to the Board, Board officers and WRA committees, including the following and other related duties as assigned by the Board:

- (a) Keeping of Board meeting minutes;
- (b) Preparation of Board meeting notices, meeting agendas and meeting minutes and

- transmission to Board members;
- (c) Maintenance of information regarding the Participating Communities and their representatives;
 - (d) Preparation of notices concerning the appointment of Participating Community representatives and transmission to Participating Communities; and
 - (e) Maintenance of a WRA website containing information concerning Board meetings, Participating Community information, WRA activities and status of WRA projects.

Section 2.58 Technical Support to the WRA Technical Committee. The Operating Contractor shall provide technical support services to the WRA Technical Committee in connection with the Committee's performance of the following duties:

- (a) service area population estimates and allocations to Board representatives;
- (b) annual updating of the reversionary ownership interests of Participating Communities;
- (c) design flows for all Improvements to be constructed;
- (d) capital contribution and surcharge payment amounts for newly connecting communities;
- (e) annual determination of community flows, including the accuracy of flow data; and
- (f) such other duties as may be assigned by the Board.

Section 2.59 Information Technology Support Services. The Operating Contractor shall provide, through the City of Des Moines Information Technology (IT) Department, or through such independent contractors as it shall select, information technology services, including:

- (a) Network and Operations Support, including consulting services and systems support for WRA networks and information systems; technical review and requirements definition for systems; advanced level troubleshooting and support; training in implementation, configuration and management of systems; and coordination of WRA systems with City systems.
- (b) Application Development and Support, including
 - (1) Consulting services and support for software applications used by WRF, including RFP development and evaluation, implementation assistance, advanced troubleshooting and advanced applications management support.
 - (2) Database design, training, implementation and support, including development of WRF-specific scripts and processes.
 - (3) Web development and support, including development and maintenance of WRA Web site. Web site hosting.
- (c) Telephone service and support to include moves, programming, technical support and billing.
- (d) Other support services, including internet access, network connectivity and business continuity services as requested by the Operating Contractor.

Section 2.60 Printshop, Courier and Postal Services. The Operating Contractor shall provide printing services, as required, for the WRA, including but not limited to Board agendas, Board resolutions and related documents, minutes of Board proceedings, and staff communications to Board members and Participating Communities. The Operating Contractor shall provide courier service and postal services, as necessary, to deliver the above described items and documents to Board members and Participating Communities.

Section 2.61 Budgeting and Funding of Costs of Miscellaneous Support Services The costs of miscellaneous support services shall be budgeted and funded as provided in Article IV, Section 4.4(i) - (l).

Division 12 Service Level Commitments

Section 2.62 The Operating Contractor shall prepare, and shall periodically update at the request of the Board, a statement of its service level commitments for the provision of services to the WRA pursuant to this Contract. The Operating Contractor shall use its best efforts to meet the performance guidelines set forth in its statement of service level commitments.

Division 13 WRA Director

Section 2.63 Appointment of WRA Director. The Board may appoint a WRA Director who shall be charged with the administration and management of the WRA System and of the provision of all services outlined in this Article. The WRA Director shall be available at the call of the Board to report or respond regarding the provision of services under this Article. In the absence of the appointment of the WRA Director by the Board, the WRA Director shall be appointed by the Operating Contractor, upon consultation with the Board. The person so appointed as WRA Director shall serve until a replacement is appointed by the Board or by the Operating Contractor as above provided.

ARTICLE III. OBLIGATIONS OF WRA.

Section 3.1 Funding of Necessary Projects. The WRA shall fund all necessary Capital Projects. Any loss, damage, or injury resulting from the WRA's failure to provide funding for Capital Projects, when reasonably requested by the Operating Contractor, shall be the sole responsibility of the WRA.

Section 3.2 Payment of Taxes. The WRA shall pay all sales, excise, ad valorem, property, or other taxes associated with WRA operations or assessed against WRA property.

Section 3.3 Obtaining and Maintaining Required Permits and Licenses. The WRA shall, with the assistance of the Operating Contractor as described in Article II, Division 1, obtain and maintain in continuous effect during the term of this Contract, all licenses and permits necessary for operation of the WRA System.

Section 3.4 Maintenance of Operating Reserve. The WRA shall establish, adequately fund and maintain an operating reserve fund to assure the availability of adequate operating funds in the event of higher than anticipated operating costs or in the event of insufficient revenues to fund WRA operations.

Section 3.5 Obtaining and Maintaining Required Insurance Coverages. The WRA shall, with the assistance of the Operating Contractor as described in Article II, Division 10, obtain and maintain in continuous effect during the term of this Contract the insurance coverages required

by the WRA Insurance and Risk Management Program, as heretofore adopted by the WRA Management Agency or as hereafter revised by the Board.

Section 3.6 Obtaining and Maintaining Required Insurance Reserves. The WRA shall establish, adequately fund and maintain insurance reserves as required by the WRA Insurance and Risk Management Program, as heretofore adopted by the WRA Management Agency or as hereafter revised by the Board.

ARTICLE IV. COMPENSATION OF OPERATING CONTRACTOR; BILLING AND PAYMENT OF COSTS BUDGETED IN WRA OPERATING AND CAPITAL BUDGETS.

Section 4.1. Compensation of Operating Contractor. The Operating Contractor's compensation for the provision of services as outlined in Article II hereof shall occur through its collection from each Participating Community of its allocated cost share of each fiscal year WRA operating budget and WRA CIP budget adopted by the WRA Board for each fiscal year during the term of this Contract, subject to the annual true-up and reallocation of cost shares based on actual costs incurred, as provided in Article IX of the WRA Agreement.

Section 4.2. Operating Contractor to Bill and Collect Budgeted Costs Allocated to Participating Communities. The Operating Contractor shall each month bill each Participating Community (a) its share of the operating budget and debt service on Bonds and Refunding Bonds as determined in accordance with the WRA Agreement, and (b) any surcharge payments imposed under Articles XI or XII of the WRA Agreement, and shall use its best efforts to collect the amounts so billed to the Participating Communities on a timely basis. Pursuant to the WRA Agreement, the first such payment by each Participating Community in each fiscal year is due and payable on July 15, with succeeding payments being due and payable on the 1st day of each month thereafter. In the event any Participating Community fails to submit a monthly payment in its entirety within ten days of the payment due date, the Operating Contractor shall immediately provide written notice to each Board member and to the delinquent Participating Community as to the nature and amount of the delinquency. In the event a Participating Community shall fail to make payment as required, the Operating Contractor may, if necessary, utilize funds from the operating reserve fund or from the reserve for replacement and repair, as appropriate, to cover ongoing expenses of the WRA. To the extent that any payment delinquency causes a shortfall in funds available to make periodic interest or principal payments on debt outstanding, the Operating Contractor shall, if necessary, utilize funds from the debt service reserve fund or any available funds of the WRA to ensure timely payment of all debt obligations.

Section 4.3. Allocation of Participating Community Budget Cost Shares to Appropriate Account. Moneys collected each month by the Operating Contractor shall be credited to the appropriate operating or CIP account, as required by the WRA Agreement.

Section 4.4. Expenditure of Funds from Appropriate WRA Operating Accounts. The Operating Contractor may draw upon the funds in WRF operating accounts to pay expenses incurred by it in

the operation of the WRF, or may draw upon the funds in WCCS operating accounts to pay expenses incurred by it in the operation the WCCS , as more particularly hereafter provided:

- (a) The costs of OM&M services for the WRF shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget.
- (b) The costs of OM&M services for the WCCS shall be reflected in and funded under the direct cost line items for WCCS operations in the WRA operating budget.
- (c) The costs of budget preparation services provided by the Operating Contractor shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget. The costs of budget preparation services provided by the Operating Contractor through the Des Moines Finance Department shall be reflected in and funded under the indirect cost line item for WRF operations in the WRA operating budget.
- (d) The costs of finance support services, legal support services and human resource support services provided by City of Des Moines administrative staff shall be budgeted and funded on either a direct cost or indirect cost basis as provided in OMB Circular A-87, or in the WRA Policy Regarding Direct and Indirect Costs for Employees in the WRA Budget adopted by the Board or by its predecessor, the WRA Management Agency. The costs of employee services provided on a direct cost basis shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget. The costs of employee services provided on an indirect cost basis shall be reflected in and funded under the indirect cost line item for WRF operations in the WRA operating budget.
- (e) The costs of police and fire protection and ambulance services provided by the City of Des Moines for the WRF and for other WRA System facilities within Des Moines, shall be reflected in and funded under the PILOT charge line item for WRF operations in the WRA operating budget. The costs of police and fire protection and ambulance services provided by other Participating Communities for other WRA System facilities shall be reflected in and funded under the PILOT charge line item for WCCS operations in the WRA operating budget. The PILOT charge shall be calculated by the Operating Contractor in accordance with the WRA Policy Regarding Computation of PILOT Charge and Reconciliation heretofore adopted by the WRA Management Agency, or in accordance with any revisions to that policy hereafter adopted by the Board. In each instance in which a Participating Community other than Des Moines requests payment of a PILOT charge, that Community shall calculate the charge in accordance with the WRA Policy Regarding Computation of PILOT Charge and Reconciliation heretofore adopted by the WRA Management Agency, or in accordance with any revisions to that policy hereafter adopted by the Board, and shall submit it to the Operating Contractor for verification.
- (f) The costs of hazardous materials response and ambulance services for the WRF

shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget. The costs of hazardous materials response and ambulance services for the WCCS shall be reflected in and funded under the direct cost line items for WCCS operations in the WRA operating budget

(g) The costs of procurement services to support the WRA System shall be reflected in and funded under the indirect cost line item for WRF operations in the WRA operating budget. The costs of goods and services so procured shall be reflected in and funded under the direct cost line items for WRF operations or for WCCS operations, as appropriate, in the WRA operating budget.

(h) The costs of risk management services provided by the Operating Contractor shall be reflected in and funded in the indirect cost line item for WRF operations in the WRA operating budget. The costs for services of the Operating Contractor's insurance consultant, the premium cost for insurance coverages procured by the Operating Contractor as authorized by the WRA Insurance and Risk Management Program, and the contributions of the Participating Communities required to create and maintain insurance reserves as authorized by the WRA Insurance and Risk Management Program, shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget.

(i) The costs of administrative/secretarial support services to the WRA Board shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget.

(j) The costs of technical support services to the WRA Technical Committee shall be reflected in and funded under the direct cost line items for WRF operations in the WRA operating budget.

(k) The costs of information technology support services shall be reflected in and funded under the indirect cost line item for the WRF in the WRA operating budget.

(l) The costs of print shop, courier and postal services shall be reflected in and funded under the direct cost line items for the WRF in the WRA operating budget.

Section 4.5. Expenditure of Funds from Appropriate WRA CIP Accounts. The Operating Contractor may draw upon funds in WRA CIP accounts to pay expenses incurred by it in the design or construction of WRA improvements, and in the acquisition of property for such projects, as more particularly hereafter provided:

(a) The costs of services provided by the Operating Contractor in the preparation of the WRA Capital Improvement Program and CIP budget shall be reflected in and funded under the direct cost line items for the WRF in the WRA operations budget.

- (b) The costs of services provided by the Operating Contractor through the City of Des Moines Finance Department in the preparation of the WRA Capital Improvement Program and CIP budget shall be reflected in and funded under the indirect cost line items for the WRF in the WRA operations budget.
- (c) The costs of services provided by the City of Des Moines in the provision or procurement of professional engineering services for WRA Capital Projects or Small Capital Projects, in the procurement of construction contracts for such projects, in the administration of construction contracts for such projects, and in the acquisition of property for such projects, shall be reflected in and funded under the project expense line item for each project in the WRA capital improvements budget.
- (d) The costs of constructing Capital Projects or Small Capital Projects shall be reflected in and funded under the project expense line item for each project in the WRA capital improvements budget.

Section 4.6 Budget Adjustments and Amendments; Limitation on Expenditures by Operating Contractor.

- (a) The Operating Contractor may make such adjustments in the amounts budgeted and to be expended between or among line items in a major cost category (e.g. personal services, contractual services, commodities, other services and charges, capital outlay, debt service, travel and training, transfers, etc.) in the WRA operating budget as it determines is necessary and appropriate. Such adjustments shall be reported to the Board in periodic reports made to the Board.
- (b) Except as provided in Sections 2.2 and 2.11, the Operating Contractor shall make no expenditure in excess of the amount budgeted in a major cost category in the WRA operating budget. With prior Board approval, the Operating Contractor may make adjustments in the amounts budgeted and to be expended between or among major cost categories in the WRA operating budget. Any proposed increase in the amount budgeted and to be expended in any major cost category in the WRA operating budget shall be approved in advance by the Board in the form of a budget amendment.

Section 4.7 Implementation of Rate Stabilization. At the direction of the Board, the Operating Contractor shall implement a system of rate stabilization for purposes of determining the annual allocated cost shares that are derived from metered flows, and utilize a multi-year average of metered flows in lieu of those attributable to the immediate prior calendar year, all as provided in the WRA Agreement. The methodology for rate stabilization shall be approved in detail by resolution of the Board. If the Board so directs the implementation of rate stabilization during the first or second quarter of a fiscal year, the Operating Contractor shall incorporate such rate stabilization methodology into the proposed budget which it prepares for the next fiscal year, and if approved by the Board as part of said budget, shall implement such rate stabilization at the beginning of that succeeding fiscal year. If the Board directs the implementation of rate stabilization after the second quarter of a fiscal year, the Operating Contractor shall not be obligated to implement rate stabilization in the next fiscal year, but shall implement it in the

fiscal year thereafter.

ARTICLE V GENERAL PROVISIONS

Section 5.1. Effective Date, Term and Termination of Contract. The Parties agree this Contract shall be effective on and as of July 1, 2004, and shall be for an initial term of twenty (20) years ending on June 30, 2024. The Parties agree that this Contract shall thereafter automatically renew for additional renewal terms of one year each, commencing on July 1st of each year and ending on June 30th of the succeeding year, unless one Party gives the other Party notice of termination not less than eighteen (18) months preceding the June 30th termination date. The Parties further agree that this Contract may be terminated by mutual agreement.

Section 5.2. Use and Ownership of WRA Real Property, Buildings, Facilities, Easements, Licenses, Rights-of-Way, Equipment, Personal Property or Vehicles; Disposition Upon Termination of Contract.

(a) Upon the effective date of and during the term of this Contract, Operating Contractor shall have the right to use and/or occupy all real property buildings, facilities, easements, licenses, rights-of-way, equipment, personal property and vehicles presently or hereinafter acquired or owned by the WRA as necessary for the operation, maintenance or management of the WRA System; provided, however, that Operating Contractor shall not by virtue of this Contract acquire any ownership interest in such real property, buildings, facilities, easements, licenses, rights-of-way, equipment, personal property or vehicles, and Provided that all such real property, buildings, facilities, easements, licenses, rights-of-way, equipment, personal property and vehicles shall remain the exclusive property of the WRA.

(b) Upon termination of this Contract and all renewals and extensions thereof, Operating Contractor shall return all such real property, buildings, facilities, easements, licenses, rights-of-way, equipment, personal property and vehicles to WRA in the same condition as they were in upon the effective date of this Contract, ordinary wear and tear excepted. Equipment, personal property and vehicles purchased by Operating Contractor for use in the operation or maintenance of the WRA System shall remain the property of Operating Contractor upon termination of this Contract, unless such equipment, personal property or vehicles were directly paid for by WRA, or WRA specifically reimbursed Operating Contractor for the cost incurred to purchase same, or this Contract provides to the contrary.

(c) Funds paid to the Operating Contractor by Participating Communities for operation, maintenance and management expenses of the WRA System, including operating reserves, shall be used to pay all such expenses incurred by the Operating Contractor to date of termination. The balance of such funds shall be paid to the WRA.

(d) Insurance reserve funds held by the Operating Contractor shall be disposed of as provided in the WRA Insurance and Risk Management Program, as heretofore adopted by the WRA Management Agency or as hereafter revised by the Board.

(e) Debt service reserve funds and CIP program funds held by the Operating Contractor shall become the property of the WRA upon termination of this Contract.

Section 5.3. Disclaimer, Best Efforts, Liability and Indemnification.

(a) Disclaimer. The Participating Communities agree that the WRA facilities heretofore and hereafter designed and constructed for or by the WRA are special purpose structures. Neither the

Board nor the Operating Contractor warrant or guarantee that WRA System facilities existing as of the date of this Agreement were designed or constructed, or that they will function efficiently or accomplish the purpose for which they were designed, nor does the Board or the Operating Contractor warrant or guarantee that any of the WRA improvements hereafter constructed will function efficiently or accomplish the purpose for which they were designed. The Board and the Operating Contractor agree to exercise the judgment that a public body generally exercises in the selection of the design engineer or engineers, letting of construction contracts, and in monitoring the actual construction of such special purpose facilities.

(b) Best Efforts. The Board and the Operating Contractor agree to cooperate in good faith with one another and with the other Participating Communities, exercise diligence in performing their respective obligations hereunder and use their best efforts to carry out the provisions of this Contract.

(c) No Liability. The Board and the Operating Contractor shall not be liable to one another or to any Participating Community by reason of any failure to construct any of the WRA improvements or the failure to provide any sanitary sewer services contemplated by the WRA improvements.

(d) Indemnification. In recognition that under the WRA Agreement the Participating Communities have agreed to share in the costs of operating the WRA System, and to share the risks inherent in operating such System, and in recognition that the City of Des Moines, as Operating Contractor hereunder, will also share in such risks as a Participating Community, the WRA and the Operating Contractor agree that the WRA shall (1) indemnify, defend and hold harmless the Operating Contractor from and against any and all claims, citations, suits, judgments, decrees, orders and the like, brought or obtained by persons or legal entities for liability for damage to property or for personal or bodily injury, including death at any time resulting therefrom, which may arise from all causes of any kind in the operation, maintenance or management of the WRA System; and (2) indemnify, defend and hold harmless the Operating Contractor from and against any and all claims, citations, suits, judgments, decrees, orders and the like, brought or obtained by persons or legal entities for losses, damages, liabilities, cost, fines or penalties arising under local, state or federal laws, including but not limited to the Clean Water Act, CERCLA or RCRA, which are directly or indirectly connected with the presence, discharge, release, disposal, or escape of hazardous substances, wastes, pollutants or contaminants of any kind, whether at the WRF or at any other WCCS facility or location, or which are due to an alleged violation of law, regulation, permit or standard which is attributable to action or inaction by the Operating Contractor. The indemnification above provided shall not extend to acts or omissions of the Operating Contractor which are not sanctioned by the WRA Board or Technical Committee, and which involve malice, a knowing violation of law, gross negligence or willful or wanton disregard for the health or safety or for the property of others.

Section 5.4. Notices and Invoices. All notices and/or invoices which the Parties are authorized or required to give one another pursuant to this Contract shall be in writing and may be personally delivered or sent by ordinary mail. Mailed notices or invoices shall be deemed to be received by the Party to whom directed one business day after the date they are postmarked. Such notices shall be delivered or mailed as follows:

(a) If to the WRA:

Chair, WRA Board
%WRA Wastewater Reclamation Facility
3000 Vandalia Road
Des Moines, Iowa 50317

; and

- (b) If to the Operating Contractor:
Bill Stowe, Des Moines Public Works Director
% City of Des Moines, Iowa
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Either Party may from time to time, upon 30 days written notice to the other Party, designate another person and/or address as the person or address to whom notices shall be directed on its behalf.

Section 5.5. Audit. The Board may by notice in writing request access to the Operating Contractor's records for purposes of conducting an independent audit of the Operating Contractor's financial records, including but not limited to the following: (a) direct and indirect costs and expenses incurred by the Operating Contractor pursuant to this Contract; (b) the crediting of Participating Community contributions or other revenues to WRA operating and CIP accounts; and (c) charges made by the Operating Contractor to WRA operating and CIP accounts. Such notice shall identify the records sought for audit, and the Operating Contractor shall provide access to the records sought for audit within 30 days after receipt of the notice requesting audit. Such audit shall be conducted by a certified public accounting firm retained by the Board, and shall be paid from the WRF operating budget. The audit findings shall be promptly provided to the Operating Contractor and to any Participating Community requesting same.

In the event that such audit reveals that the Operating Contractor inappropriately credited Participating Community contributions or other revenues to WRA operating or CIP accounts, or that the Operating Contractor inappropriately charged expenses to WRA operating or CIP accounts, the auditor shall report such events to the Board, and the Operating Contractor shall make such adjustments to said accounts as the audit determines is proper, 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 5.6. Declaration of Default and Notice. 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 provision of the Contract involved, and shall specify what action is required of the defaulting Party to correct the default. The defaulting Party shall have 30 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, and if such default shall constitute a material breach of this

Contract, the aggrieved Party may thereupon terminate the Contract as provided in Section 5.7 hereof.

Section 5.7. Termination. Either Party may terminate this Contract for material breach as provided in Section 5.6 by giving 30 days written notice of termination. Termination of this Contract shall be effective at the end of said 30-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 WRA or by the Operating Contractor, or upon entry of a court order terminating this Contract, the property and assets of the WRA shall be expended, distributed or disposed of as provided in Section 5.2 hereof, and the Operating Contractor shall assist WRA in assuming operation of the WRA System. If additional costs are incurred by Operating Contractor at request of WRA, WRA shall pay Operating Contractor such costs within thirty (30) days of its receipt of an invoice therefor.

Section 5.8. Dispute Resolution - Arbitration.

(a) The Parties agree that any disputes arising between them with regard to the interpretation or application of this Contract, except disputes wherein a Party has given notice of default to the other Party alleging a material breach of this Contract, shall be submitted to binding arbitration at the request of either Party. Any 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, who shall be selected from a list of arbitrators certified by the American Arbitration Association. 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 to the arbitration, and the third chosen by agreement of the Parties, or by the two arbitrators first chosen, from the list of arbitrators certified by the American Arbitration Association.

(c) The Party requesting arbitration shall choose an arbitrator within ten 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 days following the receipt of notice of the naming of the requesting Party's arbitrator. Should such other Party fail to select an arbitrator, then, in that event, 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 award shall be binding; if three, the award of any two shall be binding. The arbitration award may be for damages, and may include any legal or equitable remedy otherwise available to the Parties, provided that the arbitrator may not make a finding of material breach and shall not have authority to declare termination of this Contract. The award may

be impeached only for fraud or mistake. Such award shall be a condition precedent to any right of legal action.

(f) The costs of arbitration shall be shared equally by the parties.

(g) The award 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.

Section 5.9. Payment of Attorneys Fees. If judicial proceedings are necessary to enforce the terms of this Contract, the prevailing Party shall be entitled to reasonable attorney's fees directly attributed to such litigation, in addition to any other legal or equitable relief to which it may be entitled.

Section 5.10. Remedies. In addition to any other remedies available under applicable law, the Board and the Operating Contractor shall have the right to the equitable remedy of specific performance to enforce compliance with any provision of this Contract.

Section 5.11. Independent Contractor. It is understood that the relationship of Operating Contractor to WRA is that of independent contractor. The services provided under this Contract are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services, and nothing herein is intended to imply that Operating Contractor is to supply professional engineering services to WRA, unless specifically stated in this Contract or specifically hereafter agreed by the Parties to the contrary.

Section 5.12. Amendment of Contract. This Contract may be amended only by written agreement signed by both Parties.

Section 5.13. Assignment of Contract. Neither Party may assign this Contract to a third party without the written consent of the other Party.

Section 5.14. No Third Party Beneficiaries. Nothing in this Contract shall be construed to create in any third party, or in favor of any third party, any right(s), license(s), power(s) or privilege(s).

Section 5.15. Force Majeure. Neither Party shall be liable for its failure to perform its obligations under this Contract, if such failure is due to any unforeseen circumstances beyond its reasonable control. For purposes of this provision, unforeseen circumstances shall mean any event or condition which is beyond the reasonable control of the Party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Contract, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any court, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by the federal government, or by the State of Iowa or any of its governmental subdivisions, or by an administrative agency of any of them, (iv) labor disputes, strikes, work slowdowns or work stoppages; and (v) loss of or inability to obtain

service from a utility necessary to furnish power for the operation and maintenance of the WRA System.

This provision shall not be used by either Party to avoid, delay or otherwise affect any payments due to the other Party, nor shall such failure to perform be grounds for termination of this Contract.

Section 5.16. Severability. If any section, provision or part of this Contract shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Contract as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.

Section 5.17. Governing Law; Jurisdiction. This Contract shall be governed by and interpreted in accordance with the laws of the State of Iowa. Lawsuits brought by either Party in connection with this Contract shall be heard and tried in Polk County District Court, Des Moines, Iowa.

Section 5.18. Entire Agreement. This Agreement represents the entire agreement between the WRA and the Operating Contractor. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed addendum to this Agreement.

Section 5.19. Counterparts. This Contract may be executed in two counterparts, each of which so executed shall be deemed to be an original.

CITY OF DES MOINES, IOWA,
OPERATING CONTRACTOR

By T.M. Franklin Cownie
T. M. Franklin Cownie, Mayor

Attest:

Diane Rauh
Diane Rauh
City Clerk

Approved as to Form:

Terrence L. Timmins
Terrence L. Timmins
Deputy City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK,)

On this 21st day of June, 2004 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and Diane Rauh, 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 DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate 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 (Ordinance No. passed) (the Resolution adopted) by the City Council, under Roll Call No. 04-1314 of the City Council on the 21st day of June, 2004, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.



Karen Marie Herzberg
Notary Public in and for the
State of Iowa

DES MOINES METROPOLITAN WASTEWATER
RECLAMATION AUTHORITY (WRA)

By Tom Hadden
, Chair, WRA Board

Attest:
[Signature]
, Secretary, WRA Board

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 1st day of July, 2004 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Tom Hadden and Jody Smith, to me personally known, and, who, being by me duly sworn, did say that they are Chairperson and Secretary, respectively of the WRA Board; that the instrument was signed and sealed on behalf of the WRA by authority of its Board, as contained in the Resolution No. 04- 017, adopted by the WRA Board on the 1st day of July, 2004, and that Tom Hadden and Jody Smith acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

Christopher C. Coco
Notary Public in and for the
State of Iowa



EXHIBIT A

ENGINEERING AND CONSTRUCTION CONTRACTS ASSIGNED TO WRA

PART 1

ENGINEERING CONTRACTS

| <u>ENGINEERING FIRM</u> | <u>PROJECT</u> | <u>CONTRACT DATE</u> |
|--------------------------------|--|---------------------------------------|
| Howard R. Green | WRF W3 Improvements | 7/28/03 |
| HDR | WRF Emission Reduction | 4/19/04 |
| Brown & Caldwell | WRF Aeration Blower Imp | 4/21/03 |
| Black & Veatch | WRF Solids Dewatering Imp | 7/28/03 |
| Brown & Caldwell | WRF Aeration Piping Imp | 8/11/03 |
| Black & Veatch | WRF Hauled Waste Imp | 7/28/03 |
| V&K | WRA WDM South Outfall | 6/23/03 |
| V&K | WRA Four Mile Extension | 9/22/03 |
| V&K | WRA SW Area Diversion | 6/23/03 |
| Yet to be awarded | WRF Arc Flash Protection | Yet to be awarded |
| M&M Environmental Services | WRF Operator Training | 3/12/04 |
| Howard R. Green | WRF Bldg #5 Imp | 2/09/04 |
| V&K | WRA East 20 th Trunk Connector | Yet to be awarded |
| Stanley Consultants | WRA DM River Outlet | Yet to be awarded |
| HDR | WRF Emission Reduction | Yet to be awarded Being Negotiated |

PART 2

CONSTRUCTION CONTRACTS

| <u>CONSTRUCTION CO.</u> | <u>PROJECT</u> | <u>CONTRACT DATE</u> |
|-------------------------|--|----------------------|
| Van Hauen & Assoc | WRF W3 Imp | 10/23/03 |
| CJ Carroll | WRF Aeration Piping Improvements | 12/08/03 |
| Yet to be awarded | WRF Solids Dewatering Imp | Bids 4/13/04 |
| Yet to be awarded | WRF Hauled Waste Imp | Bids 4/13/04 |
| Rasch Construction | WRA WDM South Outfall | 12/08/03 |
| Yet to be awarded | WRA East 20 th Trunk Connector | Yet to be awarded |
| Yet to be awarded | WRA DM River Outlet | Yet to be awarded |
| Yet to be awarded | WRF Building #5 Imp | Bid spring 04 |

Yet to be awarded. Bids on these projects will be likely taken and contracts awarded prior to the July 1, 2004 effective date of the Operating Contract. All such proposed awards will be brought before the Management Agency for concurrence prior to actual award by Des Moines. This Exhibit will be updated prior to July 1, 2004 to provide the name of the contractor awarded the contract for each of these projects and the contract award date. If a contract for construction of one of these projects is not awarded prior to July 1, 2004, that project will be deleted from this Exhibit, and that contract will be subject to award by the Board.