

**28E AGREEMENT  
EAST NISHNABOTNA WATERSHED COALITION  
ARTICLES OF AGREEMENT**

**THIS AGREEMENT** (the “Agreement”) is entered into pursuant to Iowa Code chapter 28E by and between twenty-one (21) parties including counties, cities, and soil and water conservation districts (the “Members”), to wit:

**WHEREAS**, Iowa Code Section 466B.22 authorizes two (2) or more political subdivisions, defined as including cities, counties, soil and water conservation districts, and benefited recreational lake districts, all of which must be located within the same United States Geological Survey Hydrologic Unit Code 8 Watershed, to enter into agreement under Iowa Code Chapter 28E to establish a watershed management authority to enable cooperation in supporting watershed planning and improvements for the mutual advantage of the political subdivisions involved; and

**WHEREAS**, pursuant to Iowa Code Section 466B.23, a watershed management authority may perform all of the following duties:

1. Assess the flood risks in the watershed;
2. Assess the water quality in the watershed;
3. Assess options for reducing flood risk and improving water quality in the watershed.
4. Monitor federal flood risk planning and activities;
5. Educate residents of the watershed area regarding water quality and flood risks;
6. Allocate moneys made available to the authority for purposes of water quality and flood mitigation;
7. Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the authority. A watershed management authority shall not acquire property by eminent domain; and

**WHEREAS**, the Members deem that the establishment of the East Nishnabotna Watershed Coalition (the “Authority”), a watershed management authority encompassing all of the East Nishnabotna (the “Watershed”), a Hydrologic Unit Code 8 (HUC 8 ID #10240003) Watershed, to be of mutual advantage; and

**WHEREAS**, it is mutually desired to enter into this Agreement pursuant to Iowa Code Chapter 28E for the purpose of establishing the East Nishnabotna Watershed Coalition to carry out watershed planning and improvements in the East Nishnabotna Watershed.

**NOW, THEREFORE**, pursuant to Iowa Code Chapter 28E, and in consideration of the foregoing, it is hereby agreed between the parties as follows:

**SECTION 1. IDENTITY OF THE PARTIES.**

**1.1 Counties.** Audubon County, Carroll County, Cass County, Fremont County, Montgomery County, Page County, Pottawattamie County, and Shelby County are each a political

subdivision of the State of Iowa, organized and operating pursuant to Iowa Code Chapter 331. Their respective addresses are:

Audubon County  
318 Leroy Street #4  
Audubon, Iowa 50025  
Phone: 712-563-2428

Carroll County  
114 East 6<sup>th</sup> Street  
Carroll, Iowa 51401  
Phone: 712-792-4923

Cass County  
5 West 7<sup>th</sup> Street  
Atlantic, Iowa 50022  
Phone: 712-243-6661

Fremont County  
506 Filmore Street  
Sidney, Iowa 51652  
Phone: 712-374-2415

Montgomery County  
105 Coolbaugh Street  
Red Oak, Iowa 51566  
Phone: 712-623-5127

Page County  
112 East Main Street  
Clarinda, Iowa 51632  
Phone: 712-542-5018

Pottawattamie County  
227 South 6<sup>th</sup> Street  
Council Bluffs, Iowa 51501  
Phone: 712-328-5644

Shelby County  
612 Court Street  
Harlan, Iowa 51537  
Phone: 712-755-3733

**1.2 Cities.** Elk Horn, Elliott, Essex, Farragut, Griswold, and Shenandoah, are each a municipality of the State of Iowa, organized and operating pursuant to Iowa Code chapter 364. Their respective addresses are:

City of Elk Horn  
4212 Main Street  
Elk Horn, Iowa 51531  
Phone: 712-764-5512

City of Elliott  
409 Main Street  
Elliott, Iowa 51532  
Phone: 712-767-2351

City of Essex  
412 Iowa Avenue  
PO Box 428  
Essex, Iowa 51638  
Phone: 712-379-3444

City of Farragut  
518 Hartford Avenue  
Farragut, Iowa 51639  
Phone: 712-385-8660

City of Griswold  
601 2<sup>nd</sup> Street  
PO Box 760  
Griswold, Iowa 51535  
Phone: 712-778-2615

City of Shenandoah  
500 W Clarinda Avenue  
Shenandoah, Iowa 51601  
Phone: 712-246-4411

**1.3 Soil and Water Conservation Districts.** Carroll SWCD, Cass SWCD, East Pottawattamie SWCD, Fremont SWCD, Montgomery SWCD, Page SWCD, and Shelby SWCD are each a governmental subdivision of the State of Iowa as defined in Iowa Code Section 161A3(6) and a soil and water conservation district established pursuant to Iowa Code Section 161A5(1). Their respective addresses are:

Carroll SWCD  
1917 N US Hwy 71, Ste 1  
Carroll, Iowa 51401  
Phone: 712-792-1212

Cass SWCD  
503 W 7<sup>th</sup> Street, Ste 1  
Atlantic, Iowa 50022  
Phone: 712-243-3180

East Pottawattamie SWCD  
16 Main Street  
Oakland, Iowa 51560  
Phone: 712-482-6408

Fremont SWCD  
503 West Street  
PO Box 490  
Sidney, Iowa 51652  
Phone: 712-374-2014

Montgomery SWCD  
2505 N Broadway, Ste 2  
Red Oak, Iowa 51566  
Phone: 712-623-9680

Page SWCD  
1003 South 8<sup>th</sup> Street  
Clarinda, Iowa 51632  
Phone: 712-542-5484

Shelby SWCD  
2519 Southwest Avenue  
Harlan, Iowa 51537  
Phone: 712-755-2417

## **SECTION 2. PURPOSE.**

- 2.1** The purpose of this Agreement is to provide for the manner in which the parties shall cooperate with one another to successfully plan for and implement watershed improvements within the East Nishnabotna Watershed, including but not limited to the following activities authorized pursuant to Iowa Code section 466B.23:
- A. Assess the flood risks in the watershed;
  - B. Assess the water quality in the watershed;
  - C. Assess options for reducing flood risk and improving water quality in the watershed.
  - D. Monitor federal flood risk planning and activities;
  - E. Educate residents of the watershed area regarding water quality and flood risks;
  - F. Seek and allocate moneys made available to the authority for purposes of water quality and flood mitigation; and
  - G. Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the authority. A watershed management authority shall not acquire property by eminent domain;

## **SECTION 3. CREATION OF THE AUTHORITY.**

- 3.1** Upon the effective date stated in this Agreement there is hereby created a public agency to be known as the "East Nishnabotna Watershed Coalition" (the "Authority"). The Authority shall be a political subdivision of the State of Iowa, and a legal entity separate and distinct from the corporate existence of any participating parties to this Agreement. The Authority shall be subject to the control and supervision of any party to this Agreement or their officers and directors, only to the extent provided for herein.
- 3.2** A joint board of the participating political subdivisions known as the East Nishnabotna Watershed Coalition Board (the "Board") shall be responsible for fulfilling the purpose of the Authority. The Board shall be comprised of one appointee (the "Director") from each county, city, and district participating in this Agreement and an alternate to serve in the place of the appointed representative in their absence. The Board shall adopt Bylaws governing the administration, development, operation, and management of the Authority.
- 3.3** Each participating political subdivision shall be known as a Member. Each Member shall appoint a Director to the Board of the Authority. The Authority shall be a voluntary joint

undertaking of the political subdivisions within the Watershed pursuant to the provisions of Chapter 466B and 28E of the Code of Iowa.

#### **SECTION 4. DURATION.**

**4.1** This Agreement shall be in effect perpetually until terminated pursuant to Section 10.

#### **SECTION 5. POWERS AND DUTIES.**

**5.1** The Members shall retain all powers and duties conferred by law and shall assist each other in the exercise of such powers and the performance of such duties as are provided for in this Agreement. Each Member shall be jointly responsible for focusing attention on:

- A. Assessing the flood risks in the watershed;
- B. Assessing the water quality in the watershed;
- C. Assessing options for reducing flood risk and improving water quality in the watershed.
- D. Monitoring federal flood risk planning and activities;
- E. Educating residents of the watershed area regarding water quality and flood risks;
- F. Allocating moneys made available to the authority for purposes of water quality and flood mitigation; and
- G. Making and entering into contracts and agreements and executing all instruments necessary or incidental to the performance of the duties of the authority. A watershed management authority shall not acquire property by eminent domain.

**5.2** A Member may, but will not be required to, accept a specific responsibility to assist in achieving the goals of the Authority. Acceptance of such responsibilities shall only be by official action of the governing body of the Member. These responsibilities include but are not limited to:

- A. Identifying opportunities for funding and in-kind support for the undertaking of watershed planning and improvements within the Watershed;
- B. Serving as fiscal agent for the Authority when funds are received from any source;
- C. Identifying opportunities for infrastructure development and planning capable of assessing and mitigating flood risks in the Watershed;
- D. Identifying the most effective best management practices for improvements of water quantity and water quality improvements in the Watershed;
- E. Participating in educational/outreach programs regarding water quality and flood risks;
- F. Identifying opportunities for infrastructure development and planning capable of assessing and improving water quality in the Watershed;
- G. Providing support for the administration of any projects, including technical, financial, and clerical, as agreed to by the parties;
- H. Securing such financing, including grants, loans, and the issuance of bonds or loan agreements, as determined to be necessary or desirable to achieve the objectives of the agreement;
- I. Coordinating with local wastewater utilities;
- J. Designing and bidding of projects;
- K. Administering contracts; and
- L. Observing construction.

**SECTION 6. MANNER OF FINANCING.**

**6.1** The Board may solicit, accept, and receive donations, endowments, gifts, grants, reimbursements and other such funds as necessary to support work pursuant to this Agreement.

No action to contribute funds by a Director of the Authority is binding on the Member that he or she represents without official approval by the governing board of that Member. No Member may be required to contribute funds to the Authority, except to fulfill any obligation previously made by official action by the governing body of the Member.

All funds received for use by the Authority shall be held as a special fund by the fiscal agent designated by the Board of the Authority. When funds are provided as a grant or loan directed to a Member of the Authority for a project administered by that Member, the funds shall be retained and administered by that Member.

**SECTION 7. ENTIRE AGREEMENT.**

**7.1** This Agreement contains the entire agreement of the parties, integrates all of the terms and conditions contained in and incidental to such Agreement, and supersedes or replaces any prior agreements of the parties relating to its subject matter. No modifications or waiver of any provision in this Agreement shall be valid unless in writing and signed by all of the parties.

**7.2** If any term, provision, or condition of this Agreement shall be inoperative, the validity and effect of the other terms, provisions, or conditions shall not be affected thereby. If any term, provision, or condition of this Agreement is found to be void or invalid by any court, administrative agency, or tribunal of competent jurisdiction, the invalidity of any such term, provision, or condition shall not affect the validity of the remaining provisions hereof.

**SECTION 8. GOVERNING LAW.**

**8.1** This Agreement is made in the State of Iowa and shall be governed by, interpreted, and enforced in accordance with the laws of the State of Iowa. This Agreement shall meet all the necessary legal requirements and publications as outlined in Iowa Code Chapter 28E and other applicable Iowa laws.

**SECTION 9. AMENDMENTS.**

**9.1** This Agreement may be amended at any time by approval from the governing boards of the Members of the Authority. All amendments shall be in writing, executed by the authorized representative of each governing board of the Members, and filed in an electronic format with the Iowa Secretary of State as required by Iowa Code Section 28E.8.

**SECTION 10. TERMINATION.**

**10.1** This Agreement shall terminate upon the majority vote or mutual agreement of the governing bodies of all Members of the Authority. Upon termination, all property and money then owned by the Authority shall be distributed according to the Member's contribution levels among the Members after payment of all debts. Any funds donated under a stipulation limiting their use shall be disbursed consistent with the donor's direction.

**SECTION 11. EFFECTIVE DATE.**

**11.1** This Agreement shall take effect upon execution by the parties as required by law and upon filing with the Secretary of State in an electronic format as required by Iowa Code Section 28E.8.

**SECTION 12. WITHDRAWAL FROM MEMBERSHIP.**

**12.1** Any Member may withdraw from the Authority by the action of its governing board, unless the Authority then has unpaid debts or legal obligations, in which case the consent of the governing boards of the remaining Members to the withdrawal is required. Such withdrawal will forfeit any right to a distribution in conjunction with a subsequent termination of this Agreement.

**SECTION 13. WATERSHED BOUNDARY.**

**13.1** The geographical area to which this agreement applies shall be known as the East Nishnabotna Watershed. The East Nishnabotna is a United States Geological Survey Hydrologic Unit Code (HUC 8 ID #10240002) Watershed. The boundary of the Watershed is graphically displayed in Attachment I, which is hereby incorporated into this Agreement.

**SECTION 14. INDEMNIFICATION.**

**14.1** The Authority shall indemnify, defend, keep, save, and hold harmless the Members and their officers and employees from and against any and all losses, claims, damages, liability, costs, expenses, or deficiencies (including without limitation reasonable attorneys' fees and other costs and expenses reasonably incident to proceedings or investigations or the defense or settlement of any claim or claims) arising out of the Authority's activities, including, without limitation, challenges to the organization, creation, or status of the Authority, whether based on tort, antitrust, non-competition, wage and hour violations, or any other claim of illegality, and whether based upon state, federal, local, or common law.

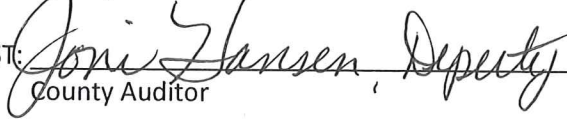
**SECTION 15. SIGNATURE PAGES.**

**15.1** The Parties agree that this Agreement has attached to it signature pages which shall be assembled and filed together with the Agreement and shall together constitute one and the same instrument. A completed copy of the Agreement with executed signature pages shall be sent to each Party.

Dated this 14<sup>th</sup> day of March 2017.

Audubon COUNTY, IOWA


BY:   
Board of Supervisors Chair

ATTEST:   
County Auditor

Dated this 1 day of MAY 2017.

Carroll  
COUNTY, IOWA

BY:   
Board of Supervisors Chair

ATTEST:   
County Auditor



Dated this 31<sup>st</sup> day of March 2017.

CASS COUNTY, IOWA

BY: *Gaylord Schelling*  
Board of Supervisors Chair Gaylord Schelling

ATTEST: *Dale Sunderman*  
County Auditor Dale Sunderman

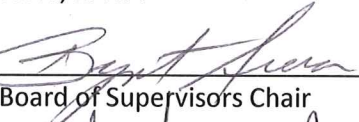
Dated this 14<sup>th</sup> day of March 2017.  
Fremont  
COUNTY, IOWA

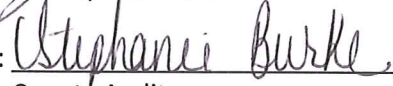
BY: Earl Henderson  
Board of Supervisors Chair

ATTEST: Wes Over  
County Auditor

Dated this 18<sup>th</sup> day of April 2017.

Montgomery  
COUNTY, IOWA

BY:   
Board of Supervisors Chair

ATTEST:   
County Auditor

Dated this   2nd   day of   May   2017.

**PAGE COUNTY, IOWA**

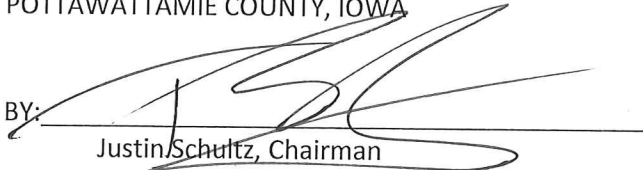
BY: James D. Richardson  
Board of Supervisors Chair

ATTEST: Yvonne Wilkerson  
County Auditor

Dated this 4<sup>th</sup> day of April, 2017.


POTTAWATTAMIE COUNTY, IOWA

BY:



Justin Schultz, Chairman  
Pottawattamie County Board of Supervisors

ATTEST:

  
Melvyn Houser, Pottawattamie County Auditor

Dated this 18th day of April 2017.

SHELBY COUNTY, IOWA


BY: Steve Kurland  
Board of Supervisors Chair

ATTEST: Mary J. Marshall  
County Auditor

Dated this 3<sup>rd</sup> day of April 2017.

Elk Horn

City, IOWA

BY:   
Mayor

ATTEST: Alisa LaCanna  
City Clerk

Dated this 10<sup>th</sup> day of April 2017.  
Elliott  
City, IOWA

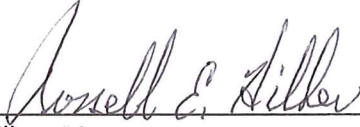
BY: Michael Carson  
Mayor

ATTEST: Melissa Jordan  
City Clerk



Dated this 12TH day of April 2017.

Essex, IOWA

BY:   
Russell E. Hilker, Mayor

ATTEST:   
Lisa A. Nelson, City Clerk

Dated this 11<sup>th</sup> day of May 2017.

Farragut  
CITY OF [CITY NAME], IOWA

Thomas R. Shull  
[Name], Mayor

ATTEST: Becky Seaman  
[Name] City Clerk

Dated this 26th day of April 2017.

GRISWOLD, IOWA

BY:   
Mayor

ATTEST:   
City Clerk

Dated this 28<sup>th</sup> day of March, 2017.

City of Shenandoah, Iowa


BY: Richard N. Hunt  
Richard N. Hunt, Mayor

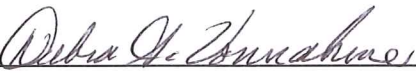
ATTEST: Karla Gray  
Karla Gray, City Clerk/Treasurer



Dated this 22<sup>nd</sup> day of March 2017.

SOIL & WATER CONSERVATION DISTRICT, CARROLL  
COUNTY, IOWA

BY:   
Chairperson

ATTEST:   
Secretary

Dated this 18 day of April 2017.

SOIL & WATER CONSERVATION DISTRICT, Cass  
COUNTY, IOWA

BY: Fredial W. Kay  
Chairperson

ATTEST: Jana Coughlin  
Secretary

Dated this 31 day of March 2017.

E Pottawattamie  
SOIL & WATER CONSERVATION DISTRICT,  
COUNTY, IOWA

BY: Robert Zimmerman  
Chairperson

ATTEST: Beeby Lockwood  
Secretary

Dated this 4<sup>th</sup> day of Apr 2017.

SOIL & WATER CONSERVATION DISTRICT,  
FREMONT COUNTY, IOWA

BY: Phillip Wing  
Phillip Wing, Chairperson

ATTEST: Jammy Seibert  
Secretary





Dated this 20<sup>th</sup> day of April 2017.

Page SOIL & WATER CONSERVATION DISTRICT,  
COUNTY, IOWA

BY:   
Chairperson

ATTEST:   
Secretary

Dated this 16 day of May 2017.

SOIL & WATER CONSERVATION DISTRICT,  
SHELBY COUNTY, IOWA

BY: Aennis W. Gaud  
Chairperson

ATTEST: Joan Schulte  
Secretary

ATTACHMENT I

