



Paul D. Pate
Secretary of State
State of Iowa

28E Agreement

FOR OFFICE USE ONLY:

FILED

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6/3/2019 11:35:13 AM

PLEASE READ INSTRUCTIONS ON BACK BEFORE COMPLETING THIS FORM

Item 1. The full legal name, organization type and county of each participant to this agreement are:

	Full Legal Name	Organization Type	*County
Party 1	Dickinson County	County	Dickinson
Party 2	Lake Park	City	Dickinson
Party 3	Orleans	City	Dickinson
Party 4	Spirit Lake	City	Dickinson
Party 5	Okoboji	City	Dickinson

**Enter "Other" if not in Iowa*

Item 2. The type of Public Service included in this agreement is: 560 Planning
(Enter only one Service Code and Description) Code Number Service Description

Item 3. The purpose of this agreement is: *(please be specific)*
 Establish Watershed Management Authority for the purpose of planning and implementing watershed improvements within the Little Sioux River Headwaters

Item 4. The duration of this agreement is: *(check one)* Agreement Expires _____ Indefinite Duration
[mm/dd/yyyy]

Item 5. Does this agreement amend or renew an existing agreement? *(check one)*
 NO
 YES Filing # of the agreement: _____
(Use the filing number of the most recent version filed for this agreement)
 The filing number of the agreement may be found by searching the 28E database at: <http://sos.iowa.gov/28e>.

Item 6. Attach two copies of the agreement to this form if not filing online.

Item 7. The primary contact for further information regarding this agreement is: *(optional)*

LAST Name Wills FIRST Name John
 Title Coordinator Department Coordinator
 Email dickinsoncwa@gmail.com Phone 7123363782

Little Sioux Headwaters Coalition

28E Agreement

THIS JOINT AND COOPERATIVE AGREEMENT (hereinafter referred to as the “Agreement” is voluntarily entered into by all parties/participants on signature pages and presented to the Iowa Secretary of State on this 31 of May 2019 pursuant to the authority of the Code of Iowa, Chapter 28E.

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

WHEREAS, pursuant to Code of Iowa Section 466B.22, a watershed management authority (coalition) 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 risk
6. Seek and allocate monies made available to the Authority for purposes of water quality and flood mitigation.
7. Make and enter into contracts and agreement and execute all instruments necessary or incidental to the performance of the duties of the Authority; and;

WHEREAS, the counties of Dickinson; and the Cities of Lake Park, Orleans, Spirit Lake, Okoboji, Arnolds Park, West Okoboji, and Wahpeton ; and the Soil and Water Conservation Districts of Dickinson deem establishment of the Little Sioux Headwaters Coalition (hereinafter referred to as the “Coalition”), a watershed management authority (Coalition) encompassing the Northern portion (or headwaters) of the Little Sioux River watershed, which falls within the same HUC 8 watershed (10230003), to be of mutual advantage; and

WHEREAS, it is mutually desired to enter into the Agreement pursuant to Code Of Iowa Chapter 28E for the purpose of establishing the Authority to carry out watershed planning and improvements in the Little Sioux Headwaters.

NOW, THEREFORE, in consideration of the mutual covenants hereafter set forth, the participants agree as follows:

1. CREATION OF THE COALITION.

Upon the effective date identified in the first Paragraph, there is hereby created a public agency to be known as the "Little Sioux Headwaters Coalition" ("The Coalition"). The agency 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 and shall be subject to the control and supervision of any party or their officers and directors only to the extent provided herein.

2. LITTLE SIOUX HEADWATERS COALITION BOUNDARY.

The area within this Agreement shall be known as the Little Sioux Headwaters Boundary. At the inception of this Agreement, this Boundary is shown in Attachment A.

3. PURPOSE AND FUNCTIONS.

The purpose of this Agreement is to provide for the manner in which the parties shall cooperate with one another to successfully encourage, plan for, and implement watershed activities within the Little Sioux River watershed, including but not limited to the following activities authorized pursuant to Code of Iowa Section 466B.22:

- a. Assess the flood risks in the watershed.
- b. Assess and improve 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 regarding flood risks and water quality.
- f. Seek and allocate monies made available to the Coalition for purposes of water quality and flood mitigation.
- g. Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the Coalition. The Coalition shall not have the power to acquire property by eminent domain. All interests in lands shall be held in the name of the Party wherein said lands are located.

4. GOVERNANCE

- a. It is the intention of this Agreement that the Coalition be established as an administrative agency and that the inherent governmental powers of any Party not be affected in any way beyond the terms of this Agreement.
- b. A joint board of the Parties known as the Little Sioux Headwaters Coalition Board (hereinafter referred to as the "Board") shall be responsible for coordinating watershed planning and improvements and executing activities directed to fulfilling the purposes of this Agreement. The Board shall be comprised of one appointee from each county, city, and district participating in this Agreement. The Board shall meet at least once a calendar year. Except as otherwise provided in this Agreement, the actions of the Board shall be the actions of the Coalition.

- c. The Board shall comply with the Open Meeting Law (Iowa Code Chapter 21), Open Records Law (Iowa Code Chapter 22) and gender balance requirements (Iowa Code Section 69.16A).
- d. The Board will develop, adopt, and from time-to-time amend governing bylaws, operating policies, and administrative procedures.
- e. The Board members shall receive no compensation for serving in such a capacity but may be reimbursed for actual expenses incurred by their respective governing body or by the Coalition subject to the existence and availability of funds.
- f. A director may be removed after missing three consecutive regular meetings of the Board. If a director is removed, the appointing agency shall appoint a successor or a designated alternate. The appointing body may at any time remove a director appointed by it.
- g. The Board shall adopt bylaws and shall elect one director as chairperson, one director as vice chairperson, one director as Treasurer, and one director as Secretary, each for a term of two years.
- h. A majority of the membership of the Board shall constitute a quorum of the Board for the purpose of holding a meeting of the Board. The affirmative vote of a majority of the quorum shall be necessary for any action taken by the Coalition unless the Board adopts a bylaw requiring a greater number of affirmative votes. A vacancy in the membership of the Board shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the Coalition.

5. DURATION

This Agreement shall be in effect in perpetuity until terminated pursuant to Section 15.

6. POWERS AND DUTIES

- a. The parties to this Agreement shall retain all powers and duties conferred by law but shall work together in the exercise of such powers and the performance of this Agreement. Each party shall be responsible for:
 - 1. Identifying opportunities for funding and in-kind support for the undertaking of watershed planning and improvements within the Little Sioux Headwaters boundary;
 - 2. Identifying opportunities for infrastructure development and planning capable of assessing and mitigating flood risks in the watershed;
 - 3. Identifying the most effective best management practices for water quantity and water quality improvements in the watershed;
 - 4. Participating in educational/outreach programs regarding water quality and flood risks;
 - 5. Identifying opportunities for infrastructure development and planning to assess and mitigate water quality in the watershed;
 - 6. Providing support for the administration of any projects, including technical, financial and clerical, as agreed to by the Parties;

7. Securing such financing, including grants, loans and the issuance of bonds of loan agreements, as determined by the respective Party to be necessary or desirable to achieve the objectives of the agreement;
8. Designing and bidding of projects;
9. Administering contracts; and
10. Observing construction.

7. OPERATIONS

- a. Within its available resources through funding or in-kind support, the Coalition may employ one or more staff members.
- b. In addition to other powers and duties, the Coalition will oversee the performance of all staff members and in-kind contributions to the Coalition of personnel, materials, and equipment.
- c. Within its available resources through funding or in-kind support, the Coalition may acquire or lease equipment and supplies necessary to its work, acquire or lease office space, acquire and manage facilities related to its work, and insure against identified risks.
- d. The Coalition may enter into cooperative agreements and other contracts with other agencies, entities, and individuals.
- e. The Board may create committees and task forces to support its work and, within its available resources through funding or in-kind support, engage experts and consultants.

8. MANNER OF FINANCING

- a. The Board may solicit, accept and receive donations, endowments, gifts, grants, reimbursements and other such funds, as well as in-kind contributions, as necessary to support work pursuant to this Agreement. It is agreed and understood by the parties hereto that no financial obligations upon any party are intended to be created hereby.
- b. Members of the Coalition may, if deemed necessary and appropriate, contribute through a formula that is agreed upon by all members of the Coalition, make appropriations from their respective budgets for the operation and administration of the Coalition. Such a formula shall be presented and passed by Resolution by all parties bound by this Agreement. These appropriations may be utilized for but not limited to the employment of staff, marketing, grant writing fees, and administrative fees to Fiscal Agents. Any such contributions from the governing bodies of this Agreement shall be binding to fulfill.
- c. No action to contribute funds by a Board member of the Coalition is binding on the Party that he or she represents without official approval by the governing body of that Party. No Party may be required to contribute funds to the Coalition.
- d. The Board will review each opportunity for funding or in-kind support. After review of the opportunity, a fiscal agent will be nominated. The fiscal agent would be a Party of other organization meeting the fiscal agent standards outlined in the bylaws.

- e. All funds received for use by the Coalition shall be held in a special fund by one of the Parties who shall act as the fiscal agent, pursuant to a written Fiscal Agent Agreement between the fiscal agent and the Coalition. When funds are provided as a grant or loan directed to a Party of the Coalition for a project administered by that Party, the funds shall be retained and administered by that Party.
- f. The Coalition shall have full authority to apply for and receive grants or endorse a participant to do the same for facilities construction and programming, but neither the Coalition nor the participants in this Agreement shall be obligated to contribute or expend non-grant monies beyond amounts included in an approved budget. The Coalition may enter into agreements with grant writers and Fiscal Agents to both write grants and administrate dollars, which may be received either by the Coalition or a party to this Agreement for projects approved by the Coalition.
- g. The Coalition shall have no power to impose any tax of any nature, nor pledge the credit of any of Parties to this Agreement, not incur any debt or other financial obligation the payment of which has not been provided for in the current or an approved future budget.

9. SEVERABILITY/INVALIDITY

If any term, provision, or condition of this Agreement shall be determined to be invalid by a court or competent jurisdiction, such invalidity shall in no way effect the validity of any other term, provision, or condition of this Agreement, and the remainder of the Agreement shall survive in full force and effect unless to do so would substantially impair the rights and obligations of the Parties to this Agreement or substantially frustrate the attainment of the purposes of this Agreement.

10. GOVERNING LAW

This Agreement shall be governed by and interpreted under the laws of the State of Iowa.

11. REPORTS AND AUDITS

Between January 1 and January 15 of each year, the Coalition shall deliver to each Party, an annual report which summarizes the programs and activities conducted or expected to be conducted by the Coalition during the previous, current, and ensuing fiscal year. In the event that the Coalition establishes a financial budget, the Coalition shall also comply with the audit provisions under Iowa Code Section 11.6 and shall furnish copies of the audit report to each Party.

12. CONFLICT OF INTEREST

The Coalition and its Committee shall be subject to all laws of the State of Iowa relating to conflicts of interest and gifts which are applicable to municipalities and municipal officers generally.

13. AMENDMENTS

- a. This agreement may be amended at any time by the Parties. All amendments shall be in writing, signed by all of the Parties, and filed in an electronic format with the Iowa Secretary of State as required by Iowa Code Section 28E.8 (2011).
- b. Any Party desiring an amendment to this Agreement shall notify other Parties of its desire, and the reasons for the request. Such a request shall be in writing to the other governing bodies of the Parties, and shall be considered by their governing body without unreasonable delay and within no more than ninety (90) days of receipt.
- c. If the request is agreed to by the other Parties, each Party shall prepare and submit to the others a certified resolution confirming the affirmative vote of the Party's governing body.
- d. The Amendment shall take effect ten (10) days following receipt of the last such resolution by the other Parties. Amendments shall be filed and recorded as required by Section 15 hereof.

14. ADDITIONAL PARTIES

- a. A City, County, or Soil and Water Conservation District within the Little Sioux Headwaters watershed who is not a Part, may request, in writing to the Coalition, to become a Party.
- b. Such a request shall be considered and decided by a 2/3 vote of the Board, and shall become effective when the new Party has signed the then-current Agreement pursuant to a resolution of its governing body and the requisite filing with the Iowa Secretary of State and/or County Auditor has been accomplished.

15. TERMINATION OF AGREEMENT/DISSOLUTION OF AGENCY

This Agreement shall terminate upon the mutual agreement of the governing bodies of all Parties in the Coalition. Upon termination, all property and money then owned by the Coalition shall be distributed equally among its members after payment of all debts. Any funds donated under a stipulation limiting their use shall be dispersed consistent with the owner's direction. The governing body of each jurisdiction may individually withdraw from their participation in the Agreement after providing the Coalition a written 90 day notice of intent. Such withdrawal will forfeit any right to a distribution in conjunction with a subsequent termination of this Agreement.

- a. Any balance of a fund created by the mechanism described in this Agreement, shall be returned to the party per the same formula which created the fund.
- b. To the extent the Authority may possess funds received from contributions towards a specific project and such funds have not been expended, such funds shall be returned to

the donors to the extent possible. If any grants create a legal obligation, the board of directors shall determine the liability of each member and former member of the Coalition.

- c. If the Coalition should own any facility or property, and this Authority is terminated, such facility or property may be donated and turned over to a non-profit or governmental entity or sold and proceeds divided equitably between the parties involved in this Agreement.

16. EFFECTIVE DATE.

This Agreement shall take effect upon execution by the Parties as required by law and filing with the Secretary of State in an electronic format.

17. RECORDATION

This Agreement shall be recorded pursuant to the requirements of the Code of Iowa, Chapter 28E.

18. ENTIRE AGREEMENT

This Agreement and attachments hereto constitute the entire Agreement among the Parties and supersedes or replaces any prior agreements among the Parties relating to its subject matter.

19. NO WAIVER

The waiver or acceptance by any Party of a breach or violation of any provision(s) of this Agreement by another Party shall not operate as, or be construed to be, a waiver of any other or subsequent breach.

20. NO ASSIGNMENT OR DELEGATION

Neither this Agreement, nor any right or obligation under it, may be assigned, transferred or delegated in whole or in part to any outside entity without the prior approval of the Board.

21. NOTICES

Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the representative designated to receive notice for each Party as set forth in this Agreement. The effective date of any notice under this Agreement shall be the date of actual delivery of such notice and not the date of dispatch. The preferred means of notice shall be either

actual hand delivery, certified U.S. Mail, return receipt requested with postage prepaid thereon, or by recognized overnight delivery service, such as FedEx or UPS.

Notices shall be delivered to the following persons regarding each Party:

22. AUTHORITY AND AUTHORIZATION

Each party to this Agreement shall supply to the Coalition a copy of the resolution by the governing body of each Party as evidence of the power and authority of each Party to enter into this Agreement.

23. HEADING AND CAPTIONS.

The paragraph heading and captions set forth in this Agreement are for identification purposes only and do not limit or construe the contents of the paragraphs.

24. SIGNATURE PAGES

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 16th day of January 2018.

ARNOLDS PARK, IOWA

BY: [Signature]
Mayor

ATTEST: [Signature]
City Clerk

Dated this 14 day of November 2017.

DICKINSON COUNTY, IOWA

BY: W.C. Leopold
Chairperson

ATTEST: Travis Pedersen
Secretary

Dated this 17th day of November 2017.

DICKINSON SOIL & WATER CONSERVATION DISTRICT,
DICKINSON COUNTY, IOWA

BY: Chris Hoffman
Chairperson

ATTEST: Maxine Trachsel Butler
Secretary - Acting

Dated this 31st day of May 2018
~~2017.~~

LAKE PARK, IOWA

BY: 
Mayor

ATTEST: 
City Clerk

Dated this 12th day of January 2018.

OKOBOJI, IOWA

BY: Mary VanderWeide
Mayor

ATTEST: Amanda Harstgen
City Clerk

Dated this 11th day of December 2017.

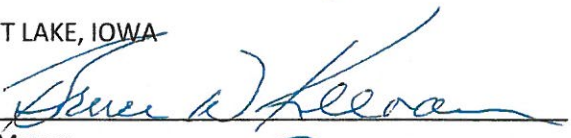
ORLEANS, IOWA

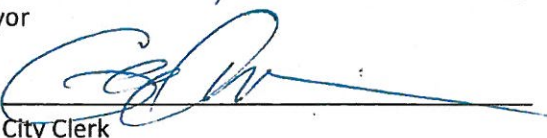
BY: Bill Moss
Mayor

ATTEST: Vernae Dal
City Clerk

Dated this 16th day of August 2018.

SPIRIT LAKE, IOWA

BY: 
Mayor

ATTEST: 
City Clerk

Dated this 23 day of Jan 2018.

WAHPETON, IOWA

BY:

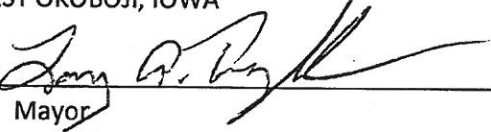
Mayor

ATTEST:

City Clerk

Dated this 13th day of November 2017.

WEST OKOBOJI, IOWA

BY: 
Mayor

ATTEST: Lissa Ballin
City Clerk

Attachment A

