

Agenda Report

March 3, 2014 City Council Meeting

March 3, 2014
Item No. 14

ISSUE: Walnut Creek Watershed Management Authority

BACKGROUND:

In 2010, the Iowa Legislature authorized the creation of Watershed Management Authorities (WMAs), recognizing that effectively addressing flooding problems stretches beyond the means of a single jurisdiction. WMAs are comprised of two or more cities, counties, or soil and water conservation districts in a watershed. WMAs:

- Assess and reduce flood risk;
- Assess and improve water quality;
- Monitor federal flood risk planning and activities;
- Educate residents of the watershed regarding flood risks;
- Allocate moneys made available to the WMA to address water quality and flood mitigation;
- Do not acquire property by eminent domain; and,
- Can coordinate with other agencies.

The MPO is leading the development of a WMA for the Walnut Creek watershed and is asking jurisdictions to approve a 28E agreement to begin. You will find the 28E agreement in your packets.

RECOMMENDATION:

Staff recommends approving the 28E agreement to begin the coordination of a MWA for the protection of Walnut Creek.

STAFF CONTACTS:

Jeffrey A. Fiegenschuh, City Administrator
Sheena Danzer, City Inspector/Zoning Administrator

CITY OF WINDSOR HEIGHTS, IOWA

RESOLUTION NUMBER 14-0310

A RESOLUTION AUTHORIZING THE CITY OF WINDSOR HEIGHTS TO ENTER INTO A 28E AGREEMENT TO ESTABLISH A WALNUT CREEK WATERSHED MANAGEMENT AUTHORITY

WHEREAS, under Chapter 28E of the Code of Iowa, the City Council of the City of Windsor Heights as a public agency, may enter into an agreement with a public or private agency authorized under the laws of this state to cooperate in such a way as to provide joint services and facilities with other agencies, and to cooperate in other ways to mutual advantage; and

WHEREAS, in response to record setting flooding that occurred in 2008 and 2010 in the Walnut Creek Watershed, it is recommended that a watershed management authority be established as per Section 466B of the Code of Iowa to enable cooperation to support watershed planning and improvements that are to the mutual advantage of the political subdivisions involved; and

WHEREAS, the Des Moines Area Metropolitan Planning Organization has developed a 28E Agreement with the Cities of Clive, Dallas Center, Des Moines, Grimes, Johnston, Urbandale, Waukee, West Des Moines, and Windsor Heights, the Counties of Dallas and Polk, the Dallas County Soil and Water Conservation District, and the Polk County Soil and Water Conservation District, to establish the Walnut Creek Watershed Management Authority whose primary purpose will be to carry out watershed planning and improvements in this watershed.

NOW, THEREFORE, BE IT RESOLVED that the City Administrator is authorized to process the "Joint and Cooperative Agreement" with the parties involved and complete the project as follows:

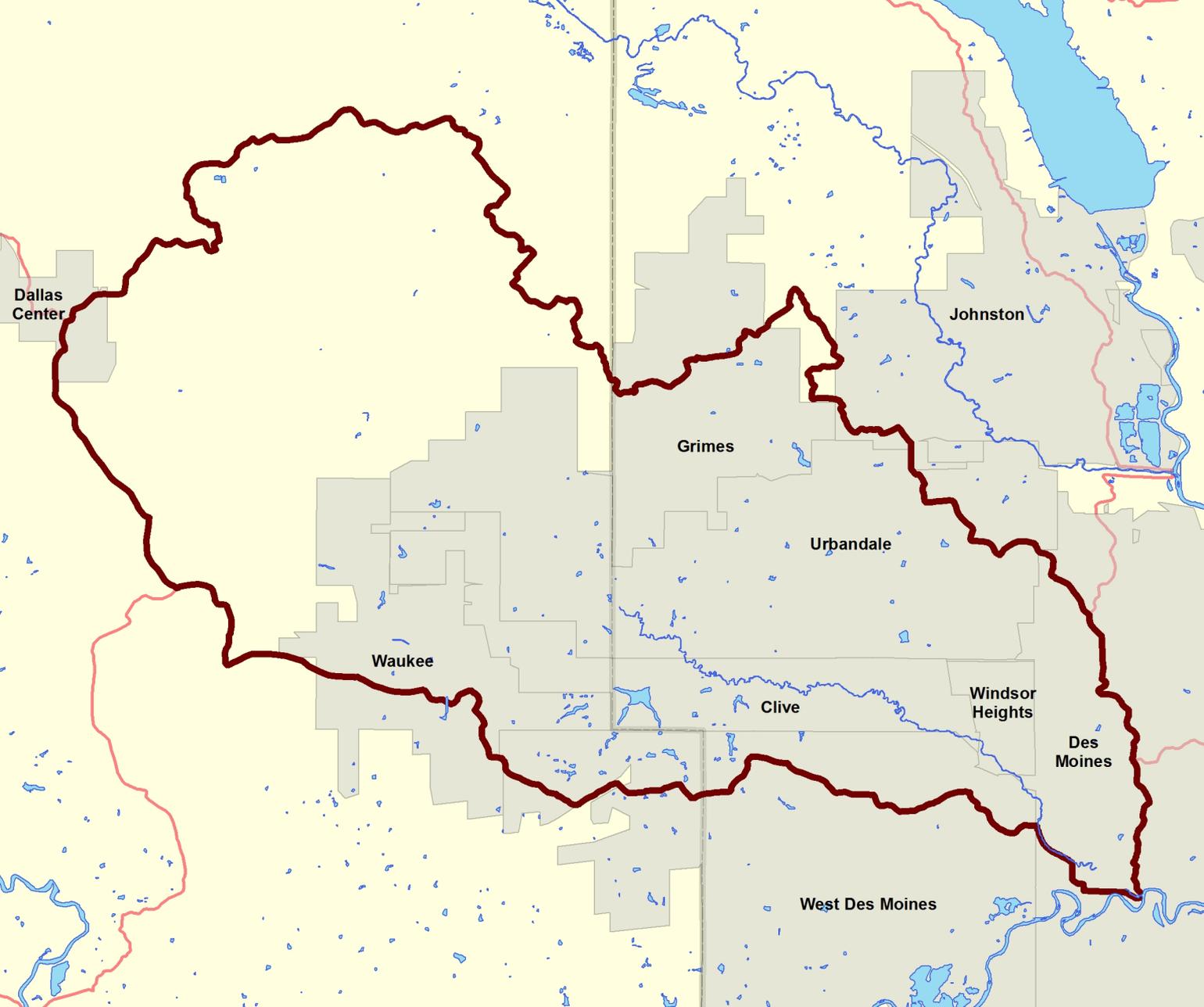
- 1) Mayor of Windsor Heights City Council to sign agreement.
- 2) Agreement to be recorded with the Polk County Recorder.
- 3) Agreement to be filed with the Secretary of State.
- 4) Return a copy of agreement to all Parties of the Agreement.
- 5) Provide planning and administration needed to implement the Agreement.

PASSED AND APPROVED THIS 3RD DAY OF MARCH 2014.

Diana Willits, Mayor

ATTEST:

Jeff Fiegenschuh, City Administrator



Dallas Center

Johnston

Grimes

Urbandale

Waukee

Clive

Windsor Heights

Des Moines

West Des Moines

Walnut Creek Watershed Management Authority Agreement

Between Dallas County, Polk County, City of Clive, City of Dallas Center, City of Des Moines, City of Grimes, City of Johnston, City of Urbandale, City of Waukee, City of West Des Moines, City of Windsor Heights, Dallas County Soil and Water Conservation District, Polk County Soil and Water Conservation District, and the Des Moines Area Metropolitan Planning Organization.

This Joint and Cooperative Agreement (hereinafter referred to as the “Agreement”) is entered into pursuant to the authority of the *Code of Iowa*, Chapter 28E as of the _____ day of _____, 2014 by and between Dallas County, Iowa; Polk County, Iowa; the City of Clive, Iowa; the City of Dallas Center, Iowa; the City of Des Moines, Iowa; the City of Grimes, Iowa; the City of Johnston, Iowa; the City of Urbandale, Iowa; the City of Waukee, Iowa; the City of West Des Moines, Iowa; the City of Windsor Heights, Iowa; the Dallas County Soil and Water Conservation District; the Polk County Soil and Water Conservation District; and, the Des Moines Area Metropolitan Planning Organization. All entities shall be referred to hereinafter as the Parties.

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 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 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. Seek and 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; and,

WHEREAS, the Parties deem establishment of the Walnut Creek Watershed Management Authority (hereinafter referred to as the “Authority”), a watershed management authority encompassing all of the Walnut Creek watershed, which falls within the same HUC 8 watershed, to be of mutual advantage; and,

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

NOW THEREFORE, it is agreed by and between the parties as follows:

SECTION 1. IDENTITY OF THE PARTIES.

- 1.1 The Counties of Dallas and Polk are each a municipality of the State of Iowa, organized and operating pursuant to *Code of Iowa* Chapter 331. Their respective addresses are:

Dallas County
801 Court Street
Adel, Iowa 50003

Polk County
111 Court Avenue
Des Moines, Iowa 50309

- 1.2 The Cities of Clive, Dallas Center, Des Moines, Grimes, Johnston, Urbandale, Waukee, West Des Moines, and Windsor Heights are each a municipality of the State of Iowa, organized and operating pursuant to *Code of Iowa* Chapters 364 and 372. Their respective addresses are:

City of Clive
1900 NW 114th Street
Clive, Iowa 50325

City of Dallas Center
1502 Walnut Street
Dallas Center, Iowa 50063

City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

City of Grimes
101 N Harvey Street
Grimes, Iowa 50111

City of Johnston
6221 Merle Hay Road
Johnston, Iowa 50131

City of Urbandale
3600 86th Street
Urbandale, Iowa 50322

City of Waukee
230 W Hickman Road
Waukee, Iowa 50263

City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, Iowa 50265

City of Windsor Heights
1133 66th Street
Windsor Heights, Iowa 50311

- 1.3 The Soil and Water Conservation Districts of Dallas and Polk are each a governmental division of the State of Iowa as defined in *Code of Iowa* Section 161A.3(6) and a soil and water conservation district established pursuant to *Code of Iowa* Section 161A.5(1). Their respective addresses are:

Dallas County SWCD
907 Court Street, Suite B
Adel, Iowa 50003

Polk SWCD
1513 North Ankeny Blvd. Suite 3
Ankeny, Iowa 50023-4167

- 1.4 The Des Moines Area Metropolitan Planning Organization is a formal transportation body for Greater Des Moines, carrying out the intent of 23 CFR 450. Its address is:

Des Moines Area Metropolitan Planning Organization
420 Watson Powell, Jr., Way, Suite 200
Des Moines, Iowa 50309

SECTION 2. WALNUT CREEK WATERSHED BOUNDARY.

The area within this Agreement shall be known as the Walnut Creek Watershed Boundary. At the inception of this Agreement, this Boundary is shown in Attachment A.

SECTION 3. PURPOSE.

- 3.1 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 Walnut Creek watershed, including but not limited to the following activities authorized pursuant to *Code of Iowa* Section 466B.22:
 - 3.1.1 Assess the flood risks in the watershed.
 - 3.1.2 Assess the water quality in the watershed.
 - 3.1.3 Assess options for reducing flood risk and improving water quality in the watershed.
 - 3.1.4 Monitor federal flood risk planning and activities.
 - 3.1.5 Educate residents of the watershed area regarding water quality and flood risks.
 - 3.1.6 Seek and allocate moneys made available to the Authority for purposes of water quality and flood mitigation.
 - 3.1.7 Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the Authority. The Authority 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.

SECTION 4. GOVERNANCE.

- 4.1 It is the intention of this Agreement that the Authority 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.
- 4.2 A joint board of the Parties known as the Walnut Creek Watershed Management Authority Board (herein after 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. Except as otherwise provided in this Agreement, the actions of the Board shall be the actions of the Authority.
- 4.3 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).

- 4.4 The Board will develop, adopt, and from time-to-time amend governing bylaws, operating policies, and administrative procedures.

SECTION 5. DURATION.

This Agreement shall be in effect in perpetuity until terminated pursuant to Section 12.

SECTION 6. POWERS AND DUTIES.

- 6.1 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. These powers shall not be transferred to the Authority. Each party shall be responsible for:
- 6.1.1 Identifying opportunities for funding and in-kind support for the undertaking of watershed planning and improvements within the Walnut Creek watershed boundary;
 - 6.1.2 Identifying opportunities for infrastructure development and planning capable of assessing and mitigating flood risks in the watershed;
 - 6.1.3 Identifying the most effective best management practices for water quantity and water quality improvements in the watershed;
 - 6.1.4 Participating in educational/outreach programs regarding water quality and flood risks;
 - 6.1.5 Identifying opportunities for infrastructure development and planning to assess and mitigate water quality in the watershed;
 - 6.1.6 Providing support for the administration of any projects, including technical, financial and clerical, as agreed to by the Parties;
 - 6.1.7 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;
 - 6.1.8 Designing and bidding of projects;
 - 6.1.9 Administering contracts; and
 - 6.1.10 Observing construction.

SECTION 7. OPERATIONS

- 7.1 Within its available resources through funding or in-kind support, the Authority may employ one or more staff members.
- 7.2 In addition to other powers and duties, the Authority will oversee the performance of all staff members and in-kind contributions to the Authority of personnel, materials, and equipment.
- 7.3 Within its available resources through funding or in-kind support, the Authority 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.
- 7.4 The Authority may enter into cooperative agreements and other contracts with other agencies, entities, and individuals.
- 7.5 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.

SECTION 8. MANNER OF FINANCING.

- 8.1 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.
- 8.2 No action to contribute funds by a Board member of the Authority 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 Authority.
- 8.3 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 or other organization meeting the fiscal agent standards outlined in the bylaws.
- 8.4 All funds received for use by the Authority 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 Authority. When funds are provided as a grant or loan directed to a Party of the Authority for a project administered by that Party, the funds shall be retained and administered by that Party.

SECTION 9. SEVERABILITY/INVALIDITY.

If any term, provision or condition of this Agreement shall be determined to be invalid by a court of 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.

SECTION 10. GOVERNING LAW.

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

SECTION 11. AMENDMENTS.

- 11.1 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).
- 11.2 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.
- 11.3 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.
- 11.4 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.

SECTION 12. ADDITIONAL PARTIES.

- 12.1 A City, County, or Soil and Water Conservation District within the Walnut Creek Watershed who is not a Party, may request, in writing to the Authority, to become a Party.
- 12.2 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.

SECTION 13. TERMINATION OF AGREEMENT.

This Agreement shall terminate upon the mutual agreement of the governing bodies of all Parties in the Authority. Upon termination, all property and money then owned by the Authority 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 Authority a written 90 notice of intent. Such withdrawal will forfeit any right to a distribution in conjunction with a subsequent termination of this Agreement.

SECTION 14. 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.

SECTION 15. 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 US 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:

County: Chairperson, Dallas County Board of Supervisors
Dallas County Administration
801 Court Street
Adel, Iowa 50003

County: Chairperson, Polk County Board of Supervisors
Polk County Administration
111 Court Avenue
Des Moines, Iowa 50309

Clive: Mayor, City of Clive
1900 NW 114th Street
Clive, Iowa 50325

Dallas Center: Mayor, City of Dallas Center
1502 Walnut Street
Dallas Center, Iowa 50063

Des Moines: Mayor, City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

Grimes: Mayor, City of Grimes
101 N Harvey Street
Grimes, Iowa 50111

Johnston: Mayor, City of Johnston
6221 Merle Hay Road
Johnston, Iowa 50131

Urbandale: Mayor, City of Urbandale
3600 86th Street
Urbandale, Iowa 50322

Waukee: Mayor, City of Waukee
230 W Hickman Road
Waukee, Iowa 50263

West

Des Moines: Mayor, City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, Iowa 50265

Windsor

Heights: Mayor, City of Windsor Heights
1133 66th Street
Windsor Heights, Iowa 50311

Dallas

Soil & Water
Conservation

District: Chairperson, Dallas County SWCD
907 Court Street, Suite B
Adel, Iowa 50003

Polk

Soil & Water
Conservation

District: Chairperson, Polk SWCD
1513 North Ankeny Blvd. Suite 3
Ankeny, Iowa 50023-4167

Des Moines
Area
Metropolitan
Planning

Organization: Chairperson, Des Moines Area MPO
420 Watson Powell, Jr., Way, Suite 200
Des Moines, Iowa 50309

Or such other address as any Party may specify by notice to the other Parties.

SECTION 16. RECORDATION.

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

SECTION 17. 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.

SECTION 18. 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.

SECTION 19. 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.

SECTION 20. AUTHORITY AND AUTHORIZATION.

Each party to this Agreement shall supply to the Authority 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.

SECTION 21. HEADINGS AND CAPTIONS.

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

SECTION 22. 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 _____ day of _____, 2014.

DALLAS COUNTY, IOWA

BY:

Board of Supervisors Chair

ATTEST:

County Auditor

Dated this _____ day of _____, 2014.

POLK COUNTY, IOWA

BY:

Board of Supervisors Chair

ATTEST:

County Auditor

Dated this ____ day of _____, 2014.

CLIVE, IOWA

BY:

Mayor

ATTEST:

City Clerk

Dated this _____ day of _____, 2014.

DALLAS CENTER, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2014.

DES MOINES, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2014.

GRIMES, IOWA

BY:

Mayor

ATTEST:

City Clerk

Dated this _____ day of _____, 2014.

JOHNSTON, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2014.

URBANDALE, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2014.

WAUKEE, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2014.

WEST DES MOINES, IOWA

BY:

Mayor

ATTEST:

City Clerk

Dated this _____ day of _____, 2014.

WINDSOR HEIGHTS, IOWA

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this ____ day of _____, 2014.

DALLAS SOIL AND WATER CONSERVATION DISTRICT
DALLAS COUNTY, IOWA

BY: _____
Chairperson

ATTEST: _____
Secretary

Dated this ____ day of _____, 2014.

POLK COUNTY SOIL AND WATER CONSERVATION DISTRICT
POLK COUNTY, IOWA

BY: _____
Chairperson

ATTEST: _____
Secretary

Dated this ____ day of _____, 2014.

DES MOINES AREA METROPOLITAN PLANNING ORGANIZATION

BY: _____
Chairperson

ATTEST: _____
Secretary



Dallas Center

Johnston

Grimes

Urbandale

Waukee

Clive

Windsor Heights

Des Moines

West Des Moines