

PLANNING & DEVELOPMENT

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Item 4
7/25/17

Timothy Huey
Director

To: Mahesh Sharma, County Administrator

From: Timothy Huey, Planning Director

Date: July 18, 2017

Re: Request for Scott County to join in the formation of a Lower Cedar Watershed Management Authority (WMA)

The Board reviewed the proposed creation of a Lower Cedar River Watershed Management Authority under legislation passed in 2010 at the June 27 Committee of the Whole meeting. The Board deferred taking any action on Scott County's participation to allow time to discuss this proposal with the Partnership for Scott County Watersheds. The Watershed Partnership voted unanimously to recommend the Board of Supervisors approve Scott County's participation in the Lower Cedar WMA. The Scott County Soil and Water Conservation District has approved its participation in this WMA. As stated earlier only a small portion of that watershed lies within western Scott County in the area surrounding and including the City of Walcott.

The Muscatine County Soil and Water Conservation District, in cooperation with the other seven County Conservation Districts, have requested all seven counties in which this watershed lies and the 25 municipalities to partner and participate in this WMA. It is formed by a Chapter 28E Agreement with the eligible political subdivisions within the watershed. A board of directors will govern the WMA, which may undertake the following activities:

- 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 and water quality; and
- Allocate moneys made available to the Authority for purposes of water quality and flood mitigation.

Participation in this WMA does not obligate any of these jurisdictions to any funding. A WMA does not have taxing authority and it may not acquire property through eminent domain. Information on the creation of proposed WMA is included with Board materials. Staff would recommend approval of a resolution supporting Scott County's participation in this WMA.



MUSCATINE COUNTY SOIL & WATER CONSERVATION DISTRICT

3500 Oakview Drive Ste. A, Muscatine, IA 52761
563-263-7944 x3 fax 855-246-1552

Robert Axtell Robert Beatty Jared Deahr Scott Eichelberger Travis Glynn

To: Cities, Counties, and Soil & Water Conservation Districts in the Lower Cedar Watershed

From: Muscatine County Soil & Water Conservation District and other watershed partners

Date: May 5, 2017

Subject: Public Notice – Lower Cedar Watershed Management Authority to Form

BACKGROUND: In 2010, Iowa lawmakers passed legislation authorizing the creation of Watershed Management Authorities (Iowa Administrative Code Chapter 466B Subchapter II). A Watershed Management Authority (WMA) is a mechanism for cities, counties, Soil and Water Conservation Districts (SWCDs) and stakeholders to cooperatively engage in planning and management at the watershed scale. A WMA is being proposed for the Lower Cedar Watershed including parts of Cedar, Johnson, Jones, Linn, Louisa, Muscatine, and Scott Counties.

The WMA is formed by a Chapter 28E Agreement by two or more eligible political subdivisions within the watershed. A board of directors governs the WMA, which may undertake the following activities:

- 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 and water quality; and
- Allocate moneys made available to the Authority for purposes of water quality and flood mitigation.

A WMA does not have taxing authority and it may not acquire property through eminent domain.

There are several benefits to forming a WMA. First and foremost, the WMA provides a means for communication and cooperation to support on-the-ground water quality and flood damage reduction in both urban and rural areas. Partnering through a WMA allows cities and counties to pool resources and provides leverage for additional funding through state or federal sources. In addition, WMAs work directly through local watershed partners to identify priorities and collectively develop an action plan for addressing watershed concerns.

PUBLIC NOTICE OF WMA FORMATION: Cities, Counties, and SWCDs in the Lower Cedar Watershed have started the process of forming a WMA. Please post this notice in a public location and share widely with staff, elected officials, and other interested stakeholders. All eligible political subdivisions within the Lower Cedar Watershed are invited to adopt the Chapter 28E Agreement. Attached is a full list of invited cities, counties, and SWCDs as well as the complete Chapter 28E Agreement. The eligible political subdivisions will meet in the coming months to consider adoption of the Chapter 28E Agreement. An organizational subcommittee of watershed stakeholders is available to attend these meetings or answer questions. Please contact Josh Spies at jspies@tnc.org or 319-726-3041 for more information.

Lower Cedar WMA – Eligible Political Subdivisions

Counties & SWCDs	Cities
Cedar	Alburnett
Johnson	Atalissa
Jones	Bennett
Linn	Bertram
Louisa	Cedar Rapids
Muscatine	Conesville
Scott	Durant
	Fredonia
	Hiawatha
	Lisbon
	Lone Tree
	Marion
	Martelle
	Mechanicsville
	Mount Vernon
	Nichols
	Robins
	Springville
	Stanwood
	Stockton
	Tipton
	Walcott
	West Branch
	West Liberty
	Wilton

**Lower Cedar Watershed Management Authority
Articles of Agreement**

THIS AGREEMENT is entered into pursuant to Iowa Code chapter 28E by and between the eligible political subdivisions that adopt these Articles of Agreement (hereinafter the “Agreement”). Eligible political subdivisions include the cities of Alburnett, Atalissa, Bennett, Bertram, Cedar Rapids, Conesville, Durant, Fredonia, Hiawatha, Lisbon, Lone Tree, Marion, Martelle, Mechanicsville, Mount Vernon, Nichols, Robins, Springville, Stanwood, Stockton, Tipton, Walcott, West Branch, West Liberty, and Wilton; the counties of Cedar, Johnson, Jones, Linn, Louisa, Muscatine, and Scott; and the Soil & Water Conservation Districts from the counties of Cedar, Johnson, Jones, Linn, Louisa, Muscatine, and Scott (hereinafter the “Members”).

WHEREAS, Iowa Code section 466B.22 authorizes two (2) or more political subdivisions, defined as including cities, counties, and soil and water conservation 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 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 contract agreements that 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 establishment of the Lower Cedar Watershed Management Authority (hereinafter the “Authority”), encompassing all the Lower Cedar Watershed (hereinafter the “Watershed”), Hydrologic Unit Code 8 ID #07080206, to be of mutual advantage; and

WHEREAS, it is mutually desired to enter this Agreement pursuant to Iowa Code Chapter 28E for the purpose of establishing the Authority to carry out planning and improvements in the Watershed; and NOW, THEREFORE, it is agreed by and between the Members as follows:

SECTION 1. IDENTITY OF THE MEMBERS.

1.1 The counties of Cedar, Johnson, Jones, Linn, Louisa, Muscatine, and Scott are each a political subdivision of the State of Iowa, organized and operating pursuant to Iowa Code Chapter 331. Their respective addresses are:

Cedar County, 400 Cedar Street, Tipton, IA 52772

Johnson County, 913 South Dubuque Street, Iowa City, IA 52240

Jones County, 500 W. Main St., Anamosa, IA 52205

Linn County, 930 1st St. SW, Cedar Rapids, IA 52404

Louisa County, 117 South Main Street, Wapello, IA 52653

Muscatine County, 414 E. Third St. Suite 101, Muscatine, IA 52761

Scott County, 600 W. 4th St., Davenport, IA 52801

1.2 The cities of Alburnett, Atalissa, Bennett, Bertram, Cedar Rapids, Conesville, Durant, Fredonia, Hiawatha, Lisbon, Lone Tree, Marion, Martelle, Mechanicsville, Mount Vernon, Nichols, Robins, Springville, Stanwood, Stockton, Tipton, Walcott, West Branch, West Liberty, and Wilton are each a municipality of the State of Iowa, organized and operating pursuant to Iowa Code chapter 364. Their respective addresses are:

City of Alburnett, 102 E 1st Street, Alburnett, IA 52202

City of Atalissa, 122 3rd St., Atalissa, IA 52720

City of Bennett, 201 Main Street, Bennett, IA 52721

City of Bertram, 50 Angle Street, Bertram, IA 52403

City of Cedar Rapids, 101 First Street SE, Cedar Rapids, IA 52401

City of Conesville, 102 3rd St., Conesville, IA 52739

City of Durant, 402 6th Street, Durant, IA 52747

City of Fredonia, PO Box 169, Columbus Junction, IA 52768

City of Hiawatha, 101 Emmons Street, Hiawatha, IA 52233

City of Lisbon, 115 N Washington, Lisbon, IA 52253

City of Lone Tree, PO Box 337, Lone Tree, IA 52755

City of Marion, 1225 6th Avenue Suite 170, Marion, IA 52302

City of Martelle, 210 Iowa Street, Martelle, IA 52305

City of Mechanicsville, 100 E First St., Mechanicsville, IA 52306

City of Mount Vernon, 213 First St. NW, Mount Vernon, IA 52314

City of Nichols, 429 Ijem Ave., Nichols, IA 52766

City of Robins, 265 South Second Street, Robins, IA 52328

City of Springville, PO Box 347, Springville, IA 52336

City of Stanwood, 209 E. Broadway, Stanwood, IA 52337

City of Stockton, 318 Commerce St., Stockton, IA 52769

City of Tipton, 407 Lynn St., Tipton, IA 52772

City of Walcott, 128 W. Lincoln St., Walcott, IA 52773

City of West Branch, 110 N Poplar St., West Branch, IA 52358

City of West Liberty, 409 N Calhoun St., West Liberty, IA 52776

City of Wilton, 104 East 4th Street, Wilton, IA 52778

- 1.3 The Soil and Water Conservation Districts of Cedar, Johnson, Jones, Linn, Louisa, Muscatine, and Scott counties 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:

Cedar County SWCD, 205 W South Ste. 2, Tipton, IA 52772

Johnson County SWCD, 51 Escort Lane, Iowa City, IA 52240

Jones County SWCD, 300 Chamber Drive, Anamosa, IA 52205

Linn County SWCD, 891 62nd Street, Marion, IA 52302

Louisa County SWCD, 260 Mulberry Street, Wapello, IA 52653

Muscatine County SWCD, 3500 Oakview Dr. Ste. A, Muscatine, IA 52761

Scott County SWCD, 8370 Hillandale Road, Davenport, IA 52806

SECTION 2. PURPOSE.

2.1 The purpose of this Agreement is to provide for the manner in which the Members shall cooperate with one another to successfully plan for and implement improvements within the Watershed, including but not limited to the following activities authorized pursuant to Iowa Code section 466B.22:

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 contract agreements that 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 "LOWER CEDAR WATERSHED MANAGEMENT AUTHORITY" (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 Members to this Agreement, and shall be subject to the control and supervision of the Members to this Agreement or their officers and directors, only to the extent provided for herein.

3.2 A joint board of the participating Members known as the Lower Cedar Watershed Management Authority Board (hereinafter the "Board") shall be responsible for fulfilling the purpose of the Authority. The Board shall be comprised of one appointee from each Member participating in this Agreement. The Board shall adopt bylaws governing the administration, development, operation and management of the Authority.

SECTION 4. DURATION. 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.
- g. Making and contracting agreements that 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.

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 any 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 Members;
- 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. 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.

6.1 No action to contribute funds by the Board is binding on the Member that he or she represents without official approval by the governing body 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.

6.2 All funds received for use by the Authority shall be held as a special fund by the fiscal agent designated by the Board. When funds are provided as a grant or loan directed to a Member 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 and integrates all the terms and conditions contained in and incidental to such Agreement. No modifications or waiver of any provision in this Agreement shall be valid unless in writing and signed by all the parties. If, for any reason, any provisions of this Agreement shall be inoperative, the validity and effect of the other provisions shall not be affected thereby.

7.2 If any provision of this Agreement is found to be invalid by any court, administrative agency or tribunal or competent jurisdiction, the invalidity of any such provision shall not affect the validity of the remaining provisions hereof.

SECTION 8. GOVERNING LAW. This Agreement shall be governed by and interpreted under the laws of the State of Iowa and 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 bodies of all Members. All amendments shall be in writing, executed by the authorized representative of each governing body of the Members, and filed in an electronic format with the Iowa Secretary of State as required by Iowa Code Section 28E.8.

9.2 Eligible political subdivisions that are not participating may later join the Authority by filing written notice with the Board and adopting this Agreement by resolution. The request to become a Member will be considered approved when the new Member has submitted the adopted resolution with the executed signature page and the updated Agreement has been filed in an electronic format with the Iowa Secretary of State as required by Iowa Code Section 28E.8.

SECTION 10. TERMINATION. This Agreement shall terminate upon the majority vote of the Board or agreement of the governing bodies of all Members. 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 AND EXECUTION OF DOCUMENTS. This Agreement shall take effect upon execution by the Members as required by law and filing in an electronic format with the Iowa Secretary of State as required by Iowa Code Section 28E.8. The Members agree to timely execute any documents necessary to carry out the terms of this Agreement. The Members further agree that this document may be executed outside the presence of the other Members and in separate counterparts.

SECTION 12. WITHDRAWAL FROM MEMBERSHIP. Any Member may withdraw from the Authority by the action of its governing body, unless the Authority then has unpaid debts or legal obligations, in which case the consent of the governing bodies 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. The geographical area to which this agreement applies shall be known as the Lower Cedar Watershed. The Lower Cedar is a United States Geological Survey Hydrologic Unit Code (HUC 8 ID #07080206) Watershed. The boundary of the Watershed is graphically displayed in Attachment 1, which is hereby incorporated into this Agreement.

SECTION 14. INDEMNIFICATION. 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.

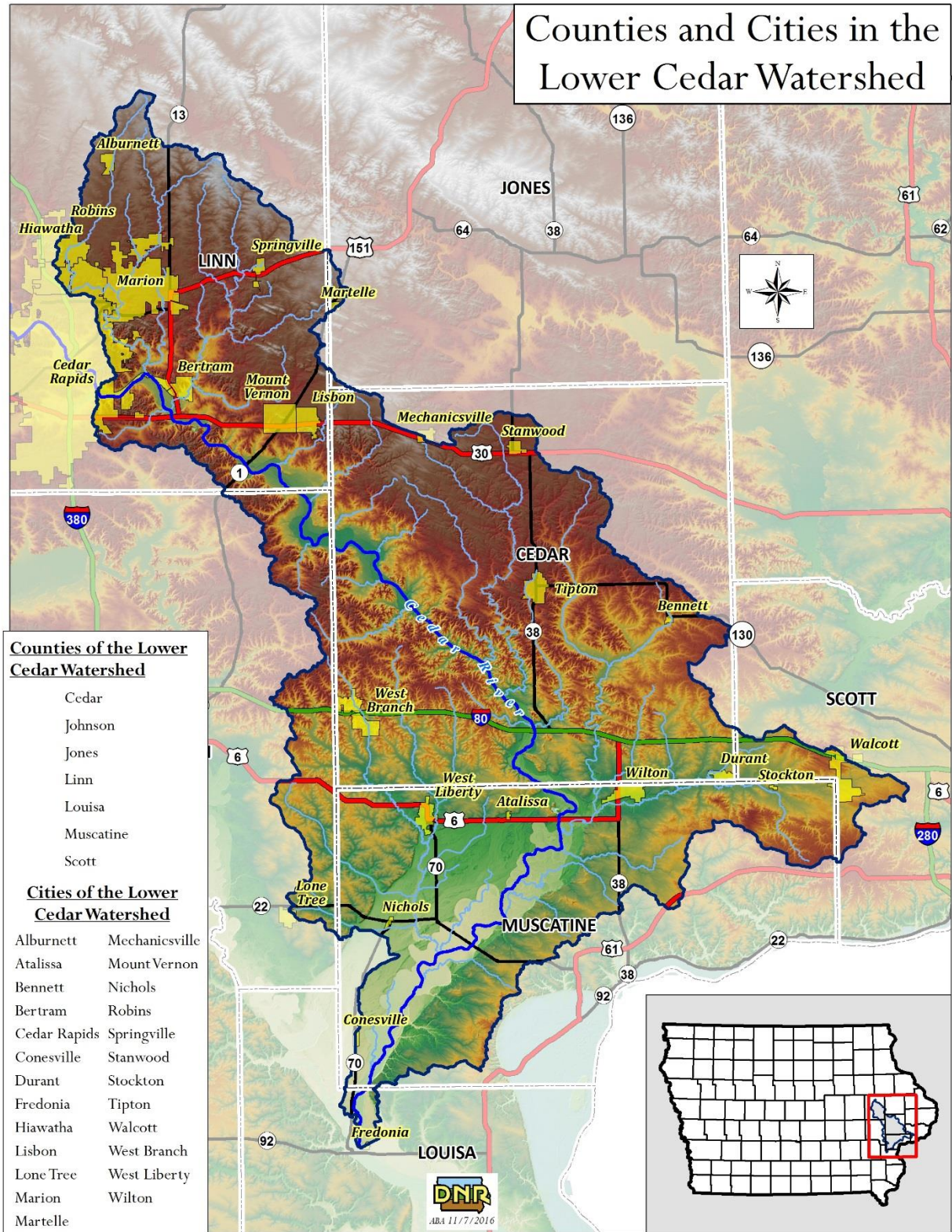
SECTION 15. AUTHORIZATION AND SIGNATURE PAGES.

15.1 Each Member to this Agreement shall supply to the Authority a copy of the resolution by which it adopted the Agreement. An example resolution template is shown in Attachment 3.

15.2 The Members 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 all executed signature pages shall be sent to each Member.

15.3 Each signature page will be specific to each potential member and will contain only their signature lines. Example signature lines are shown in Attachment 2.

Attachment 1
Boundary of the Lower Cedar Watershed



Attachment 2
Examples of Signature Lines

Dated this _____ day of _____, 2017

_____ County, Iowa

BY: _____
Chair, Board of Supervisors

ATTEST: _____
County Auditor

Dated this _____ day of _____, 2017

City of _____, Iowa

BY: _____
Mayor

ATTEST: _____
City Clerk

Dated this _____ day of _____, 2017

_____ County Soil & Water Conservation District

BY: _____
Chair, District Commissioners

ATTEST: _____
Commissioner

Attachment 3
Example Resolution

RESOLUTION _____

RESOLUTION APPROVING THE ARTICLES OF AGREEMENT
CREATING THE LOWER CEDAR WATERSHED MANAGEMENT AUTHORITY

WHEREAS, In 2010, Iowa lawmakers passed legislation authorizing the creation of Watershed Management Authorities.

WHEREAS, A Watershed Management Authority (WMA) is a mechanism for cities, counties, Soil and Water Conservation Districts (SWCDs) and stakeholders to cooperatively engage in watershed planning and management.

WHEREAS, the **City/County/SWCD** desires to enter into an Agreement that would establish a Watershed Management Authority within the Lower Cedar Watershed (Hydrologic Unit Code #07080206) to enable cooperation in watershed planning and improvements pursuant to Iowa Code Chapter 466B.23; and

WHEREAS, Chapter 28E of the Code of Iowa provides the authority for public agencies to enter into agreements for their mutual advantage; and

WHEREAS, this Agreement is made and entered into by the eligible political subdivisions within the Lower Cedar Watershed that adopt these Articles of Agreement; and

NOW BE IT RESOLVED BY THE **CITY COUNCIL/ BOARD OF SUPERVISORS/ BOARD OF COMMISSIONERS**, IOWA that the **City Manager / City Clerk / Auditor / Chair / Other Signatory** are hereby authorized to sign and execute the Articles of Agreement for the Lower Cedar Watershed Management Authority, a copy of which is attached hereto and incorporated herein by this reference; and

BE IT FURTHER RESOLVED BY THE **CITY COUNCIL / BOARD OF SUPERVISORS / SOIL & WATER COMMISSIONERS** OF THE **CITY / COUNTY** OF **Blank**, IOWA that said Agreement is hereby approved as to form and content and is found to be in the best interest of the **City of / County / SWCD of Blank**, Iowa and the eligible political subdivisions that adopt these Articles of Agreement; and

BE IT FURTHER RESOLVED BY THE **CITY COUNCIL / BOARD OF SUPERVISORS / SOIL & WATER COMMISSIONERS** OF **BLANK** that the **Auditor/City Clerk/Secretary** is hereby authorized to file a copy of this Resolution and Agreement with the Secretary of State, as required by Chapter 28E, Iowa Code.

It was moved by _____ and seconded by _____ that the Resolution be adopted.

PASSED and APPROVED this _____ day of _____, 2017.

TITLE

ATTEST: _____
TITLE

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES THAT
THIS RESOLUTION HAS BEEN FORMALLY APPROVED BY
THE BOARD OF SUPERVISORS ON _____.
DATE

SCOTT COUNTY AUDITOR

RESOLUTION
SCOTT COUNTY BOARD OF SUPERVISORS

July 27, 2017

**APPROVAL OF THE ARTICLES OF AGREEMENT CREATING THE LOWER
CEDAR WATERSHED MANAGEMENT AUTHORITY AND SCOTT COUNTY'S
PARTICIPATION IN THAT AUTHORITY UNDER IOWA CODE 28E**

BE IT RESOLVED by the Scott County Board of Supervisors as follows:

- Section 1. Scott County proposes to enter into an Agreement that would establish a Watershed Management Authority within the Lower Cedar Watershed (Hydrologic Unit Code #07080206) to enable cooperation in watershed planning and improvements pursuant to Iowa Code Chapter 466B.23; and
- Section 2. Chapter 28E of the Code of Iowa provides the authority for public agencies to enter into agreements for their mutual advantage; and
- Section 3. In 2010, Iowa lawmakers passed legislation authorizing the creation of Watershed Management Authorities.
- Section 4. A Watershed Management Authority (WMA) is a mechanism for cities, counties, Soil and Water Conservation Districts (SWCDs) and stakeholders to cooperatively engage in watershed planning and management.
- Section 5. This Agreement is made and entered into by the eligible political subdivisions within the Lower Cedar Watershed that adopt these Articles of Agreement; and
- Section 6. The Scott County Board of Supervisors approves the Articles of Agreement for the Lower Cedar Watershed Management Authority, a copy of which is attached hereto and incorporated herein by this reference; and
- Section 7. The Chairman of the Scott County Board of Supervisors is hereby authorized to sign this agreement and file a copy of this Resolution and Agreement with the Secretary of State, as required by Chapter 28E, Iowa Code.
- Section 8. This resolution shall take effect immediately.