

## **Turkey River Watershed Management Authority: 28E Agreement**

THIS AGREEMENT is voluntarily entered into by all parties/participants on the attached signature pages and presented to the Iowa Secretary of State on this \_\_\_\_ day of \_\_\_\_\_, 2012.

WHEREAS, the purpose of this Agreement is to allow the participants to make efficient use of their powers in securing funding for and cooperating to achieve the goals outlined in Paragraph 2 of this document. This 28E agreement shall be liberally construed to that end;

WHEREAS, this document is authorized by Iowa Code Chapter 28E (2011) and Iowa Code Chapter 466B (2011) to promote the most efficient use of material and human resources for the public good and for that purpose all cities, counties, soil and water conservation districts, and other governmental entities in the watershed are invited to become a participant in this Agreement;

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

### **1. CREATION OF THE AUTHORITY.**

Upon the effective date identified in Paragraph 3, there is hereby created a public agency to be known as the “Turkey River Watershed Management Authority” (the “Authority”). 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. PURPOSE AND FUNCTIONS.**

The purpose of the Authority shall be to perform the following duties:

- a. Assess and reduce the flood risks in the watershed;
- b. Assess and improve water quality in the watershed;
- c. Monitor the federal flood risk planning and activities;
- d. Educate residents of the watershed regarding flood risks and water quality; and
- e. Allocate moneys made available for purposes of water quality and flood mitigation.

\*The Authority may make and enter into contracts and agreements and execute instruments necessary or incidental to the performance of the duties of the Authority but shall not under any circumstances acquire property by eminent domain.

### **3. EFFECTIVE DATE.**

The effective date of this Agreement shall be the first day after the date on which all of the following conditions precedent have been satisfied:

- a. The governing bodies of all participants have adopted resolutions approving this Agreement and said resolutions become effective.
- b. This Agreement has been authorized and signed by the necessary representative or representatives from each participant and said signature page has been attached to this Agreement.
- c. This agreement has been filed with the Iowa Secretary of State.

### **4. DURATION.**

The duration of this Agreement and of the Authority shall be perpetual unless this Agreement is amended or terminated per the provisions of this agreement.

### **5. GOVERNING BODY.**

The Authority shall be governed by a board of directors. Members of the board of directors shall be divided among the political subdivisions which comprise the Authority and shall be appointed by the respective political subdivision's elected legislative body. The board of directors shall meet at least one time per calendar year but may draft a bylaw which allows for meeting more frequently. The board shall be subject to the Iowa Open Meetings and Open Records Laws and shall make the necessary provisions to conform to the requirements of the law. 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 Authority subject to the existence and availability of funds.

Each participating political subdivision shall have one representative on the board of directors. The directors shall have staggered terms of four years with the initial terms being shortened and lengthened as necessary to achieve staggered terms. A person appointed to fill a vacancy shall be appointed in the same manner as the original appointment for the duration of the unexpired term. A director is eligible for reappointment.

A director may be removed after missing three consecutive regular meetings of the board. If a director is removed a successor shall be appointed for the duration of the unexpired term of the removed director in the same manner as the original appointment. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office or for any of the reasons outlined in Iowa Code Section 66.

The board of directors shall adopt bylaws and shall elect one director as chairperson and one director as vice chairperson, each for a term of two years, and shall appoint a secretary who need not be a director. The board may create any committees necessary to achieve the purposes and functions of this agreement. Further duties shall be set forth in the bylaws.

A majority of the membership of the board of directors 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 Authority 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 Authority.

#### **6. MAP OF AREA AND BOUNDARIES OF THE AUTHORITY.**

Pursuant to the requirements of Iowa law, this Agreement includes a map showing the area and boundaries of the Authority. The map is attached to this Agreement and marked as Exhibit A.

#### **7. COORDINATION WITH OTHER ENTITIES.**

The Authority may choose to coordinate all of its activities with the Department of Natural Resources, the Department of Agriculture, and Land Stewardship, Councils of Governments, Public Drinking Water Utilities, Soil and Water Conservation Districts, and any other local, state, or federal entities.

#### **8. CONTRIBUTIONS TO THE AUTHORITY AND BUDGET.**

Members of the Authority may, if deemed necessary and appropriate, contribute through an equitable formula, appropriations from their respective budgets for the operation and administration of the Authority. 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.

#### **9. GRANTS AND FISCAL AGENTS.**

The Authority 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 Authority nor the participants in this Agreement shall be obligated to contribute or expend non-grant monies beyond amounts included in an approved budget. The Authority may enter into agreements with grant writers and Fiscal Agents to both write grants and administrate dollars which may be received either by the Authority or a party to this Agreement for projects approved by the Authority.

## **10. FISCAL RESTRICTIONS.**

The Authority shall have no power to impose any tax of any nature, nor pledge the credit of any of parties to this Agreement, nor incur any debt or other financial obligation the payment of which has not been provided for in the current or an approved future budget.

## **11. REPORTS AND AUDITS.**

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

## **12. CONFLICTS OF INTEREST.**

The Agency 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. VOLUNTARY TERMINATION.**

Membership in this Agreement may be terminated voluntarily by any party to the Agreement. A party wishing to voluntarily terminate their membership shall provide written notice of intent to terminate membership to all other parties to the Agreement. The termination shall be effective twenty (20) days from the date that written notice is provided to other members. A party may withdraw written notice before the 20 day period expires and may reapply for membership to the board of directors after the 20 day period has expired. The board of directors may waive the 20 day period for good cause shown. Termination, whether voluntary or involuntary, in no way relieves a participant from any continuing obligations that may have been imposed on said participant by entry into the Authority. The board of directors shall determine whether a participant that has been terminated from the Authority has any continuing obligations and if so the amount or requirement of said continuing obligation.

The remaining parties may choose to amend this agreement by removing all references to a party that voluntarily terminates its membership in this agreement and continue this Agreement under all the terms and conditions as previously set.

## **14. INVOLUNTARY TERMINATION.**

In the event that either a party to this Agreement fails to timely perform a duty imposed upon it under this Agreement, the Authority may cause a notice to be served on the entity by certified

mail which specifies the particulars of the alleged default and demands performance. If the party fails to cure its default within twenty (20) days after the date of mailing of the notice, the Authority may exercise all rights and remedies it may have at law or in equity including serving judgment for any damages incurred and/or a decree of specific performance of this agreement. A default shall not cause a termination of this Agreement. In the event the Authority fails to perform a duty or observe a requirement imposed by this Agreement, a party may pursue the same remedies against the Authority, if the Authority fails to cure such default within the time set forth above following notice of the default, the party shall be entitled to the same remedies as were given to the Authority. Termination, whether voluntary or involuntary, in no way relieves a participant from any continuing obligations that may have been imposed on said participant by entry into the Authority. The board of directors shall determine whether a participant that has been terminated from the Authority has any continuing obligations and if so the amount or requirement of said continuing obligation.

#### **15. DISSOLUTION OF AGENCY.**

The board of directors may choose to terminate the Authority under the rules and bylaws prescribed by the board. Upon termination, the Authority shall dissolve and the affairs of the Authority shall be wound up as herein provided. The winding up of the affairs of the Authority and the distribution of its assets shall be conducted by the board of directors as follows:

- a. General Funds. 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. Unexpended Grants and Gifts. 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 Authority.
- c. If the Authority should own any facility and this Authority is terminated, such facility 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. AMENDMENTS.**

This Agreement may be amended only by a written document approved by the resolution of all parties signed by their representative to the board of directors.

#### **17. APPLICABLE LAWS.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. This Agreement is made pursuant to statutory authority granted to the parties pursuant to Iowa Code Sections 28E, 466B, and other relevant federal or state law.

# Turkey River Watershed Counties & Incorporated Cities

