



**Date** December 20, 2021

APPROVING 28E AGREEMENT WITH THE IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP – DIVISION OF SOIL CONSERVATION AND WATER QUALITY, POLK COUNTY, AND DES MOINES WATER WORKS TO PROVIDE FUNDING FOR THE CENTRAL IOWA COVER CROP SEEDER PROJECT IN AN AMOUNT NOT TO EXCEED \$75,000.

WHEREAS, increased flooding and reduced water quality within the Des Moines River watershed has impacted Des Moines residential and commercial properties; and

WHEREAS, the City, along with Polk County, and various other communities have entered into 28E agreements to create the Beaver Creek Watershed Management Authority and the North Raccoon River Watershed Management Coalition; and

WHEREAS, the Beaver Creek Watershed Management Authority and North Raccoon River Watershed Management Coalition have developed Watershed Management Plans; and

WHEREAS, the Iowa Department of Agriculture and Land Stewardship – Division of Soil conservation and Water Quality, Polk County, and Des Moines Water Works desire to enter into a cooperative agreement with the City for the purchase, maintenance and use of a cover crop seeder; and

WHEREAS, Polk County has agreed to be responsible for the purchase, maintenance, and liability needs of necessary equipment, including a cover crop seeder, that will be owned by the County in order to establish cover crop best management practices within sub-watersheds with approved management plans residing within the Des Moines watershed, with special emphasis in Beaver Creek and the North Raccoon River, in order to meet the goals of the Watershed Management Plans; and

WHEREAS, Polk County has further agreed to be responsible for entering into lease agreement(s) with a third party to operate and maintain the equipment; and

WHEREAS, the Public Works Department has determined that the Water Shed Management Plans best management practices within the Des Moines watershed with a special emphasis in the Beaver Creek and North Raccoon River watersheds will directly benefit the stormwater management utility and its operations and purpose, pursuant to Des Moines Municipal Code Section 118-272(b); and

WHEREAS, Public Works Department staff have negotiated the terms of a 28E Agreement with such parties, to provide cost share for the purchase and operation of a cover crop seeder for application of cover crop best management practices within sub-watersheds with approved management plans residing within the Des Moines River watershed with a special emphasis in the



**Roll Call Number**

**Agenda Item Number**

55

**Date** December 20, 2021

Beaver Creek and Raccoon River Watersheds, in an amount not to exceed \$75,000 as the City's cost of the cost share for the estimated \$600,000 cover crop seeder purchase.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the above described 28E Agreement between the City, the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation and Water Quality, Polk County, and Des Moines Water Works For the Central Iowa Cover Crop Seeder Project, a copy of which is on file in the City Clerk's Office, is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, said 28E Agreement for and on behalf of the City of Des Moines, Iowa.

(Council Communication No. 21-538)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Preparer: Matt Lechtenberg, Executive Officer III, PH: (515) 281-3857  
Iowa Department of Agriculture & Land Stewardship  
Henry A. Wallace Bldg., 502 E. 9<sup>th</sup> Street, Des Moines, IA 50319-0050

Return to: Matt Lechtenberg, Iowa Department of Agriculture & Land Stewardship  
Henry A. Wallace Bldg., 502 E. 9<sup>th</sup> Street, Des Moines, IA 50319-0050

**28E AGREEMENT BETWEEN IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP – DIVISION OF SOIL CONSERVATION AND WATER QUALITY; POLK COUNTY, IOWA; THE CITY OF DES MOINES, IOWA; AND DES MOINES WATER WORKS FOR THE CENTRAL IOWA COVER CROP SEEDER PROJECT**

This 28E Agreement by and between the Iowa Department of Agriculture and Land Stewardship – Division of Soil Conservation and Water Quality (hereinafter “DIVISION”) located at 502 East 9<sup>th</sup> Street, Des Moines, Iowa 50319; Polk County, Iowa (hereinafter “COUNTY”), a governmental subdivision of the State of Iowa; the City of Des Moines, Iowa, a municipal corporation of the County of Polk, State of Iowa (hereinafter “CITY”); and Des Moines Water Works, a public utility (hereinafter “DMWW”)(Collectively referred to as “Parties” or “the Parties”) becomes fully executed on the date signed by all Parties. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa.

**I. PURPOSE**

This Agreement is entered into between the DIVISION, the CITY, DMWW, and the COUNTY for the purpose of providing the terms under which the Parties agree to fund and manage the Central Iowa Cover Crop Seeder Project (hereinafter “PROJECT”). The PROJECT involves the purchase of a fully operational cover crop seeder capable of timely and consistently seeding cover crops into standing crops (hereinafter “SEEDER”), which will be used on privately-owned cropland located within sub-watersheds with approved management plans residing within the Des Moines River watershed, with special emphasis on the Beaver Creek and North Raccoon River. The anticipated cost to purchase the SEEDER is \$600,000. The COUNTY will serve as the fiscal agent of the project and provide funding to purchase the SEEDER and other necessary equipment. The CITY will provide a one-time, \$75,000 payment to the COUNTY for the purchase of the SEEDER. DMWW will provide a one-time, \$25,000 payment to the COUNTY for the purchase of the SEEDER. The DIVISION will provide up to \$350,000 to the COUNTY based on the number of acres seeded during the PROJECT term, as determined by the DIVISION.

**II. TERM**

This Agreement shall begin January 1, 2022, and be in effect until December 31, 2025, unless terminated earlier pursuant to the provisions herein. The Agreement may be extended by the written agreement of all parties on terms stated therein.

**III. ADMINISTRATION**

This Agreement shall be administered by the DIVISION. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined below. No separate entity is created under this Agreement.

**IV. HOLDING OF PROPERTY UNDER THIS AGREEMENT**

Pursuant to this Agreement, the COUNTY is solely responsible for acquiring and maintaining the equipment relating to the PROJECT, including the SEEDER, for the term of the PROJECT. At the conclusion of this Agreement's term, or if the Agreement is terminated pursuant to Article XIII, the equipment, including the SEEDER, shall remain with COUNTY with the COUNTY maintaining responsibility for any outstanding costs.

**V. POWERS AND DUTIES**

The parties to this Agreement shall retain all powers and duties conferred by their respective enabling acts but shall assist each other in the exercise of these powers and the performance of these duties.

**VI. DIVISION RESPONSIBILITIES**

The DIVISION shall:

- A. Follow the procedures outlined in Article X which will be used to determine the actual eligible cost-share amount provided for this PROJECT.
- B. Reimburse the COUNTY for an amount not to exceed \$350,000.00 of the eligible project costs based upon acres of cover crops seeded during the PROJECT term. Reimbursement will be based on receipt of claims for reimbursement with supporting documentation, approved by the DIVISION, in compliance with this Agreement.
- C. Send COUNTY reimbursement payments to the Polk County Treasurer, 111 Court Avenue, Des Moines, IA 50309-2298- Attention Public Works Department.

## **VII. CITY RESPONSIBILITIES**

The CITY shall:

- A. Provide a one-time, upfront payment of \$75,000 to the COUNTY to be used for the purchase of the SEEDER. In the event that a minimum of 10,000 acres of cover crops are not planted during the four-year term of this Agreement within the Des Moines River watershed, the CITY shall be reimbursed by the COUNTY in a pro rata amount based on the number of acres actually planted versus the 10,000 minimum.
- B. Upon signature by all Parties, send the \$75,000 payment to Polk County, Iowa, 111 Court Avenue, Des Moines, IA 50309-2298- attention Public Works Department.

## **VIII. DMWW RESPONSIBILITIES**

DMWW shall:

- A. Provide a one-time, upfront payment of \$25,000 to the COUNTY to be used for the purchase of the SEEDER. In the event that a minimum of 10,000 acres of cover crops are not planted during the four-year term of this Agreement within the Des Moines River watershed, DMWW shall be reimbursed by the COUNTY in a pro rata amount based on the number of acres actually planted versus the 10,000 minimum.
- B. Upon signature by all Parties, send the \$25,000 payment to Polk County, Iowa, 111 Court Avenue, Des Moines, IA 50309-2298- attention Public Works Department.

## **IX. COUNTY RESPONSIBILITIES**

The COUNTY shall:

- A. The PROJECT shall be managed by the COUNTY.
- B. Purchase necessary equipment, including the SEEDER, with ability to seed cover crops in-season, prior to harvest of cash crop, and with minimal disturbance to cash crop. Equipment purchased, including the SEEDER, will be owned by the COUNTY and COUNTY will be responsible for all maintenance, including the costs thereof, and agree to keep the SEEDER and equipment in good working condition during the term of this Agreement. COUNTY has the right to contract with a third party to perform such maintenance. In the event that the SEEDER is not purchased by June 1st, 2022, the CITY and DMWW shall have the right to immediate reimbursement from the COUNTY of the CITY's \$75,000 payment and DMWW's \$25,000 payment upon the COUNTY's receipt of a written request from the CITY or DMWW, respectively.
- C. Follow the procedures outlined in Article X which will be used to determine the actual eligible cost-share amount provided for this PROJECT.
- D. Act as the fiscal agent for the PROJECT. The COUNTY may enter into a lease and operations agreement(s) with a third party(s) to do the following: operate and maintain the equipment, including the SEEDER; aid in establishing and operating the private property cover crop program; market the program; and identify private property farms within the project area and

provide the cover crop planting for participants using the SEEDER and equipment. The COUNTY will use its best efforts to market the cover crop program itself and provide input and guidance to the third party operator(s) on marketing, including geographical targeting, and scheduling of cover crop applications.

- E. Submit claims for reimbursement of acres of cover crops installed to the DIVISION. These claims will be submitted utilizing a form provided by the DIVISION and will be accompanied by supporting documentation.
- F. Provide the additional funding necessary to purchase the necessary equipment, including the SEEDER, to deliver the agreed to acres for the PROJECT term and/or any other additional costs associated with the PROJECT.
- G. Provide cost documentation to the CITY and DMWW for the purchase price of the SEEDER.
- H. Provide refunds in the total amount paid to the COUNTY by the CITY and DMWW if the SEEDER is not purchased by June 1, 2022.

#### **X. COST-SHARE AMOUNT PROCEDURES**

The COUNTY and DIVISION will follow the following procedures to determine the actual state cost share amount for the completion of the project.

- A. The COUNTY will forward to the DIVISION a list of participating farmers/landowners, acres of cover crops, and locations soon after completion. The DIVISION will review this supporting documentation to determine the DIVISION'S approved eligible costs based on the acres of cover crops seeded. The approved eligible costs will be used by the DIVISION to establish the amount of funding per acre the DIVISION will provide as reimbursement to the COUNTY. The DIVISION will provide funding to the COUNTY in an amount of \$8.75 per acre of verified cover crops, not to exceed \$350,000.00 for the PROJECT term. Should a dispute arise between the COUNTY and the DIVISION relative to the DIVISION approved eligible cost amounts this dispute must be resolved between the COUNTY and the DIVISION prior to reimbursement.
- B. Revisions to the DIVISION-approved eligible cost amounts may be submitted by the COUNTY if unanticipated conditions are encountered that would influence the costs of reimbursement. The COUNTY shall provide the proper documentation supporting this revision in costs to the DIVISION. The DIVISION will provide a written response to the COUNTY regarding whether they approve the proposed revision of the reimbursement amounts or not. If the DIVISION approves the revision, the DIVISION will then be responsible for providing funding reimbursement to the COUNTY based on the agreed to revised costs. Should the DIVISION not agree to the revised costs submitted by the COUNTY, this dispute must be resolved between the COUNTY and the DIVISION before the PROJECT continues.

#### **XI. FINANCING**

The DIVISION shall pay all costs associated with the administration of this Agreement, except as provided in Article IX of this Agreement.

**XII. AMENDMENT**

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by all Parties, and filed in an electronic format with the Secretary of State as required by Iowa Code Section 28E.8(1)(b) (2020).

**XIII. TERMINATION**

Any or all parties may terminate this Agreement at any time upon 120 days prior written notice to the other parties. Upon termination of this Agreement, the Parties agree to use their best efforts to wrap up all operations undertaken pursuant to this Agreement. In the event of a conflict as to the distribution of funding associated with the administration of this Agreement, such conflict shall be resolved between the parties by arbitration paid for equally between the disputing parties.

**XIV. NOTICES**

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

To THE COUNTY

Polk County  
5885 NE 14<sup>th</sup> Street  
Des Moines, IA 50313

To the DIVISION

Division of Soil Conservation & Water  
Quality - IDALS  
502 E. 9<sup>th</sup> Street  
Wallace State Office Building  
Des Moines, IA 50319-0050

To DMWW

Des Moines Water Works  
2201 George Flagg Parkway  
Des Moines, IA 50321

To the CITY

City of Des Moines  
216 SE 5<sup>th</sup> Street  
Des Moines, IA 50313

**XV. APPLICABLE LAW**

This Agreement is to be governed by the laws of the State of Iowa.

**XVI. FILING AND RECORDING**

It is agreed that the DIVISION will file this Agreement in an electronic format with the Secretary of State as required by Iowa Code section 28E.8(1)(a) (2020).

**IN WITNESS WHEREOF**, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

**DIVISION OF SOIL CONSERVATION AND WATER QUALITY**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Julie Kenney, Deputy Secretary of Agriculture

Iowa Department of Agriculture & Land Stewardship

This instrument was acknowledged before me  
on the \_\_\_\_ day of \_\_\_\_\_, 2021, by  
Julie Kenney, Deputy Secretary of the Iowa  
Department of Agriculture & Land Stewardship.

\_\_\_\_\_

Notary Public in and for the State of Iowa

IN WITNESS THEREOF, POLK COUNTY, IOWA has caused this 28E Agreement to be executed on the \_\_\_ day of \_\_\_\_\_, 2021.

**Polk County, Iowa**

By: \_\_\_\_\_  
Chairperson, Board of Supervisors

Attest: \_\_\_\_\_  
Polk County Auditor

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public in and for said \_\_\_\_\_ County, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known, and who being duly sworn, did say that they are the Chairperson and Auditor, respectively of the Board of Supervisors of Polk County, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said County, and that said instrument was signed and sealed on behalf of said County by authority and resolution of its Board of Supervisors as contained in Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2021, and said Chairperson and Auditor acknowledged said instrument to be the free act and deed of said County by it voluntarily executed.

\_\_\_\_\_  
Notary Public for Iowa

IN WITNESS THEREOF, the City of Des Moines has caused this 28E Agreement to be executed on the \_\_\_\_ day of \_\_\_\_\_, 2021

CITY OF DES MOINES, IOWA

ATTEST:

\_\_\_\_\_  
T. M. Franklin Cownie, Mayor

\_\_\_\_\_  
P. Kay Cmelik, City Clerk

Approved As To Form:

  
\_\_\_\_\_  
Ann DiDonato  
Assistant City Attorney

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018 before me, a Notary Public in and for said County, personally appeared T. M. Franklin Cownie and P. Kay Cmelik to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, as contained in the Resolution adopted under Roll Call No. 18-\_\_\_\_\_, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public for Iowa

IN WITNESS THEREOF, Des Moines Water Works has caused this 28E Agreement to be executed on the\_ day of \_\_\_\_\_, 2021.

**Des Moines Water Works**

By: \_\_\_\_\_  
Ted Corrigan, CEO & Board Secretary

Attest: \_\_\_\_\_  
Amy Kahler, Board Treasurer

This instrument was acknowledged before me on the\_\_\_\_day of\_\_\_\_\_, 2021, by Ted Corrigan, CEO of Des Moines Water Works.

\_\_\_\_\_

Notary Public in and for the State of Iowa