

COUNCIL ACTION FORM

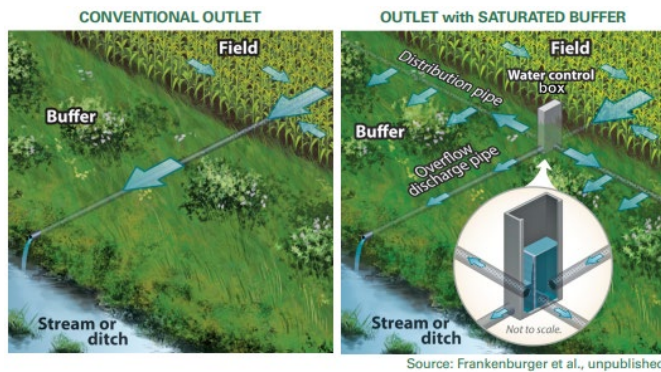
SUBJECT: FUNDING AGREEMENTS ASSOCIATED WITH STORY COUNTY SATURATED BUFFER/BIOREACTOR PROJECT

BACKGROUND:

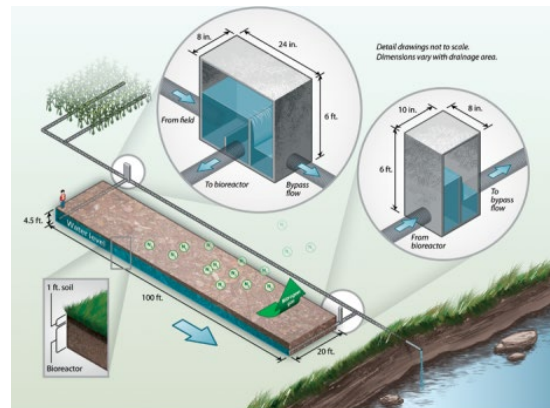
The Water Pollution Control (WPC) Facility is being converted to a nutrient removal treatment technology over a period of 20 years. Separate from the work that will occur inside the treatment plant, watershed-based improvements performed by the City can be “banked” as credit toward any future, more stringent nutrient reduction regulations imposed on the WPC Facility. On February 24, 2021, staff executed a Memorandum of Understanding (MOU) with the Iowa Department of Natural Resources to allow these off-site nutrient reductions to be banked with the Iowa Nutrient Reduction Exchange.

Throughout this past year, staff has been in development of a partnership with multiple entities to bundle together Edge-of-Field (EOF) practices that can be bid as a single bid package. This project will construct 25-30 EOF practices in Story County, consisting of both saturated buffers and bioreactors. These practices allow natural removal of nitrogen from subsurface drainage before it enters a stream or other surface waters. Additional information about these practices is shown below.

Saturated Buffers



Bioreactors



A saturated buffer is an area of perennial vegetation between agricultural fields and waterways where tile outlets drain. Tile lines connect to a control structure, which distributes water laterally along the buffer. As water drains into the buffer, the living roots of perennial vegetation absorb water and nutrients, like nitrogen. According to the Iowa Nutrient Reduction Strategy, a saturated buffer has the potential to remove 50% of nitrogen from water that is diverted through the buffer.

A bioreactor is a buried trench on the edge of a farm field that is traditionally filled with woodchips. Drainage tiles outlet into the woodchips where bacteria convert nitrogen in tile water into nitrogen gas. According to the Iowa Nutrient Reduction Strategy, a bioreactor, on average, removes 43% of nitrogen from water diverted through it.

The City of Ames will act as the fiscal agent for the proposed project. This will include receiving funds from the different partners, procuring necessary temporary easements, and then contracting for the work to be performed. The funding for this project will consist of 75% from the Iowa Department of Agricultural and Land Stewardship (IDALS) and 25% split between the City and Story County. The estimated cost for the City's share is \$41,000 which will come from the Watershed Based Nutrient Reduction capital improvements project. The project will involve 20 to 30 installations that will each treat tile drainage from fields that range in size from 20 to 100 acres.

Two separate agreements have been developed to achieve the sharing of funds and resources: one with IDALS and the Story County Soil & Water Conservation District (SWCD) and a separate agreement with Story County/Story County Conservation. Both IDALS and Story County will provide funding, while Story County SWCD will provide resources to execute the individual maintenance agreements with each landowner. City staff has coordinated with the Legal Department and each entity to review the agreements. Both agreements (attached) have been finalized and are now ready for approval by City Council.

With assistance from various entities, initial property owner meetings have been completed, and final landowner meetings are anticipated to take place in the coming months. Each landowner will be required to sign a 10-year maintenance agreement and allow temporary access to their property during construction, which they will be compensated for. Following landowner meetings, staff intends to bring preliminary plans and specifications to City Council for approval and to issue a Notice to Bidders for construction summer/fall 2022.

ALTERNATIVES:

1. A. Approve a 28E agreement for fiscal agent assistance with the Iowa Department of Agricultural and Land Stewardship – Division of Soil Conservation and Water Quality, City of Ames, and Story County Soil & Water Conservation District.

B. Approve an agreement between Story County, Iowa, Story County Conservation Board, and the City of Ames, for funding assistance for water nutrient removal practices.
2. Do not approve either agreement. The City would not be eligible to receive nutrient reduction credits for these specific projects.

CITY MANAGER'S RECOMMENDED ACTION:

The Ames Water Pollution Control Facility will be converted to a nutrient removal treatment technology over a period of 20 years. To mitigate future investment beyond what is already planned for, watershed-based projects can be performed, and the

resulting nutrient reduction credits can be banked. Following project completion, the City will register each of these practices and receive annual nutrient reduction credit for the lifespan of each practice.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

Preparer: Matt McDonald, Water Quality Initiative Projects Coordinator, PH: (515)-725-1037
Iowa Department of Agriculture & Land Stewardship
Henry A. Wallace Bldg., 502 E. 9th Street, Des Moines, IA 50319-0050

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

**28E AGREEMENT FOR FISCAL AGENT ASSISTANCE BETWEEN IOWA
DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP – DIVISION OF
SOIL CONSERVATION AND WATER QUALITY; CITY OF AMES; AND STORY
COUNTY SOIL AND WATER CONSERVATION DISTRICT
FOR THE CENTRAL IOWA EDGE OF FIELD 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 9th Street, Des Moines, Iowa 50319; the City of Ames, Iowa, (hereinafter “CITY”); and Story County Soil and Water Conservation District (hereinafter “STORY SWCD”) located at 510 South 11th St., Nevada, IA, with the parties to this Agreement collectively referred to as “Parties” or “the Parties”, becomes fully executed on the date signed by the DIVISION. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa.

I. PURPOSE

This Agreement is entered into between the DIVISION, CITY, and the STORY SWCD for the purpose of providing the terms under which the Parties agree to fund and manage the Story County Edge-of-Field Project (hereinafter “PROJECT”). The PROJECT involves the installation of nutrient reducing Edge of Field Practices (Saturated Buffers and/or Bioreactors) to be constructed on private lands within priority watersheds. The CITY will serve as the fiscal agent of the PROJECT and support a portion of the costs required to facilitate the installation of these practices. The STORY SWCD will secure maintenance agreements with participating landowners and provide technical assistance as specified below. The DIVISION will support funding for eligible costs, as determined by the DIVISION, and described in Article IX. The Parties do not intend to create a separate legal entity under this Agreement.

II. TERM

This Agreement shall begin December 1, 2021, and be in effect until June 30, 2023, unless terminated earlier pursuant to the provisions herein. The Agreement may be extended by the written agreement of the 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.

IV. HOLDING OF PROPERTY UNDER THIS AGREEMENT

This Agreement does not allow for any one of these entities to acquire or hold any property relating to the PROJECT.

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 will:

- A. Follow the procedures outlined in Article IX which will be used to determine the actual eligible cost-share amount provided for this PROJECT.
- B. Reimburse the CITY for agreed to project costs associated with a) practice engineering costs and b) applicable construction costs upon receipt of claims for reimbursement. All claims for reimbursement shall have supporting documentation, including designs and construction progress reports, where applicable, in compliance with this Agreement. The reimbursement will be determined by the procedures outlined in Article IX, and will not exceed the as agreed state cost-share fund allocation based on the final estimated costs for each project.
- C. Provide support as necessary to the STORY SWCD to ensure the STORY SWCD secures proper maintenance agreements with participating landowners for the installed practices.
- D. Send CITY reimbursement payments to the City of Ames Water and Pollution Control Department, 1800 E. 13th Street, Ames, Iowa 50010.

VII. CITY RESPONSIBILITIES

The CITY will:

- A. Follow the procedures outlined in Article IX which will be used to determine the actual eligible cost-share amount provided for this PROJECT.
- B. Act as the fiscal agent for the PROJECT. The duties of the fiscal agent will be to hire consultant engineer, manage contract with consultant, and provide payments to consultant.
- C. Submit claims for reimbursement of engineering costs to the DIVISION. These claims will be submitted utilizing a form provided by the DIVISION and will be accompanied by engineering costs and supporting documentation as well as engineering progress reports.
- D. Provide the additional funding necessary to cover the total engineering costs and/or any other additional costs associated with construction when used in conjunction with the funding reimbursement provided by the DIVISION.
- E. Coordinate with STORY SWCD of the practice sites prior to the start of construction to execute individual maintenance agreements with the participating landowner(s). Maintenance agreements will use the same format and follow the same procedures of maintenance agreements developed for similar projects.

VIII. STORY SWCD RESPONSIBILITIES

The STORY SWCD with jurisdiction over the particular practice site will:

- A. Execute an individual maintenance agreement with the appropriate landowner(s) prior to the start of construction of the edge of field practice. Execution of individual maintenance agreements between the STORY SWCD and landowner(s) shall be done for each practice site within the STORY SWCD. All maintenance agreements are to be recorded within the appropriate County where the practice is being installed.
- B. Provide technical assistance during the practice design and installation process and technical certification of practice upon completion of the practice in the respective County.

IX. COST-SHARE AMOUNT PROCEDURES

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

- A. The CITY and DIVISION will proceed with the understanding that the costs of engineering for the PROJECT will be reimbursed by the DIVISION based on the mutually determined eligible costs.
- B. The CITY and DIVISION will proceed with the understanding that the costs of construction for the PROJECT will be reimbursed by the DIVISION up to 75% of the total eligible costs.
- C. The CITY will forward to the DIVISION a copy of the designs completed for each project that shall include the most current cost estimates. The DIVISION will review all estimates and determine at that time if an adjustment of costs and/or scope and can be made based on available funds.
- D. The CITY will forward to the DIVISION a copy of the construction bid tabulation(s) as soon as they are completed. The DIVISION will review the construction bid tabulation and may use other cost information to determine the DIVISION'S approved eligible costs for construction. The approved construction costs will be used by the DIVISION to establish the amount of funding the DIVISION will provide as reimbursement to the CITY for the construction of the edge of field practices. The DIVISION will provide funding to the CITY in an amount as agreed to of the approved eligible construction costs. Should a dispute arise between the CITY and the DIVISION relative to the DIVISION approved eligible construction cost amounts this dispute must be resolved between the CITY and the DIVISION prior to construction being started on any practice.
- E. Revisions to the DIVISION approved eligible cost amounts may be submitted by the CITY if unanticipated conditions are encountered that would influence the cost of the construction or engineering. The COUNTY shall provide the proper documentation supporting this revision in costs to the DIVISION. The DIVISION will provide a written response to the CITY regarding whether they approve the proposed revision of the eligible costs or not. If the DIVISION approves the revision, the DIVISION will then be responsible for providing funding reimbursement to the CITY based on the agreed to revised eligible construction or engineering costs. Should the DIVISION not agree to the revised eligible costs submitted by the CITY, this dispute must be resolved between the CITY and the DIVISION before the construction continues.

X. FINANCING

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

XI. 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).

XII. 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.

XIII. NOTICES

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

To the CITY

City of Ames
Water & Pollution Control Dept.
1800 E. 13th Street
Ames, IA 50010

To the DIVISION

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

To the STORY SWCD

Story County Soil and Water Conservation District
510 South 11th Street
Nevada, IA 50201

XIV. APPLICABLE LAW

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law.

In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Story County District Court for the State of Iowa, Nevada, Iowa or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate.

XV. 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.

[Remainder of page intentionally left blank. Signature pages follow]

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 _____, 2022, by Julie Kenney, Deputy Secretary of the Iowa Department of Agriculture & Land Stewardship.

Notary Public in and for the State of Iowa

CITY OF AMES, IOWA

IN WITNESS THEREOF, THE CITY OF AMES, IOWA has caused this 28E Agreement to be executed on the ____ day of _____, 2022.

By: _____
John A. Haila, Mayor

Attest: _____
Diane Voss, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF STORY)

On this ____ day of _____, 2022, before me, a Notary Public in and for said County, personally appeared John A. Haila and Diane Voss to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Ames, Iowa, 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 City, and that said instrument was signed and sealed on behalf of said City by authority and resolution of its City Council as contained in Resolution No. _____ adopted on _____, 2022, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City by it voluntarily executed.

Notary Public in and for the State of Iowa

STORY COUNTY IOWA SOIL AND WATER CONSERVATION DISTRICT

BY: _____ DATE: _____

Chair
Story County Soil and Water Conservation District

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, Chair of the Story County Iowa Soil and Water Conservation District

Notary Public in and for the State of Iowa

AGREEMENT BETWEEN STORY COUNTY, IOWA, STORY COUNTY CONSERVATION BOARD, AND THE CITY OF AMES, IOWA FOR FUNDING ASSISTANCE FOR WATER NUTRIENT REMOVAL PRACTICES

This Agreement is made and entered into by and between Story County, Iowa (County), Story County Conservation Board (Board) and the City of Ames, Iowa (City), collectively (Parties). The Agreement shall become effective upon acceptance by all parties.

PURPOSE AND NEED

The treatment of agricultural tile outlets to reduce nutrient runoff is a key priority of the County, Watershed Management Authorities, City, and the Iowa Nutrient Reduction Strategy. In an effort to demonstrate new methods to work with private landowners using economies of scale and scope, the Project has devised new methods to increase landowner adoption rates and improve design, construction and other efficiencies by bundling service delivery for two specific kinds of practices known as a saturated buffer and a bioreactor. Through the Project, funding from the Iowa Department of Agriculture and Land Stewardship (IDALS), STORY SWCD, City, Board, and the County will be pooled to install these tile treatment practices in groupings on private property across Story County. To efficiently achieve the goals of the Project, a single fiscal agent will coordinate funding, publicly bid projects, and manage payment of contractors. The City is fiscal agent for the Project. This Agreement outlines the City's obligations as Fiscal Agent. Furthermore, this Agreement designates the County as a funding agent for the Project. This Agreement covers practices that will be funded and bid in 2022 as part of the Project.

DUTIES OF THE PARTIES

DUTIES OF COUNTY:

1. County has funding for the implementation of priority projects within the Sugar Creek-South Skunk River, Indian Creek, East Indian Creek, West Indian Creek, Keigley Branch-South Skunk River, and Ioway Creek Watersheds. In exchange for the City acting as the fiscal agent for the Project, County shall provide a portion of that funding to the City for use in this Project. The funding to be dedicated to this Project in 2022 shall be up to \$41,000.00. This amount is payable by County to the City at the time the City completes design and bidding for the Project.

DUTIES OF THE CITY:

In exchange for County providing up to \$41,000.00 of funding to the City to be used for the Project in 2022:

1. The City shall act as the fiscal agent for the Project. The duties of the fiscal agent shall be to enter into agreements with eligible property owners to install Edge-of-Field practices (saturated buffers/bioreactors) upon their land, bid and enter into agreements with contactors to design and install the tile system improvements on the subject properties, and manage the various funding sources for the Project.
2. The City shall dedicate the funding provided by the County for the Project to assist with installation costs, temporary construction easements, easement payments and final inspections upon completion of the work.

GENERAL

ENTIRE AGREEMENT: This Agreement contains the sole and entire Agreement between the parties relating to the subject hereof, and any representation, promise, or condition not contained herein, or any amendment hereto, shall not be binding on any party unless set forth in a subsequent written agreement signed by all parties.

GOVERNING LAW: This Agreement shall be governed by the laws of the State of Iowa without regard to conflicts of law principles or rules. Venue shall be in the appropriate Story County District Court or the United States District Court for the Southern District of Iowa. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Parties expressed in this Agreement shall be in addition to, and not in limitation of, those provided by applicable law.

MODIFICATIONS: This Agreement may be modified or waived only by a separate writing by the Parties expressly so modifying or waiving such.

TERM OF AGREEMENT: This Agreement shall be effective upon acceptance by all parties and be in effect until the City accepts the final completion of the practices, unless terminated earlier pursuant to the provisions herein.

TERMINATION: Any party may terminate this Agreement upon 60 days written notice to the other party. Upon termination by Board or County, the City shall retain all funds previously received from Board or County for continued use in the Project.

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, City of Ames, Iowa has caused this Agreement to be executed in three (3) separate counterparts, each of which shall be considered an original.

Executed by City of Ames, Iowa

_____ day of _____, 2022

City of Ames, Iowa

Attest _____
Diane Voss, City Clerk

John A. Haila, Mayor

STATE OF IOWA)
) ss:
COUNTY OF STORY)

On this _____ day of _____, 2022, 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 Mayor and Auditor, respectively of the City of Ames, 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 City, and that said instrument was signed and sealed on behalf of said City by authority and resolution of its City Council as contained in Resolution No. _____ adopted on _____, 2022, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City by it voluntarily executed.

Notary Public for Iowa

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, Story County, Iowa has caused this Agreement to be executed in three (3) separate counterparts, each of which shall be considered an original.

Executed by Story County, Iowa

_____ day of _____, 2022

STORY County, Iowa

Attest _____
Auditor

Chairperson, Board of Supervisors

STATE OF IOWA)
) ss:
COUNTY OF STORY)

On this _____ day of _____, 2022, 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 Story 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 _____, 2022, 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

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, Story County Conservation Board, Iowa has caused this Agreement to be executed in three (3) separate counterparts, each of which shall be considered an original.

Executed by Story County Conservation Board, Iowa

_____ day of _____, 2022

Story County Conservation Board

Chairperson

STATE OF IOWA)
) ss:
COUNTY OF STORY)

On this _____ day of _____, 2022, before me, a Notary Public in and for said Board, personally appeared _____ and _____ to me personally known, and who being duly sworn, did say that they are the Chairperson of the Story County Conservation Board, 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 Board by authority and resolution of its Conservation Board as contained in Resolution No. _____ adopted on _____, 2022, and said Chairperson acknowledged said instrument to be the free act and deed of said Board by it voluntarily executed.

Notary Public for Iowa