



Matt Schultz
Secretary of State
State of Iowa

28E Agreement

FOR OFFICE USE ONLY:

FILED

M505489

9/24/2012 9:03:13 AM

PLEASE READ INSTRUCTIONS ON BACK BEFORE COMPLETING THIS FORM

Item 1. The full legal name, organization type and county of each participant to this agreement are:

	Full Legal Name	Organization Type	*County
Party 1	Polk County	County	Polk
Party 2	Various	Other	Other
Party 3			
Party 4			
Party 5			

**Enter "Other" if
not in Iowa*

Item 2. The type of Public Service included in this agreement is: 310 Water System
(Enter only one Service Code and Description) Code Number Service Description

Item 3. The purpose of this agreement is: (please be specific)

Fourmile Creek Watershed Management Authority 28E with
Story County, Boone County, Ankeny, Des Moines, Pleasant Hill, Altoona, Bondurant, Slater, Alleman, Elkhart,
Sheldahl, Story Boone & Polk County Soil & Water Conservation

Item 4. The duration of this agreement is: (check one) ☐ Agreement Expires _____ ☒ Indefinite Duration
[mm/dd/yyyy]

Item 5. Does this agreement amend or renew an existing agreement? (check one)

☒ **NO**

☐ **YES** Filing # of the agreement: _____

(Use the filing number of the most recent version filed for this agreement)

The filing number of the agreement may be found by searching the 28E database at: www.sos.state.ia.us/28E.

Item 6. Attach two copies of the agreement to this form if not filing online.

Item 7. The primary contact for further information regarding this agreement is: (optional)

LAST Name Rice **FIRST** Name Robert

Title _____ Department _____

Email _____ Phone 286-3705



Doc ID: 026463770028 Type: GEN
Kind: 28E AGREEMENT
Recorded: 09/21/2012 at 03:13:55 PM
Fee Amt: \$0.00 Page 1 of 28
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2013-00027505

BK **14451** PG **225-252**

Preparer

Information: N/A

Individual Name

Address

City

Phone

Address Tax

Statement: N/A

Name

Address

City

Zip

RETURN TO:

Return to:

**After Recording Return to:
Becky Dewey, Auditor's Office**

Description: **Fourmile Creek Watershed Management Authority Agreement
between Polk County, Story County, Boone County, Cities of
Ankeny, Des Moines, Pleasant Hill, Altoona, Bondurant, Slater,
Alleman, Elkhart, Sheldahl, Story County Soil & Water Conservation,
Boone County Soil & Water Conservation, Polk County Soil & Water
Conservation**

*Julie Haggerty
Polk County Recorder
111 Court Ave, Room 250
Des Moines IA 50309-2251*

Fourmile Creek Watershed Management Authority Agreement
Between Polk County, Story County, Boone County, City of Ankeny, City of Des
Moines, City of Pleasant Hill, City of Altoona, City of Bondurant, City of Slater, City of
Alleman, City of Elkhart, City of Sheldahl, Story County Soil and Water Conservation, Boone
County Soil and Water Conservation District, and
Polk County Soil and Water Conservation District.

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 on this day of , 2012 by and between Story County, Iowa; Boone County, Iowa; Polk County, Iowa; the City of Ankeny Iowa; the City of Des Moines, Iowa; the City of Pleasant Hill, Iowa; the City of Alleman, Iowa; the City of Slater, Iowa; the City of Bondurant, Iowa; the City of Altoona, Iowa; the City of Elkhart, Iowa; the City of Sheldahl, Iowa; the Story County Soil and Water Conservation District; the Boone County Soil and Water Conservation District; and the Polk County Soil and Water Conservation District. 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 10 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 Fourmile Creek Watershed Management Authority (hereinafter referred to as the "Authority"), a watershed management authority encompassing all of the Fourmile Creek watershed, a Hydrologic Unit Code 10 (HUC 10) 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 Fourmile 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 Polk, Story, and Boone are each a municipality of the State of Iowa, organized and operating pursuant to *Code of Iowa* Chapter 331. Their respective addresses are:

Polk County
111 Court Avenue
Des Moines, Iowa 50309

Story County
900 Sixth Street
Nevada, Iowa 50201

Boone County
201 State Street
Boone, Iowa 50036

- 1.2 The Cities of Ankeny, Des Moines, Pleasant Hill, Altoona, Bondurant, Slater, Alleman, Sheldahl, and Elkhart 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 Ankeny
410 W. 1st Street
Ankeny, Iowa 50023

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

City of Pleasant Hill
5160 Maple Drive, Suite A
Pleasant Hill, Iowa 50327

City of Altoona
407 8th Street SE
Altoona, Iowa 50009

City of Bondurant
200 2nd Street NE
P.O. Box 37
Bondurant, Iowa 50035

City of Slater
101 Story Street
P. O. Box 538
Slater, Iowa 50244-0538

City of Alleman
14000 NE 6th Street
P.O. Box 86
Alleman, Iowa 50007

City of Elkhart
260 NW Main Street
P.O. Box 77
Elkhart, Iowa 50073

City of Sheldahl
803 2nd Avenue
Sheldahl, Iowa 50243

- 1.3 The Soil and Water Conservation Districts of Polk, Story, and Boone 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:

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

Story County SWCD
510 South 11th Street
Nevada, Iowa 50201

Boone County SWCD
1602 Snedden Drive
Boone, Iowa 50036

SECTION 2. FOURMILE CREEK WATERSHED BOUNDARY.

The area within this Agreement shall be known as the Fourmile Creek Watershed Boundary. 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 Fourmile 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 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 Fourmile Creek Watershed Management Authority Board (herein after referred to as the "Board") shall be responsible for coordinating watershed planning and improvements. The Board shall be comprised of one appointee from each county, city, and district participating in this Agreement.
- 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 Once established, the Board will develop governing bylaws.

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 Watershed Management 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 Fourmile 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. MANNER OF FINANCING.

- 7.1 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. It is agreed and understood by the parties hereto that no financial obligations upon any party are intended to be created hereby.
- 7.2 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.
- 7.3 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.
- 7.4 All funds received for use by the Authority shall be held in a special fund by one of the Parties who shall act 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 8. SEVERABILITY/INVALIDITY.

If any term, provision or condition of this Agreement shall be determined to be invalid by a court of law, 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 9. GOVERNING LAW.

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

SECTION 10. AMENDMENTS.

- 10.1 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).
- 10.2 Any Party desiring an amendment to this Agreement shall notify the 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.

- 10.3 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.
- 10.4 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 11. ADDITIONAL PARTIES.

- 11.1 A City, County, or Soil and Water Conservation District within the Fourmile Creek Watershed who is not a Party, may request, in writing to all Parties, to become a Party.
- 11.2 Such a request shall be considered an Amendment and shall follow the steps outlined in Section 10 hereof.

SECTION 12. 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 terminate their participation in the agreement after providing the Authority a written 90 notice of intent.

SECTION 13. 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 14. 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, Polk County Board of Supervisors
Polk County Administration
111 Court Avenue
Des Moines, Iowa 50309

County: Chairperson, Story County Board of Supervisors
Story County Administration
900 6th Street
Nevada, Iowa 50201

County: Chairperson, Boone County Board of Supervisors
Boone County Administration
201 State Street
Boone, Iowa 50036

Ankeny: Mayor, City of Ankeny
410 W. 1st Street
Ankeny, Iowa 50023

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

Pleasant Hill: Mayor, City of Pleasant Hill
5160 Maple Drive, Suite A
Pleasant Hill, Iowa 50327

Altoona: Mayor, City of Altoona
407 8th Street SE
Altoona, Iowa 50009

Bondurant: Mayor, City of Bondurant
200 2nd St. NE
P.O. Box 37
Bondurant, Iowa 50035

Slater: Mayor, City of Slater
101 Story Street
P. O. Box 538
Slater, Iowa 50244-0538

Alleman: Mayor, City of Alleman
14000 NE 6th Street
P.O. Box 86
Alleman, Iowa 50007

Elkhart: Mayor, City of Elkhart
260 NW Main Street
P.O. Box 77
Elkhart, Iowa 50073

Sheldahl: Mayor, City of Sheldahl
803 2nd Avenue
Sheldahl, Iowa 50243

Polk County Soil and Water Conservation District:
Chairperson, Polk County SWCD
1513 North Ankeny Blvd. Suite 3
Ankeny, Iowa 50023-4167

Story County Soil and Water Conservation District:
Chairperson, Story County SWCD
510 South 11th Street
Nevada, Iowa 50201

Boone County Soil and Water Conservation District:
Chairperson, Boone County SWCD
1602 Snedden Drive
Boone, Iowa 50036

SECTION 15. RECORDATION.

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

SECTION 16. 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 17. NO WAIVER.

The waiver or acceptance by any Party of a breach or violation of any provisions of this Agreement by another Party shall not operate as, or be construed to be, a waiver of any subsequent breach.

SECTION 18. 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 written consent of all the Parties.

SECTION 19. AUTHORITY AND AUTHORIZATION.

Each party to this Agreement shall supply a copy to the Authority 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 20. 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.

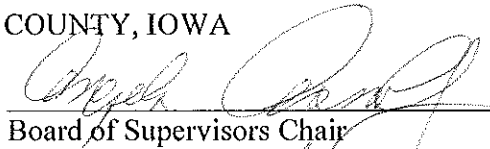
SECTION 21. SIGNATURE PAGES.

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.

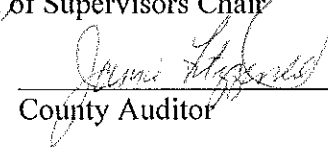
Dated this 4th day of SEPT,, 2012.

POLK COUNTY, IOWA

BY:


Board of Supervisors Chair

ATTEST:


County Auditor

Dated this 18 day of September, 2012.

STORY COUNTY, IOWA

BY: Wayne E. Clinton
Board of Supervisors Chair

ATTEST: [Signature]
County Auditor

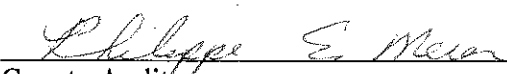
Dated this 12 day of Sept, 2012.

BOONE COUNTY, IOWA

BY:


Board of Supervisors Chair

ATTEST:


County Auditor

Dated this 6th day of August, 2012.

ANKENY, IOWA

BY:

Mayor

ATTEST:

City Clerk

Dated this 27th day of August, 2012.

DES MOINES, IOWA

BY:

Mayor

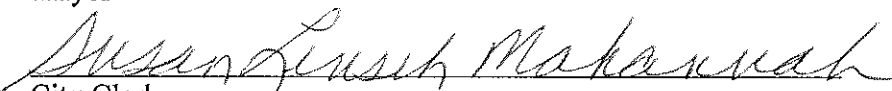
ATTEST:

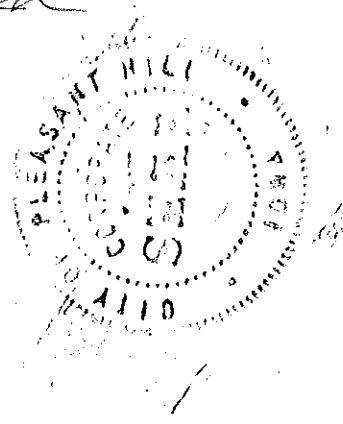
City Clerk

Dated this 14th day of August, 2012.

PLEASANT HILL, IOWA

BY: 
Mayor

ATTEST: 
City Clerk



Dated this 4th day of September, 2012.

ALTOONA, IOWA

BY: *Jim Skip Cabling*
Mayor

ATTEST: *Dan L. Davis*
City Clerk

Dated this 6th day of September, 2012.

BONDURANT, IOWA

BY: _____

Mayor

ATTEST: _____

City Clerk

Dated this 10th day of September, 2012.

SLATER, IOWA

BY: Gary Halverson
Mayor

ATTEST: Mary E. Sprouse
City Clerk

Dated this 18 day of September, 2012.

ALLEMAN, IOWA

BY: William M. Bodnar
Mayor

ATTEST: Kathleen A. Ganson
City Clerk

Dated this 17th day of September, 2012.

ELKHART, IOWA

BY: _____

Mayor

ATTEST: _____

City Clerk

Dated this 10th day of September, 2012.

SHELDAHL, IOWA

BY:

Mayor

ATTEST:

City Clerk

Dated this 6th day of September, 2012.

POLK COUNTY SOIL AND WATER CONSERVATION DISTRICT
POLK COUNTY, IOWA

BY: Chip Marsh
Chairperson

ATTEST: Danella Schwartz
Secretary

Dated this 6th day of September, 2012.

STORY COUNTY SOIL AND WATER CONSERVATION DISTRICT
STORY COUNTY, IOWA

BY: Erwin E. Klaas
Chairperson

ATTEST: Claudia Dalbey
Secretary

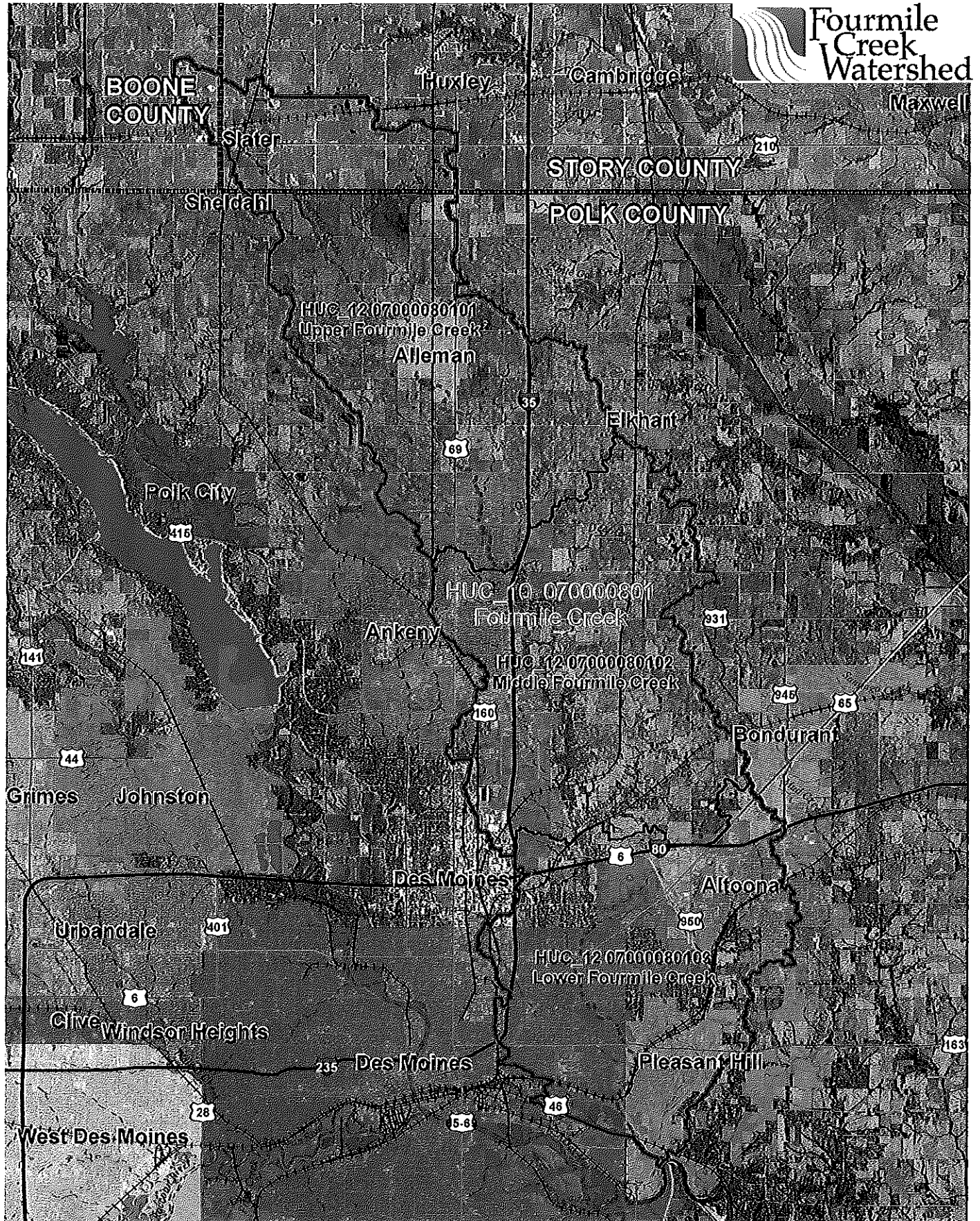
Dated this 26th day of July, 2012.

BOONE COUNTY SOIL AND WATER CONSERVATION DISTRICT
BOONE COUNTY, IOWA

BY: Kevin M. Guigg
Chairperson

ATTEST: Jayne C. Smith
Secretary

Attachment A



SNYDER & ASSOCIATES
Engineers and Planners



0 1.5 3 Miles



Fourmile Creek Watershed

RESOLUTION

Moved by Hockensmith, Seconded by Giovannetti that the following resolution be adopted:

WHEREAS, under Chapter 28E of the Code of Iowa, the Polk County Board of Supervisors 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 Fourmile Creek Watershed, the Board of Supervisors approved Resolution 1-11 dated January 11, 2011, which included approval of a Cooperative Services Agreement with the Cities of Ankeny, Des Moines, and Pleasant Hill to complete a comprehensive study of the Fourmile Creek watershed so possible flood reduction measures can be identified and implemented; and

WHEREAS, the findings of this study included a recommendation that a watershed management authority be established to enable cooperation in supporting watershed planning and improvements that are to the mutual advantage of the political subdivisions involved; and

WHEREAS, the Public Works Department has developed a 28E Agreement with the Cities of Alleman, Altoona, Ankeny, Bondurant, Des Moines, Elkhart, Pleasant Hill, Sheldahl, Slater, the Counties of Boone and Story, the Boone County Soil and Water Conservation District, the Story County Soil and Water Conservation District, and the Polk County Soil and Water Conservation District, to establish the Fourmile Creek Watershed Management Authority whose primary purpose will be to carry out watershed planning and improvements in the Fourmile Creek Watershed.

NOW, THEREFORE, BE IT RESOLVED that the Director of Public Works be authorized to process the "Joint and Cooperative Agreement" with the parties involved and complete the project as follows:

- 1) Chairperson of the Polk County Board of Supervisors 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

POLK COUNTY BOARD OF SUPERVISORS:

Angela Connolly
Chairperson

RECOMMENDED FOR APPROVAL:

Robert Rice
Robert Rice, Director
Polk County Public Works

ROLL CALL
FOR ALLOWANCE

E.J. Giovannetti	<u>Yea</u>	<u>Nay</u>
Robert Brownell	<u>Yea</u>	<u>Nay</u>
John F. Mauro	<u>Yea</u>	<u>Nay</u>
Tom Hockensmith	<u>Yea</u>	<u>Nay</u>
Angela Connolly	<u>Yea</u>	<u>Nay</u>

SEP - 4 2012

APPROVED AS TO FORM:

Rebecca Hilliard
Assistant County Attorney
Fiscal Impact: None

ALLOWED BY VOTE
OF BOARD

Angela Connolly
CHAIRPERSON

Yea 5 Nay 0
Above tabulation made by BD

#13