
AGENDA ITEM SUMMARY

Subject: 28E Agreement – City & Floyd Soil Water Conservation District

Background Summary:

Attached is the most recent draft of a 28E agreement between the City and Floyd Soil and Water Conservation District. This agreement generally lays out the parameters for our partnership with SWCD to implement the watershed improvement projects that we are funding with a portion of our Sponsored Project Dollars awarded from the WRRF Project.

SWCD will act as the point entity in terms of outreach with landowners and farmers to promote and implement water quality best management practices. Ultimately landowners will enter into an agreement with the City to install and maintain those practices for a set period of years and in return the City will reimburse the landowners once installed for the majority to all of the cost of the project.

Brad Slotter, along with Doug Johnson of Floyd County SWCD, Ann Seda with IDNR, myself and others have assisted in creating the document. We're looking to get this approved in short time frame as Doug is working with farmers already to get some projects lined up.

IDNR is generally accepting of the layout of the agreement and we are currently working on ironing out some final details. That being said we wanted to get this draft to you for initial review and consideration.

**AGREEMENT
BETWEEN THE CITY OF CHARLES CITY, IOWA
AND
THE FLOYD SOIL & WATER CONSERVATION DISTRICT
FOR
SRF WATER RESOURCE RESTORATION PROJECTS**

This Agreement is entered into the ____ day of _____, 2022, by and between the City of Charles City, Iowa, (City) and the Floyd Soil and Water Conservation District (SWCD) for the purpose of coordinating and implementing rural water quality practices as part of the Charles City Watershed Sponsored Project.

RECITALS

A. The Iowa Finance Authority (IFA) and the Iowa Department of Natural Resources (IDNR) have awarded the City funding from the State Revolving Fund (SRF) to plan and implement urban and rural water quality improvement practices in the City of Charles City and in the Charles City Watershed (the Watershed), which funding is provided as part of the Charles City Watershed Sponsored Project.

B. As a recipient of SRF funds, the City is obligated to assure and certify to the DNR and IFA that it will comply with the accomplishment, deliverables, and terms and conditions of the SRF and Charles City Watershed Sponsored Project.

C. The City desires to contract with SWCD for the purpose of identifying, facilitating, and completing water resource restoration projects within the Watershed in accordance with the terms of the Charles City Watershed Sponsored Project and this Agreement.

D. The City and the Floyd SWCD are qualified entities to enter into an agreement pursuant to Iowa Code Chapter 28E.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. IDENTITY OF THE PARTIES.

1.1 Charles City is a municipality of the State of Iowa, organized and operating pursuant to Iowa Code §364. The City's address is 105 Milwaukee Mall, Charles City, Iowa, 50616.

1.2 The Floyd Soil and Water Conservation District is established pursuant to Iowa Code §161A. The Floyd SWCD's address is 623 Beck Street, Charles City, Iowa 50616.

SECTION 2. PURPOSE.

The purpose of this Agreement is to provide for the manner in which the parties will identify, facilitate, and complete SRF-eligible water resource restoration projects (the Projects) within the Charles City Watershed (HUC 070802011002, 070802011003, and part of 070802011005) as depicted in Exhibit A. The Projects may include, but shall not be limited to, the following:

- 1.) Stormwater management practices in the Iowa Stormwater Management Manual.
- 2.) Agricultural Best Management Practices (BMPs) in the NRCS field office technical guide.

SECTION 3. 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 as set forth herein.

SECTION 4. THE FLOYD SOIL & WATER CONSERVATION DISTRICT RESPONSIBILITIES.

4.1 The Floyd Soil & Water Conservation District (SWCD) is responsible for coordinating projects within the Watershed as follows:

- 1.) Identifying water quality concerns, water quality improvement opportunity, and the most effective best management practices for water quality improvements within the Watershed.
- 2.) Identifying and coordinating Projects in accordance with the Charles City Watershed Project objectives and goals set forth in the Charles City Watershed Plan and other relevant documents.
- 3.) Assisting landowners in the Watershed with applying for SRF funding and coordinating the submission of such documentation and information from the landowners to the City as requested by the IFA and IDNR.
- 4.) Identifying any permits required for the Projects and assisting the City with obtaining any required permits.
- 5.) Coordinating the design, construction observation, approval, and completion of Projects and practices.
- 6.) Ensuring all BMPs meet or exceed Iowa DNR approved standards.
- 7.) Furnishing the necessary personnel, labor, equipment, material, and/or services and otherwise doing all things necessary for or incidental to the performance of its obligations set forth herein.

4.2 In conjunction with the Projects, the Floyd SWCD will also be assisting landowners with applying for, and determining eligibility for, state and federal cost share dollars for NRCS and IDALS funding. SRF funding is not available to replace or compete with

existing cost-share programs, and accordingly NRCS and IDALS funding must be utilized (if available) before landowners are eligible for SRF funding. The Floyd SWCD shall be responsible for coordinating SRF Project funding with funding from other programs as follows:

- 1.) The Floyd SWCD will assist landowners in the Charles City Watershed with designing and installing best management practices (BMPs) that improve water quality and decrease flooding. The Floyd SWCD shall utilize the Charles City Watershed Plan to coordinate projects in the Watershed.
- 2.) The Floyd SWCD will assist the City with facilitating the process set forth in Exhibit B for providing funding to landowners in the watershed for eligible BMPs. The cost-share rate for eligible BMPs is detailed in attachment C, Charles City Watershed Project Best Management Practices Eligible for SRF Cost-Share Funding from the City of Charles City. The Floyd SWCD shall require applicants to apply for and determine eligibility of NRCS and IDALS funding prior to applying for and receiving SRF funds for cost-share practices.
- 3.) The Floyd SWCD will utilize NRCS/IDALS Technicians to assist with providing estimated costs for practices.
- 4.) The Floyd SWCD shall review and analyze all eligible BMPs applications in the chronological order received and shall coordinate the funding of such BMPs according to the criteria set forth in Exhibit C.
- 5.) The Floyd SWCD shall review and approve all Projects prior to construction.

4.3 In conjunction with the Projects, the Floyd SWCD will develop, enter into, and record practice management and/or maintenance agreements with landowners when state cost share funds such as IFIP, REAP-P, and SF512WQI are provided to the landowner for the purpose of ensuring that the landowners comply with the requirements and conditions for receiving state financial assistance. In the event that state cost share funds such as IFIP, REAP-P, and SF512WQI are provided to the landowner in conjunction with SRF funds, then Floyd SWCD shall enter into program maintenance/performance agreements (in such form to be reviewed and approved by the City) with landowners for the purpose of ensuring that the landowners comply with the requirements for both state cost share programs and for SRF funding, and the Floyd SWCD shall be responsible for monitoring and enforcing the agreements and for notifying the City of any violations of the agreements.

In the event that no state cost share funds are provided to a landowner and only SRF funding is utilized (or is combined with federal cost share funding), the Floyd SWCD shall assist the City with obtaining from the landowner(s) Program Maintenance and Performance Agreements ("Maintenance Agreements") between the City and landowner(s) in the form attached hereto as Exhibit D. Additionally, Floyd SWCD shall (1) provide personnel to monitor participating properties in the Watershed for compliance with the Maintenance Agreements as required by the terms and conditions of the Project(s) and SRF funding, (2) provide any necessary reports required by the terms and conditions of the Project to the City, and (3) notifying the City of any violations of the Maintenance Agreements.

4.4 Floyd SWCD agrees to satisfy all aspects of this Agreement, including the Exhibits, in a timely and professional manner. Floyd SWCD shall comply with all applicable rules, regulations, terms, and conditions associated with the use of SRF funds in the Projects. Floyd SWCD shall comply with all other applicable federal, state, and local laws, rules, and regulations in performing this Agreement.

SECTION 5. CITY RESPONSIBILITIES.

5.1 Charles City is responsible for:

- 1.) Assisting with identifying opportunities for funding and in-kind support for the undertaking of water quality and water improvement projects within the watershed.
- 2.) Assisting with identifying opportunities for infrastructure development and planning capable of improving water quality in the watershed.
- 3.) Providing technical support for the administration of any projects, including technical, financial, and clerical.
- 4.) Entering into and enforcing Program Maintenance and Performance Agreements with landowners when only SRF funding is utilized or when SRF funding is combined with federal cost share funding.

5.2 During the duration of this Agreement, the City shall be responsible for reimbursing and paying landowners (as further described in Exhibit C) following the completion of SRF-eligible water improvement Projects within the Watershed and following approval of such projects by the IFA and IDNR. The City shall have no obligation to reimburse or pay costs or expenses incurred by landowners if a project or portion thereof is deemed to be ineligible for SRF funding.

5.3 In no event shall the compensation to be provided under this Agreement exceed \$500,000.00. The source of funds for this Agreement is SRF Sponsored Project # WRR18-002 between the City and IFA and IDNR. Such fund shall only be used in the completion of SRF eligible sponsored projects. If a reduction or elimination of funds occurs, the City may unilaterally terminate all or part of this Agreement or reduce the scope of work and/or number of projects in its sole discretion.

SECTION 6. ENTIRE AGREEMENT.

6.1 This Agreement contains the entire agreement and integrates all of the terms and conditions contained in and incidental to such agreement and supersedes all prior negotiations and communications concerning this Agreement, oral or written, between the parties, their agents, employees and representatives. No modifications or waiver of any provision in this Agreement are valid unless in writing and signed by all of the parties. If for any reason, any provision of this Agreement are inoperative, the validity and effect of all other provisions will not be affected thereby.

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

6.3 The Agreement shall be binding upon and inure to the benefit of the parties and their representative successors and assigns. The parties agree that neither City nor the Adair SWCD shall have the right to assign their rights and obligations hereunder to any party without prior consent of the other party, which consent shall not be unreasonably withheld.

SECTION 7. GOVERNING LAW.

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

SECTION 8. AMENDMENTS.

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and electronically filed with the Secretary of State as required by Iowa Code section 28E.8 (2021).

SECTION 9. DURATION AND TERMINATION.

This Agreement shall be in effect from the date of approval and execution of the Agreement by the parties through the conclusion of all Maintenance Agreements with landowner(s) unless renewed or unless terminated pursuant to the provisions of this Agreement.

9.1 Either party may terminate this agreement for a violation of express provisions of this Agreement or for cause. In such case, the aggrieved party shall give the responsible party written notice of such violation or failure. The responsible will be given the opportunity to correct the violation or failure within fifteen (15) business days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

9.2 The City and Floyd SWCD may terminate this Agreement by written, mutual consent of both parties.

9.3 In the event SRF funding is eliminated or is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to termination of this Agreement, the City and/or Floyd SWCD may terminate this Agreement, subject to renegotiation under those new funding limitations and conditions.

SECTION 10. DISPUTE RESOLUTION.

Any dispute between the parties arising out of or within the scope of the interpretation, construction, or application of this Agreement must, prior to the commencement of any formal legal proceedings, be submitted to arbitration. Either party must submit to the

other a written request for arbitration. Within ten days after the date of such request, City and the Floyd SWCD must each select one arbitrator and notify the other party of the name and address of such arbitrator. The arbitrators so selected must within ten days after being notified of their selection, select a third arbitrator and after doing so, must notify City and the Floyd SWCD in writing forthwith of the name and address of the third arbitrator. The arbitration proceedings will be governed by Iowa Code §679A.

SECTION 11. ADMINISTRATION

This Agreement shall be administered by the City. All administrative decisions concerning this Agreement shall be undertaken pursuant to the terms outlined.

SECTION 12. NO PROPERTY OR SEPARATE ENTITY.

No real or personal property will be used or acquired under the terms of this Agreement. This Agreement does not create a separate legal entity. There will be no funds expended or budget established in conjunction with the privileges granted herein. The parties will not acquire any property pursuant under this Agreement, and the parties will not establish a joint board for the administration of the enterprise.

SECTION 13. 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 City

City of Charles City, Iowa
105 Milwaukee Mall
Charles City, Iowa 50616

To the SWCD

Floyd SWCD
623 Beck Street
Charles City, Iowa 50616

SECTION 14. HOLD HARMLESS

To the extent allowable by the Iowa Tort Claims Act Chapter 669 and other applicable law, each party (the "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other party (the "Indemnified Party"), its officials, agents, and employees, while acting within the scope of their duties from and against all third party claims, demands, and causes of action of any kind or character, arising out of: (1) the Indemnifying Party's breach of its obligations under this Agreement; (2) bodily or personal injuries, death, or damage to property arising out of services performed, or omissions of services or; (3) in any way resulting from the acts or omission of the Indemnifying Party and/or its agents, employees, subcontractors or its representatives under this Agreement, all to the extent of the Floyd SWCD's negligence or the City's negligence.

SECTION 15. FILING

It is agreed that the City will electronically file this Agreement with the Secretary of State as required by Iowa Code section 28E.8(1)(a).

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.

CITY OF CHARLES CITY, IOWA

**FLOYD SOIL & WATER
CONSERVATION DISTRICT**

By: _____
Dean Andrews, Mayor

By: _____
Kenneth Pecinovsky,
Commissioner Chairman

By: _____
Trudy O'Donnell, City Clerk

Exhibit A
(to be attached)

Exhibit B

Charles City SRF Cost Share Application Process

1. Site suitability for a planned practice will be determined by USDA-NRCS. An estimate of the construction cost for a project determined to be suitable will be completed by the USDA-NRCS and the landowner will be provided with said cost estimate.
2. Eligible applicants will apply for USDA-NRCS and/or IDALS and/or City of Charles City SRF financial assistance at the Floyd Soil and Water Conservation District (FSWCD) office in Charles City.
3. The FSWCD will approve applications for IDALS financial assistance and inform the applicant of said approval. The USDA-NRCS will approve applications for USDA-NRCS financial assistance and inform the applicant of said approval. The FSWCD will submit to the City of Charles City landowner applications that potentially qualify for City of Charles City SRF financial assistance. When USDA-NRCS and/or IDALS-SF512WQI financial assistance has been approved for the project, the amount of financial assistance requested from the City of Charles City will be the total estimated project cost minus any approved USDA-NRCS and/or IDALS-SF512WQI financial assistance. When IDALS-IFIP or IDALS-REAP financial assistance has been approved for the project, the amount of financial assistance requested from the City of Charles City will be no more than 75% of the total estimated project cost minus any approved USDA-NRCS and/or IDALS-IFIP and/or IDALS-REAP financial assistance.
4. The City of Charles City will review applications for City of Charles City SRF financial assistance with the IFA and/or IDNR and will inform applications of approval or denial of SRF funding.
5. The USDA-NRCS or a private consultant will design the practice (including a management plan and a maintenance plan for the practice). The USDA-NRCS or the private consultant will provide copies of the practice design and a post-design cost estimate to the applicant, the FSWCD, and the City of Charles City. Practice designs must be approved by the FSWCD. If the landowner chooses to utilize the services of a private consultant for practice design, construction inspection, and project completion certification, then the landowner will be responsible for contracting said services with the consulting firm of his/her choosing.
6. The FSWCD will revise the amount of IDALS funding approved, as needed, based on the post-design cost estimate for the project. The FSWCD will notify the City of Charles City of any needed revision of the Charles City SRF financial assistance previously approved by the City of Charles City. The City of Charles City will revise

the amount of Charles City SRF funding approved, as needed, based on the post-design cost estimate for the project.

7. The applicant hires a contractor to install the planned practice or installs the practice himself/herself.
8. The FSWCD approves practices completed to design specifications and notifies the applicant and the City of Charles City.

Or

A private consultant hired by the landowner certifies completed privately designed practices and notifies the FSWCD and the landowner. The FSWCD approves all private certifications of completed practices.

9. The applicant pays the contractor and the private engineering firm (if applicable) for services completed to approved design standards.
10. The applicant submits bills to the FSWCD and the USDA-NRCS for reimbursement of eligible expenses.
11. The USDA-NRCS approves payment for project expenses eligible for USDA cost-share funding and notifies the applicant, the FSWCD, and the City of Charles City of payment approval.
12. The FSWCD approves payment for project expenses eligible for IDALS-DSC cost-share funding and notifies the applicant and the City of Charles City of payment approval.
13. The City of Charles City approves payment for project expenses eligible for Charles City SRF funding and pays the applicant.
14. The landowner signs a maintenance/performance agreement with the FSWCD and/or the City of Charles City for the lifespan of the practice.

Applications for financial assistance, application approvals, modifications to approved applications, completed practice certifications, payment approvals, and maintenance agreements will be documented on forms to be developed jointly by the City of Charles City and the FSWCD specifically for the Charles City watershed SRF financial assistance program.

Charles City SRF/Floyd SWCD Cost Share Process

- _____ Applicant completes and signs both a W-9 and Applying for Assistance – SRF Program Cost Share Application and as necessary a State Cost-share Application (Entities need to provide documentation as to who can bind the entity.)
- _____ Aerial photo is attached to identify location.
- _____ Field visit is conducted by IDALS Technicians and or NRCS Technicians

- _____ Preliminary design & cost estimate are determined by technician.
- _____ The Floyd SWCD Board reviews application and ranks application at monthly Meeting.
- _____ Assistance Request Letter Pending Board Approval is sent to applicant for signature.
- _____ Application is presented for Board approval.
- _____ If project is funded an approval letter is sent to the applicant.
- _____ Final Design is given to applicant for completion of the project.
- _____ Applicant hires contractor and work is completed according to design.

Bills are submitted –

Copies of bills for project approved by the Board must contain:

- Business name and address
- Cost share recipient's name and address
- Detailed information regarding:
 - Date service performed
 - Items being billed for
 - Item units
 - Price per unit
 - Total price per item
 - Total of all expenses

Incomplete bills will be returned to the cost share recipient to secure necessary bill prior to cost share payment being authorized.

- _____ Project is reviewed to insure it meets design requirements and certified by a technician.
- _____ After review is documented, Certification Page is signed by applicant.
- _____ Maintenance /Performance Agreement is signed by applicant and recorded by the Floyd SWCD at the county Recorder's Office.
- _____ The Floyd SWCD notifies the City of Charles City when the project is certified and approved.
- _____ Cost share warrant is prepared and mailed to applicant by the City of Charles City.

- _____ If the applicant performs any of the work themselves, Form IP5 "Materials, Equipment, and Labor Provided by the Applicant" will need to be completed.

Exhibit C

Charles City Watershed Project Best Management Practices Eligible for SRF Cost-Share Funding from The City of Charles City (Listed in order of ranking priority)

When only SRF funds are used or when SRF funds are used in combination with USDA-NRCS and/or IDALS-SF512WQI financial incentives the landowner or operator will be reimbursed for 100% of the lesser of the actual or estimated cost of the project.

When SRF and/or USDA-NRCS funds are used in combination with either IDALS-IFIP or IDALS-REAP financial incentives the landowner or operator will be reimbursed for 75% of the lesser of the actual or estimated cost of the project.

Conservation practices must be in the Charles City Watershed to be eligible for Charles City watershed project SRF funds.

All practices must be completed by **9/30/2024** unless otherwise agreed upon by the parties.

Ag Land Practices: (All eligible for EQIP funds.)

Saturated Buffer (604) (Also eligible for IDALS-SF512WQI funds.)

Eligible construction expenses not covered by approved USDA or IDALS financial incentives.

Denitrifying Bioreactor (605) (Also eligible for IDALS-SF512WQI funds.)

Eligible construction expenses not covered by approved USDA or IDALS financial incentives.

Wetland Restoration (657) (Also eligible for IDALS-SF512WQI and IDALS-REAP funds.)

Eligible construction expenses not covered by approved USDA or IDALS financial incentives.

Wetland Enhancement (659) (Also eligible for IDALS-SF512WQI funds.)

Eligible construction expenses not covered by approved USDA or IDALS financial incentives.

Wetland Creation (658) (Also eligible for IDALS-SF512WQI and IDALS-REAP funds.)

Eligible construction expenses not covered by approved USDA or IDALS financial incentives.

Conservation Cover (327) Filter strips, Riparian Forest Buffers, and Prairie Strips only.

(Also eligible for IDALS-REAP funds.)

Eligible installation expenses not covered by approved USDA or IDALS financial incentives.

Filter strips and riparian forest buffers will have a minimum width of 60'.

Prairie strips will have a minimum width of 30'.

Blind Inlet (Underground Outlet-NRCS practice code 620)

Eligible installation expenses not covered by approved USDA or IDALS financial incentives.

Drainage Water Management (554)

Eligible installation expenses not covered by approved USDA or IDALS financial incentives.

Urban Practices: (All eligible for IDALS-REAP funds.)

REAP-P + other public funds limited to 75% cost-share.

Permeable Paving Systems

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Rain Gardens

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Rainwater Harvesting

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Bioretention Cells

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Stormwater Wetlands

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Bioswales

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Native Turf

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Soil Quality Restoration

Eligible installation expenses not covered by approved IDALS-REAP financial incentives.

Exhibit D
(Program Maintenance and Performance Agreement – to be drafted by City)