

**Appendix B: Mud, Camp, and Spring Creek Watershed Management
Authority Chapter 28E Agreement**



Matt Schultz
Secretary of State
State of Iowa

28E Agreement

FOR OFFICE USE ONLY:

FILED

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2/18/2014 1:36:01 PM

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	Jasper County	County	Jasper
Party 3	Marion County	County	Marion
Party 4	Altoona	City	Polk
Party 5	Bondurant	City	Polk

**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)*
 MUD CREEK, SPRING CREEK & CAMP CREEK WATERSHED
 MANAGEMENT AUTHORITY 28E AGREEMENT

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 Bailey FIRST Name Kurt
 Title Engineer Department Engineer
 Email _____ Phone 515-286-3705



Doc ID: 028291610021 Type: GEN
 Kind: 28E AGREEMENT
 Recorded: 02/11/2014 at 03:19:59 PM
 Fee Amt: \$0.00 Page 1 of 21
 Revenue Tax: \$0.00
 Polk County Iowa
 JULIE M. HAGGERTY RECORDER
 File# 2014-00061897

BK **15103** PG **278-298**

Preparer

Information: **Kurt Bailey, Public Wks, 5885 NE 14th, DSM 50313, 286-3705**

Individual Name	Address	City	Phone
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Address Tax

Name	Address	City	Zip
	N/A		

Return to:

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

Description:

**Mud Creek, Spring Creek & Camp Creek
 Watershed Management Authority Agreement**

COPY

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

Mud Creek, Camp Creek, & Spring Creek Watershed Management Authority Agreement Between Polk County, Jasper County, Marion County, City of Altoona, City of Bondurant, City of Mitchellville, City of Pleasant Hill, City of Runnells, Polk Soil and Water Conservation, Jasper Soil and Water Conservation District, and Marion 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 11th day of February, 2014 by and between Polk County, Iowa; Jasper County, Iowa; Marion County, Iowa; the City of Altoona Iowa; the City of Bondurant, Iowa; the City of Mitchellville, Iowa; the City of Pleasant Hill, Iowa; the City of Runnells, Iowa; the Polk Soil and Water Conservation District; the Jasper Soil and Water Conservation District; and the Marion Soil and Water Conservation District. All entities shall be referred to hereinafter as the Parties.

WHEREAS, Iowa Code chapter 466B 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 Iowa Code chapter 28E to establish a watershed management authority in order to enable cooperation in supporting watershed planning and improvements for the mutual advantage of the political subdivisions involved; and

WHEREAS, pursuant to Iowa Code 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 Mud Creek, Camp Creek & Spring Creek Watershed Management Authority (hereinafter referred to as the "Authority"), a watershed management authority encompassing all of the Mud Creek, Camp Creek, & Spring Creek watershed which falls within the same 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 Iowa Code chapter 28E for purposes of establishing the Authority to carry out watershed planning and improvements in the Mud Creek, Camp Creek, & Spring 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, Jasper, and Marion are each a municipality of the State of Iowa, organized and operating pursuant to Iowa Code chapter 331. Their respective addresses are:

Polk County
111 Court Avenue
Des Moines, Iowa 50309

Jasper County
101 1st Street North
Newton, Iowa 50208

Marion County
214 E. Main
Knoxville, Iowa 50138

- 1.2 The Cities of Altoona, Bondurant, Mitchellville, Pleasant Hill, and Runnells are each a municipality of the State of Iowa, organized and operating pursuant to Iowa Code chapters 364 and 372. Their respective addresses are:

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

City of Bondurant
200 Second St, NE
Bondurant, Iowa 50035

City of Mitchellville
204 Center Avenue North
Mitchellville, Iowa 50169

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

City of Runnells
110 Brown Street
Runnells, Iowa 50237

- 1.3 The Polk, Jasper and Marion Soil and Water Conservation Districts are each a governmental division of the State of Iowa as provided in Iowa Code section 161A.3(6) and a soil and water conservation district established pursuant to Iowa Code section 161A.5(1). Their respective addresses are:

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

Jasper SWCD
409 1st Avenue, West
Newton, Iowa 50208

Marion SWCD
1445 Lake Drive, Ste. 1
Knoxville, Iowa 50138

SECTION 2. MUD CREEK, CAMP CREEK, & SPRING CREEK WATERSHED BOUNDARY.

The area within this Agreement shall be known as the Mud Creek, Camp Creek & Spring Creek Watershed Boundary (hereafter the "Boundary"). The Boundary is shown in Attachment A hereto, which is hereby incorporated herein.

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 Mud Creek, Camp Creek & Spring Creek watershed, including but not limited to the following activities authorized pursuant to Iowa Code 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 that 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 Mud Creek, Camp Creek, & Spring 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 Iowa Open Meetings Law (Iowa Code chapter 21), the Iowa Open Records Law (Iowa Code chapter 22) and the gender balance requirements of 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 or unless terminated pursuant to the provisions of section 12 of this Agreement.

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 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 Mud Creek, Camp Creek & Spring 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 or 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 such other funds as are 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 as the fiscal agent of the Authority 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 by a court of law to be invalid, 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 by 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 (2013).
- 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 requests 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 Amendments shall take effect ten (10) days following receipt by the other Parties of the last resolution confirming the affirmative vote of a Party's governing body. Amendments shall be filed in an electronic format with the Iowa Secretary of State as required by Iowa Code section 28E.8 (2013), and section 15 of this Agreement.

SECTION 11. ADDITIONAL PARTIES.

- 11.1 A City, County, or Soil and Water Conservation District within the Mud Creek, Camp Creek & Spring Creek Watershed which is not a Party to this Agreement may request to become a Party by submitting a written request to the Parties to this Agreement,.
- 11.2 A request to become a Party to this Agreement shall be considered a request to amend this Agreement 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 its participation in this Agreement by providing the Authority 90 days written notice of intent to terminate its participation in this Agreement.

SECTION 13. EFFECTIVE DATE.

This Agreement shall take effect upon execution by the Parties and filing with the Iowa Secretary of State in accordance with the requirements of Iowa Code section 28E.8 (2013).

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, Jasper County Board of Supervisors
 Jasper County Administration
 101 1st Street, North
 Newton, Iowa 50208

- County: Chairperson, Marion County Board of Supervisors
 Marion County Administration
 214 E. Main
 Knoxville, Iowa 50138

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

Mitchellville: Mayor, City of Mitchellville
204 Center Avenue North
Mitchellville, Iowa 50169

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

Runnells: Mayor, City of Runnells
110 Brown Street
Runnells, Iowa 50237

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

Jasper Soil and Water Conservation District:
Chairperson, Jasper County SWCD
709 1st Avenue West
Newton, Iowa 50208

Marion Soil and Water Conservation District:
Chairperson, Marion SWCD
1445 Lake Drive, Ste. 1
Knoxville, Iowa 50138

SECTION 15. RECORDATION.

This Agreement shall be filed in an electronic format with the Iowa Secretary of State in accordance with the requirements of Iowa Code section 28E.8 (2013).

SECTION 16. ENTIRE AGREEMENT.

This Agreement and the attachments hereto constitute the entire Agreement among the Parties and supersede or replace 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 12TH day of NOVEMBER, 2013.

POLK COUNTY, IOWA

BY: Tom Hockens
Board of Supervisors Chair

ATTEST: Jani Foyell
County Auditor

Dated this 4th day of November, 2013.

ALTOONA, IOWA

BY: *Jim Skip Calkins*
Mayor

ATTEST: *David Soren*
City Clerk

Dated this 6th day of November, 2013.

BONDURANT, IOWA

BY: _____

Mayor

ATTEST: _____

City Clerk

Dated this 2ND day of DECEMBER, 2013.

MITCHELLVILLE, IOWA

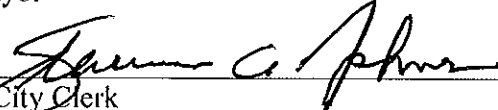
BY: Bill Ruben
Mayor

ATTEST: Full Nelson
City Clerk

Dated this 26 day of November, 2013.

PLEASANT HILL, IOWA

BY: 
Mayor

ATTEST: 
City Clerk

Dated this 14 day of January, 2014.

RUNNELLS, IOWA

BY: Don Dato
Mayor

ATTEST: Stephanie Herbold
City Clerk

Dated this 19th day of November, 2013.

POLK SOIL AND WATER CONSERVATION DISTRICT
POLK COUNTY, IOWA

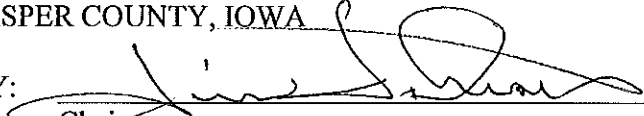
BY: Chip Mathis
Chairperson

ATTEST: Janet Schmitt
Secretary

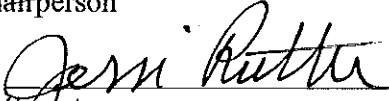
Dated this 19 day of November, 2013.

JASPER COUNTY SOIL AND WATER CONSERVATION DISTRICT
JASPER COUNTY, IOWA

BY:


Chairperson

ATTEST:


Secretary

Dated this 30th day of January, 2014.

MARION SOIL AND WATER CONSERVATION DISTRICT
MARION COUNTY, IOWA

BY: Jack Bensink
Chairperson

ATTEST: Eunthia Davis
Secretary

RESOLUTION

Moved by Van Dora, Seconded by Brownell 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 Mud Creek/Spring Creek/Camp Creek Watersheds, it is recommended that a watershed management authority be established as per Section 466B of the Code of Iowa to enable cooperation to support 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 Altoona, Bondurant, Mitchellville, Pleasant Hill, Runnells, the Counties of Jasper and Marion, the Polk County Soil and Water Conservation District, the Jasper County Soil and Water Conservation District, and the Marion County Soil and Water Conservation District, to establish the Mud Creek, Spring Creek & Camp Creek Watershed Management Authority whose primary purpose will be to carry out watershed planning and improvements in these three watersheds.

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:

Tom Hockensmith

Chairperson

RECOMMENDED FOR APPROVAL:

Robert Rice

Robert Rice, Director
Polk County Public Works

APPROVED AS TO FORM:

David Hilburn Tom

Assistant County Attorney

ROLL CALL
FOR ALLOWANCE

Steve Van Oort	Yea	Nay
Robert Brownell	Yea	Nay
Angela Connolly	Yea	Nay
John F. Mauro	Yea	Nay
Tom Hockensmith	Yea	Nay

NOV 12 2013

ALLOWED BY VOTE
OF BOARD
CHAIRPERSON

Yea	<u>5</u>	Nay	<u>0</u>
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Vote tabulation made by ed

Fiscal Impact: None

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