

Resolution 23-66

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

Return to: Matt McDonald, Iowa Department of Agriculture & Land Stewardship  
Henry A. Wallace Bldg., 502 E. 9<sup>th</sup> 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; JASPER COUNTY IOWA; AND  
JASPER COUNTY SOIL AND WATER CONSERVATION DISTRICT  
FOR THE SOUTH SKUNK RIVER 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 9<sup>th</sup> Street, Des Moines, Iowa 50319; Jasper County, Iowa, (hereinafter “COUNTY”) located at 101 1<sup>st</sup> Street North, Newton, IA 50208; and Jasper County Soil and Water Conservation District (hereinafter “JASPER SWCD”) located at 808 Iowa Speedway Drive, Newton, IA 50208, 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, COUNTY, and the JASPER SWCD for the purpose of providing the terms under which the Parties agree to fund and manage the South Skunk River 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 COUNTY 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 JASPER 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 July 1, 2023, and be in effect until June 30, 2028, 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 COUNTY 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 JASPER SWCD to ensure the JASPER SWCD secures proper maintenance agreements with participating landowners for the installed practices.
- D. Send COUNTY reimbursement payments to Jasper County Iowa, 101 1<sup>st</sup> Street North, Newton, IA 50208

## **VII. COUNTY RESPONSIBILITIES**

The COUNTY 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 JASPER 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. JASPER SWCD RESPONSIBILITIES**

The JASPER 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 JASPER SWCD and landowner(s) shall be done for each practice site within the JASPER 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 COUNTY and DIVISION will follow the following procedures to determine the actual state cost share amount for the completion of the project.

- A. The COUNTY 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 COUNTY and DIVISION will proceed with the understanding that the costs of construction for the PROJECT will be reimbursed by the DIVISION up to 100% of the total eligible costs.
- C. The COUNTY 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 COUNTY 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 COUNTY for the construction of the edge of field practices. The DIVISION will provide funding to the COUNTY in an amount as agreed to of the approved eligible construction costs. Should a dispute arise between the COUNTY and the DIVISION relative to the DIVISION approved eligible construction cost amounts this dispute must be resolved between the COUNTY 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 COUNTY 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 COUNTY 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 COUNTY based on the agreed to revised eligible construction or engineering costs. Should the DIVISION not agree to the revised eligible costs submitted by the COUNTY, this dispute must be resolved between the COUNTY 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 COUNTY

Jasper County Iowa

101 1<sup>st</sup> Street North

Newton, IA 50208

To the JASPER SWCD

Jasper County Soil and Water Conservation District

808 Iowa Speedway Drive

Newton, IA 50208

To the DIVISION

Division of Soil Conservation & Water

Quality - IDALS

502 E. 9th Street

Wallace State Office Building

Des Moines, IA 50319-0050

**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 Jasper County District Court for the State of Iowa, Newton, 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: \_\_\_\_\_

Grant Menke, Deputy Secretary of Agriculture  
Iowa Department of Agriculture & Land Stewardship

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Grant Menke, Deputy Secretary of the Iowa Department of Agriculture & Land Stewardship.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

JASPER COUNTY, IOWA

IN WITNESS THEREOF, JASPER COUNTY, IOWA has caused this 28E Agreement to be executed on the 18<sup>th</sup> day of July, 2023.

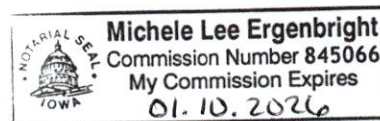
By: [Signature]  
Chairperson, Board of Supervisors

Attest: [Signature]  
Jasper County Auditor

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF JASPER)

On this 18<sup>th</sup> day of July, 2023, before me, a Notary Public in and for said County, personally appeared Brandon Talsma and Jenna Jennings 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 Jasper County, 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 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. 23-66 adopted on July 25, 2023, and said Chairperson and Auditor acknowledged said instrument to be the free act and deed of said County by it voluntarily executed.

[Signature]  
Notary Public in and for the State of Iowa





**JASPER COUNTY IOWA SOIL AND WATER CONSERVATION DISTRICT**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Chair, Jasper County Soil and Water Conservation District

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, Chair of the Jasper County Iowa Soil and Water Conservation District

\_\_\_\_\_  
Notary Public in and for the State of Iowa