

**IOWA CODE CHAPTER 28E AGREEMENT REGARDING THE ALLOCATION  
OF LOCAL OPTION SALES AND SERVICES TAX RECEIPTS FOR THE  
CONSTRUCTION OF THE CLARKE COUNTY RESERVOIR PROJECT**

**By and Between**

**City of Murray, Iowa,  
Clarke County Reservoir Commission,**

**and**

**Clarke County, Iowa**

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**IOWA CODE CHAPTER 28E AGREEMENT REGARDING THE ALLOCATION  
OF LOCAL OPTION SALES AND SERVICES TAX RECEIPTS FOR THE  
CONSTRUCTION OF THE CLARKE COUNTY RESERVOIR PROJECT**

This Iowa Code Chapter 28E Agreement Regarding Allocation of Local Option Sales and Services Tax Receipts for the Construction of the Clarke County Reservoir Project, effective July 1, 2010, (the "Agreement"), is made by and between the City of Murray, Iowa, (the "City") and the Clarke County Reservoir Commission, (collectively, the "Participants") and Clarke County, Iowa, (the "County"), all organized and existing under the laws of the State of Iowa. The Participants and the County shall be collectively referred to as the "Parties."

WHEREAS, the Parties have determined that there is a need to formulate a workable program for utilizing their respective resources and other appropriate private and public resources to fund, under one or more agreements for voter approved purposes, while any project debt is outstanding, of the Clarke County Reservoir Project (the "Project"); and

WHEREAS, the Parties have determined that they should jointly exercise their powers under Chapters 28E and 423B of the Code of Iowa, 2010, as amended (the "Code") to take certain actions that the Parties deem necessary or appropriate to achieve their goals and objectives as they pertain to the Project, the Project being in the best interests of the residents of the City and the County; and

WHEREAS, the Clarke County Reservoir Commission (the "Commission") has determined, pursuant to Iowa Code Section 6A.22, as amended, that the current and future demands for drinking water for the service area of the member units of local government represented by the Clarke County Reservoir Commission exceed the capacity of the existing West Lake to meet those demands and that a new source of drinking water must be found with a capacity to produce enough water for future needs; and

WHEREAS, the Commission will determine, pursuant to Iowa Code Section 6A.22, as amended, whether the creation of a lake with a capacity to provide enough water for future needs is reasonable and necessary for a source of drinking water to meet the current and future demands of the member units of local government represented on the Clarke County Reservoir Commission; and

WHEREAS, the Commission will hold a public hearing, pursuant to Iowa Code Section 6B.2A, as amended, to determine whether to authorize the commencement of a project to construct a reservoir on the Squaw Creek Watershed located Northwest of Osceola, Iowa; and

WHEREAS, subject to the determination that the creation of a lake is reasonable and necessary as a source of drinking water and upon authorization to construct such a lake in the Squaw Creek Watershed, the Commission will proceed with the reservoir project; and

WHEREAS, the voters of the City of Murray, Iowa, on November 3, 2009, approved a public measure titled, "Local Option Sales and Service Tax Referendum," which provided that the specific purposes for which the revenues shall be expended are:

To fund, under one or more agreements, the acquisition of land, planning, design, construction and equipping, while any project debt is outstanding, for the Clarke County Reservoir Project.

WHEREAS, the Commission will expend some local option revenues for the Project, and it is anticipated that the County will issue one or more series of Local Option Sales and Services Tax Bonds or Notes (the "Bonds") pursuant to the provisions of Section 423B.9 of the Code to finance the Project;

WHEREAS, the City of Murray wishes to convey the local option revenues to the Commission for the Project, and to the extent the County issues the Bonds, to irrevocably pledge to, and confer "Secondary Recipient" status upon the County with respect to a portion of the local option sales and services tax receipts to be received by the City that is sufficient to ensure repayment of the Bonds.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

1. AUTHORITY. This Agreement is entered into pursuant to the provisions of Chapter 28E and Section 423B.9 of the Code.

2. DURATION. This Agreement becomes effective when approved by the governing body of each Party, and the Agreement is filed, in an electronic format, with the Secretary of State of Iowa and shall remain in effect until terminated hereunder, however, it shall not in any event expire until all of the Bonds, and any bonds or notes issued to refund the Bonds, are paid in full, and the City has met its obligation to contribute all local option sales and services tax collected by the City to the Commission and, in turn, to the County as "Secondary Recipient" under this Agreement. By mutual agreement approved by the governing body of each of the Parties, the Parties may amend the duration to a shorter period so long as no Bonds issued by the County in anticipation of the local option sales and services tax collected by the City are outstanding. This agreement can be terminated by any of the parties upon completion of the referendum approved by the voters, provided all outstanding bonds and debts have been fully satisfied.

← Pay until  
no Bonds  
are outstanding

3. ADMINISTRATION. The Parties hereby agree that the Commission shall be designated as the administrator for purposes of this Agreement as provided by Section 28E.6 of the Code. All other management and operation of the Project shall be administered under a separate 28E Agreement providing for the creation and operation of the Clarke County Reservoir Commission.

4. PURPOSES.

- (a) Pursuant to Chapter 28E of the Code, the Parties do hereby agree that the purpose of this Agreement is to jointly exercise their respective powers to fund voter approved purposes for the Project, while any project debt is outstanding.
- (b) The City of Murray hereby agrees that the Project shall be jointly financed in part by the local option sales and services tax collected by the City as provided herein.
- (c) Pursuant to Section 423B.9(5) of the Code, the City of Murray agrees to irrevocably pledge, pursuant to Sections 6 and 11 of this Agreement, the local option sales and services tax collected by the City to the payment of the Bonds.

5. INITIAL FINANCING OF PROJECT. The Commission shall initially handle all aspects of the Project with funds received under this Agreement. If the Parties hereto agree by written supplement hereto, the County shall issue its Local Option Sales and Services Tax Bonds or Notes (the "Bonds") pursuant to the provisions of Section 423B.9 of the Code to finance a portion of the Project.

6. IRREVOCABLE PLEDGE. All local option sales and services tax collected by the City after July 1, 2010, shall be paid to the Commission for use as required by voter approval, until an addendum to this Agreement has been executed by the Parties providing for issuance of the Bonds by the County.

If a supplement to this Agreement is executed providing for the issuance of the Bonds by the County, the City of Murray hereby designates Clarke County as the "Secondary Recipient" of the local option sales and services tax collected by the City in an amount sufficient to meet all requirements of any resolutions authorizing issuance of the Bonds, or any bond or note refunding the Bonds, (the "Pledged Portion"). Said Pledged Portion is irrevocably pledged to retire the Bonds. All local option sales and services tax received by the City in excess of the Pledged Portion shall be retained by the Commission for use as required by voter approval. The County shall use all local option sales and services tax received under this Agreement, including any interest earned thereon, for the purpose of issuing and repaying the Bonds.

The proceeds from all Bonds issued pursuant to this Agreement shall be used only for voter approved purposes, and separate accounts shall be established and maintained to assure compliance therewith.

7. USE OF BOND PROCEEDS. Before letting any contracts for construction of the Project, the Commission shall provide the Parties with the plans, specifications, form of contracts and estimated cost for the entire Project. To the extent not included in the plans and specifications, the Commission shall also provide a Project timetable at the same time. The Parties shall agree upon a financing schedule at that time, which schedule shall include the date or dates by which the Bonds shall be issued and the timing and amount for transfer of Bond proceeds to the Commission under this Agreement. Proof of expenditure of Bond proceeds shall be provided to the County in the form of invoices and proof of payment. All Bond proceeds expenditures shall be in strict compliance with the financing schedule.

8. BUDGET/ORGANIZATIONAL ENTITY. No separate legal or administrative entity is created by this Agreement and no joint budget shall be adopted for purposes of this Agreement. Each of the Parties shall pay its own costs.

9. TERMINATION. This Agreement terminates upon its expiration as described in paragraph 2 of this Agreement. This Agreement shall not be terminated by agreement of the Parties when there are any outstanding Bonds or bonds or notes refunding the Bonds unless sufficient Tax Revenues to pay the principal, interest and premium, if any, at and prior to maturity of all Bonds, have been properly set aside and pledged for that purpose.

No partial termination of this Agreement shall be permitted.

10. DISPOSITION OF PROPERTY. No property will be acquired under this Agreement. However, this does not otherwise affect the acquisition of property by the Commission.

11. PAYMENT OF REVENUE.

- (a) The City agrees that it shall remit to the Commission within thirty (30) days after receipt of the funds from the State of Iowa, all local option sales and services tax received by said City in a given year. In all events, said payments will continue with respect to the Commission until all local option sales and services tax received by said City sufficient to meet all requirements of the resolutions authorizing any Bonds, or bonds or notes refunding said Bonds, are met. Provided, however, any delay in such payment shall be excused to the extent caused by a natural disaster (act of God) or technological impossibility.
- (b) The City acknowledges that if the City does not remit the tax revenues by the stated date under this Agreement in one or more of the years outlined above, the City agrees that interest on the unpaid amount shall accrue at

Has this  
been done?  
←

the rate of one percentage point above the prime interest rate, as established by the Federal Reserve, and then in effect, until paid, and that all such shortfalls shall become due and payable on the final maturity date of the Bonds.

- (c) If the City does not remit said funds as agreed hereto within the required time periods, said parties will have thirty (30) days to remedy the default. If the City does not pay its unpaid portion of the local option sales and services tax collected by the City within the required period to remedy the default, the City agrees to confess judgment, to the party entitled to receive said funds, for the defaulted amount in a court proceeding in Clarke County and will issue a judgment bond to pay said judgment. The Commission confesses judgment only if holding funds received from the City.
- (d) In the event that the Commission has funds available to prepay or defease the Bonds during the term of this Agreement, the City will continue to pay the Pledged Portion throughout the original term of this Agreement, except any interest savings caused by the refunding shall be credited against the amount owed.
- (e) All funds received from the Commission by the County shall be deposited in a separate interest bearing account and held for the purposes of this Agreement. Interest earned thereon shall be applied to the repayment of the bonds. The County will provide quarterly reports to the Commission and the City for all receipts and disbursements for this account. Any funds not used for the repayment of the bonds shall be retained by the Commission.

12. DECLARATION OF DEFAULT NOTICE. In the event that any party determines that another party has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing to all Parties, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said 30-day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided in Section 13 hereof.

13. REMEDIES UPON DEFAULT. In the event of default by the City in its obligation to remit the local option sales and services tax collected by the City to the Commission, or a default by any of the Parties in the performance of any material provision of this Agreement, the other party may, at its option, after declaring default and giving notice thereof, seek specific performance.

In order to obtain specific performance, the party seeking such relief shall, after expiration of the 30-day period following receipt of notice of default, commence a cause of action for such relief in the Iowa District Court in and for Clarke County.

If specific performance cannot be obtained, or will not adequately compensate the aggrieved party in connection with an event of default, the aggrieved party may seek such other remedy or cumulative remedies as may be available under existing law, or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default shall be construed as a waiver thereof, and any such right or power may be exercised from time to time as may be deemed expedient.

14. **CHANGE OF USE.** For the duration of this Agreement, the local option sales and services tax shall not be changed to a different use, nor repealed nor reduced in rate. Under no circumstances will the local option sales and services tax be changed in use, repealed or reduced until any and all Bonds, or bonds or notes issued to refund the Bonds, have been repaid. The City of Murray shall not request an election by the voters nor initiate action by its Council to change the purpose, repeal, or reduce the rate, or otherwise act to change the allocation or use of the local sales and services tax which constitutes the Pledged Portion to which the County is a Secondary Recipient. The City also specifically acknowledges and agrees that in consideration of the County's agreement to issue Bonds under Paragraph 5 hereof, no change in use or diminution of the Pledged Portion shall be effective under HF 2700 of the 2008 Session of the 82<sup>nd</sup> Iowa General Assembly as it amended Iowa Code Sections 423B.1, 423B.7, and 423B.10.

15. **SUPPLEMENTS.** This Agreement may be amended or supplemented at any time during the term hereof by the execution, filing and recording of a written instrument signed and approved by the governing bodies of each party (in each instance, a "Supplement"). Any such Supplement shall refer to this Agreement and shall be construed in accordance with the objectives hereof.

16. **COUNTERPARTS.** This Agreement and any Supplement hereto may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one in the same instrument.

17. **SEVERABILITY.** If any provision of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision entered into, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such provision shall be deemed to be effective in the manner and to the full extent permitted by law.

18. **GOVERNING LAW.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be approved by resolutions of their respective governing bodies and have caused this Agreement to be duly executed and attested on their behalf by their duly authorized officers, with their corporate seals affixed hereto.

CLARKE COUNTY RESERVOIR  
COMMISSION

By: *Sandy Kale*  
Sandy Kale, Chairperson

ATTEST:

*D. McIntosh*  
Dan McIntosh, Treasurer

STATE OF IOWA, COUNTY OF CLARKE, ss:

On this 10<sup>th</sup> & 14<sup>th</sup> day of June, 2010, before me, a Notary Public in and for the State of Iowa, personally appeared **Sandy Kale and Dan McIntosh**, to me personally known, who, being by me duly sworn, did say that they are the **Chairperson and the Treasurer**, respectively, of the **Clarke County Reservoir Commission**, that the foregoing Iowa Code Chapter 28E Agreement Regarding Allocation of Local Option Sales and Services Tax Receipts was signed by authority of the Commission; and the Chairperson and the Treasurer, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said Commission by it and by them voluntarily executed.

Given under my hand and seal of office, this 10<sup>th</sup> & 14<sup>th</sup> day of June, 2010.

*Marion E. James*  
Notary Public





**SUPPLEMENT TO IOWA CODE CHAPTER 28E AGREEMENT REGARDING THE  
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**By and Between**

**City of Murray, Iowa,  
Clarke County Reservoir Commission,**

**And**

**Clarke County, Iowa**

**COPY**

**SUPPLEMENT TO IOWA CODE CHAPTER 28E AGREEMENT REGARDING THE ALLOCATION OF LOCAL OPTION SALES AND SERVICES TAX RECEIPTS FOR THE CONSTRUCTION OF THE CLARKE COUNTY RESERVOIR PROJECT**

1. As provided by Section 16 of the Agreement described in the title to this Agreement the Parties adopt the following SUPPLEMENT.

2. The following additional Section, designated 4(d) is hereby added to the Agreement, to wit:

(d) The Parties further hereby agree that in the event any debt issued or obtained by the Commission, including, but not limited to, commercial debt or state or federal debts (the "Debt"), is necessary to acquire interests in real property that be useful to achieve the completion of the Project, the City of Murray agrees to irrevocably pledge the local option sales and service tax collected by the City to the payment of the Debt.

3. The following additional Section, designated 6A is hereby added to the Agreement, to wit:

6A. Prior to the issuance of bonds the parties agree that tax revenues may be used to acquire interests in real property as may be necessary or useful to achieve the completion of the Project.

4. The following underlined amendment is hereby made to the Agreement, section 11(a):

11. PAYMENT OF REVENUE.

(a) The City agrees that it shall remit to the Commission within thirty (30) days after receipt of the funds from the State of Iowa, all local option sales and services tax received by said City in a given year. In all events, said payments will continue with respect to the Commission until all local option sales and services tax received by said City sufficient to meet all requirements of the resolutions authorizing any Bonds, or bonds or notes refunding said Bonds, or other outstanding Debts and obligations pursuant to Section 4(d) of this Agreement. are met. Provided, however, any delay in such payment shall be excused to the extent caused by a natural disaster (act of God) or technological impossibility.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be approved by resolutions of their respective governing bodies and have caused this Agreement to be duly executed on their behalf by their duly authorized officers, and the same to be attested by their City Clerks, Vice-Chairperson, and Auditor, respectively, and their corporate seals affixed hereto.

CITY OF MURRAY, IOWA

By: Kristi Frederick, Mayor

(SEAL)

ATTEST:

By: Denise Simmons, City Clerk

STATE OF IOWA )  
 ) SS  
COUNTY OF CLARKE )

On this 4<sup>th</sup> day of August, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Kristi Frederick and Denise Simmons, to me personally known, who, being by me duly sworn, did say that they are the Mayor and the City Clerk, respectively, of the City of Murray, Iowa, that the foregoing Iowa Code Chapter 28E Agreement Regarding Allocation of Local Option Sales and Services Tax Receipts was signed by authority of the City; and the Mayor and the City Clerk, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City by it and by them voluntarily executed.

Given under my hand and seal of office, this 4<sup>th</sup> day of August, 2016.

Don Kirk  
Notary Public

8/2/18  
(SEAL)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be approved by resolutions of their respective governing bodies and have caused this Agreement to be duly executed on their behalf by their duly authorized officers, and the same to be attested by their City Clerks, Vice-Chairperson, and Auditor, respectively, and their corporate seals affixed hereto.

CLARKE COUNTY RESERVOIR  
COMMISSION

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

(SEAL)

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Vice-Chairperson

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF CLARKE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the Chairperson and the Vice-Chairperson, respectively, of the Clarke County Reservoir Commission, that the foregoing Iowa Code Chapter 28E Agreement Regarding Allocation of Local Option Sales and Services Tax Receipts was signed by authority of the Commission; and the Chairperson and the Vice-Chairperson, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said Commission by it and by them voluntarily executed.

Given under my hand and seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

(SEAL)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be approved by resolutions of their respective governing bodies and have caused this Agreement to be duly executed on their behalf by their duly authorized officers, and the same to be attested by their City Clerks, Vice-Chairperson, and Auditor, respectively, and their corporate seals affixed hereto.

CLARKE COUNTY, IOWA

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

(SEAL)

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Auditor

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF CLARKE    )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the Chairperson of the Clarke County Board of Supervisors, and the Auditor, respectively, of Clarke County, Iowa, that the foregoing Iowa Code Chapter 28E Agreement Regarding Allocation of Local Option Sales and Services Tax Receipts was signed by authority of the County; and the Chairperson of the Clarke County Board of Supervisors and the Auditor, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said County by it and by them voluntarily executed.

Given under my hand and seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

(SEAL)

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**Q. Can a local option sales tax be repealed?**

Yes. To repeal the tax, an election may be called and held in the same manner and under the same conditions as the election which approved the tax. However, only qualified voters of the areas of the county where the tax has been imposed can vote. The tax cannot be repealed before it has been in effect for one year.

The county board of supervisors can, upon its own motion, repeal the local option tax in any unincorporated area of the county where the tax is imposed. For any municipality, the county board of supervisors must, upon receipt of a motion of the governing body of the municipality, repeal the local option tax within that municipality. The tax can be repealed within a municipality which is contiguous to other municipalities.