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# PROJECT FUNDING POLICY, PROCEDURE, AND GENERAL REQUIREMENTS

The State Water Commission has adopted this policy to support local sponsors in development of sustainable water related projects in North Dakota. This policy reflects the State Water Commission's cost-share priorities and provides basic requirements for all projects considered for prioritization during the agency's budgeting process. Projects and studies that receive funding from the agency's appropriated funds are consistent with the public interest. The State Water Commission values and relies on local sponsors and their participation to assure on-the-ground support for projects and prudent expenditure of funding for ~~evaluations and project~~ or program development ~~construction~~. It is the policy of the State Water Commission that only the items described in this document will be eligible for cost-share or loans upon approval by the State Water Commission, unless specifically authorized by State Water Commission action.

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I. DEFINITIONS

- A. CAPITAL IMPROVEMENT FUND is money set aside using a portion of user fees for future asset replacement, and ~~When applicable~~, a cost-share application shall include documentation of the following:
1. Current capital improvement fund balance
  2. Existing and new assets
  3. Replacement cost of assets
  4. Average life of assets
  5. Current and future monthly reserve per user
- B. CONSTRUCTION COSTS include earthwork, concrete, mobilization and demobilization, dewatering, materials, seeding, rip-rap, crop damages, re-routing electrical transmission lines, moving storm and sanitary sewer system and other underground utilities and conveyance systems affected by construction, mitigation required by law related to the construction contract, water supply works, irrigation supply works, and other items and services provided by the contractor. Construction costs are only eligible for cost-share if incurred after State Water Commission approval and if the local sponsor has complied with North Dakota Century Code (N.D.C.C.) in soliciting and awarding bids and contracts, and complied with all applicable federal, state, and local laws.
- C. COST-SHARE means funds appropriated by the legislative assembly or otherwise transferred by the Commission to a local entity under Commission policy as reimbursement for a percentage of the total approved cost of a project approved by the Commission.
- D. ~~DEPARTMENT means the Department of Water Resources.~~
- E. ECONOMIC ANALYSIS means an estimate of the economic benefits and direct costs that result from the development of a project.
- F. ~~ECONOMIC IMPACT describes the direct and indirect changes in a defined region's economy due to a specific business, organization, policy, program, project, activity or other economic event.~~
- G. ENGINEERING SERVICES include pre-construction and construction engineering. Pre-construction engineering is the engineering necessary to develop plans and specifications for permitting and construction of a project including preliminary and final design, material testing, flood insurance studies, hydraulic models, and geotechnical investigations. Construction engineering is the engineering necessary to build the project designed in the pre-construction phase including construction contract management, and construction observation. Administrative and support services not specific to the approved project are not engineering services. Engineering services are eligible costs if incurred after State Water Commission approval. ~~If the total anticipated engineering costs are greater than the threshold stipulated in NDCC 54-44.7-04, then the local sponsor must follow the engineering selection process~~

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provided in NDCC 54-44.7 and provide a copy of the selection committee report to the Secretary. The local sponsor will be considered to have complied with this requirement if they have completed a selection process for a general engineering services agreement at least once every three years and have formally assigned work to a firm or firms under an agreement. The local sponsor must inform the Secretary of any change in the provider of general engineering services.

- H. EXPANSIONS are construction related projects that increase the project area or users served. Expansions do not include maintenance, replacement, or reconstruction activities.
- I. EXTRAORDINARY MAINTENANCE COSTS include the repair or replacement of portions of facilities or components that extends the overall life of the system or components that are above and beyond regular or normal maintenance. Extraordinary maintenance activities extend the asset's useful life beyond its originally predicted useful life.
- J. GRANT means a one-time sum of money appropriated by the legislative assembly and transferred by the Commission to a local entity for a particular purpose. A grant is not dependent on the local entity providing a particular percentage of the cost of the project.
- K. IMPROVEMENTS are construction related projects that upgrade a facility to provide increased efficiency, capacity, or redundancy. Improvements do not include any activities that are maintenance, replacement, or reconstruction.
- L. LIFE CYCLE COST ANALYSIS means the summation of all costs associated with the anticipated useful life of a project, including project development, land, construction, operation, maintenance, and disposal or decommissioning.
- M. LITIGATION for this policy is defined as legal action that would materially affect the ability of the local sponsor to construct the project; that would delay construction such that the authorized funds could not be spent; or is between political subdivisions related to the project.
- N. ~~LOAN~~ means an amount of money lent to a sponsor of a project approved by the Commission to assist with funding approved project components. A loan may be stand-alone financial assistance.
- O. LOCAL SPONSOR is the entity submitting a cost-share application and must be a political subdivision, state entity, or commission legislatively granted North Dakota recognition that applies the necessary local share of funding to match State Water Commission cost-share. They provide direction for studies and projects, public point of contact for communication on public benefits and local concerns, and acquire necessary permits and rights-of-way.
- P. RECLAIMED WATER is municipal wastewater that has been treated to meet specific water quality criteria with the intent of being used for a range of purposes. The term recycled water is synonymous with reclaimed water.
- Q. REGULAR MAINTENANCE COSTS include normal repairs and general upkeep of facilities to allow facilities to continue proper operation and function. These maintenance items occur on a regular or annual basis. Regular maintenance activities simply help ensure the asset will remain serviceable throughout its originally predicted useful life.
- R. STORMWATER is rainwater or melted snow that runs off streets, lawns, and other sites.

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S. ~~SUSTAINABLE OPERATION, MAINTENANCE, AND REPLACEMENT PLAN~~ is a description of the anticipated operation, maintenance, and replacement costs with a statement that the operation, maintenance, and replacement of the project will be sustainable by the local sponsor. ~~For water supply projects, a~~ summary of the project sponsor's Capital Improvement Fund must also be included.

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T. ~~WASTEWATER is used water discharged from homes, businesses, industry, and agricultural facilities.~~

U. WATER CONVEYANCE PROJECT means any surface or subsurface drainage works, bank stabilization, or snagging and clearing of water bodies.

II. ~~INELIGIBLE ITEMS excluded from cost-share include:~~

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1 Administrative costs, including salaries for local sponsor members and employees as well as consultant services that are not project specific and other incidental costs incurred by the sponsor.

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2 Property and easement acquisition costs paid to ~~a~~ the landowner unless specifically identified as eligible within the ~~Flood Recovery Property Acquisition Program, the Flood Protection Program, or~~ for Water Retention Projects.

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3 Work and costs incurred prior to a cost-share approval date, except for emergencies as determined by the Secretary.

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4 Project related operation and regular maintenance costs.

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5 ~~Sediment removal as part of reconstruction of an existing drain.~~

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6 Funding contributions provided by federal, other state, or other North Dakota state entities that supplant costs.

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7 ~~Elements of finished water storage projects that are sized in excess of the capacity necessary for average daily consumption. This excludes storage associated with water treatment plants. Average daily consumption means average reported water usage over a ten year period.~~

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8 ~~Wastewater treatment processes and wastewater effluent transmission lines.~~

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9 Work incurred outside the scope of the approved study or project.

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10 Local requirements imposed beyond State and Federal requirements for the project may be ineligible.

III. COST-SHARE APPLICATION AND APPROVAL PROCEDURES

The State Water Commission will not consider any cost-share applications unless the local sponsor first makes an application to the Secretary. No funds will be used in violation of Article X, § 18 of the North Dakota Constitution (Anti-Gift Clause).

A. APPLICATION REQUIRED. An application for cost-share is required in all cases and must be submitted by the local sponsor ~~on to~~ the State Water Commission ~~Cost-Share Application form~~. Applications for cost-share are accepted at any time. Applications received less than 45 days

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before a State Water Commission meeting will not be considered at that meeting and will be held for consideration at a future meeting unless specifically exempted by the Secretary. The application form is maintained and updated by the Secretary. A completed application must include the following:

- 1 Category of cost-share activity.
- 2 Location of the proposed project or study area shown on a map.
- 3 Description, purpose, goal, objective, and narrative of the proposed activities.
- 4 Delineation of costs, with contingencies of no more than 10 percent of the total project cost.
- 5 Anticipated timeline of project from preliminary study through final closeout.
- 6 Potential federal, other state, or other North Dakota state entity participation.
- 7 ~~Documentation of an engineering selection process if engineering costs are anticipated to be greater than the threshold provided in NDCC 54-44.7-04~~
- 8 Engineering plans, if applicable.
- 9 Status of required permitting, including submission of completed drain, sovereign land, or construction permits if required by the Department. (Required at the time applications include a request for construction cost-share.)
- 10 When applicable for flood control projects, a Conditional Letter of Map Revision (CLOMR) from the United State's Federal Emergency Management Agency. (Required at the time applications include a request for construction cost-share.)
- 11 ~~Potential territorial service area conflicts or service area agreements, if applicable.~~
- 12 Sustainable operation, maintenance, and replacement plan for projects. (Required at the time applications include a request for construction cost-share.)
- 13 Completed economic analysis worksheet for water conveyance and flood-related projects expected to cost two hundred thousand dollars or more. (Required at the time applications include a request for construction cost-share.)
- 14 Completed life cycle cost analysis worksheet for water supply ~~construction~~ projects. The completed worksheet must include a no action alternative, and up to three additional plausible alternatives - including repair, replacement, and regionalization options. If repair, replacement, and regionalization alternatives are excluded from the life cycle cost analysis, justification must be provided by the project sponsor.
- 15 For Water Infrastructure Revolving Loan Fund or Legacy Infrastructure Loan Fund requests - sponsors must provide a letter of verification from the Bank of North Dakota indicating the sponsor's debt service capacity, and an explanation of the overall economic impact of the project.
- 16 Additional information as deemed appropriate by the Secretary or Commission.

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Applications for cost-share are separate and distinct from the State Water Commission biennial project information collection effort that is part of the budgeting process and published as the State Water Plan. All local sponsors are encouraged to submit project financial needs for the State Water Plan. Projects not submitted as part of the State Water Plan development process may be held until action can be taken on those that were included during budgeting, unless determined to be an emergency that directly impacts human health and safety or that are a direct result of a natural disaster.

- B. PRE-APPLICATION. A pre-application process is allowed for cost-share of assessment projects. This process will require the local sponsor to submit a brief narrative of the project, and a delineation of costs. The Secretary will then review the material presented, make a determination of project eligibility, and estimate the cost-share funding the project may anticipate receiving. A project eligibility letter will then be sent to the local sponsor noting the percent of cost-share assistance that may be expected on eligible items as well as listing those items that are not considered to be eligible costs. In addition, the project eligibility letter will state that the Secretary will recommend approval when all cost-share requirements are addressed. The local sponsor may use the project eligibility letter to develop a project budget for use in the assessment voting process. Upon completion of the assessment vote and all other requirements an application for cost-share can be submitted.
- C. REVIEW. Upon receiving an application for cost-share, the Secretary will review the application and accompanying information. If the Secretary is satisfied that the proposal meets all requirements, the local sponsor will be asked to present the application, and the Secretary will provide a recommendation to the State Water Commission for its action. The Secretary's review of the application will include the following items and any other considerations that the Secretary deems necessary and appropriate.
- 1 Applicable engineering plans;
  - 2 Field inspection, if deemed necessary by the Secretary;
  - 3 The percent and limit of proposed cost-share determined by category of cost-share activity and eligible expenses;
  - 4 Assurance of sustainable operation, maintenance, and replacement of project facilities by the local sponsor;
  - 5 Status of permitting and service area agreements;
  - 6 Available funding in the State Water Commission budget, if in the State Water Plan, and a priority ranking when appropriate;
  - 7 Results of economic analysis of water conveyance or flood-related projects, when applicable; and
  - 8 Results of life cycle cost analysis for water supply projects, when applicable.

~~For cost-share applications over \$100 million, additional information requested by the State Water Commission will be used to determine cost-share.~~

- D. SECRETARY APPROVALS. The Secretary is authorized to approve cost-share up to \$75,000 and also approve cost overruns up to \$75,000 without State Water Commission action. The Secretary

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will respond to such requests within 60 days of receipt of the request. A final decision may be deferred if warranted by funding or regulatory consideration.

- E. NOTICE. The Secretary will give a 10-day notice to local sponsors when their application for cost-share is placed on the tentative agenda of the State Water Commission's next meeting.
- F. AGREEMENT AND DISTRIBUTION OF FUNDS. No funds will be disbursed until the State Water Commission and local sponsor have entered into an agreement for cost-share participation. No agreement for construction funding will be entered into until all required ~~State Engineer Department~~ permits have been acquired.

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For construction projects, the agreement will address indemnification and vicarious liability language. The local sponsor must require that the local sponsor and the state be made an additional insured on the contractor's commercial general liability policy including any excess policies, to the extent applicable. The levels and types of insurance required in any contract must be reviewed and agreed to by the Secretary. The local sponsor may not agree to any provision that indemnifies or limits the liability of a contractor.

For any property acquisition, the agreement will specify that if the property is later sold, the local sponsor is required to reimburse the Commission the percent of sale price equal to the percent of original cost-share.

The Secretary may make partial payment of cost-sharing funds as deemed appropriate. Upon notice by the local sponsor that all work or construction has been completed, the Secretary may conduct a final field inspection. If the Secretary is satisfied that the work has been completed in accordance with the agreement, the final payment will be disbursed to the local sponsor, less any partial payment previously made.

- G. PROJECT PROGRESS REPORTS. The project sponsor must provide a progress report to the Commission at least once every ~~two~~ four years if the term of the project exceeds ~~two~~ four years. If a progress report is not received in a timely fashion, or if after a review of the progress report the Commission determines the project has not made sufficient progress, the Commission may terminate the agreement for project funding. The project sponsor may submit a new application to the Commission for funding for a project for which the Commission previously terminated funding.

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- H. LITIGATION. If a project submitted for cost-share is the subject of litigation, the application may be deferred until the litigation is resolved. If a project approved for cost-share becomes the subject of litigation before all funds have been disbursed, the Secretary may withhold funds until the litigation is resolved.

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- I. ECONOMIC ANALYSIS. Project sponsors seeking cost-share for construction of flood control or water conveyance projects with a total cost of two hundred thousand dollars or more must complete the Water Commission's economic analysis worksheet. The results of the economic analysis must be provided with the sponsor's application for cost-share assistance for agency review. When the results of the economic analysis are determined by the agency to be accurate, the results will then be presented to the State Water Commission for their consideration as part of the cost-share request.

Projects that yield a benefit to cost (BC) ratio of one to one, or greater, are eligible for up to the maximum allowable cost-share per project type and policy. Projects that yield a BC ratio of less

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than one to one will have the BC ratio used as a percentage of the allowable cost-share (i.e. eligible costs, multiplied by the applicable cost-share percentage, multiplied by the BC ratio) – unless otherwise authorized by the Commission. Projects that will result in Federal Emergency Management Agency accredited flood protection for communities may be exempt from the requirement of using the BC ratio as a percentage of the allowable cost-share.

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- J. LIFE CYCLE COST ANALYSIS. Project sponsors seeking cost-share for ~~construction of~~ water supply projects must complete the Water Commission's life cycle cost analysis worksheet. The completed worksheet must include a no action alternative, and up to three additional plausible alternatives - including repair, replacement, and regionalization options. If repair, replacement, and regionalization alternatives are excluded from the life cycle cost analysis, justification must be provided by the project sponsor.

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The results of the life cycle cost analysis must be provided with the sponsor's application for cost-share assistance for agency review. When the results of the life cycle cost analysis are determined by the agency to be accurate, the results will then be presented to the State Water Commission for their consideration as part of the cost-share request.

- K. PROJECT FRACTURING. The fracturing or separating of projects into smaller components to avoid policy requirements is prohibited. If the Commission determines a project has been fractured for this purpose, the entire project, or elements of the project, may be considered ineligible for cost-share assistance.

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#### IV. COST-SHARE CATEGORIES

The State Water Commission supports the following categories of projects for cost-share. ~~Engineering expenses related to construction are cost-shared at the same percent as the construction costs when approved by the State Water Commission.~~ The Commission will consider cost-share requests and issue agreements under a two-tier process. Cost-share for pre-construction expenses will be considered first; followed by construction-related expenses after completion of pre-construction activities, including plans and specifications for bidding project construction. In addition to cost-share and grants, the State Water Commission may lend a portion of the local share based on demonstrated financial need.

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*[Note - As part of the Strategic Governance and Finance study, information about North Carolina's (NC) Asset Inventory Assessment (AIA) program was provided. The NC AIA offers up to \$150,000 in matching funds over three fiscal years for developing an inventory of water infrastructure, to assess the condition of assets, to prioritize the most critical infrastructure needs, and to develop a capital improvement plan to fund the projects. This type of program could be added to future policy at the Commission's discretion. Its purpose would be to help with the development of capital improvement funds necessary for proactive financial management of the system and to reduce the reliance on grant funding from the state.]*

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- A. PRE-CONSTRUCTION EXPENSES. The State Water Commission supports local sponsor development of feasibility studies, engineering designs, and mapping as part of pre-construction activities to develop support for projects within this cost-share policy. The Commission may provide up to 50 percent cost-share for pre-construction expenses, or up to the construction cost-share percentage if less than 50%. The following projects and studies are eligible.

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- 1 Feasibility studies to identify water related problems, evaluate options to solve or alleviate the problems based on technical and financial feasibility, and provide a recommendation and cost estimate of the best option to pursue.
- 2 Engineering design to develop plans and specifications for permitting and construction of a project, including associated cultural resource and archeological studies.
- 3 Mapping and surveying to gather data for a specific task such as flood insurance studies and flood plain mapping, LiDAR acquisition, and flood imagery attainment, which are valuable to managing water resources.

Copies of the deliverables must be provided to the Secretary upon completion. The Secretary will determine the payment schedule and interim progress report requirements.

B. COST INCREASES. When a sponsor has been approved for cost-share assistance and additional cost-share is requested as a result of increased construction-related costs, only those eligible construction-related costs resulting in the cost increase are eligible for additional cost-share. Pre-construction engineering costs are a non-eligible expense as part of cost increase cost-share requests.

C. MAIN STREET INITIATIVE. The Commission supports water development infrastructure that aligns with the Main Street Initiative, which is one of North Dakota's five Strategic Initiatives. The four foundational pillars of the Main Street Initiative are Skilled Workforce; Smart, Efficient Infrastructure; Healthy, Vibrant Communities; and Economic Diversification. In support of the Main Street Initiative, the Commission can provide additional cost-share assistance of 10 percent beyond existing cost-share percentages, with a maximum of \$250,000 in additional funding, if an eligible water infrastructure project:

1. Is located within a community that has received a "Main Street Champion" designation from North Dakota's Department of Commerce (NDDC);
2. Has been identified as an integral part of a completed comprehensive planning effort or action plan that was developed through the NDDC "Partners In Planning" grant program; and
3. Meets all other Commission eligibility requirements for cost-share.

D. WATER SUPPLY

1 REGIONAL, RURAL, AND MUNICIPAL WATER SUPPLY PROJECTS. The State Water Commission supports water supply efforts associated with regional, rural, and municipal water supply systems. The transmission of reclaimed water for beneficial use is also an eligible cost. The local sponsor may apply for funding, and the application will be reviewed to determine project priority. Debt per capita, water rates and financial need may be considered by the Commission when determining an appropriate cost-share percentage. The Commission reserves flexibility to adjust percentages on a case by case basis, but generally may provide up to 65 percent cost-share for water system expansions, improvements, and replacements.

New connections between communities and rural or regional water systems that result in decommissioning of existing infrastructure, including, but not limited to water wells, surface

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~~water intakes, water treatment, water storage, or water transmission lines, are eligible for up to 75 percent cost-share.~~

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~~Up to 75% cost-share may be provided for:~~

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- ~~• Rural Water System Expansions and Improvements~~
- ~~• Connection of communities to a regional system~~
- ~~• Improvements required to meet primary drinking water standards~~

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~~Up to 60% cost-share may be provided for:~~

- ~~• Municipal Water Supply Expansions and Improvements~~
- ~~• Connection of new rural water customers located within extraterritorial areas of a municipality~~

Water Depots for industrial use receiving water from facilities constructed using State Water Commission funding or loans have the following additional requirements:

- a) Domestic water supply has priority over industrial water supply in times of shortage. This must be explicit in the water service contracts with industrial users.
  - b) If industrial water service will be contracted, public notice of availability of water service contracts is required when the depot becomes operational.
  - c) Public access to water on a non-contracted basis must be provided at all depots.
2. FEDERAL MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM. The Municipal, Rural, and Industrial Water Supply Program, which uses federal funds, is administered according to North Dakota Administrative Code Article 89-12.
3. DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM. This program ~~is to provide~~ assistance ~~with for~~ water supply ~~projects that support~~ for livestock impacted during drought declarations and is administered according to North Dakota Administrative Code Article 89-11. ~~The Commission may provide up to 65 percent cost-share for Drought Disaster Livestock Water Assistance Program projects, but no more than \$4,500 per project, and three projects per applicant.~~

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E. FLOOD CONTROL. The State Water Commission may provide cost-share for eligible items of flood control projects protecting communities from flooding and may include the repair of dams that provide a flood control benefit. When applicable, project sponsors must first acquire a Conditional Letter of Map Revision (CLOMR) from the United State's Federal Emergency Management Agency prior to applying for construction-related cost-share assistance.

1. ~~FLOOD RECOVERY PROPERTY ACQUISITION PROGRAM. This program is used to assist local sponsors with flood recovery expenses that provide long term flood damage reduction benefits through purchase and removal of structures in areas where flood damage has occurred. All contracted costs directly associated with the acquisition will be considered eligible for cost share. Contracted costs may include: appraisals, legal fees (title and abstract search or update, etc.), property survey, closing costs, hazardous materials abatement needs (asbestos, lead paint, etc.), and site restoration.~~

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The State Water Commission may provide cost-share of the eligible costs of approved flood recovery expenses that provide long-term flood reduction benefits based on the following criteria and priority order:

- a) Local sponsor has flood damage and property may be needed for construction of temporary or long-term flood control projects, may be cost-shared up to 75 percent.
- b) Local sponsor has flood damage and property would increase conveyance or provide other flood control benefits, may be cost-shared up to 60 percent.

Prior to applying for assistance, the local sponsor must adopt and provide to the Secretary an acquisition plan (similar to plans required by Hazard Mitigation Grant Program (HMGP)) that includes the description and map of properties to be acquired, the estimated cost of property acquisition including contract costs, removal of structures, the benefit of acquiring the properties, and information regarding the ineligibility for HMGP funding. Property eligible for HMGP funding is not eligible for this program. The acquisition plan must also include a description of how the local sponsor will insure there is not a duplication of benefits.

Over the long-term development of a flood control project following a voluntary acquisition program, the local sponsor's governing body must officially adopt a flood risk reduction plan or proposal including the flow to be mitigated. The flow used to develop the flood risk reduction plan must be included in zoning discussions to limit new development on other flood-prone property. An excerpt of the meeting minutes documenting the local sponsor's official action must be provided to the Secretary.

The local sponsor must fund the local share for acquisitions. This requirement will not be waived. Federal funds are considered "local" for this program if they are entirely under the authority and control of the local sponsor.

The local sponsor must include a perpetual restrictive covenant on acquired properties similar to the restrictions required by the federal HMGP funding with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds.

The local sponsor must provide justification, acceptable to the Secretary, describing the property's ineligibility to receive federal HMGP funding. This is not meant to require submission and rejection by the federal government, but rather an explanation of why the property would not be eligible for federal funding. Example explanations include: permanent flood control structures may be built on the property; project will not achieve required benefit-cost analysis to support HMGP eligibility; or lack of available HMGP funding. If inability to receive federal funding is not shown to the satisfaction of the Secretary, following consultation with the North Dakota Department of Emergency Services, the cost-share application will be returned to the local sponsor for submittal for federal funding prior to use of these funds.

- 2 FLOOD PROTECTION PROGRAM. This program supports local sponsor efforts to mitigate impacts and prevent future property damage due to flood events. The State Water Commission may provide cost-share up to 60 percent of eligible costs for flood protection

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~~projects and related property acquisitions. For projects with federal participation, the cost-share may be up to 50 percent of eligible non-federal costs. The State Water Commission may consider a greater level of cost participation for projects involving a total cost greater than \$100 million and having a basin wide or regional benefit.~~

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~~Local share must be provided on a timely basis. The State Water Commission may lend a portion of the local share based on demonstrated financial need.~~

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~~Property acquisition costs limited to the purchase price of the property that is not eligible for HMGP funding and within the footprint of a project may be eligible under this program. All contracted costs directly associated with property acquisitions for project development or recovery under this program will be considered eligible for cost-share. This includes the acquisition of flood damaged properties or properties necessary for project development. Contracted costs may include: appraisals, legal fees (title and abstract search or update, etc.), property survey, closing costs, hazardous materials abatement needs (asbestos, lead paint, etc.), and site restoration.~~

~~Prior to applying for assistance related to acquisitions, the local sponsor must adopt and provide to the Secretary an acquisition plan that includes a description and map of properties to be acquired; the estimated cost of property acquisition, including contract costs and removal of structures; and the benefit of acquiring the properties.~~

~~The local sponsor must include a perpetual restrictive covenant on any properties purchased under this program similar to the restrictions required by the federal HMGP funding with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds. Costs for property acquired, by easement or fee title, to preserve the existing conveyance of a breakout corridor recognized as essential to FEMA system accreditation may be eligible under this program.~~

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~~The local sponsor must fund the local share for acquisitions. Federal funds are considered "local" for this program if they are entirely under the authority and control of the local sponsor.~~

~~For any property acquisition, the agreement will specify that if the property is later sold, the local sponsor is required to reimburse the Commission the percent of sale price equal to the percent of original cost-share.~~

~~The cost-share application must include the return interval or design flow for which the structure project will provide protection. The Commission will calculate the amount of its financial assistance, based on the needs for protection against:~~

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- ~~1. One-hundred year flood event as determined by a federal agency;~~
- ~~2. The national economic development alternative; or~~
- ~~3. The local sponsor's preferred alternative if the Commission first determines the historical flood prevention costs and flood damages and the risk of future flood prevention costs and flood damages, warrant protection to the level of the local sponsor's preferred alternative.~~

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Storm water management is not an eligible cost-share category. In order to differentiate between a flood control project and storm water management, the Commission may reduce the cost-share provided by the percentage of the contributing watershed that is located within the community's corporate limits as calculated on an acreage basis.

- 3 FEMA LEVEE SYSTEM ACCREDITATION PROGRAM. The State Water Commission may provide cost-share up to 60 percent for eligible services for FEMA 44 CFR 65.10 flood control or reduction levee system certification analysis. The analysis is required for FEMA to accredit the levee system for flood insurance mapping purposes. Typical eligible costs include site visits and field surveys to include travel expenses, hydraulic evaluations, closure evaluations, geotechnical evaluations, embankment protection, soils investigations, interior drainage evaluations, internal drainage hydrology and hydraulic reports, system modifications, break-out flows, and all other engineering services required by FEMA. The analysis will result in a comprehensive report to be submitted to FEMA and the Secretary.

Administrative costs to gather existing information or to recreate required documents, maintenance and operations plans and updates, and emergency warning systems implementation are not eligible.

- 4 WATER RETENTION PROJECTS. The goal of water retention projects is to reduce flood damages by storing floodwater upstream of areas prone to flood damage. The State Water Commission may provide cost-share up to 60 percent of eligible costs for water retention projects including purchase price of the property. ~~For projects with federal participation, the cost-share may be up to 50 percent.~~ Water retention structures constructed with State Water Commission cost-share must meet state dam safety requirements, including the potential of cascade failure. A hydrologic analysis including an operation plan and a quantification of the flood reduction benefits for 25, 50, and 100-year events must be submitted with the cost-share application.

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- 5 INDIVIDUAL RURAL AND FARMSTEAD RING DIKE PROGRAM. This program is intended to protect individual rural homes and farmsteads through ring dike programs established by water resource districts. All ring dikes within the program are subject to the Commission's Individual Rural and Farmstead Ring Dike Criteria provided in Attachment A. Protection of a city, community or development area does not fall under this program but may be eligible for the flood control program. The State Water Commission may provide up to 60 percent cost-share of eligible items for ring dikes up to a limit of \$55,000 per ring dike.

Landowners enrolled in the Natural Resource Conservation Service's (NRCS) Environmental Quality Incentive Program (EQIP) who intend to construct rural or farmstead ring dikes that meet the ~~State Water Commission~~ Department's elevation design criteria are eligible for a cost-share reimbursement of 20 percent of the NRCS construction payment, limited to a combined NRCS and State Water Commission contribution of 80 percent of project costs.

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#### F. WATER CONVEYANCE.

- 1 RURAL FLOOD CONTROL. These projects are intended to improve the drainage and management of runoff from agricultural sources. The State Water Commission may provide cost-share up to 45 percent of the eligible items for the construction of drains, channels, or diversion ditches. Construction costs for public road crossings that are integral to the project are eligible for cost-share as defined in N.D.C.C. § 61-21-31 and 61-21-32. If an

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assessment-based rural flood control project involves multiple districts, each district involved must join in the cost-share application.

Cost-share applications for rural assessment drains will only be processed after the assessment vote has passed, and a drain permit has been obtained. If the local sponsor wishes to submit a cost-share application prior to completion of the aforementioned steps, a pre-application process will be followed.

A sediment analysis must be provided with any application for cost-share assistance for reconstruction of an existing drain. The analysis must be completed by a qualified professional engineer and must clearly indicate the percentage volume of sediment removal involved in the project. The cost of that removal must be deducted from the total for which cost-share assistance is being requested.

2. **BANK STABILIZATION.** The State Water Commission may provide cost-share up to 50 percent of eligible items for bank stabilization projects on public lands or those lands under easement by federal, state, or political subdivisions. Bank stabilization projects are intended to stabilize the banks of lakes or watercourses, as defined in N.D.C.C § 61-01-06, with the purpose of protecting public facilities. Drop structures and outlets are not considered for funding as bank stabilization projects, but may be eligible under other cost-share program categories. Bank stabilization projects typically consist of a rock or vegetative design and are intended to prevent damage to public facilities including utilities, roads, or buildings adjacent to a lake or watercourse.
3. **SNAGGING AND CLEARING.** Snagging and clearing projects consist of the removal and disposal of fallen trees and associated debris encountered within or along the channel of a natural watercourse. Snagging and clearing projects are intended to prevent damage to structures such as bridges, and maintain the hydraulic capacity of the channel during flood flows. The Water Commission may provide cost-share for up to 50 percent of the eligible items for snagging and clearing as well as any sediment that has accumulated in the immediate vicinity of snags and any trees in imminent danger of falling in the channel or watercourses as defined in N.D.C.C § 61-01-06. Items that are not eligible include snagging and clearing of man-made channels; the dredging of watercourses for sediment removal; the clearing and grubbing of cattails and other plant vegetation; or the removal of any other unwanted materials.
- G. **RECREATION.** The State Water Commission may provide cost-share up to 40 percent for projects intended to provide water-based recreation. Typical projects provide or complement water-based recreation associated with dams.
- H. **IRRIGATION.** The State Water Commission may provide cost-share for up to 50 percent of the eligible items for irrigation projects. The items eligible for cost-share are those associated with the off-farm portion of new central supply works, including water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, and electrical transmission and control facilities. The Commission will only enter into cost-share agreements with political subdivisions, including irrigation districts, and not with individual producers.
- I. **DAMS AND EMERGENCY ACTION PLANS.** The State Water Commission supports projects that address dam safety, deficiencies, repairs, and removals, as well as emergency action plans. In addition to the following cost-share percentages, the State Water Commission may lend a

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portion of the local share based on demonstrated financial need. For dams and emergency action plans, the Water Commission may:

1. Provide cost-share for up to 60 percent of the eligible items for dam deficiency or repair projects and dam breach or removal projects.
2. Provide cost-share up to 75 percent to mitigate public dangers associated with low head dam roller effects. Cost-share funding will be considered under this category for dam removals, or the placement of rock rip rap, but not both. Modifications, repairs, or removals that go beyond what is minimally required to mitigate roller effects may be cost-shared at lesser amounts – depending on the purpose for which the supplemental modifications or repairs are being made (i.e. recreation, water supply, flood control, irrigation, etc).
3. Provide cost-share up to ~~80~~ 75 percent for emergency action plans of each dam classified as high or medium/significant hazard. The cost of a dam break model is only eligible for reimbursement for dams classified as a high hazard.

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ATTACHMENT A  
INDIVIDUAL RURAL AND FARMSTEAD RING DIKE CRITERIA

MINIMUM DESIGN CRITERIA

- Height: The dike must be built to an elevation 2 ft above either the 100-year flood or the documented high water mark of a flood event of greater magnitude, whichever is greater.
- Top Width:
  - If dike height is 5 ft or less: 4 ft top width
  - If dike height is between 5 ft and 14 ft: 6 ft top width
  - If dike height is greater than 14 ft: 8 ft top width
- Side Slopes: 3 horizontal to 1 vertical
- Strip topsoil and vegetation: 1 ft
- Adequate embankment compaction: Fill in 6-8 inch layers, compact with passes of equipment
- Spread topsoil and seed on ring dike

LANDOWNER RESPONSIBILITY

Landowners are responsible to address internal drainage on ring dikes. If culverts and flap gates are installed, these costs are eligible for cost-share. The landowner has the option of completing the work or hiring a contractor to complete the work.

IF CONTRACTOR DOES THE WORK, payment is for actual costs with documented receipts.

IF LANDOWNER DOES THE WORK, payment is based on the following unit prices:

- Stripping, spreading topsoil, and embankment fill: Secretary will determine rate schedule based on current local rates.
- Seeding: Cost of seed times 200%
- Culverts: Cost of culverts times 150%
- Flap gates: Cost of flap gates times 150%

OTHER FACTS AND CRITERIA

- The topsoil and embankment quantities will be estimated based on dike dimensions. Construction costs in excess of the 3:1 side slope standard will be the responsibility of the landowner. Invoices will be used for the cost of seed, culverts, and flap gates.
- Height can be determined by existing FIRM data or known elevations available at county floodplain management offices. Engineers or surveyors may also assist in establishing height elevations.

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- The projects will not require extensive engineering design or extensive cross sections.
- A dike permit is required if the interior volume of the dike consists of 50 acre-feet, or more.

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## ATTACHMENT B

### Standard Operating Procedures Cost-Share Program Administration

It has been determined by the Commission that there are Cost-Share Program operational procedures that are more appropriately clarified through Standard Operation Procedures (SOP). The following SOP have been approved by the Commission to assist Department staff with various administrative decisions related to the Cost-Share Program.

#### COST INCREASES

The following are various types of projects for which sponsors request cost increase assistance.

1. Projects approved for cost-share during the current biennium, and are requesting additional cost-share funding for cost increases.

#### SOP

- Requests in excess of \$75,000 will be presented to the Commission for consideration.
- Requests of \$75,000 or less will be considered by the Director Secretary.

2. Projects approved for cost-share during past biennia, and are requesting current biennium cost-share funding or available carryover funds for cost increases.

#### SOP

- Requests in excess of \$75,000 may be deferred for the first six months of the biennium before being presented to the Commission for consideration.
- Requests of \$75,000 or less may be deferred for the first six months of the biennium before being considered by the Director Secretary.

3. Projects that were denied or deferred for cost increase funding during the previous biennium.

#### SOP

- Requests in excess of \$75,000 may be deferred for the first six months of the biennium before being presented to the Commission for consideration.
- Requests of \$75,000 or less may be deferred for the first six months of the biennium before being considered by the Director Secretary.

#### PROJECTS NOT SUBMITTED TO THE WATER DEVELOPMENT PLAN

Project sponsors will sometimes request cost-share funding for projects that are eligible under the agency's cost-share policy, but were not submitted or included in the current Water

Development Plan (WDP). The following are various types of projects that are not included in the current WDP, but are submitted for cost-share consideration.

1. Projects that were, or were not identified in the previous biennium WDP, and are not included in the current WDP.

***SOP***

- These projects will be deferred for the first six months of the biennium for Commission consideration. (Exceptions are those projects considered to be an emergency – directly impacting human health and safety.)

**INVOICE ELIGIBILITY**

Project sponsors are encouraged to submit invoices for reimbursement in a timely manner to, in part, help with reductions in agency budget carry-over amounts from previous budget cycles.

1. Invoices that are dated one year or more before the date they are received by the Department for reimbursement.

***SOP***

- Those invoices are considered ineligible for reimbursement. Invoices submitted by livestock producers who have been approved for cost-share through the Drought Disaster Livestock Water Assistance Program are exempt from this SOP.

**LOW HEAD DAM REPAIRS – ROLLER EFFECT MITIGATION**

Under the revised “Dam Safety and Emergency Action Plans” section of the Water Commission’s cost-share policy, the Commission will provide 75% cost-share to mitigate public dangers associated with low head dam roller effects. The following are various types of low head dam improvement projects that are submitted for cost-share consideration.

1. Dam breaches, removals, or rock rip rap.

***SOP***

- The Water Commission may cost-share up to 75% to mitigate public dangers associated with low head dam roller effects. Cost-share funding will be considered under this category for dam removals, or the placement of rock rip rap, but not both.
- Modifications, repairs, or removals that go beyond what is minimally required to mitigate roller effects may be cost-shared at lesser amounts – depending on the purpose for which the supplemental modifications or repairs are being made (i.e. recreation, water supply, flood control, irrigation, etc).

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**LIFE CYCLE COST ANALYSIS FOR PRECONSTRUCTION & CONSTRUCTION REQUESTS**

Under the “Life Cycle Cost Analysis” section of the Water Commission’s cost-share policy, project sponsors seeking cost-share for construction of water supply projects must complete and submit

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~~the Commission's Life Cycle Cost Analysis worksheet. In addition, effective February 2021, the Commission considers cost-share requests and issues agreements under a two-tier process. Cost share for pre-construction activities are considered first, followed by requests for construction-related expenses.~~

~~1. Projects seeking pre-construction cost-share funding.~~

~~**SOP**~~

- ~~• The Water Commission and Director will require the submittal of life cycle cost analysis results with cost-share applications.~~

~~2. Projects seeking construction cost-share funding.~~

~~**SOP**~~

- ~~• The Water Commission and Director will require updated life cycle cost analysis results with cost-share applications.~~

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