NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 261 – RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

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NEBRASKA ADMINISTRATIVE CODE

NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 261

RULES GOVERNING THE
ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Adopted ~~September 16, 2015~~_____, 2018

NEBRASKA NATURAL RESOURCES COMMISSION
TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

ALPHABETICAL TABLE OF CONTENTS

Subject	Statute	Code §
Water Sustainability Fund, Administration of	61-204, 61-222, 84-909	Title 261
Application Procedures and Requirements		Chapter 2
Application Filing Dates	2-1509	010
Application Procedure	2-1509	003
Combined Sewer Overflow Project Application	2-1507	007
Economic Feasibility	2-1509, 2-1510	005
Engineering and Technical Feasibility	2-1509	004
Filing Fees	84-909	001
Filing Location	84-909	002
Financial Feasibility	2-1509, 2-1510	006
Ineligible Applications or Components of Applications	2-1509	009
Ineligible Natural Resources Districts	2-1507	008
Information Required in an Application	2-1509	011
Returned Applications	2-1509	012
Commission Action and Requirements		Chapter 3
Action on the Report of the Director	2-1510, 2-1511	001
~~Annual~~ Availability of Funds	2-1511	003~~4~~
~~Apportioning and Setting Aside Funds~~	~~84-909~~	~~006~~
Changes in Scope of Approved Proposals	2-1511	008~~11~~
Contractual Arrangements	2-1511	005~~8~~
~~Determination of Fiscal Year Financial Needs~~	~~84-909~~	~~005~~
Disbursements	2-1511	006~~9~~
Funding	84-909	002
Inspection During and After Construction	2-1511	0~~1~~07

TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Subject	Statute	Code §
Project Reporting	2-1511	009~~12~~
~~Project Totals Exceeding Balance in Fund~~	~~84-909~~	~~003~~
Reductions in Allocations	2-1510, 2-1511	004~~7~~
Easement and Right of Way Land Rights: Purchases and Sales		Chapter 5
Agreement to Retain in Public Use	2-1511	010
Amount Paid	2-1511	006
Annual Inspection	2-1511	009
Appraisals	2-1511	002
Documentation of Purchase	2-1511	007
Eligibility for Funds	2-1511	001
Eminent Domain Awards	2-1511	005
Purchase Price and Total Cost of Acquisition	2-1511	003
Release/Lifting of Easement	2-1511	011
State Lien	2-1511	008
Title Insurance and Other Relevant Documents	2-1511	004
General Provisions		Chapter 1
Definitions	2-1501, 84-909	002
Interest Rate	2-1511	004
Periodic Consultations	2-1511	005
Purpose and Effect of Rules	61-222, 61-204	001
Types of Assistance	2-1511, 2-1512	003
Land Rights: Purchases, Sales and Rents/Revenues	2-1501, 84-909	Chapter 4
~~Acquisition by Public Bodies~~		~~017~~
~~Acquisition or Retention of Less Than Full Parcel~~		~~020~~
~~Agreement to Retain in Public Use~~		~~021~~
~~Amount Paid~~		~~007~~
Annual Financial Statement		0~~11~~05
~~Annual~~ Inspection	2-1511	0~~10~~04
~~Annual Lease~~		~~012~~

TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Subject	Statute	Code §
~~Appraisal and Notification to Public Bodies of Appraised Fair Market Value~~		~~016~~
~~Appraisals~~		~~002~~
~~Approval or Rejection of Bids~~		~~030~~
~~Conduct of Auction~~		~~027~~
~~Criteria for Acquisition by Public Bodies~~		~~018~~
~~Damage to Crops~~		~~003~~
~~Desire to Acquire by Two or More Public Entities~~		~~019~~
~~Documentation of Purchase~~		~~008~~
~~Earnest Money Deposit~~		~~028~~
Eligibility for Funds	2-1511	001
~~Eminent Domain Awards~~		~~006~~
Land Acquisition Reimbursement	2-1511	003
~~Method of Sale~~		~~022~~
~~Notice of Intent to Acquire or Retain~~		~~015~~
~~Notice of Sales~~		~~025~~
~~Notifying Public Bodies of Proposed Sales~~		~~014~~
~~Public Auctioneers~~		~~023~~
~~Purchase Agreement~~		~~029~~
Purchase Price and Total Cost of Acquisition	2-1511	00~~4~~2
~~Sale Expenses~~		~~031~~
~~Sale of Improvements~~		~~024~~
~~Sealed Bids~~		~~026~~
~~State Lien~~		~~009~~
~~Title Insurance and Other Relevant Documents~~		~~005~~
~~Use of Lease Revenues~~		~~013~~
Rental or Lease of Acquired Property	2-1511	006
Sales of Lands	2-1511	007

NEBRASKA NATURAL RESOURCES COMMISSION
TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

NUMERICAL TABLE OF CONTENTS

Subject	Statute	Code §
Water Sustainability Fund, Administration of	61-204, 61-222 84-909	Title 261
General Provisions		Chapter 1
Purpose and Effect of Rules	61-222, 61-204	001
Definitions	2-1501, 84-909	002
Types of Assistance	2-1511, 2-1512	003
Interest Rate	2-1511	004
Periodic Consultation	2-1511	005
Application Procedures and Requirements		Chapter 2
Filing Fees	2-1509	001
Filing Location	84-909	002
Application Procedure	2-1509	003
Engineering and Technical Feasibility	2-1509	004
Economic Feasibility	2-1509, 2-1510, 84-909	005
Financial Feasibility	2-1509, 2-1510	006
Combined Sewer Overflow Project Application	2-1507	007
Ineligible Natural Resources Districts	2-1507	008
Ineligible Applications or Components of Applications	2-1509	009
Application Filing Dates	2-1509	010
Information Required in an Application	2-1509	011
Returned Applications	2-1509	012

TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Subject	Statute	Code §
Commission Action and Requirements		Chapter 3
Action on the Report of the Director	2-1510, 2-1511	001
Funding	84-909	002
~~Project Totals Exceeding Balance in Fund~~	~~84-909~~	~~003~~
~~Annual~~ Availability of Funds	2-1511	003~~4~~
~~Determination of Fiscal Year Financial Needs~~	~~84-909~~	~~005~~
~~Apportioning and Setting Aside Funds~~	~~84-909~~	~~006~~
Reductions in Allocations	2-1510, 2-1511	004~~7~~
Contractual Arrangements	2-1511	005~~8~~
Disbursements	2-1511	006~~9~~
Inspection During and After Construction	2-1511	0~~1~~07
Changes in Scope of Approved Proposals	2-1511	008~~11~~
Project Reporting	2-1511	0~~1~~09~~2~~
Fee Title Land Rights: Purchases, Sales and Rents/Revenues	2-1501, 84-909	Chapter 4
Eligibility for Funds	2-1511	001
~~Appraisals~~		~~002~~
~~Damage to Crops~~		~~003~~
Purchase Price and Total Cost of Acquisition	2-1511	00~~4~~2
Land Acquisition Reimbursement	2-1511	003
~~Title Insurance and Other Relevant Documents~~		~~005~~
~~Eminent Domain Awards~~		~~006~~
~~Amount Paid~~		~~007~~
~~Documentation of Purchase~~		~~008~~
~~State Lien~~		~~009~~
~~Annual~~ Inspection	2-1511	0~~10~~04
Annual Financial Statement	2-1511	0~~11~~05
~~Annual Lease~~Rental or Lease of Acquired Property	2-1511	0~~12~~06
~~Use of Lease Revenues~~		~~013~~
~~Notifying Public Bodies of Proposed~~ Sales of Lands	2-1511	0~~14~~07

~~Notice of Intent to Acquire or Retain 015~~
~~TITLE 261 - RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND~~

~~Subject~~	~~Statute~~	~~Code §~~
~~Appraisal and Notification to Public Bodies of Appraised Fair Market Value~~		~~016~~
~~Acquisition by Public Bodies~~		~~017~~
~~Criteria for Acquisition by Public Bodies~~		~~018~~
~~Desire to Acquire by Two or More Public Entities~~		~~019~~
~~Acquisition or Retention of Less Than Full Parcel~~		~~020~~
~~Agreement to Retain in Public Use~~		~~021~~
~~Method of Sale~~		~~022~~
~~Public Auctioneers~~		~~023~~
~~Sale of Improvements~~		~~024~~
~~Notice of Sales~~		~~025~~
~~Sealed Bids~~		~~026~~
~~Conduct of Auction~~		~~027~~
~~Earnest Money Deposit~~		~~028~~
~~Purchase Agreement~~		~~029~~
~~Approval or Rejection of Bids~~		~~030~~
~~Sale Expenses~~		~~031~~
Easement and Right of Way Land Rights: Purchases and Sales		Chapter 5
Eligibility for Funds	2-1511	001
Appraisals	2-1511	002
Purchase Price and Total Cost of Acquisition	2-1511	003
Title Insurance and Other Relevant Documents	2-1511	004
Eminent Domain Awards	2-1511	005
Amount Paid	2-1511	006
Documentation of Purchase	2-1511	007
State Lien	2-1511	008
Annual Inspection	2-1511	009
Agreement to Retain in Public Use	2-1511	010
Release/Lifting of Easement	2-1511	011

NEBRASKA ADMINISTRATIVE CODE

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TITLE 261 – NEBRASKA NATURAL RESOURCES COMMISSION
RULES GOVERNING ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 1 – GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules are adopted for the purpose of meeting the goals of the Nebraska Water Sustainability Fund. The Water Sustainability Fund ~~shall be~~ is administered by the Natural Resources Commission (Commission) to provide financial assistance to eligible projects, programs or activities that lead to sustainability of Nebraska's water resources that promotes healthy watersheds, improves water quality and protects the ability of future generations to meet their water needs. In a manner consistent with these rules and regulations and the governing Statutes, the Commission ~~shall~~ will administer the Water Sustainability Fund to assist projects, programs or activities that meet the goals and are of the types of projects provided for ~~herein~~ *Neb. Rev. Stat.* § 2-1506(1) and 2-1506(2).

~~001.01 The goals of the Water Sustainability Fund are to:~~

~~(1) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow;~~

~~(2) Remediate or mitigate threats to drinking water;~~

~~(3) Promote the goals and objectives of approved integrated management plans or ground water management plans;~~

~~(4) Contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources;~~

~~(5) Assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project;~~

~~(6) Provide increased water productivity and enhance water quality;~~

~~(7) Use the most cost-effective solutions available;~~

~~(8) Comply with interstate compacts, decrees, other state contracts and agreements and federal law.~~

~~001.02 The above goals for the Water Sustainability Fund can best be met with programs, projects or activities in the following categories:~~

~~(1) Research, data and modeling;~~
~~(2) Rehabilitation or restoration of water supply infrastructure, new water supply infrastructure or water supply infrastructure maintenance or flood prevention for the protection of critical infrastructure;~~
~~(3) Conjunctive management, storage and integrated management of ground water and surface water;~~
~~(4) Compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.~~

001.0~~3~~1 Under no circumstances ~~shall~~ are these rules and regulations to be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Commission, nor ~~shall~~ are they in any event to be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Fund.

002 Definitions. As used in these rules, the terms listed below ~~shall~~ will have the meanings noted:

002.01 Accrued Revenues. "Accrued revenues" ~~shall~~ means income from sales, rents and other sources of revenue returned to the Fund;

002.02 Allocation. "Allocation" ~~shall~~ means the overall financial limit authorized by the Commission for a project;

002.03 Applicant. "Applicant" ~~shall~~ means any state agency or person or entity eligible to apply for financial assistance from the Fund;

002.04 Appropriation. "Appropriation" ~~shall~~ means the amount of funding approved by the Legislature and authorized by the Governor for the Fund;

002.05 Cap. "Cap" ~~shall be~~ is set legislatively for the Fund and ~~shall~~ means the amount of allocation that can be awarded by the Commission in excess of obligation;

002.06 Combined Sewer Overflow Project. "Combined sewer overflow project" ~~shall~~ means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality;

002.07 Commission. "Commission" ~~shall~~ means the Nebraska Natural Resources Commission created pursuant to Section 2-1504;

002.08 Cost Effectiveness. "Cost effectiveness" ~~shall~~ means a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits or a given objective;

002.09 Current Year Appropriations. "Current Year Appropriations" ~~shall~~ means appropriations from the legislature for the current fiscal year which may include accrued revenues;

002.10 Department. "Department" ~~shall~~ means the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101;

002.11 Director. "Director" ~~shall~~ means the Director of the Department Natural Resources as provided in Section 81-102;

002.12 ~~Eligible~~ Costs & Cost Share.

002.12(a) Eligible Costs.

"Eligible Costs" ~~shall~~ means project expenses the sponsor would have to pay which are directly required to complete the project and which are incurred after approval of the project by the Commission. Such costs may not be paid by other funding sources nor be used as local match required by State appropriated funding requirements. Matching contribution requirements provided by the applicant or applicant partners to Federal grants, excluding those sources identified in 002.12(b)(2), are acceptable as Eligible Costs (e.g., – Natural Resources Conservation Service (NRCS) or US Army Corps of Engineers (USACOE)).

002.12(b) Ineligible Costs.

"Ineligible Costs" include, but are not limited to:

1. Project related activities and expenditures incurred prior to approval of the project by the Commission.
2. Expenditures accounted for as a contribution towards a match requirement of grants from federal pass-through sources such as Pitman-Roberson, Dingel-Johnson or any other state appropriated funds.
3. Expenditures paid with funds supplied by the USACOE, Farm Service Agency (FSA), NRCS or any other federal funding sources.
4. ~~1.~~ Any expenditures for which State of Nebraska appropriated dollars (e.g., -Nebraska Environmental Trust, Department of Environmental Quality grants) are being used, including any required match, may not be included in Eligible Costs.

5. Expenditures paid by any other party or entity other than those partners listed on the application.
6. Expenditures used for project operation and maintenance, debt interest, applicant project administration and management, lobbying, entertainment or any other similar purpose;

~~"Eligible Costs" shall mean the direct project cost which would otherwise be borne by the applicant if the Water Sustainability Fund was not available. Direct project cost is deemed to include any local match required by federal or other non-state funding sources, but exclude project costs paid or reimbursed by federal and other non-state entities, project funding received directly or indirectly from other state sources plus any associated local match requirement, costs for operation and maintenance, debt interest, applicant project administration and management, and all discretionary costs such as lobbying, entertainment, etc.;~~

002.13 Fund. "Fund" ~~shall~~ means the Nebraska Water Sustainability Fund created by Section 61-222;

002.14 Governing Body. "Governing Body" ~~shall~~ means the individual or group of individuals which are empowered by law to govern the business of an applicant;

002.15 Intangible Benefits. "Intangible Benefits" ~~shall~~ means benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.16 Large Project. A project with a funding request of greater than $250,000;

002.17 Obligation. "Obligation" ~~shall~~ means actual dollars made available by the Commission to a project for reimbursement;

002.18 Political Subdivision. "Political Subdivision" ~~shall~~ means any political subdivision of the State of Nebraska to which has been granted the authority to develop water and

related land resources, including, but not limited to, a metropolitan utilities district, natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

002.19 Primary Benefits. "Primary Benefits" ~~shall~~ means net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.20 Program, Project and/or Activities. "Program, Project and/or Activities" or "project" ~~shall~~ means any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules;

002.21 Program, Project and/or Activity Proposal. "Program, Project and/or Activity proposal" or "proposal" or "application" ~~shall~~ means a proposal which is submitted seeking financial assistance from the Fund;

002.22 Project Engineer or Project Director. "Project Engineer or Project Director" ~~shall~~ means any engineer, engineering firm, or other person, persons or firm retained or employed by the applicant to provide professional engineering or other professional or technical services during the planning, design, and construction of the proposal;

002.23 Secondary Benefits. "Secondary Benefits" ~~shall~~ means net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a program, project and/or activity;

002.24 Sewer Separation Project. "Sewer separation project" ~~shall~~ means funding to combined sewer overflow projects.

002.25 Small Project. "Small P~~p~~roject" ~~shall~~ means a project with a total funding request of $250,000 or less.

002.26 State Agency. "State Agency" ~~shall~~ means any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources;

002.27 Tangible Benefits. "Tangible Benefits" ~~shall~~ means benefits, either primary or secondary, that can be expressed in monetary terms;

002.28 Total Net Allocations. "Total net allocations" ~~shall~~ means unspent appropriations from prior years and Current Year Appropriations minus Sewer Separation Project Allocations;

002.29 Water Productivity. "Water productivity" ~~shall~~ means water use to increase water sustainability;

002.30 Water Sustainability. "Water Sustainability" ~~shall~~ means water use is sustainable when current use promotes healthy watersheds, improves water quality, and protects the ability of future generations to meet their needs;

002.31 Water Sustainability Fund Cap. "Water Sustainability Fund Cap" ~~shall~~ means a financial cap that may be established by the legislature on limiting the approval of any project which would cause the funding from the Fund to exceed the cap.

003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or any combination thereof, or through the direct acquisition by the state of interests in eligible programs, projects and/or activities. The form of assistance which may be allocated to a program, project and/or activity ~~shall~~ will be determined utilizing the following criteria:

003.01 Grants. Funding may be made as grants to applicants when it is determined that such an allocation ~~will not be subsequently recovered from revenue or receipts and when the~~ leads to a program, project and/or activity, or separable portion thereof, that provides for the goals of the Water Sustainability Fund.~~appears to be of general statewide public benefit thereby making reimbursement of such money from the applicant's funds inappropriate or impossible, or when the funds are intended for a state or to meet the requirements for matching a federal grant or federal cost share agreement. If only a portion of the program, project and/or activity meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program, project and/or activity can be accomplished without a grant.~~

003.02 Loans. Funding in the form of loans may be made to applicants for any program, project and/or activity or any part thereof consistent with the purposes of the Fund which will directly generate revenue or receipts or which can be anticipated to culminate in a program, project and/or activity which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment appropriate.

003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more

appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

004 Interest Rate. The rate of interest payable on loans from the Fund ~~shall~~ will be determined annually prior to October 1 of each fiscal year. Such rate of interest ~~shall be~~ is computed by averaging the yields, as determined by a readily available state and local bond index, such as the state and local bond rates available from the Federal Reserve System, Board of Governors issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. The rate of interest payable on a loan for a specific program, project and/or activity ~~shall be~~ is the rate in effect for the fiscal year in which the Commission approves the program, project and/or activity for a loan allocation. Such rate ~~shall~~ will remain in effect throughout the repayment period determined to be appropriate for such program, project and/or activity.

005 Periodic Consultation. Periodically the Commission will request that the following entities submit suggestions to the Commission on funding and planning for water programs, projects or activities: the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board and the Game and Parks Commission.

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: SEPTEMBER 11, 2015
Title 261 – NATURAL RESOURCES COMMISSION
RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 2 – APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any program, project and/or activity proposal or any application for assistance from the Fund.

002 Filing Location. All proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund ~~shall~~ are to be filed with the Director.

003 Application Procedure. If the applicant decides to submit an application, the number and format of the application ~~shall~~ may be specified by the Director.

004 Engineering and Technical Feasibility.

004.01 A structural proposal ~~shall be~~ is considered feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering, geohydrologic and other technical principles and concepts. Engineering and technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

004.01A A detailed discussion of the plan of development selected for the proposal;

004.01B A description of all field investigations made to substantiate the feasibility report;

004.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

004.01D A description of the water and land rights associated with the proposal and pertinent water supply and water quality information, if appropriate;

004.01E A detailed discussion of each component of the final plan preparation including, when applicable:

004.01E1 Required geologic investigation;

004.01E2 Required hydrologic data;

004.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

004.02 A non-structural proposal ~~shall be~~ is considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

004.02A A detailed discussion of the plan of development designed for the proposal, including techniques to be utilized in all aspects of the proposal;

004.02B A description of field or research investigations utilized to substantiate the project conception;

004.02C A description of the water and/or land rights necessary for proposal continuation, if applicable;

004.02D A discussion of the anticipated effects, if any, of the proposal upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

005 Economic Feasibility. Except as otherwise specified by subsection 005.04 of this section, a proposal is economically feasible if primary tangible benefits exceed project costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the report. The period of analysis for economic feasibility studies ~~shall~~ will be ~~fifty (50) years or with the discretion of the Director, up to one hundred (100) years or~~ the life of the proposal~~, whichever is less~~.

005.01 Cost Information. The application ~~shall~~ must include all relevant cost information including, but not limited to the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and replacement costs. Cost information ~~shall~~ must also include the estimated construction period as well as the estimated proposal life.

005.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose proposal, the benefits will be estimated for each purpose and displayed by year for the proposal life. The application ~~shall~~ must not include benefits derived from a previously constructed project or portion of a project. Intangible and secondary benefits of the proposal should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria ~~shall~~ must be provided to the applicant by the Director.

005.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the proposal~~, not to exceed 100 years~~. A form for so indicating the annual cash flow ~~shall~~ must be supplied by the Director.

005.04 Other Methods. In the case of proposals for which there is no generally accepted method for calculation of primary tangible benefits and if the proposal will increase water sustainability, the economic feasibility of such proposal ~~shall~~ must be demonstrated by such method as the Director and the Commission deem appropriate.

006 Financial Feasibility. A proposal is financially feasible if sufficient funds can be made available to complete the proposal, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the proposal. When an applicant has partners or co-sponsors on a project, a signed letter of commitment, or an agreement from each such partner or co-sponsor must be submitted with the application in order to demonstrate capability to complete a project. The proposal ~~shall~~ will identify the amount and source of federal, state, local and/or other funding from the applicant and each partner or cosponsor, if any, so that eligibility for funding can be determined. When a loan is involved, financial feasibility requires assurance that the proposals can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the proposal.

If a loan is requested, applicant ~~shall~~ must also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

007 Combined Sewer Overflow Project Application. If an application is from a municipality for assistance with the cost of constructing, upgrading, developing and replacing sewer infrastructure facilities as a part of a combined sewer overflow project, as defined in this Title, it must contain in its application a demonstration of need for financial assistance from the Fund and the population of the municipality.

008 Ineligible Natural Resources Districts. ~~Natural Resources Districts which have not adopted or are not currently participating in the development of an integrated management plan pursuant to Neb. Rev. Stat. §46-715(1)(a) or (b) are not eligible to apply for assistance from the Fund~~See *Neb. Rev. Stat.* § 2-1507(5).

009 Ineligible Applications or Components of Applications.

009.01 An application for financial assistance in any form (grant, loan or both) to assist in paying the cost of only a feasibility study is not eligible for assistance from the Fund.

009.02 ~~Unless an application is submitted which explicitly includes a request for financial assistance to obtain a necessary government issued permit, right or authorization (permit) such as a 404 permit, surface water right, consultation with the Nebraska Game and Parks Commission regarding nongame threatened or endangered species,~~ A~~a~~n application ~~shall~~ will be ineligible for consideration if the applicant does not possess at the time the application is submitted all ~~o~~necessary government issued~~f such~~ permits, water rights or authorizations such as 404 permits, surface water rights, or consultation with the Nebraska Game and Parks Commission regarding nongame threatened or endangered species which are required for the project to be completed.

009.03 Interest owed on borrowed money is not a cost which may be included in an application nor will such costs be reimbursed.

009.04. Costs incurred by and/or services provided to an applicant prior to approval of an application by the Commission ~~(Prior Costs)~~ may not be included in project costs and will not be paid or reimbursed ~~except for approved Prior Costs~~. ~~If a project is ultimately approved, Prior Costs shall be considered. Prior Costs as used in this subsection are limited to those which are documented with the application (i.e. attached to the application) and shall not exceed 15% of the sponsor's 40% local cost share. Documents establishing Prior Costs which are to be attached to the application include copies of invoices, cancelled~~

~~checks and any other standard documentation as required by the Director for standard reimbursements. Incomplete documentation will cause rejection of the application by the Director and the application will not be forwarded to the Commission. Prior costs incurred between the date of the application and approval may also be deemed eligible for cost share reimbursement. To be considered, an itemized estimate of expenses that are expected to be incurred between the date of filing the application and the following June 30th must be~~

~~attached to the application and must be subsequently documented with reimbursement requests.~~ ~~**Under no circumstances will reimbursement be made for costs incurred, but not documented as specified in this subsection.**~~

009.05. Operation and/or maintenance expenses will not be costs of a project which can be reimbursed and may not be included in an application.

009.06. A rate of inflation may not be used as a component of project costs which are subject to reimbursement and may not be included in an application.

009.07. Grant Provisions.

009.07.01 For applicants other than the Department of Natural Resources, a~~A~~fter deducting all other sources of funding contributed to offset costs of the project (such as federal, state, Nebraska Environmental Trust and/or other~~s~~ sources regardless of the method(s) of recording and receiving such funds), financial assistance from the Fund will be 60%, or a lesser percentage if requested by the applicant, of the remaining costs which otherwise would have to be paid from local sources. The following project costs may not be included as a share of the applicant costs:

(1) Costs paid or reimbursed by a. non-state entities having as a source federal money or b. federal entities;
(2) Costs for operation and maintenance, debt interest, applicant administration and management costs;
(3) Discretionary costs.

009.07.02 For the Nebraska Department of Natural resources, after deducting federal and Nebraska Environmental Trust funds, financial assistance from the Fund will be 60%, or a lesser percentage if requested by the Department, of the remaining project costs. The Department may meet the match requirement with other sources of state funding and may include preapproved in-kind services. The following project costs may not be included as a share of the Department costs:

(1) Costs paid or reimbursed by a. non-state entities having as a source federal money or b. federal entities;
(2) Costs for operation and maintenance, debt interest, applicant administration and management costs;
(3) Discretionary costs.

009.08. An applicant may use in-kind services for a portion of its local cost share but only if such use is preapproved by the Commission in writing and only upon the applicant showing how the use of in-kind services will result in lower project costs (For example a contractor's bid for the identical services is higher than the proposed value of the in-kind services).

010 Application Filing Dates. Applications must be submitted to the Director only between the dates of July 15 and August 1.~~, except for the initial period following the date these rules become effective, the beginning date shall be the 90th day after the rules become effective and the ending date for acceptance of applications shall be to and including 14 days thereafter, for a total of 15 days.~~

011 Information Required in an Application. In addition to other information that may be required to be included in an application, applications must specify:

(1) the amount requested as a loan, if any, and the amount requested as a grant, if any;~~,~~

(2) if the amount requested is for $250,000 or less;~~,~~

(3) if the amount requested is more than $250,000;~~,~~

(4) if the project will not be completed in one year or less, the amount of funding requested in each year for which the project is requesting funding.

012 Returned Applications. Applications found by the Director to be satisfactory and reviewed by the Commission but not approved for funding will be denied and the applicant informed. Such applications may be resubmitted to the Director in the next application cycle and if the applicant chooses to do so, then the applicant must either certify that there are no changes in the application or include a narrative page describing any changes in the application compared to the prior application.

NEBRASKA ADMINISTRATIVE CODE

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Title 261 – NATURAL RESOURCES COMMISSION
RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 3 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Following receipt of a report and determination prepared by the Director that an application has been determined to be satisfactory, the Commission may request additional information from the Applicant.

001.01 Following receipt of the Director's report and recommendations, the Commission will forward all such applications to the Application Review Committee(s) which will examine each application and rank and score each application based upon the ~~following~~ criteria in *Neb Rev. Stat*. § 2-1508(1)-(8)~~:~~. The ~~following criteria shall~~criteria ~~shall~~ will be given a score of 0, 2, 4 or 6 points~~:~~.

~~(1) Remediates or mitigates threats to drinking water;~~
~~(2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;~~
~~(3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;~~
~~(4) Contributes to multiple water supply goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;~~
~~(5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;~~
~~(6) Is cost-effective;~~
~~(7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;~~

~~(8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the Untied States such that their incapacitation would have a debilitating effect on public security or public health and safety;~~

~~and t~~The ~~following~~ criteria in § 2-1508(9) to (15) ~~shall~~ will be awarded 0, 1, 2, or 3 points~~:~~.

~~(1) Improves water quality;~~
~~(2) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;~~
~~(3) Has a local jurisdiction with plans in place that support sustainable water use;~~
~~(4) Addresses a statewide problem or issue;~~
~~(5) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;~~
~~(6) Contributes to watershed health and function;~~
~~(7) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.~~

If the application is designed to meet the requirements of a federal mandate which furthers the goals of the Water Sustainability Fund (for example, improve water quality, mitigate threats to drinking water, or address flood control impacts), then that application ~~shall~~ will receive two additional points.

An application which contains either N/A or has a blank in an answer to a question in the scoring question section of an application ~~shall~~ will receive no points for each such answer.

No points will be awarded for any projects or portions of a project built or developed prior to the date of an application.

001.02 The Application ~~Review Committee~~Review Committee or Committees will be comprised of members of the Commission and will be appointed to such committee(s) by the Executive Committee.

Title 261
Chapter 3

001.03 The Application Review Committee(s) ~~shall~~ will make a preliminary scoring for each application based upon the scoring criteria specified in this chapter. The scoring recommendation ~~shall~~ will be reviewed by the Commission, which~~and it~~ may either adopt the recommendation of the committee or only upon an affirmative vote of at least 14 members of the Commission, revise the recommendation.

001.04 An application as defined in Chapter 2 007, which is recommended for further consideration by the Director, ~~shall~~ will be reviewed by the Commission for a determination of an adequate demonstration of need by the applicant, a determination of the form of the allocation made by the Director and the percentage of the population served by the applicant compared to the total population served by all of the approved for funding applications, as defined in Chapter 2 007. All of the applications reviewed and approved by the Commission pursuant to this subsection ~~shall~~ will be awarded their respective proportion of the amount of funds appropriated to the Fund pursuant to Neb. Rev. Stat. §2-1507 (2).

001.04.01 Subsequent to the initial year in which approval for funding of applications as defined in Chapter 2 007 is made, renewed applications in subsequent years must state that the applicant is still qualified to apply because its plan is still approved by the Department of Environmental Quality.~~,~~ The renewed application~~it~~ must state whether the applicant~~if it~~ still has need for financial assistance and it must state the applicant's~~its~~ current estimated population. Funding to all then approved applications that are made pursuant to~~as defined in~~ Chapter 2 007 will be based upon then current funds and populations served.

001.04.02 Applications filed pursuant to Chapter 2 007 will not be scored.

001.04.03 Applications filed pursuant to Chapter 2 007 are not considered to be part of any cap.

001.05 Commission action on recommendations made by the Director, as to the form of grant, loan or combination thereof, ~~shall~~ must be in accordance with such recommendations.

001.06 A Commission member ~~shall be~~ is ineligible to participate in the action of the Commission concerning an application for a grant or a loan if such member is a member of the governing body, or~~therwise~~ represents the applicant for financial assistance or otherwise has a conflict of interest. All Commission members ~~shall be~~ are eligible to vote on proposals involving state acquisition of interests in proposals.

002 Funding. After scoring and ranking applications that the Director finds to be satisfactory, the Commission will make the following determinations to establish the amount of money~~allocation~~ available to utilize in funding~~approving~~ new projects and to ~~obligate~~ fund~~s~~ a~~for~~ previously approved project~~s~~.

002.01 Current Year Appropriations~~Fund Allocations~~. The Commission ~~shall~~ will set aside~~allocate up to~~:

(1) If approved for funding pursuant to Chapter 3 001.04, 10% of the funds appropriated as specified in Nebraska Rev. Stat. §2-1507(2);
(2) 10% of the Current Year Appropriation for Small Projects; ~~with~~
(3) ~~t~~The remainder ~~available~~ for Large Projects. The Commission is not authorized to approve an allocation for a project that would cause the Cap to be exceeded.

002.02 Small Project Funding ~~Allocation~~. The Commission ~~shall~~ will fund current year Small Projects by starting with the highest scored project. The Commission ~~shall~~ will proceed in rank order until funds which have been set aside for Small Projects, including

any carryover from the prior year, have been committed or the Commission may limit funding for Small Projects based upon the scoring of the projects and other considerationsallocate funds

Title 261

Chapter 3

current year Small Projects starting with the highest scored project and proceeding until all such projects have been allocated funds or until the available allocation has been utilized or until the Commission sets a limit on current year funding for Small Projects. Any remaining amount may be eligible to be carried over or be made available to allocate to Large Projects subject to Commission approval.

002.03 Large Project Funding Allocation/Obligation. The Commission shall will first provideobligate funds forfor Largea Large Projects which hasve been previously approved but not fully fundedand which have complied with the funding requirements in Chapter 3 Sections 005 and 006. The Commission shall will next consider funding for current year projects starting with the highest scored project and proceeding until legislatively authorized funds, including any carryover from the prior year, are committed by fully funding projects or until the Commission limits funding based upon the scoring or other considerationsavailable allocations for Large Projects have been utilized. After funding has been completed as described herein, and if funds remain, the Commission may approve and partially fund (obligate) one additional project. In doing so, the Commission must be able to fully allocate this project utilizing the "cap". In no event may the Commission approve an allocation for more than one project, nor exceed the Cap.

002.04 Project Obligation. Prior to the Commission's action obligating funds for a given fiscal year, the Department may invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission. The Commission shall then consider and approve obligations for Small Projects and Large Projects in accordance with the allocation approved in Chapter 3 Subsection 002.02 and 002.03.

003 Project Totals Exceeding Balance in Fund. Notwithstanding any approval for funding, an applicant shall not under any conditions be entitled to reimbursement for any project costs until funds have been obligated for reimbursement of costs incurred by the applicant on such project. Costs paid, accrued or authorized by an applicant prior to funds being obligated for such projects and costs paid, accrued or authorized by an applicant for portions of project development in excess of those portions for which funds have been obligated shall be incurred at the risk of the applicant and such applicant shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement.

0034 Annual Availability of Funds. The extent, if any, to which financial assistance will be provided to any project in any one fiscal year shall will be in accordance with and contingent upon

the availability of funds and Commission action obligating funds for such project in such fiscal year~~ in accordance with Chapter 3 Sections 005 or 006~~.

~~005 Determination of Fiscal Year Financial Needs.~~

~~005.01 No later than March 31 of each year each applicant willing to utilize and capable of utilizing either an initial or an additional obligation of funds for a project which is not fully obligated shall present a report to the Commission indicating:~~

~~Title 261~~
~~Chapter 3~~

~~005.01A The estimated time schedule for beginning, ongoing work and completing the project.~~

~~005.01B The estimated time schedule and expenditure amount for commencing, continuing and completing reimbursement requests.~~

~~005.01C Any such request shall be accompanied by an estimate of the costs for completing work identified in the request.~~

~~005.01D Any extenuating circumstances that may delay completion of the project or any other factors which may affect the sponsor's ability to complete the project.~~

~~006 Apportioning and Setting Aside Funds. Prior to July 1 of each year the Commission shall obligate available funds for projects eligible for additional funding assistance. In making such apportionments, the Commission shall consider the following:~~

~~006.01 Whether it is reasonable to expect that each project for which funding is requested is capable of being commenced within the next fiscal year;~~

~~006.02 Whether any of the projects proposed for additional funding, in the opinion of the Commission, could be delayed without significant adverse effects on the total project;~~

~~006.03 Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed;~~

~~006.04 The water and related resources needs addressed by each project;~~

~~006.05 The urgency of need for each project;~~

~~Title 261~~
~~Chapter 3~~

~~006.06 The extent of benefit provided by each project; and~~

~~006.07 How to make the most efficient utilization of the available funds.~~

~~Prior to the Commission's action obligating funds for a given fiscal year, the Department may invite the sponsors of all projects for which additional funding obligation has been requested for that fiscal year to appear before the Commission to address the manner in which their projects relate to the factors to be considered by the Commission.~~

0047 Reductions in Allocations. An applicant must~~ay~~ no later than March 31 of each year submit reports containing an update of the estimated time schedule for beginning and completing the approved project and any anticipated delays to implementing the project or obtaining sufficient funds to meet the applicant's financial obligations for the project. The Commission ~~shall~~ will review all such reports, if any, which have been submitted and any other relevant information available to it and ~~shall~~will, if appropriate and consistent with the funding preferences established in state statute, make reductions in the amount allocated and obligated for any approved application. No amount previously allocated and obligated in accordance with section 002 of this chapter ~~shall~~ will be decreased unless:

0047.01~~5~~ The ~~appropriation for the~~ Water Sustainability Fund is reduced by subsequent legislative act, or;

0047.026 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Water Sustainability Fund or the Commission's rules.

~~007.01 The applicant has indicated a decrease in needs;~~

~~007.02 The Commission, based on information contained in the applicant's report submitted in accordance with these rules or other information available to it, finds that there are reasonable grounds for concern that the project may not be completed;~~

~~007.03 The project is abandoned or significantly delayed;~~

~~007.04 The Department fails to receive a re-appropriation of unexpended funds;~~

In case of any such findings, the Commission may modify, suspend or revoke any previous action to allocate and obligate funds for the project. Provided, however, any action to modify, suspend, or revoke any previous allocation ~~shall~~ will not affect the applicant's right to reimbursement for costs which it has incurred or for which the Fund has become legally obligated prior to such Commission action. In addition, such action ~~shall~~ will not affect the applicant's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an allocation.

005~~8~~ Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

006~~9~~ Disbursements. From the annual appropriations by the Legislature to the Fund and subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Director ~~shall~~ will disburse no more often than once each month, such funds as are necessary to reimburse or pay, in the proper proportion, all eligible costs incurred by the applicant, if any. All such costs ~~shall~~ must be documented by the applicant in the manner as is directed by the Director prior to the disbursement of any funds. In the event that a proposal has been approved for combination grant and loan, each disbursement ~~shall~~ will, unless otherwise specified by the Commission, constitute a disbursement of loan and grant funds in the same proportion as the approved allocations.

0~~1~~07 Inspection During and After Construction. The Director or his or her designated representative(s) ~~shall~~ must have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection ~~shall~~ may never subject the State of Nebraska to any action for damages. The Director may bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer or project director ~~shall~~ must initiate necessary corrective action whenever notified by the Director of any such variances. I~~and i~~f corrective action is~~they are~~ not completed as directed, then the project will no longer be eligible for funding. Subsequent to the completion of construction, project investigation and inspection may be conducted by the Department during the life of the project and may be prescribed pursuant to the contract between the applicant and the Department.

008~~11~~ Changes in Scope of Approved Proposals. The A~~a~~pplicant ~~shall~~ will promptly report all increases in the cost of a project and any proposed additions, deletions, or modifications or any change in the purpose or purposes of the project by submitting to the Commission and to the Director an amendment to the formal application and feasibility report, if any.

~~Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the allocation for the project shall be required.~~ Any proposed change in the scope, purpose, or plan of development for the project~~, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the allocation for the project is requested~~ ~~shall~~ will be reviewed by~~referred to~~ the Director for his or her~~ review and~~ recommendation to the Commission regarding whether the project still meets the criteria for funding eligibility contained in the Fund or the Commission's rules. Except in the case of a project for which the Department is the applicant, the Director has the discretion to approve or refer to the Commission minor changes. Additionally for those changes which the Director determines to be more than minor and changes to a project for which the Department is the Applicant, will be referred to the Commission for consideration. The Director is requested to notify the Commission of any minor changes approved by the Director.

The Commission ~~shall~~ will review all such referrals and information which have been submitted and ~~shall~~ may, if appropriate and consistent with the purposes for Funding established in the Commission rules, approve the change in scope, purpose or plan of development.

If the Commission finds that the change results in the project being inconsistent with the Commission rules for the Fund, or the change would reduce the benefits from the project, the Commission may notify the Applicant that the project as a result of the change no longer qualifies for funding and the contract between the Applicant and the Department ~~shall~~ will be terminated. The Applicant may submit an application for the revised project during a subsequent application period.

Increases in cost of approved projects are the responsibility of the Applicant. The Applicant may choose to withdraw its approved project and the contract between the applicant and the Department may be terminated. For any approved project that the Applicant withdraws, abandons or otherwise does not complete, the Commission may require total or partial repayment of any funds expended by the Commission. The applicant may submit a new application to the Commission during a subsequent application period.

0~~09~~~~12~~ Project Reporting. Projects which are granted financial assistance from the Fund must submit on or before April 1st, an annual report containing information detailing project progress and anticipated progress for the year.

At the time the Applicant completes a project, a Close Out Report ~~shall~~ will be submitted to the Commission and the Director identifying what the project accomplished and what benefits were achieved. Quantifying and/or explicitly describing the water sustainability benefits, as described in the application, that were or will be achieved by the funding supplied by the Fund is preferred. After project completion/close out, annual reports are no longer required, unless real estate that was acquired as a part of the project is rented or otherwise generates revenue exclusive of park entry fees, city fees or revenue not resulting from the project.

NEBRASKA ADMINISTRATIVE CODE

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RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

~~Chapter 4 – LAND RIGHTS: PURCHASES, SALES AND RENTS/REVENUES~~

~~001 Eligibility for Funds. To be eligible for land rights assistance from the Water Sustainability Fund, the local organization, defined as public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government, must first enter into an agreement with the Department. Such agreement, which shall be on a form supplied by the Department, shall provide that the local organization will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must have been met:~~

~~001.01 The Department has either participated in the planning or reviewed the plans and has approved the program of work;~~

~~001.02 The local organization has identified to the Department the location and purpose of purchasing lands, easements, and rights-of-way;~~

~~001.03 The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations against disposal of said property;~~

~~001.04 The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and~~

~~001.05 The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.~~

~~002 Appraisals. An appraisal with an "as of" date within six months prior to the purchase date of the tract must accompany each reimbursement request for funds. The cost of such appraisal may be eligible for cost share reimbursement. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.~~

~~003 Damage to Crops. The local organization shall have the option: (1) of giving the landowner the option of retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) of delaying the purchase until after the growing/harvesting season; or (3) of the landowner receiving a damage payment for the crops destroyed based upon the appraisal; or (4) in the event that the crop is purchased by the local organization, the purchase price, harvest expenses and management decisions and ultimate sales revenue shall be the sole responsibility of the local organization and neither related expenses nor revenues shall be applied to the project. When applicable (3 above), the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. The cost of such appraisal may be eligible for cost share reimbursement.~~

~~004 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Water Sustainability Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal whichever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution of any proceeds subsequently realized from the sale of the land or right-of-way.~~

~~005 Title Insurance and Other Relevant Documents. Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. The title insurance policy must be from an insurance company authorized to provide such insurance in~~

~~Nebraska. The local organization shall also furnish the Department with a copy of any completed purchase agreement (signed by both parties), a deed or easement with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document demonstrating the terms and conditions of the proposed purchase. All reimbursement requests shall be itemized and packaged in the order of the itemized listing.~~

~~006 Eminent Domain Awards. If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Chapter 4 Section 007.~~

~~007 Amount Paid.~~

~~007.01 The Commission reserves the right to approve or reject payment for any cost share reimbursement for purchases of any lands, easements, or rights-of-way if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed. It may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost share of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.~~

~~007.02 The amount which will be approved by the Commission for reimbursement from the Water Sustainability Fund shall not exceed the purchase price as defined in Chapter 4 Section 004.~~

~~007.03 If for any reason the local organization desires to sell any of its interest in real property, the local organization shall first make such request to and obtain approval of the Commission. If for any reason the local organization desires to rent any of its real property, the local organization shall first make such request to and obtain approval of the Director of the Department. The local organization must remit to the Department a pro rata share of the proceeds of any rental income or of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Water Sustainability Fund.~~

~~008 Documentation of Purchase. The local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary for each transaction. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds.~~

~~009 State Lien. In instances where the WSF is used to acquire fee title interest in real property, the Department shall file a lien against the property, in the local courthouse, for the purpose of preventing the sale of the property without the prior approval of the Commission, as well as the funds interest in any rental or other income generated by the property.~~

~~010 Annual Inspection. At least once each year during construction and once every five years after project close-out, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired. A report of the staff member's findings along with any suggestions or recommendations will be submitted to the local organization for follow-up action.~~

~~011. Annual Financial Statement. Each local organization holding fee title to lands purchased with Water Sustainability Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands. This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.~~

~~012. Annual Lease. When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Water Sustainability Funds. Unless otherwise approved by the Director, leases shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.~~

~~013. Use of Lease Revenues. Rental and lease revenues may be used for reasonable and necessary expenses incurred by the local organization in the management of such lands with prior Department approval. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with the Department prior to such management action and shall keep the Department informed of all matters relevant to property management.~~

~~014. Notifying Public Bodies of Proposed Sales. The Department shall notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.~~

~~015. Notice of Intent to Acquire or Retain. Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such interest.~~

~~Title 261~~
~~Chapter 4~~

~~016. Appraisal and Notification to Public Bodies of Appraised Fair Market Value. Whenever a public entity indicates in accordance with Chapter 4 Section 017 that it is interested in acquiring or retaining lands purchased in whole or in part with Water Sustainability Funds, the Department shall have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Chapter 4 Section 020.~~

~~017. Acquisition by Public Bodies. Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Water Sustainability Funds shall notify the Department of such desire by the date specified in the notification. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If acquisition of such lands for public use by a public body is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund. Proceeds from rents and other income shall be split in the same manor.~~

~~Title 261~~
~~Chapter 4~~

~~018. Criteria for Acquisition by Public Bodies.~~

~~018.01 Whenever a public entity indicates in accordance with Chapter 4 Section 019 that it desires to acquire or retain lands purchased in whole or in part with Water Sustainability Funds, the Commission shall determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Chapter 4 Sections 024 through 029. In making such determination, the Commission shall consider the following factors:~~

~~018.01A The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.~~

~~018.01B The nature of probable alternative uses for such property and their relative importance in the community and the state.~~

~~018.01C The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.~~

~~018.01D The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.~~

~~018.01E The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.~~

~~018.01F The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally acquired and its consistency with accepted conservation principles.~~

~~018.02 Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Water Sustainability Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.~~

~~019 Desire to Acquire by Two or More Public Entities. In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Chapter 4 Section 020. If following such evaluation, more than one of the proposed purchases by public bodies is deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.~~

~~020 Acquisition or Retention of Less Than Full Parcel.~~

~~020.01 The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such purchase or retention would satisfy the criteria of Chapter 4 Section 020 and if~~

~~020.01A It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and~~

~~020.01B No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.~~

~~020.02 The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.~~

~~021 Agreement to Retain in Public Use. As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Water Sustainability Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed the life of the project, shall specify the following terms and conditions:~~

~~021.01 The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Chapter 4 Section 019.~~

~~021.02 No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Water Sustainability Fund without prior Commission approval.~~

~~021.03 Such public body shall not utilize the property or any part thereof for income production unless such income results from activities that benefit the maintenance of the property or to serving the public purposes for which the property was acquired or retained.~~

~~021.04 Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.~~

~~022. Method of Sale. When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Chapter 4 Sections 019 through 023 shall be by public auction, sealed bid or other acceptable method. Prior to such sale the Department shall through the local organization:~~

~~022.01 Cause an appraisal to be made of such land,~~

~~022.02 Retain the services of a public auctioneer,~~

~~022.03 Cause legal notice thereof to be published.~~

~~023. Public Auctioneers. In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall select a public auctioneer, for the services of such public auctioneer, and over-see the contracting of said auctioneer with the local organization. Selection of the auctioneer shall be the responsibility of the Director of the Department. Fees associated with the appraisal, auctioneer, advertising and notice, and any other fees associated with the sale, provided they are approved by the Department in advance, are eligible for reimbursement from the sale proceeds prior to the disbursement split between the Department and the local organization.~~

~~024. Sale of Improvements. When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the Department shall cause legal notice thereof to be published pursuant to Chapter 4 Section 027.~~

~~025. Notice of Sales. Notice of all sales governed by these rules shall be published in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Advertisement/notice shall also be distributed by flyer and/or posters posted in public view, on web sites and any other appropriate method for generating interest in the sale. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements~~

~~and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.~~

~~026 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.~~

~~027 Conduct of Auction. The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.~~

~~028 Earnest Money Deposit. The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.~~

~~029 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.~~

~~Title 261~~
~~Chapter 4~~

~~030 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, and such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be rescheduled for sale according to the rules hereinabove set forth.~~

~~031 Sale Expenses. Any expenses, that have been approved by the Director in advance, which are incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Chapter 4 Subsection 007.03.~~

Chapter 4 – FEE TITLE LAND RIGHTS: PURCHASES, SALES AND RENTS/REVENUES

001 Eligibility for Funds. Cost share assistance for fee title land rights purchases as part of projects funded with the Water Sustainability Fund is available only to public districts, cities, counties, political subdivisions and agencies of the State. Such project sponsors must enter into an agreement with the Department prior to making any purchase commitments. Such agreement, ~~which shall be~~ on a form supplied by the Department, ~~shall~~ is to provide that the eligible project sponsor will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must be met:

001.01 The project sponsor and the Department have signed an agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations regarding disposal of said property; and

001.02 The Purchase Price of the land must be established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser within 6 months prior to purchase.

002 Purchase Price and Total Cost of Acquisition. For purposes of Water Sustainability Fund administration, the terms "Purchase Price" and "Total Cost of Acquisition" of the land ~~shall~~, in the absence of a condemnation proceeding, means the lower of the amount actually paid by the project sponsor or the amount established by an appraisal.

002.01 Eminent Domain Awards. In the event of a condemnation proceeding, the Purchase Price and Total Cost of Acquisition ~~shall~~ means the amount of damages awarded by a court of competent jurisdiction for cost of the land. Any other damages awarded including damage to crops are the sole responsibility of the sponsor. The Commission reserves the right to require that the project sponsor appeal any award if such award is deemed excessive.

002.02 Payments in Excess of Appraised Value or Court Awarded Damages. Any amount paid by a project sponsor in excess of the Purchase Price ~~shall be~~ is the sole responsibility of the project sponsor and ~~shall have~~ has no effect upon the distribution of any proceeds subsequently realized from any subsequent revenues from land rents or sale of the land.

002.03 Damage to Crops. No costs related to damage to crops on land acquired by a project sponsor ~~shall~~ will be eligible for reimbursement by the Water Sustainability Fund.

003 Land Acquisition Reimbursement. The amount that will be subject to reimbursement from the Water Sustainability Fund ~~shall~~ may not exceed the Purchase Price as defined in Chapter 4 Section 002.

003.01 Commission Approval of Cost Share Reimbursements. The Commission reserves the right to approve or reject payment of any cost share reimbursement for purchases of any fee title land rights purchased subsequent to a Commission decision if, based on reports from the project sponsor or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed. The Commission may withhold or limit assistance to the project sponsor for the acquisition of any lands needed for that project. Any Commission action to refuse to assist a project sponsor in paying the costs of acquisition of any interest in fee title land shall not, however, affect the project sponsor's right to reimbursement of costs for which the project sponsor has become legally obligated prior to such Commission action. In addition, such action ~~shall~~ will not affect the project sponsor's right to reimbursement for the cost share of land

acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern ~~shall~~ include, but are not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.

003.02 Documentation of Property Purchases.

003.02.01 Willing Seller Land Purchase. The project sponsor ~~shall~~ must furnish the Department with a copy of any completed purchase agreement (signed by both parties), a deed with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document demonstrating culmination of the terms and conditions of the purchase. All reimbursement requests ~~shall~~ must be itemized and packaged in the order of the itemized listing.

003.02.02 Acquisition through Eminent Domain Proceedings. If a project sponsor acquires a fee title interest in real property through the power of eminent domain, approval by the Commission of any court award exceeding in amount the appraised value of the land ~~shall~~ must be required prior to the disbursement of any funds in excess of the appraised value. The Commission reserves the right to require that the project sponsor appeal any award if such award is deemed excessive.

003.03 Cost Share Reimbursement. Before any cost share reimbursement related to fee title land rights purchases are paid, the project sponsor must submit a copy to the Department of a title insurance policy on the property acquired. The title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska.

003.04 State Lien. In instances where the Fund is used to acquire fee title interest in real property, the Department ~~shall~~ will file a lien against the property, in the local courthouse, for the purpose of preventing the sale of the property without the prior approval of the Director, as well as securing the Fund's interest in any rental or other income generated from non-public use of the property.

004 Inspections. At least once each year during construction and once every five years after project closeout, a Department staff member ~~shall~~ will inspect each parcel of land for which fee title has been acquired. A report of the staff member's findings along with any suggestions or recommendations will be submitted to the project sponsor for follow-up action.

005 Annual Financial Statement. Each project sponsor holding fee title to lands purchased with Water Sustainability Funds ~~shall~~ must submit a complete revenue and related expense statement to the Department by November 1 of each year during which non-public use revenue is generated. Such required statement ~~shall~~ is to set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands. This financial statement is required in addition to any other statement or accounting required by law or otherwise to be submitted by the project sponsor. After project completion/close out, annual reports are no longer required unless real estate acquired as a part of the project is rented or otherwise is generating non-public use revenue. Public use revenue such as park entry fees and service and delivery fees collected by public districts, cities, counties, political subdivisions and agencies of the State are exempted.

006 Rental or Lease of Acquired Property. If land acquired in part with funding from the Water Sustainability Fund is made available by the sponsor for rent or lease for agricultural or other uses, a Department staff member ~~shall~~ will work with the project sponsor in preparing the rental or lease agreement. The Director ~~shall~~ must be designated a third party on lease agreements, and no lease ~~shall~~ will be deemed effective unless and until it has been approved in writing by the Director.

Title 261
Chapter 4

006.01 Rental and Lease Revenues. The Water Sustainability Fund ~~shall~~ must share in net rental and lease revenue on the basis of the cost share provided toward the Purchase Price as defined in Chapter 4, Section 002.

006.02 Management Expenses. Rental and lease revenues may be used for reasonable and necessary expenses incurred by the project sponsor in the management of such lands with prior Department approval. The Department is responsible for overseeing the management of such lands, and the project sponsor ~~shall~~ is required to consult with the Department prior to such management action and ~~shall~~ keep the Department informed of all matters relevant to property management. Approved management expenses ~~shall~~ will be deducted from gross rental and lease revenues to determine net revenue for distribution.

006.03 Distribution of Net Revenue. The sponsor ~~shall~~ will provide the Department with a detailed accounting of revenues and management expenses used to determine net rental and lease revenue in accordance with the contract between the project sponsor and the Department. The sponsor ~~shall~~ will at that time also calculate the share due to the Water Sustainability Fund based on the cost share percentage provided from the Fund for purchase of the land and remit that amount to the Department. Such revenues will be deposited by the Department into the Water Sustainability Fund.

007 Sale of Lands. If for any reason the project sponsor desires to sell any of its interest in real property acquired in part with funding from the Water Sustainability Fund including but not limited to fee title, water rights and/or mineral rights, the project sponsor ~~shall~~ is required to first make such request to, and obtain approval of, the Director. Sales ~~shall~~ are to be conducted in the manner prescribed in the sections below.

007.01 Method of Sale. When any lands and/or improvements on lands involving the Water Sustainability Fund are to be sold, whether those lands are to be sold with or without improvements, such sale ~~shall~~ will be by public auction, sealed bid or other acceptable method. Prior to such sale the Department ~~shall~~ will through the project sponsor:

(1) Cause an appraisal to be made of such land and/or improvements on lands,

(2) Retain the services of an auctioneer, and

(3) Cause legal notice of a public auction to be published.

007.01.01 Auctioneers. In retaining the services of an auctioneer for the sale at auction of any lands purchased in whole or in part with the Water Sustainability Fund, the Department ~~shall~~ will select an auctioneer, for the services of such auctioneer, and over-see the contracting of said auctioneer with the project sponsor. Selection of the auctioneer ~~shall~~ will be the responsibility of the Director of the Department. Fees associated with the appraisal, auctioneer, advertising and notice, and any other fees associated with the sale, provided they are approved by the Department in advance, are eligible for reimbursement from the sale proceeds prior to the disbursement split between the Department and the project sponsor.

007.01.02 Notice of Sales. Notice of all sales governed by these rules ~~shall~~ will be published in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Advertisement/notice ~~shall~~ will also be distributed by flyer and/or posters posted in public view, on web sites and any other appropriate method for generating interest in the sale. Such notices ~~shall~~ will list and describe the land(s) and/or improvement(s) to be sold and the easements and/or rights-of-way, if any, which will be retained by the project sponsor, and ~~shall~~ will state the date, time and place for the opening of sealed bids. If appropriate, such

notice ~~shall~~ will state the address where sealed bids are to be mailed or delivered and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties ~~shall~~ will also be provided.

007.01.03 Sealed Bids. In order to be eligible for consideration, sealed bids for improvements ~~shall~~ must state which improvement(s) the bid is for and ~~shall~~ must be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit ~~shall~~ will be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids ~~shall~~ must be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids ~~shall~~ will remain sealed until the time set for their opening, at which time the two highest bids ~~shall~~ will be read.

007.01.04 Conduct of Auction. The public auction for each tract of land to be sold ~~shall~~ will remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

007.01.05 Earnest Money Deposit. The highest bid for a tract of land received at public auction ~~shall~~, in order to be eligible for consideration by the Commission, must be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

007.01.06 Purchase Agreement. The highest bidder for the purchase of any of the lands governed by these rules ~~shall~~ must, after being designated the highest bidder, enter into a purchase agreement with the project sponsor stating that the balance due ~~shall~~ is to be paid within thirty days of notification by the project sponsor of the acceptance of the bid by the Commission. The purchase agreement ~~shall~~ will describe all applicable terms for the sale, including all terms specified by the Commission. Failure to comply with this rule or with the conditions of the purchase agreement ~~shall~~ will result in the forfeiture of said bidder's deposit.

007.01.07 Approval or Rejection of Bids. The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission ~~shall~~ will review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the bid. If a portion of the original purchase price was contributed by the project sponsor, such project sponsor ~~shall~~ will be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it ~~shall~~ will direct the project sponsor to proceed with the sale. Upon receiving full payment, the project sponsor ~~shall~~ will convey title to the purchaser, reserving as applicable, such interests in the land as are necessary for the project sponsor to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission. In the event that the Commission determines that a bid is inadequate, the bidder's deposit ~~shall~~ will be returned within ten days after such determination, the land ~~shall~~ will be leased for an additional year, and the land ~~shall~~ will be rescheduled for sale according to the rules set forth in this chapter.

Title 261
Chapter 4

007.02 Sale Proceeds. The Water Sustainability Fund ~~shall~~ will share in net sale proceeds on the basis of the cost share provided toward the Purchase Price as defined in Chapter 4, Section 002.

007.02 01 Sale Expenses. Any expenses which are incurred by the Department or the project sponsor in conducting this sale that were approved by the Director in advance ~~shall~~ are to be subtracted from the sale price to determine Net Sale Proceeds.

NEBRASKA ADMINISTRATIVE CODE

ISSUE DATE: NEW DRAFT
TITLE 261 – NATURAL RESOURCES COMMISSION
RULES GOVERNING THE ADMINISTRATION OF THE WATER SUSTAINABILITY FUND

Chapter 5 – EASEMENT AND RIGHT OF WAY LAND RIGHTS: PURCHASES~~,~~ AND SALES

001 Eligibility for Funds. Cost share assistance for the purchase of Easements (Land Rights) is available only to public districts, cities, counties, political subdivisions and agencies of the State. Such project sponsors must enter into an agreement with the Department prior to making any purchases of easements or rights of way. Such agreement, on a form supplied by the Department, is to provide that the project sponsor will abide by the law and rules and regulations governing administration of the Water Sustainability Fund. In addition, the following conditions must be met:

001.01 The project sponsor and the Department have entered into the agreement on the administration and expenditure of these state funds, rental and income generation requirements and limitations, as well as specific limitations against disposal of said property easements; and

001.02 The price of the easement or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser.

002 Appraisals. An appraisal with an “as of” date within six months prior to the purchase date of the easement should accompany each reimbursement request for funds.

003 Purchase Price and Total Cost of Acquisition. For all purposes of the administration of the Water Sustainability Fund, the terms "P~~p~~urchase P~~p~~rice" and "T~~t~~otal C~~c~~ost of A~~a~~cquisition" for the easement or right of way ~~shall, in the absence of a condemnation proceeding~~, means in the absence of a condemnation proceeding the amount actually paid by the project sponsor or the amount established by an appraisal whichever is the

lesser amount. In the event of a condemnation proceeding, such terms ~~shall~~ means the amount to obtain the easement or right of way awarded by a court of competent jurisdiction. Payments by a project sponsor in excess of any price so established ~~shall~~ will be the sole responsibility of the project sponsor and ~~shall have~~ has no effect upon the distribution of any proceeds subsequently realized from the sale of the easement or right-of-way.

004 Title Insurance and Other Relevant Documents. Before any funds are paid out to the project sponsor, such organization must furnish to the Department a copy of a title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. The title insurance policy must be from an insurance company authorized to provide such insurance in Nebraska. The project sponsor ~~shall~~ will also furnish the Department with a copy of any completed purchase agreement (signed by both parties), an easement with seal or filing stamp, the closing statement signed by both parties, all cancelled checks and any other written document demonstrating the terms and conditions of the proposed purchase. All reimbursement requests ~~shall~~are to be itemized and packaged in the order of the itemized listing.

005 Eminent Domain Awards. If a project sponsor is unable to acquire an easement, except through the power of eminent domain, approval by the Commission of any court award exceeding the appraised value ~~shall be~~ is required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the project sponsor appeal such award if such award is deemed excessive.

006 Amount Paid.

006.01 The Commission reserves the right to approve or reject payment for any cost share reimbursement for purchases of any easements, or rights-of-way if based on reports from the project sponsor or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed. The Commission may withhold or limit assistance to the project sponsor for the acquisition of

any easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist a project sponsor in paying the costs of acquisition of any interest in land shall will not affect the project sponsor's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall will not affect the project sponsor's right to reimbursement for the cost share of easements acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but are not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, federal or other sources of funding.

006.02 The amount which will be approved by the Commission for reimbursement from the Water Sustainability Fund shall may not exceed the purchase price as defined in Chapter 4 Section 003.

006.03 If for any reason the project sponsor desires to sell or lift any of its restrictions or interest in easements or rights of way, the project sponsor shall will first make such request to and obtain approval of the Director. If for any reason the project sponsor desires to rent or temporarily lift any of its restrictions or easements, the project sponsor shall will first make such request to and obtain approval of the Director. The project sponsor must remit to the Department a pro rata share of the proceeds of any subsequent sale of such property right. The pro rata share shall must be equal to the cost share reimbursement relative to the total cost of acquisition (as defined in Chapter 5 Section 003) for such property.

007 Documentation of Purchase. The project sponsor shall is to forward to the Department a copy of the easement, court decree (in the case of a condemnation proceeding) or any other document or material deemed by the Department to be necessary for each transaction. Such easement, court decree, etc. shall needs to be verified by the clerk of the court or the register of deeds.

Title 261
Chapter 5

008 State Lien. In instances where the fund is used to acquire easements or restrictions of use of any real property, the Department ~~shall~~ remains a third party for the purpose of enforcing the restriction and preventing the sale of the easement without the prior approval of the Director; as well as the funds interest in any rental or sales income generated by the use or disposition of the property.

009 Annual Inspection. At least once each year during construction and once every five years after project close-out, a Department staff member ~~shall~~ will inspect each parcel of land for which an easement has been acquired and is retained. A report of the staff member's findings along with any suggestions or recommendations may be submitted to the project sponsor for follow-up action.

010 Agreement to Retain in Public Use. The easement~~shall~~ will, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the original application.

011 Release/Lifting of Easement. No easement ~~shall~~ may be released or lifted in whole or in part without prior Commission approval. Such release shall result in an increased land value and such increase ~~shall~~ must be verified by an appraisal. The entity retaining ownership of the property ~~who's~~whose lease is being removed or lifted, ~~shall~~ must remit to the project sponsor, an amount not less than that determined by appraisal, to be the increased valuation as the result of the removal of the easement. The project sponsor ~~shall~~ must then remit to the Department that portion of the payment equal to the percentage originally paid for by the fund.