

2.6 COST-SHARING: **FROM CONTRACTING TO PROJECT COMPLETION**

The following was developed to answer range of questions including cost-share contract execution; voluntary and enforcement cost-sharing; costs and practices eligible for cost-sharing; manure storage and nutrient management cost-sharing; DATCP approval and recording; change orders and amendments; contract extensions and expirations; county reimbursement requests; and contract satisfactions and cancellations.

EXECUTION OF COST-SHARE CONTRACTS

1. A properly executed contract is required to obtain DATCP cost-sharing. A contract is not properly executed if a required party has not signed the document. Even if an operator will be installing an annual conservation practice, the landowner must sign the contract since the installation will affect the landowner's legal rights.
2. For engineered practices using bond funds, the cost-share contract must be executed before the practice is installed. This requirement is based on Bond Counsel opinion (December 27, 2000) that "having the agreement in place before the landowner installs the conservation practice helps ensure that bond proceeds will be applied in a manner consistent with constitutional and statutory requirements."
3. The county representative (the LCC Chair or designee) should sign a cost-share contract in the same year that the cost-share funds are allocated. For example, if a county plans to use 2018 allocated funds, the county should sign the contract in 2018.
 - If a county has a policy reason for signing contracts with landowners in late November or December in the year prior to county's grant award, the county should take these precautions after the landowner signs any cost-share contract: (1) the county representative should wait to sign the contract until after January 1 of the grant year, and (2) the county should inform the landowner that no work on the project can begin until after the county has signed the contract.
4. While all cost-share contracts must have required signatures from landowners, cost-share recipients and their spouses, DATCP has streamlined the requirements for notarizing these signatures. DATCP has developed a *Landowner/Grant Recipient Notarization Table* that explains the streamlined notarization requirements for all cost-share contracts. See Sec. 2.12 of the SWRM Grant Resources website. (Note all references to subsections in Section 2 refer to policy and procedure documents found in the SWRM Grant Resources Manual at this website, https://datcp.wi.gov/Pages/Programs_Services/SWRMSect2.aspx)
5. When completing section 3 of a cost-share contract, counties should:
 - Use the most current technical standard for the design of a cost-shared practice.
 - The 2018 revision of ATCP 50 updated the technical standards used for many cost-shared practices but retained the 2014 versions of NRCS 313 and NRCS 635 standards.
 - Landowners may voluntarily agree to use newer standards, which should be documented in the box provided for designating technical standards used in the design.

- Record units of measurement and quantity for each practice listed, and include changes in quantity on the change order form. For more information on listing practices and NR 151 references, refer to Section 2.2 *Cost-Share Funding Source Table and NR 151 Code Guidance*.

VOLUNTARY AND ENFORCEMENT COST-SHARING

6. Most counties offer cost-sharing under voluntary arrangements with landowners.
 - Typically counties offer the maximum cost-share rate of 70 percent to pay for the installation of a conservation practice unless a maximum flat rate is available.
 - In a voluntary transaction, the county is free to negotiate a cost-share amount lower than the maximum rates. For example, a county may cap cost-sharing for manure storage at 20 percent of the eligible costs.
7. If a county requires a landowner to install a conservation practice to achieve compliance with a performance standard or prohibition, the landowner must be offered 70 percent of the costs for the practice (90 percent if the landowner qualifies for economic hardship)
 - If a county intends to use DATCP or other non-DNR funds as part of its offer of enforcement cost-sharing, the county must provide adequate cost-sharing as defined by DATCP rules. Sec. ATCP 50.08 requires that a bona fide offer cover the costs of practice installation, practice maintenance and agricultural land out of production if applicable.
 - Counties must work with DATCP to determine if their offer of cost-sharing is adequate. DATCP requires that counties answer a series of questions to ensure that the county has considered all facets of the project and the related costs in making their offer.

ELIGIBLE COSTS AND PRACTICES

8. Counties may not use DATCP cost-sharing to:
 - Bring a permittee into compliance with standards under Wisconsin Pollution Discharge Elimination System permit under chs. 281 and 283, Stats. This precludes cost-sharing related to (1) CAFOS and other WPDES permit holders for practices that achieve compliance with permit requirements such as manure storage and nutrient management plans, and (2) trading, adaptive management, and multi-discharger variance that results in compliance with WPDES permits.
 - Pay for practices installed on state-owned land.
 - Pay for any state or local administrative permit fees.
9. A county may authorize a landowner to install a cost-shared practice and pay the landowner for goods or services the landowner provides if the landowner is competent to do the work and the cost of the work performed is not more expensive than what a contractor would charge. See s. ATCP 50.40(15). To provide payments to the landowner, a county must assign value to a landowner's contributions, and may use information from the Farm Service Agency and other entities concerning the valuation of labor, equipment and materials. A county must prepare documentation that reflects the amount and value of services, equipment and materials provided by the landowner. DATCP has a data sheet

that counties can use to record this information. See section 3.2 of SWRM Grant Resources website.

10. Counties cannot be reimbursed for costs of county staff who design or install practices cost-shared with DATCP bond funds. This type of work, known as force account work, is defined as “construction related work a municipality performs using its own employees for project planning, design, construction, repairs or improvements.” Sec. ATCP 50.40(7)(b) specifically provides that a cost-share grant may not reimburse the cost of engineering services provided by the county land conservation committee or its agent. Furthermore, sec. ATCP 50.40(16)(c) allows a county to use its own employees or agents to design, construct, or install a cost-shared practice if, by doing so, it can minimize public costs related to the practice, but only authorizes a county to charge the labor costs to its staffing grant award and not to its cost-share grant award.
11. Cost-sharing at the 90 percent rate for “economic hardship” is available only for owners or operators of farmland.
12. A maximum 50 percent cost-share rate applies to:
 - Any conservation practice installed on land owned by a local government.
 - Access roads (ATCP 50.65), roof runoff systems (ATCP 50.85), stream-bank or shoreline protection (ATCP 50.88), stream crossing (ATCP 50.885), or wetland development or restoration (ATCP 50.98), if the practice is not required to implement a performance standard on a farm.
13. Counties may combine DATCP cost-sharing with grants from other federal, state, local, and private sources. They cannot combine DATCP funds if:
 - The total payment provided a landowner will exceed 100 percent of the costs incurred to install a conservation practice.
 - The other source of cost-share funds is a TRM grant or another DNR nonpoint grant, and the total cost-sharing provided a landowner will exceed 70 percent of the project costs (or 90 percent of the project costs if the landowner qualifies for economic hardship)
14. DATCP funds cannot be used to directly pay for implementation of the tillage setback performance standards; however, DATCP will provide 70 percent cost-sharing to install stream bank or shoreline protection practices if this cost-shared practice implements the tillage setback performance standard.

COST-SHARING FOR MANURE STORAGE AND OTHER PRACTICES WITH REQUIRED NUTRIENT MANAGEMENT PLANS

15. If a county is interested in cost-sharing a large scale construction project such as a manure storage structure that costs more than its annual allocation of bond cost-sharing, a county may (1) seek one or more transfers of funds from another county, (2) apply for NOD/NOI funding from the DNR or DATCP reserve, (3) use part of its SEG allocation if it has 75 percent or more of acres covered by nutrient management plans, or (4) combine its current allocation with future DATCP funding to complete the project.

- Regarding option four, a county would need to sign a cost-share contract in the first year to lock in funding and include a provision that anticipated funding in the second year. The contract would need to be extended into the second year to complete the project
 - The following specific language should be added to the cost-share contract:

“The total cost-share amount for this project exceeds the available funds provided by DATCP for grant year [insert current year]. This contract is contingent on the county securing additional funding either through an inter-county transfer of cost-share funds or the award of cost-share funds as part of the county’s annual allocation for grant year [insert following year].”

16. Farmers receiving DATCP cost-sharing for manure storage must:

- Design storage capacity based on the storage needs dictated by the farm’s NMP.
- Submit a NM checklist certifying that the NMP complies with the 2015 NRCS 590 standard, as a condition for receiving a DATCP reimbursement for installation of the storage structure.
- Agree in writing to develop a NMP at no charge as part of a cost-share contract (a line must added to Section 3 indicating that practice code 50.78 will be installed for 10 years with no cost-sharing).
- Do the following during the 10 year maintenance period:
 - If animals are added, expand the storage capacity of the cost-shared structure to handle more manure, or revise their NMP and increase their land base to accommodate more manure.
 - Apply stored manure to non-frozen soils in compliance with a NMP under s. ATCP 50.04 (3).

17. When offering cost-sharing for manure storage, a county should not provide separate cost-sharing for a nutrient management plan. When a landowner receives cost-sharing for storage, the landowner is in fact being paid to implement nutrient management plan.

18. In addition to manure storage projects, landowners who receive cost-sharing for the following conservation practices are required to have a nutrient management plans without additional cost-sharing:

- A barnyard runoff control systems (ATCP 50.64) if DATCP cost-share payments exceed \$25,000 or more.
- A feed storage runoff control system (ATCP 50.705) if the system will collect runoff from a feed storage area over one acre in size and that runoff is not transferred to a manure storage system.
- A manure storage system closure (ATCP 50.63) or milking center waste control systems (ATCP 50.77) if land application of waste is a necessary component of the main cost-shared practice.

NUTRIENT MANAGEMENT AND COST-SHARING

19. The cost-share rate for a nutrient management plan (NMP) is \$10 per acre per year for four years (or \$40 per acre). A county must document compliance with the 2015 NRCS 590 standard by submitting the most current MMP checklist [ARM-LWR-480 (Rev. 6/22/17)]

- Counties must offer four years of cost-sharing, and are discouraged from offering less than \$40 per acre.
20. If a county intends to cost-share nutrient management, cover crop, residue management, and other “soft practices” on land owned by a local government, then the county cannot use the maximum flat rate for cost-sharing and cannot provide cost-sharing for more than one year. Instead the county may only provide cost-sharing to cover 50% of the actual costs incurred for one year. Since counties are reimbursing local governments for actual costs incurred, they must collect copies of receipts documenting soil testing and other plan development costs.
 21. While other cost-share practices may have the potential to trigger a landowner’s continuing compliance responsibilities related to NR 151 performance standards and prohibitions, DATCP specifically requires that counties notify landowners of their compliance obligations in the following instances:
 - If a county offers nutrient management cost-sharing, which must be provided for four years, the county must also provide landowners a separate written notice at the time the contract is signed. The extent of the notice of continuing compliance is described in Section 2.10 Guidance for Required Notice of Continuing Compliance.
 - If a county offers cost-sharing for cover crops or other annual practice, the county must provide a notice of continuing compliance for both the performance standards related to soil erosion and nutrient management. For more details, see footnote 1 in Section 2.2 *Cost-Share Funding Source Table And NR151 Code Guidance*

DATCP APPROVAL AND RECORDING OF THE COST-SHARE CONTRACT

22. If a county will be providing more than \$50,000 of DATCP cost-share funds for a project, it should seek DATCP approval as soon as possible. DATCP has streamlined the process for securing approval as described in Section 2.4 *Over \$50,000 DATCP Cost-Sharing Requirements*.
23. Counties are required to record cost-share contracts that exceed \$14,000 in cost-sharing except
 - They are not required to record contracts if cost-sharing is provided for nutrient management, contour farming, cover crop, pesticide management, residue management and stripcropping.
24. Even though the initial cost-share contract is below the thresholds for DATCP approval or recording, cost-share projects can cross these thresholds based on one or more change orders.
25. To satisfy recording requirements for cost-share contracts exceeding \$14,000, counties must record the contract before making any cost-share payments to the landowner or cost-share recipient.
26. Counties may voluntarily record cost-share contracts, but as with contracts that are subject to mandatory recording, all signatures on the contract must be notarized. See Section 2.12 *Landowner/Grant Recipient Notarization Table* for streamlined requirements related to notarization of signatures on cost-share contracts.

27. As with the costs related to mandatory recording, the cost of voluntary recording may be included as part of the total cost of the project and reimbursed by DATCP.

COST-SHARE CONTRACT CHANGE ORDERS AND AMENDMENTS

28. A change order should be completed to track changes in the quantity or cost of the conservation practices identified in the original cost-share contract. These changes include increases or decreases in costs to install conservation practices, changes in quantity (feet, number or acres) of a practice and addition or subtraction of whole practices (includes both cost and quantity). A county should use the DATCP change order form to track changes in the quantity and costs for conservation practices. While a landowner and cost-share recipient no longer need to sign change orders, they need to consent to changes and should be provided a copy of the completed change order signed by the county representative.

29. A contract amendment is used to make changes in the terms and conditions of the original cost-share contract unrelated to changes in the quantity or cost of conservation practices. Here are a few examples where a contract amendment is needed: a substitution of parties (e.g. when a landowner sells a farm), a change in the description of the land where the conservation practice is installed, and the addition of new requirements related to operation and maintenance for a cost-shared practice. While DATCP has not developed an online form for this contract document, we have examples of amendments we can share with counties.

COST-SHARE CONTRACT EXTENSIONS AND EXPIRATIONS

30. A cost-share contract may be extended for only one year, and only to the extent a county has cost-share funds available to cover the anticipated costs of the extended project.

- If a county's available funding is less than the amount necessary to cover the extension request, DATCP will only approve an extension for the funds available.
- A county may provide the landowner the full amount of cost-sharing for the project by making up the difference using funds allocated in the second year. In this case, the county does not need to modify the cost-share contract, because there are no changes in the cost-share dollars provided for the project.
- If a county decides to reduce the landowner's cost-sharing to match the amount extended by DATCP, the county should complete a change order to modify the cost-share contract with the landowner.

31. After a project extension is granted, counties may use a change order to add practices or change project costs. DATCP will first use extended funds to pay for additional costs as result of the change order, even if the funds were not extended for that particular project. However, if extended funds cannot cover these project costs, DATCP will use new funds awarded to the county.

32. Cost-share contracts expire at the end of calendar year in which they are signed unless DATCP grants a one-year extension for the project. Extended projects expire at the end of the second calendar year after their execution.

- DATCP will not provide reimbursement for costs incurred beyond the year in which the cost-share contract is signed unless DATCP formally approved a one-year extension of the project. Likewise no reimbursement is available where a project is extended for one year but the work is not completed in the second year.

- If a contract has expired, a county cannot sign a new cost-share contract for engineered practices if the practice has been installed. A new cost-share contract may be signed for the project only if work has not been started to install an engineered practice. A cost-share contract may be signed for nutrient management plan, cover crop, or other annual practice even if the practice was previously installed

REIMBURSEMENT-RELATED ISSUES

33. Counties should not submit reimbursement requests until landowners or cost-share recipients have made all payments for which they are responsible. Typically counties submit reimbursement requests after reimbursing landowners or cost-share recipients for their share of project costs.
- However, if a county seeks reimbursement before paying landowners or cost-share recipients, it shall (a) determine that the landowner or cost-share recipients has taken all necessary actions to be eligible for DATCP cost-share payment, and (b) distribute payments to the landowner or cost-share recipient within 60 days of receiving a DATCP reimbursement.
34. For cost-share reimbursement cost-share grants, counties must:
- Email a signed and fully completed a Certification and Cost-share Reimbursement Request (ARM-LWR-112) for partial or full reimbursement of eligible project costs.
 - Select the correct NR 151 code from the pulldown menu on the reimbursement form: the default entry “00” reflects that the practice does not achieve compliance with any NR 151 standard. For assistance in filling in the appropriate NR 151 code, refer to Section 2.2 *Cost-Share Funding Source Table and NR 151 Code Guidance*.
35. DATCP will not reimburse a cost-shared practice unless the county provides documentation certifying that a cost-shared practice was properly installed in accordance with technical standards.
- For engineered practices, a county must provide a completed NRCS construction coversheet to certify that a conservation practice is designed and installed according to technical standards.
 - County employees that approve the design or installation of practice must have adequate job certification under s. ATCP 50.46 or is otherwise qualified.
 - Changes in DATCP rules mean that county staff may not have valid conservation engineering certifications if they fail to complete education requirements or fail to provide required information.
 - NRCS employees may rely on their job approval authority to certify that cost-shared practice
 - For nutrient management plans, a county must submit DATCP-approved checklist (ARM-LWR-480, revised no earlier than June 2017) certifying that cost-shared nutrient management plan meets the requirements.
 - The county is responsible for reviewing any checklist submitted to DATCP to verify compliance with the requirements in s. 50.04., and requesting any documentation to substantiate a checklist response where appropriate.

36. There may be rare occasions when a cost-share project is finished but a county cannot obtain a certification before the final February 15th deadline for submitting a reimbursement request. Counties can avoid these situations by making advance arrangements with DATCP engineering staff and others to review an installed practice. If certification cannot be obtained in a timely manner, counties can preserve their right to reimbursement by sending a letter as a place holder for remittance. If no certification is submitted, DATCP will liquidate the available funds and the project payment will be denied.
37. With every cost-share reimbursement payment, DATCP provides an updated reporting sheet detailing processed payments by cost-share contract number and available balances. Counties are encouraged to reconcile their records with this sheet when each payment is received and contact DATCP concerning any discrepancies.

MAINTENANCE AND MONITORING OF INSTALLED PRACTICES

38. For each cost-shared practice, the LCC agrees to develop effective operation and maintenance plans, conduct monitoring during the life of each cost-share contract including all required maintenance periods, and take appropriate actions to ensure that landowners meet their contractual responsibilities to operate and maintain any cost-shared practice.
 - If a landowner fails to maintain a cost-shared practice, the LCC must take reasonable and appropriate action to gain compliance including notifying landowners of a contract violation, and if compliance cannot be voluntarily secured, demanding repayment, seeking specific performance, or pursuing other appropriate actions to enforce the cost-share contract.
 - At DATCP's option, counties shall be required to reimburse DATCP from any funds recovered from a landowner for failure to comply with the terms of the cost-share contract.

CONTRACT SATISFACTION OR RELEASE

39. Following the expiration of operation and maintenance (O&M) period for a recorded cost-share contract, counties may be asked to prepare a document stating the contractual obligations have been satisfied. A buyer of land may want a satisfaction recorded in the chain of title as proof that the buyer is under no contractual obligations to maintain the practice.
 - DATCP has taken the position that a satisfaction or release is not required because the recorded contract by its terms has a specific end date for the period. No additional document is needed to extinguish the landowner's obligations. Furthermore, since DATCP is not party to original contract, we cannot prepare or sign a satisfaction.
 - With the assistance of counsel, counties may use models developed by other counties to prepare their own satisfactions.
40. In preparing a satisfaction, the county should exercise care to indicate that the satisfaction only applies to the obligations established under the cost-share contract, and does not alter the continuing compliance obligation that are tied to land regardless of who owns the land. See, e.g., NR 151.09(3)(b) and NR 151.095(4)(b), which provide that if cropland or a livestock facility is meeting a livestock performance standard or prohibition on or after the

effective date of the standard or prohibition, the livestock performance standard or prohibition shall continue to be met by the existing owner or operator, heirs or subsequent owners or operators of the facility.

41. Landowners may wish to cancel a cost-share contract and release themselves from the obligations related to the contract. As the contracting party with the landowner, the county is the only entity that can handle this transaction. If the practices were installed and paid for, a county may not release the landowner without some repayment of the cost-share funds. As with a satisfaction, the county must draw up the appropriate document to cancel the transaction, and release the landowner. A cancellation or release does not free landowners from the continuing compliance responsibilities as described in answer to the prior question.