

Title 261 - NATURAL RESOURCES COMMISSION

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.

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.

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:

018.01(A). 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.

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

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

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

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

018.01(F). 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

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

020.01(B). 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.

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.

