

Land Disposition and Management of Comprehensive Project Policy

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PREAMBLE

The leaders and representatives of the Member Entities of the Metro Flood Diversion Authority (“Authority”) entered into a Joint Powers Agreement dated June 1, 2016 (the “JPA”) that established procedures and a governing structure to secure long term and comprehensive flood risk reduction for the Fargo-Moorhead Metropolitan Area and to promote accountable governance, provide for the construction of the Fargo-Moorhead Area Flood Diversion Project (“Comprehensive Project”), encourage Member Entities’ participation, and foster a sense of community by facilitating joint jurisdictional cooperation among the Member Entities.

Section 3.01 of the JPA states that the purpose of the JPA is to allow the Member Entities to work collaboratively to avoid the duplication of required approvals and actions with respect to the Comprehensive Project, and to maximize efficiencies of the Member Entities with respect to flood control projects, by having the Member Entities’ employees, engineers, attorneys, and professional consultants cooperate in the design, financing, construction, operation, and maintenance of the Comprehensive Project.

Section 3.02 of the JPA clarifies that the intent of the JPA is to increase efficiencies with respect to designing, constructing, financing, operating and/or maintaining the Project by allowing the Member Entities to cooperate in the bidding and letting of contracts, by cross-pledging sales taxes, by coordinating special assessment levies, by entering into a Project Agreement with a P3 Developer, by cooperating in the administration of the Comprehensive Project, and by reimbursing the Member Entities for certain expenses incurred in connection with the Comprehensive Project, such as the purchase of real property.

The Member Entities have been purchasing real property interests for several years and continue to acquire property rights on behalf of the Authority for the Comprehensive Project. The Authority will periodically review its inventory of real property to determine if its land ownership exceeds its foreseeable needs for the Comprehensive Project. Land that is no longer needed, not expected to be needed in the future for the Comprehensive Project and declared “Excess Land” by the Executive Director may be made available for sale, lease, or exchange in accordance with this Policy. Excess Land and the proceeds of the lease and sales of such lands shall be treated as fiscal assets of the Authority and this Policy provides a framework for the effective management of these assets. Land that is expected to be needed in the future for the Comprehensive Project should be leased or otherwise managed in the best interests of the Authority, consistent with the applicable parts of this Policy.

1 Introduction

- 1.1 In connection with carrying out their land acquisition responsibilities under the JPA, the Member Entities have acquired, and may continue to acquire, real property that may be determined not to be necessary for completion or operation of the Comprehensive Project.
- 1.2 The JPA governs the sale of excess property acquired by Member Entities in connection with real property needed for the Comprehensive Project. In accordance with Section 16.10 of the JPA, each Member Entity shall coordinate the sale of such property with the Authority's Executive Director and the Member Entity's chief administrative staff. Member Entities shall not sell, trade, and/or exchange excess Comprehensive Project property without prior written approval from the Authority's governing body (the "Diversion Authority Board").
- 1.3 The Authority's Property Rights Acquisition and Mitigation Plan provides initial guidance on the disposal process for Excess Lands. Further guidance on the procedure for requesting Authority approval to sell lands can be found in the Authority's resolution(s) establishing the procedures and protocols for accepting funds derived from land sales and rent, as well as the corresponding resolutions for certain Member Entities.
- 1.4 The purpose of this Policy is to provide a policy framework for Member Entities to follow when determining when and how Comprehensive Project Land may be sold or managed for the benefit of the Authority. This policy is intended to be administered by the Executive Director and serves as guidance to the Diversion Authority and its Member Entities, transparent to the community, and beneficial to the Diversion Authority.
- 1.5 When a Member Entity proposes to the Authority to sell Excess Land, Member Entities should observe the following guiding principles:
 - 1.5.1 Refrain from selling land at less than Market Value.
 - 1.5.2 Provide preference to Member Entities.
 - 1.5.3 Provide preference to Prior Landowners for land that is located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead.
 - 1.5.4 Provide preference to Adjacent Landowners for land that is located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead.
 - 1.5.5 Eventually sell or exchange all Excess Lands, at a time when it is in the best interests of the Authority to do so, financially.

2 Definitions

- 2.1 "Adjacent Farm Operator" means the specific party or parties, collectively and individually, that, through ownership or by contract, operated the adjoining farmland for the last growing season prior to the Authority offering the land for lease. Land that is separated from the Excess Land by a public road, right of way, or legal drain shall, for the purposes of this Policy, be considered adjacent.

- 2.2 “Adjacent Landowner” means a person or entity holding title to land adjoining the Excess Land based on the most recent property tax statement(s). Land that is separated from the Excess Land by a public road, right of way, or legal drain shall, for the purposes of this Policy, be considered adjacent.
- 2.3 “Authority” means the Metro Flood Diversion Authority, a North Dakota political subdivision created by the Joint Powers Agreement.
- 2.4 “Comprehensive Project” (a/k/a “LPP Flood Risk Management Features”) means construction of the following elements: a storm water diversion channel through North Dakota that conveys 20,000 cubic feet per second at the one percent (1%) chance or 100 year event and is approximately 30 miles long, tie-back embankments, a staging area, a Diversion Inlet Structure, a 6-mile connecting channel, a control structure on each of the Red and Wild Rice Rivers, an aqueduct hydraulic structure on each of the Maple and Sheyenne Rivers, a drop structure of each of the Rush and Lower Rush Rivers, three railroad crossings, in-town levees, community ring levees, and environmental mitigation, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environment Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by District Engineer, St. Paul District on September 19, 2013 and the Final Supplemental Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019, and approved by the District Engineer, St. Paul District on February 28, 2019.
- 2.5 “Comprehensive Project Land” means land acquired by the Authority or one of its Member Entities for the construction, operation, use, maintenance, or mitigation of the Comprehensive Project.
- 2.6 “Diversion Authority Board” means the Governing Body of the Authority.
- 2.7 “Excess Land” means land owned by the Authority or one of its Member Entities that has been declared by the Executive Director as no longer needed for the construction, operation, use, maintenance, or mitigation of the Comprehensive Project.
- 2.8 “Governing Body” means the body that performs the legislative and governmental functions of a political subdivision, including but not limited to, a board, council, or commission. For example, the Cass County Commission, the Clay County Commission, the Moorhead City Council, and the Fargo City Commission are the Governing Body of each of said entities as the board for the Cass County Joint Water Resource District is the Governing Body for that entity.
- 2.9 “Impacted Owner” means an individual or entity from whom property rights are being or have been acquired for the Comprehensive Project.
- 2.10 “JPA” and/or “Joint Powers Agreement” means the Joint Powers Agreement dated as of June 1, 2016, by and between the Member Entities, as amended from time to time, which created and continues the Authority.
- 2.11 “Market Lease Rate” means the current lease rate for agricultural land as determined by professionals competent in the agricultural industry, unless otherwise determined by the Authority. The Market Lease Rate shall take into consideration the impacts of the Comprehensive Project that affect the lease value of the Excess Land.

- 2.12 “Market Value” means the value established for the Excess Land by appraisal, real estate market assessment, or other method acceptable to the Executive Director. The Market Value of Excess Land shall take into consideration the impacts of the Comprehensive Project that affect the value of the Excess Land.
- 2.13 “Member Entities” shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and CCJWRD and, for purposes of this policy, the Moorhead-Clay County Joint Powers Authority.
- 2.14 “Prior Farm Operator” means the specific party or parties, collectively and individually, that, through ownership or by contract, operated the applicable farmland for the last growing season prior to the Authority offering the land for lease.
- 2.15 “Prior Landowner” means the specific party or parties, collectively and individually, that owned and conveyed the Comprehensive Project Land to the Member Entity and/or the Authority.
- 2.16 “Public Lease” means a lease of Comprehensive Project Land secured through advertising the lease offering for a minimum of 30 days by (i) publishing a notice of intent to lease or issue a request for proposals; (ii) a classified advertisement published once a week for three (3) consecutive weeks in a local newspaper of general circulation; or (iii) other commercially reasonable means of publicly marketing the specific Comprehensive Project Land being offered for lease.
- 2.17 “Public Sale” means a sale of Excess Land that is advertised for a minimum of 30 days by (i) publishing a notice of intent to sell or issue a request for proposals; (ii) a classified advertisement published once a week for three (3) consecutive weeks in a local newspaper of general circulation; or (iii) other commercially reasonable means of publicly marketing the specific Excess Land being sold.

3 Responsibilities

- 3.1 The Member Entities have a core responsibility to acquire and make available to the Authority real property for construction, operations, maintenance, and mitigation of the Comprehensive Project.
- 3.2 The Member Entities have a further responsibility to act in the best interest of the Authority and the financial interests of the Comprehensive Project (and the public at large) in acquiring, managing, developing, and disposing of the property it acquires on behalf of the Authority.
- 3.3 The Member Entities must seek approval from the Authority prior to selling, trading, or exchanging Comprehensive Project property. The Member Entities must also remit to the Authority all revenues from land sales and leases of Comprehensive Project property. The Member Entities will carry out these duties in accordance with the Joint Powers Agreement, and in accordance with the Authority’s resolution(s) establishing the procedures and protocols for accepting funds derived from land sales and rent, as well as the corresponding resolutions of applicable Member Entities.

4 Key Principles

- 4.1 Sale of Excess Land. It is the Authority's intent that all Excess Land will eventually be sold or exchanged at a time when it is in the financial best interests of the Authority to do so as determined by the Authority. The Authority views Excess Lands as assets of the Authority to be used to offset costs and pay down debt obligations of the Comprehensive Project.
- 4.2 Land Sold Via Public Sale/Real Estate Listing/RFP. It is the Authority's intent that the sale of Excess Lands, subject to the preferences set forth herein, shall be done via public sale or in the case of Excess Land that is located inside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead, by listing Excess Land with a licensed real estate agent or through a public RFP process such that there is transparent and abundant opportunity for all buyers to purchase the property.
- 4.3 Refrain from Selling Land at Less Than Market Value. It is the Authority's intent that Excess Land should not be sold, listed, or offered by RFP at less than Market Value.
- 4.4 Preference to Sell Excess Land to a Member Entity. First preference should be given to Member Entities. Member Entities should be provided the opportunity to acquire Excess Land at Market Value for purposes consistent with the Member Entity's approved policies and procedures prior to the Excess Land being made available to the prior landowner as set forth herein.
- 4.5 Preference to Sell Excess Land to Prior Landowner. For Excess Land located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead, second preference should be given to the Prior Landowner. The Prior Landowner should be provided the opportunity to acquire Excess Land at Market Value prior to Excess Land being made available to Adjacent Landowners as set forth herein.
- 4.6 Preference to Sell Excess Land to Adjacent Landowner. For Excess Land located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead, third preference should be given to Adjacent Landowners. Each Adjacent Landowner should be provided the opportunity to acquire Excess Land at Market Value prior to Excess Land being made available to the general public.
- 4.7 Preference to Lease Agricultural Land to the Prior Farm Operator. First preference should be given to the Prior Farm Operator, who should be provided with notice of the intent to lease the Comprehensive Project Land prior to the Comprehensive Project Land being made available to the Adjacent Farm Operators as set forth herein.
- 4.8 Preference to Lease Agricultural Land to an Adjacent Farm Operator. Second preference should be given to the Adjacent Farm Operators. Each Adjacent Farm Operator should be provided the opportunity to lease Comprehensive Project Land at Market Lease Rates prior to the Comprehensive Project Land being made available for lease to the general public.
- 4.9 Mitigation for Impacted Owners. Should a Member Entity determine that it would be in the best interest of the Authority to sell or exchange Comprehensive Project Land with an Impacted Owner, the Member Entity will work to negotiate such sale or exchange, as applicable, prior to the Excess Land being made available to the Adjacent Landowners or the general public.
- 4.10 Authority Pays Taxes on Lands. The Authority or Member Entity should continue to pay property taxes on Comprehensive Project Lands held in its name or in the name of a Member Entity until such time as (i) construction of a Comprehensive Project Element has commenced on the Comprehensive Project Land; and (ii) the lands are declared Excess Lands and sold or exchanged.

5 Manner of Disposal of Excess Land

- 5.1 The purchaser of Excess Land will be responsible for closing costs, as well as any necessary relocation costs, subdivision costs, rezoning fees, and other costs to complete the sale or exchange.
- 5.2 Preference to Member Entities:
 - 5.2.1 The Authority will give first preference of the sale of Excess Land to Member Entities. Upon the Authority's determination that Excess Land should be sold, it will first give written notice of intent to sell to the Member Entities, subject to any conditions in the original acquisition of the Excess Land. Should a Member Entity desire to retain the Excess Land for purposes consistent with its policies and procedures, it shall, within thirty (30) calendar days of receiving the notice of intent, provide written notice to the Authority of its intent to acquire the Excess Land. The Authority will transfer all obligations of the ownership and management of the Excess Land to the purchasing Member Entity upon receipt of funds equal to or greater than Market Value in accordance with standard real property sale procedures.
- 5.3 Preference to Prior Landowner: Section 5.3 will only apply to Excess Land located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead.
 - 5.3.1 The Authority or Member Entity will give second preference to the Prior Landowner. To carry out this principle, the Member Entity who owns the Excess Land will, subject to any conditions in the original acquisition of the Excess Land, provide the Prior Landowner with a notice of intent to sell the Excess Land at Market Value and ask the Prior Landowner to provide written notice of their commitment to acquire the Excess Land at Market Value within thirty (30) calendar days from the date of the notice.
 - 5.3.2 If there are multiple parties that make up the Prior Landowner and those parties do not want to collectively repurchase the Excess Land at the Market Value, priority shall be given to the Prior Landowner party that within the 30-day period offers to acquire the land for the highest purchase price at or above the Market Value.
 - 5.3.3 If the Prior Landowner does not commit to acquire the Excess Land in the allotted timeframe, the Member Entity will offer the Excess Land to the Adjacent Landowner.
- 5.4 Preference to Adjacent Landowner: Section 5.4 will only apply to Excess Land located outside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead.
 - 5.4.1 The Authority, or Member Entity will give the third preference of the sale of Excess Land to the Adjacent Landowners. To carry out this principle, the Member Entity who owns the Excess Land will, subject to any conditions in the original acquisition of the Excess Land, provide the Adjacent Landowners with a notice of intent to sell the Excess Land at Market Value and ask the Adjacent Landowners to provide written notice of their interest in acquiring the Excess Land at the Market Value within thirty (30) calendar days from the date of the notice.
 - 5.4.2 If there are multiple interested Adjacent Landowners, priority shall be given to the Adjacent Landowner that, within the 30-day period, offers to acquire the land for the highest purchase price above the Market Value.
 - 5.4.3 If no Adjacent Landowners submit interest in acquiring the Excess Land in the allotted timeframe, the Member Entity will sell the Excess Land at a Public Sale.

5.5 Public Sale:

- 5.5.1 Public Sales will be subject to a reserve price that is calculated based on current Market Value. If the Excess Land cannot be sold for the Market Value, the Executive Director will make a recommendation to the Authority to adjust the Market Value, sell the Excess Land at the most favorable offer received, or postpone the sale to a later date.

6 Manner of Leasing Comprehensive Project Land and Property (Property not immediately required for the Authority's needs)

- 6.1 The Member Entities have acquired and may continue to acquire land and property which is either not immediately required for the Comprehensive Project or not yet declared by the Executive Director as Excess Land.

6.2 Residential, Recreational, Conservation, and Commercial Land:

- 6.2.1 Such land will be offered for lease on an annual or month-to-month basis or for a longer term if such basis is customary for the applicable property.

- 6.2.2 The amount of rent will be determined by the market rate as determined by professionals competent in the appropriate industry, unless otherwise decided by the Authority.

- 6.2.3 The rent from such leases will be remitted to the Authority at a frequency appropriate for the type of property being leased.

6.3 Farmland:

- 6.3.1 Such land will be offered for lease on an annual basis unless a longer lease is in the best interest of the Authority.

- 6.3.2 The rent from such leases will be remitted to the Authority on an annual basis.

6.3.3 Preference to Prior Farm Operator:

- 6.3.3.1 The Member Entities will give first preference for leasing farmland to the Prior Farm Operator. To carry out this principle, Member Entities will provide the Prior Farm Operator with a written notice of intent to lease the farmland at the Market Lease Rate and ask the Prior Farm Operator to provide written notice of their interest in leasing the farmland within thirty (30) calendar days from the date of the notice.

- 6.3.3.2 If there are multiple parties that make up the Prior Farm Operator and those parties do not want to collectively lease the farmland at the Market Lease Rate, priority shall be given to the Prior Farm Operator party that, within the 30-day period, offers to lease the land for the highest lease rate at or above the Market Lease Rate.

- 6.3.3.3 If the Prior Farm Operator does not commit to lease the farmland in the allotted timeframe, the Member Entity will offer to lease the farmland to the Adjacent Farm Operator.

6.3.4 Preference to Adjacent Farm Operator:

- 6.3.4.1 The Member Entities will give second preference for leasing farmland to the Adjacent Farm Operators. To carry out this principle, Member Entities will provide the Adjacent Farm Operators with a written notice of intent to lease the farmland at the Market Lease Rate and ask them to provide written notice of their interest in leasing the farmland within thirty (30) calendar days from the date of the notice.
- 6.3.4.2 If there are multiple interested Adjacent Farm Operators, priority shall be given to the Adjacent Farm Operator that, within the 30-day period, offers to lease the land for the highest lease rate above the Market Lease Rate.
- 6.3.4.3 If no Adjacent Farm Operator submits interest in leasing the farmland in the allotted timeframe, the Member Entities will offer the farmland for lease to the public.
- 6.4 Public Lease:
 - 6.4.1 Public Leases will be offered at the Market Lease Rate. Interested parties may submit a written notice of intent to lease at the Market Lease Rate to the Member Entity during the advertising period. If more than one notice of interest in leasing the property is received, priority shall be given to the party that within the advertising period offers to lease the property for the highest rental price at or above the Market Lease Rate.
 - 6.4.2 If the farmland cannot be leased for at least the Market Lease Rate (no notice of intent is received), the Authority will adjust the Market Lease Rate and re-advertise the Public Lease for a minimum of fourteen (14) calendar days. If more than one notice of interest in leasing the farmland is received, priority shall be given to the party that within the advertising period offers to lease the farmland for the highest rental price at or above the Market Lease Rate as adjusted. If no notice of intent is received again, the Market Lease Rate will be adjusted again and the process repeated until the farmland is leased, or the farmland in question is managed differently as determined by the Authority.
- 6.5 Non-commercially viable remnant land. The Authority recognizes that small, odd-shaped, non-commercially viable, parcels may exist before and remain after a Comprehensive Project Element is constructed. The Executive Director or his/her designee may determine if such lands shall be maintained by a Member Entity, the Authority or through other means.

7 Unsolicited Proposals

- 7.1 The Authority and its Member Entities may entertain unsolicited proposals, including property development proposals, land sales, and leases. For purposes of unsolicited proposals, the following principles will apply:
 - 7.1.1 Proposals received will be analyzed and evaluated by the Member Entity and/or Authority.
 - 7.1.2 Proposals that are deemed reasonable by the Authority will be subject to the preferences for prior and adjacent parties as described for sales and leases, then advertised similarly to Public Sale to elicit competitive proposals and public comment.
 - 7.1.3 Should the advertisement elicit purchase or lease interest from one or more third parties, a Public Sale or Public Lease process will be conducted.
 - 7.1.4 The final lease or sale transaction will be submitted to the Authority for approval.

8 Impacted Owners

- 8.1 The Authority and its Member Entities may entertain proposals from Impacted Owners for land sales or exchanges. For purposes of such proposals, the following principles will apply:
 - 8.1.1 Proposals received will be analyzed and evaluated by the Member Entity and Executive Director to determine whether the sale or exchange is in the best interest of the Authority.
 - 8.1.2 Proposals received will be subject to the preferences described herein.
 - 8.1.3 Sales and exchanges will be at Market Value, unless otherwise approved by the Authority.
 - 8.1.4 The final sale or exchange transaction will be submitted to the Authority for approval.

9 Transaction Requirements

- 9.1 Except as may be authorized by the Authority, all Excess Land shall be sold in accordance with the terms and conditions of a purchase agreement prepared by the applicable Member Entity to be entered into between the buyer and the applicable Member Entity and sold “as is,” via a quit claim deed prepared by the applicable Member Entity. All conveyances shall be subject to any existing easements, reservations, rights of use and restrictions of record, building and use restrictions, zoning ordinances, municipal regulations, prior conveyances or leases of oil, gas and mineral rights, and all liens, encumbrances, defects and other conditions on, concerning or relating to the Excess Land. In no event will the Member Entity consider conveying Excess Land by Warranty Deed. The buyer at buyer’s option, sole cost, and expense may obtain a standard policy of title insurance for the Excess Land.

10 Transparency/Open Records

- 10.1 It is important that all land transactions of the Authority and its Member Entities are conducted in a transparent manner. Any documents prepared by, or provided to, the Authority or its Member Entities in connection with the sale of Excess Land are subject to each Member Entity’s respective state open records law and must be disclosed by the Member Entity in accordance with that Member Entity’s state law.

11 Protection of the Public Interest

- 11.1 The Member Entities have a further responsibility to protect the public interest in acquiring, managing, developing, and disposing of the property it acquires on behalf of the Authority. In this regard, the Member Entities must conduct all real estate transactions in the best interest of the Authority (and thus, the public at large) rather than that of the individual purchaser. In all transactions the Member Entities enter, there should be maximum benefit to the Authority, its operational requirements, and the broader community.

12 Transactions with Local/Federal Government

- 12.1 The Authority intends that any Excess Land sold should continue to generate revenue for the benefit of all taxing jurisdictions in the form of real estate taxes, unless approved otherwise by the Diversion Authority Board.

Dated: March 25, 2021.

Shelly Carlson

Michelle (Shelly) A. Carlson, Chair

Joel Paulsen

Joel Paulsen, Executive Director