Standard Operating Procedure
CDBG-DR Infrastructure Projects – Involuntary Property Acquisition

Without Acquisition or Relocation of Improvements

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Notes on Documentation:

Records: At all stages, staff will save to the electronic file a copy of any signed document and any information sent to property owners.

Check requisitions: Check requisitions must be accompanied by supporting documentation showing that the required federal and city procedures have been followed, including the Acquisition Checklist and copies of documents.

Notices: All notices to a property owner except the initial notification that the City may be interested in acquiring the property must be either personally served or sent by certified or registered first-class mail, return receipt requested, and documented in City files (49 CFR 24.5)

HUD Templates: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

I. PRELIMINARY STEPS

The preliminary steps can be completed as parallel processes, at approximately the same time.

PROGRAM

A. Set up project in DRGR federal reporting system

B. Obtain from HUD the Memorandum of Authorization to Incur Pre-Agreement Costs

FINANCE

A. Set up project in TylerMunis

B. Obtain source and amount of Matching Funds

ENGINEERING

A. Describe the Project

B. Establish the limits of the Project Area

C. Determine Buyout vs Acquisition. Buyouts are not covered under this procedure.

   For guidance, see: https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf

D. Determine Involuntary vs Voluntary Acquisition per federal regulations. Voluntary acquisition is not covered under this procedure.

   For guidance, see: https://www.hudexchange.info/programs/relocation/overview/#voluntary-acquisition-vs-involuntary-acquisition-of-property and 49 CFR 24.101(b)(1).

E. In coordination with PROGRAM, determine whether displacement and relocation requirements apply (49 CFR Part 24 Subpart C)

   1. If acquisition of this property involves displacement or relocation, contact PROGRAM staff for guidance prior to proceeding.

II. ENVIRONMENTAL ASSESSMENT

ENGINEERING

A. Obtain Tier I Overview Environmental Assessment that meets federal standards

PROGRAM or ENGINEERING

B. Submit Tier I Environmental Assessment and Request for Release of Funds to HUD

   Note: A Finding of No Significant Impact and Intent to Request Release of Funds notice must be published with required comment periods prior to Request For Release of Funds submission (Form HUD-7015.15).

C. Obtain HUD Authorization to Use Grant Funds

   Note: HUD's release date on the Authority to use Grant Funds (Form HUD-7015.16) is the allowable date to commit program funds.

ENGINEERING

D. Obtain Tier II Site Specific Environmental Assessment that meets federal standards

III. CONTACT AND APPRAISAL

REAL ESTATE

A. Identify each Subject Property affected by the Project Area:
   1. Consult County Tax Assessor Records to obtain Subject Tax Parcel Number and Card
      a. Obtain Property Owner Contact Information from Tax Parcel Card
      b. Obtain Initial Property Information from Tax Parcel Card
      c. Prepare Master Owner List with Owner Contact and Property Information if numerous Subject Properties
   2. Research the County Clerk Office records to obtain Deed Information for each Subject Property
      a. Obtain most Recent Deed for each Subject Property
      b. Research Deed/Easement History for each Subject Property
      c. Research Plats and Surveys for each Subject Property
   3. Perform Initial Inspection of Project Area

B. Obtain Temporary Right of Entry from Property Owner for Surveying, Appraisal, Environmental Purposes – May Acquire at Time of Pre-Appraisal Contact
   1. Prepare Temporary Right of Entry (TROE) form from Template Stored on Server
   2. Describe the Property and Purpose of TROE

C. Order Survey - if not Ordered by project manager

1. Contact Surveying Company and provide necessary Property Information and Temporary Right of Entry Information

D. Conduct cost reasonableness review for:

1. Survey (If separate from design engineering contract)
2. Appraisal and Review Appraisal (if not already contracted through the City)
3. Not needed for Title Policy - this cost is set by the state insurance board
4. Any additional closing costs that are anticipated

E. Notice to Owner and the basic protections provided to the owner by law (49 CFR 24.102(b))- send by First Class Letter Mailed to Address noted on Tax Assessor Parcel Card.

1. If acquisition of this property involves displacement or relocation, contact PROGRAM staff for guidance prior to notifying landowner of intent to acquire property so that additional information can be contained in the notice, per 49 CFR 24.203. This notice establishes eligibility for relocation assistance.
2. Include the following attachments:
   a. Texas Landowner Bill of Rights
   b. HUD brochure describing landowner's rights, HUD 1041-CPD.

AFTER FURTHER PROJECT DESIGN

F. If on an individual parcel, property improvements will be impacted or a part of the acquisition, request that PROGRAM staff review the parcel for Duplication of Benefits before proceeding.

G. Notice of Intent to Acquire

1. Provide Owner with Information Regarding the Overall Timing of Acquisition, Type of Acquisition, what is to be Constructed, Appraisal Procedure, Acquisition Procedure. If relocating people or property, provide as applicable: Form(s) HUD 1365, 1042,1043, or 1044-CPD
2. Ask Landowner if willing to donate parcel
3. Use the Contact to Determine Existence of:
   a. Property improvements
   b. Leasehold interests
   c. Known hazardous materials
   d. Known or evident underground improvements
   e. Known liens against the property
   f. Advertising signs on property
4. Inform Property Owner of their Right to Accompany the Appraiser during the Inspection of the Property.

H. Determine whether an appraisal is required. (49 CFR 24.102(c)(2)). PENDING FINAL DECISION ON WHETHER WE PREFER NOT TO DO WAIVERS SINCE EMINENT DOMAIN IS ALWAYS A POSSIBILITY

1. The City can do a waiver valuation instead if:
   a. The owner is donating the property and releases the City from its obligation to appraise the property; or
   b. The valuation problem is uncomplicated and the estimated anticipated value is $10,000 or less.
   c. For properties where the anticipated value is between $10,000 and $25,000, the appraisal requirement may also be waived provided the property owner is offered the option of having the Agency appraise the property.
2. If Waiver Valuation is sufficient, conduct the Waiver Valuation process, attached

   If we are going to do waiver valuations, we need to create a process and a form to use and attach them – possibly based on the Federal Bureau of Land Management process and forms saved to the file
3. If Appraisal is required: Appraisers should be selected from the pre-approved on-call list only, or they need to follow Federal procurement standards.

   If not selecting an appraiser from the pre-approved on-call list, prior to awarding an appraisal contract, REAL ESTATE should check SAM.gov for debarment or exclusions and submit the search results with their request to Purchasing and Contracting for allocations.
4. Prepare Appraisal Request Letter ordering an Appraisal that includes the elements listed in 49 CFR 24.103 and send the following information to Appraisal Company, including:
   i. Address of the property
   ii. Contact Name and Contact Information
   iii. Legal Description
   iv. Survey and Field Notes
   v. Maps, Deeds, Plats
   vi. Any other pertinent information regarding the Subject Property helpful to the Appraiser
5. After Appraisal is received, conduct Appraisal Review Process, attached

I. Order Title Commitment from Title Insurance Company

1. Send Title Commitment Order, providing necessary property information

J. Upon Receipt of Title Commitment

1. Review Commitment Schedule B and Schedule C for Curative Items
2. Resolve Curative Items noted in Commitment Schedules

K. Designated Official issues Just Compensation Memo in agreement with the amount set

IV. <u>NEGOTIATION</u>

REAL ESTATE

A. Notify other departments:

1. Verify with PROGRAM that HUD's Authorization to Use Grant Funds has been received
2. Verify with FINANCE that accounts are setup
3. Verify with ENGINEERING that they are ready to move forward
4. Notify CITY ATTORNEY that offers are about to be made and check for information needed by CITY ATTORNEY

B. Make Written Offer to Purchase and Begin Negotiations

1. Present Offer Letter that contains the summary statement required by 49 CFR 24.102 (e)
   a. If acquisition of this property involves displacement or relocation, contact PROGRAM staff for guidance prior to presenting offer. Additional information must be provided to persons residing on the property, and the date of offer is the official Initiation of Negotiations date that starts the federal relocation process.
2. Discuss Offer with Property Owner
3. Answer Questions
4. Explain Administrative Settlement Process
5. Deliver Copy of the Appraisal
6. Have Property Owner Sign Acknowledgement of Receipt of Appraisal Report
7. Document all Owner Contact in File

C. Updating Offer of Just Compensation

1. Review File and Property Owner Comments
2. Have Appraisal Updated or Obtain New Appraisal if the following indicate a need:

a. Information provided by the property owner

b. A material change in the property's condition

c. Significant time passes since appraisal was conducted

d. Real Estate Market changes significantly

3. Submit Second Offer Letter
4. If Updated or New Appraisal report indicates a need to change Just Compensation Offer - Submit Revised Written Offer which must rescind original offer

D. Make Final Offer

1. Review File and Previous Negotiation Information with Property Owner
2. Present Final Offer Letter by Certified Mail

E. Offer Acceptance or Refusal

1. Offer Acceptance – Prepare for Transaction Closing

2. Offer Refusal – Prepare for Second Offer, Final Offer, or Eminent Domain Process

V. CLOSING WITH AN ACCEPTED OFFER

REAL ESTATE

A. Closing

1. If closing with Title Company: order Closing Documents and Set Up Closing with Title Company, Property Owner, and CITY MANAGER.
2. If closing In-House:

a. Prepare Documents not being prepared by Title Company, including Letter Agreement and Easement Document

b. Set up closing appointments with Property Owner and CITY MANAGER.

B. Record Executed Documents at County Clerk's Office - if not performed by Title Company

C. Close File

1. Scan Executed Documents into Project File on Server
2. Remove any Unnecessary Paperwork from File
3. Forward File to GIS for Entry into Database and Mapping
4. Copy Executed Documents for File and Forward Original Easement/ROW, Letter Agreements and Title Policy to CITY ATTORNEY
5. Prepare CD to Store File Information
6. Upon Return of File from GIS, File in CIP File Cabinet
7. Upon Receipt of Title Policy:

   a. Scan Policy into Project File on Server

   b. Copy Policy for File Folder

   c. Forward Original Title Policy to Legal Dept.

VI. CLOSING WITH ADMINISTRATIVE SETTLEMENT

For reference: 49 CFR 24.101(i) and Appendix A Section 24.102(i)

REAL ESTATE

A. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized City official approves such administrative settlement as being reasonable, prudent, and in the public interest. The City has specifically authorized the following individual staff members to approve such administrative settlements:

1. *See 49 CFR 24.101(i) and Appendix A Section 24.102(i) for this requirement – the City Manager could specifically designate the staff members so it doesn't have to be him each time (this will be either just Phil or Phil and Brandon)*

B. The authorized City official shall prepare a written justification which states what available information, including trial risks, supports such a settlement.

VII. CLOSING WITH EMINENT DOMAIN

REAL ESTATE

A. Contact CITY ATTORNEY - City will comply with Title IX, Rule 71.1 of the Federal Rules of Civil Procedure and Section 251.001 of the Texas Local Government Code

1. Provide File to CITY ATTORNEY to begin Eminent Domain Process
2. CITY ATTORNEY will decide to pursue Condemnation or Hire Outside Attorney

B. Provide Support to Condemnation Attorney

C. Close File upon completion of Eminent Domain proceedings

1. Locate copies of Executed Documents to save into Project File on Server or Ascertain that documentation has been saved to Project File
2. Forward File Information to GIS for Entry into Database and Mapping
3. Prepare CD to Store File Information
4. File Documentation in Project File and Store in Appropriate File Cabinet

Appendices

Appendix A. Involuntary Acquisition Flow Chart

attached

Appendix B. Involuntary Acquisition Checklist

Attached

Appendix C. Waiver Valuation Process

If we decide to do waiver valuations, we need to create a process and a form to use and attach them – possibly based on the Federal Bureau of Land Management process and forms saved to the file

Appendix D. Appraisal Review Process

1. The City has set the following criteria for the minimum qualification of appraisers and review appraisers, whether in-house staff or for fee (49 CFR 24.103(d)):
   a. State of Texas Certified
   b. Member Appraisal Institute (MAI) Designation
   c. Demonstrated understanding of the Uniform Appraisal Standards for Federal Land Acquisitions ("the yellow book")
2. The Review Appraiser may be either in-house staff (if qualified) or hired for fee. (49 CFR 24 Appendix A Section 24.104 (a)) *At this time the City of San Marcos hires review appraisers*.
3. The Review Appraiser will conduct the appraisal review per the requirements in 49 CFR 24.104 and 49 CFR 24 Appendix A Sections 24.104 and 24.104 (a)-(c) and will prepare a written report that contains the following elements:
   d. Identification of the appraisal as Recommended, Accepted, or Not Accepted, as those terms are defined in 49 CFR 24.104(a) and Appendix A Section 24.104(c)
   e. If the appraisal is Accepted, the review appraisal must include a determination that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value.
   f. Documentation of the findings and conclusions arrived at during the review of the appraisal
   g. Identification of any damages or benefits to any remaining property.
   h. A signed certification that states the following:

      The parameters of the review, and
      The approved value, and
      The amount believed to be just compensation for the acquisition.

Appendix E. Applicable Laws and Regulations

1. Uniform Relocation and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.)
2. Title 49 of the Code of Federal Regulations Part 24, as amended, is the government-wide regulation that implements the URA
3. Section 104(d) of the Housing and Community Development Act
4. Title IX, Rule 71.1 of the Federal Rules of Civil Procedure
5. Section 251.001 of the Texas Local Government Code
6. Fair Housing Act 42 U.S.C. 3601-3619, HUD Section 504

Appendix F. Guides

For additional information:

1. HUD Handbook 1378, which provides policy and guidance on implementing the URA: https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780
5. HUD's URA Overview: https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura