

CITY OF MINOT

Program for Voluntary Acquisition of Real Estate

**Approved January 18, 2012
Amended and Approved June 14, 2012**



June 14, 2012

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Attachments

Attachment A: City Appeal Process – Offer Price for Voluntary Acquisition

Attachment B: City Appeal Process - Displacement

PROGRAM OVERVIEW

INTRODUCTION

In July 2011, the City of Minot suffered substantial real estate damage due to flood waters from the Mouse River. This flood damage created severe hardships for many residents throughout the City. The City of Minot is attempting to obtain funding from various sources for the purchase of real estate in certain areas of the community from property owners on a voluntary basis.

This document was created to explain how the City of Minot will administer a voluntary acquisition program and how the program will operate.

VOLUNTARY ACQUISITION PROGRAM

This voluntary acquisition program is based upon a negotiated purchase of property on a **willing buyer - willing seller** basis. Regarding a willing buyer and a willing seller, terms of voluntary acquisition must be demonstrated in accordance with the URA (49 CFR § 24.101(b)(1) and HUD Handbook 1378, Exhibit 32). If the seller rejects an offer made by the City or the City and the seller cannot reach an agreed upon purchase price, the City will discontinue its voluntary acquisition of the property under this program.

This program does not involve the use of the City's eminent domain powers. The City may at a later time in the future and under a different program exercise its power of eminent domain to acquire properties for the construction of a flood control project. However, no decision has been made with respect to the use of the City's eminent domain authority for the acquisition of any property that may be related to any future flood control project.

Participation in the Voluntary Acquisition Program:

The City will make offers to owners of flood-damaged property on a **willing buyer - willing seller** basis. To make initial contact with eligible property owners that might be interested in participating in the voluntary acquisition program, the City will send letters to everyone who has requested notice or information of a voluntary acquisition program. In addition, the City may send correspondence concerning the program to eligible individuals who have requested a City inspection of the flood-damaged structures within the eligible areas or are the owner of record of property located in the area designated for the voluntary acquisition program. The City will use other means of distributing information about the program including public meetings, direct mailings, news releases and web page utilization.

Property owners choosing to participate in the voluntary acquisition program are not eligible for relocation assistance benefits under NORTH DAKOTA CENTURY CODE Chapter 54-01.1 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA).

Participation in this program is entirely voluntary. The City will not require any owner to sell property to the City as part of this program. The City will not use its power of eminent domain to obtain land for this program. A property owner's decision not to sell will not impede acquisition of other properties participating in this program. The City, however, reserves its right to exercise its eminent domain authority at a later date in the future upon the closing of this voluntary acquisition program.

Seller shall have the right to rescind any offer and acceptance at any time prior to executing a purchase agreement. Any rescission of offer and acceptance shall be placed in writing and delivered to the City's authorized agent.

Offer to Purchase:

The City's offer will be based upon the pre-flood market value of the property for this voluntary acquisition program. The City will determine the pre-flood market value of the structure and property through information provided by the City of Minot Assessor's office. In making its determination of the market value, the City Assessor's office will use building layout sketches, construction type and materials, permit history and other available information regarding the condition and value of the property. The Assessor's Office will also utilize any information received from the owner including recent appraisals.

If the structure was demolished prior to the City's offer to purchase because of imminent threat to life or property created by the flood event, the property owner will be offered the pre-flood assessed value.

If the offer is rejected and no further negotiation is anticipated, the acquisition staff will close the property's file and "de-obligate" the funds reserved for the property's acquisition and relocation payments.

The property owner may discontinue negotiations at any time prior to the execution of an acquisition agreement.

Appeal Offer Price

The City will make every attempt to accurately estimate the pre-flood market value of the property. If, after the presentation of the offer, the seller believes the purchase price is incorrect, the seller can present additional information directly relating to the pre-flood market value and appeal the City's offer price. This is a two stage appeal process. See Attachment A: City's Appeal Process-Offer Price for Voluntary Acquisition.

What is to be Acquired:

In General

The City of Minot will acquire properties, on a voluntary basis, subject to funding availability. The City's acquisition of property under this program will typically involve

acquisition of the lot, all structures and mineral rights. However, upon demonstration of unique circumstances, the City may acquire the lot only. In such a case, the owner is responsible for the removal of the structure(s). Acquisitions will occur on a first-come, first-served basis in accordance with these priorities as funding may not be sufficient to acquire all eligible properties.

Pre-Acquisition Activities:

The City is undertaking a number of activities relating to eligible properties prior to making an offer to purchase. Briefly, these activities include:

1. Determining pre-flood market value by the City Assessor's office which will be used in making offers to purchase;
2. Identifying the owners who want to be considered for acquisition.
3. Identifying the occupancy of any property to be acquired. For any tenant occupied property, identifying the resources that are necessary to fulfill the URA tenant relocation requirements, including replacement housing, funding for the expenses, and additional time necessary to fulfill the URA requirements.

After the property owner indicates an interest in participating in the acquisition program, the City will:

1. Make offer to property owner.
2. Upon agreement for the acquisition of the property, order title information;
3. Work with such State and Federal agencies, including FEMA, to obtain information about any assistance received from those agencies and their programs for each property being acquired; and
4. Determine whether environmental investigation or testing is warranted for property to be acquired. Such investigation and testing may include a Phase I or Phase II Environmental Report to identify any contaminants or other environmental concerns. Decisions regarding environmental investigation or testing will be made in coordination with State and Federal agencies.
5. Prepare closing documents.

Timing of Offers:

As soon as funding for this program is available, the City will begin the process to make offers to purchase to property owners. Promptness of response and readiness of property title for sale will determine priority and time frame for closing.

Offer Form:

Major elements of the City's offer are:

1. Purchase Price. The pre-flood market value of the real estate based upon the opinions of the City Assessor.
2. Deduction from Purchase Price. As applicable, insurance proceeds, loans, repair grants, compensation in compliance with a court order or other assistance available to help address damages to the structure that represent a duplication of payment for the real estate, property taxes and special assessments pro-rated to the date of closing, and other payments required to clear special assessments, liens, mortgages, fines, judgments, etc., will be paid prior to closing or deducted at the time of closing. The City will receive individual determinations by NDDDES and/or FEMA of any required deductions. Deductions will not be taken for the amounts the homeowner can verify with receipts that were expended on repairs or cleanup (no credit shall be allowed for the homeowners own labor for repair work.)

Conditions:

The following conditions apply to the acquisition of property under this program:

1. Closing Date. A mutually agreed upon date by the City and the seller to close on the property conditioned upon the Department Housing and Urban Development's determination of environmental clearance and release of CDBG disaster recovery funds.
2. Clear Title. The seller must provide clear title to the City's satisfaction before the closing can occur. The seller must convey the property by warranty deed. Any existing mortgages, liens or other encumbrances will be paid at closing to the extent that funds are available. Any unpaid mortgages, liens or encumbrances are the responsibility of the seller.

3. Taxes and Special Assessments. Taxes and special assessments will be prorated to the date of closing. However, no refund will be made for prepaid special assessments.
4. Abstract. The property owner is responsible for the cost of updating any abstract, title insurance policy, or other evidence of title.
5. Offer Expiration Date. The City will allow thirty (30) days from the date the offer is made for the seller to decide whether to accept the City's offer. The City may permit an extension of the expiration date. It is the intention of the City to make as many offers as quickly as possible. Property owners are not obligated to accept the City's offer. In the event that an offer is not accepted in a timely manner, the property owner may resubmit their intention to participate in the program to the City. Negotiations regarding the acquisition of the property will begin again, depending upon availability of funding.
6. Termination of Negotiations. Negotiations regarding the acquisition of the property may be terminated by the property owner or the City at any time prior to executing a purchase agreement.
7. Property Inspection. Upon acceptance of the City's offer, the seller will grant access to the City to inspect the flood-damaged property for personal property, hazardous materials, etc., that must be removed prior to closing.
8. Environmental. The City shall take steps to insure that a property with past or present commercial or industrial use, or one that is adjacent to such property, or a property that is suspected of having hazardous contaminants present at the site, is not contaminated at the time of acquisition. The property owner will be required to provide information identifying what, if any, hazardous materials have been deposited or stored on the property. If the City, State and/or FEMA determine that a Phase I Environmental Site Assessment is necessary, the City, State or FEMA may conduct a Phase I Environmental Site Assessment prior to the property acquisition. If abatement of hazardous contaminants is warranted, the hazardous materials must be removed at the property owner's expense. Cleanup costs associated with obtaining clean site certification, and any costs associated with hazardous materials, are not eligible project costs and will be borne by the property owner. The seller must indemnify the City, State and FEMA for any liability arising from previous contamination of the property.

An environmental assessment compliant with 24 CFR Part 58 will be completed and an environmental clearance received prior to a commitment to expend CDBG disaster recovery funds.

9. Removal of Personal Property. The seller agrees to remove, at its expense, prior to closing, all personal property which the seller chooses to remove. Any personal property remaining on the premises following the closing shall be considered to be abandoned property of which the seller authorizes its removal and disposal.
10. No Salvage. Except as otherwise authorized by the City, no salvage of any structure, or part thereof, will be allowed. The City's acquisition of the property is intended to reflect the pre-flood condition except for any flood related damage. The City will consider salvage by the property owner on a case-by-case basis. In the event salvage is authorized, the value of the salvaged items will be deducted from the purchase price. The City shall determine the value of such salvaged items.
11. Duplication of Benefits. All National Flood Insurance Program (NFIP) payments and FEMA minimal repair payments (for real property only) must be deducted from the acquisition payment. Other insurance, SBA loans, repair grants, compensation in compliance with a court order or other assessments available to help address damages to the structure must also be deducted from the acquisition payment. At NDDDES' or FEMA's direction, other assistance may also be deducted from the acquisition payment. If the buyout participant has received flood insurance which exceeds the assessed value of the structure, the participant will be offered the assessed land value only. No duplication of benefits will be deducted from the land value.
12. Subject to City Approval. The offer is subject to City approval of the form of offer and the specific offer terms for each property.
13. First-Come, First-Served. Final obligation of the acquisition funds shall occur at the time of offer and acceptance, on a "first-come, first-served" basis.

PROCESS AFTER OFFER IS ACCEPTED

After the seller accepts the City's offer, the following will be undertaken:

- * The seller will provide the City with any abstract of title or title insurance in the seller's possession.
- * The City will update the abstract or title insurance policy.
- * If not available from the seller, the City will determine whether an abstract of title or title insurance will be required. If determined to be necessary the City will order an abstract or title insurance or other title information. The cost of such evidence of title shall be the responsibility of the seller.
- * The City will order any title searches, abstract work, title opinion or title insurance, and will provide forms of affidavits, releases and other necessary closing documents.
- * Upon receipt of the necessary closing and title-clearing documents from the seller, the City will prepare a closing statement and schedule the closing. The City will undertake any necessary property inspections.
- * The City will disburse funds at closing in accordance with the closing statement. After the closing, the City will transmit and file all necessary documents in order to close the acquisition of the property.

ACQUISITION STAFF

The law firm of Swanson & Warcup, Ltd. has been designated to assist the City in the acquisition process. Additional acquisition staff may be designated or contracted with as needed. The acquisition staff is available to answer questions.

The City may obtain additional services to be performed on a contract basis to assist in the acquisition program. The services that may be contracted for include:

- Title searches, certificate, and/or abstracts
- "Mortgage" property surveys
- Title Opinions
- Title Insurance
- An escrow agent for closing and/or related services
- Environmental investigation and testing, if required
- Other services as needed

RELOCATION BENEFITS

Homeowner Benefits:

The City is offering this program on a strictly voluntary acquisition basis. Accordingly, many of the notices and processes normally required by NORTH DAKOTA CENTURY CODE Chapter 54-01.1 and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) do not apply to this program. **Property owners choosing to participate in this voluntary acquisition program are not eligible for relocation assistance benefits under NORTH DAKOTA CENTURY CODE Chapter 54-01.1 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.**

Tenant Benefits:

The City will be obligated to provide relocation assistance in accordance with the Uniform Relocation Act (URA) to tenants and tenant-owned businesses occupying flood-damaged property if they are required to relocate when an offer to purchase is accepted for the flood-damaged property they were renting.

Eligibility:

To be eligible for the tenant residential relocation benefits, the tenant must:

1. Have been a legal resident occupant of the property for which the City has approved acceptance of the purchase offer for the flood damaged property.
2. Purchase or rent a decent, safe, and sanitary replacement housing unit that is not location in an Area "A" on the NFIP Flood Hazard map.

Tenant-owned Business

If, in addition to the tenant being a legal residential occupant of the property, the tenant also owned a business operated exclusively from this property and this business was legally operating (had the appropriate governmental permits, was in conformance with zoning regulations, etc.) and filed business income tax returns, the tenant-owned business may also be eligible for business relocation assistance. In determining relocation assistance for a home-based business, to avoid duplication of benefits the portion of the real property that was dedicated to the business will be excluded in identifying comparable replacement housing and in calculating a potential replacement housing

payment.

Determination of Benefits:

The acquisition staff will determine benefits in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; the Waivers and Alternative Requirements for CDBG Disaster Recovery Grantees under HUD Appropriations Act, 2012; and/or NORTH DAKOTA CENTURY CODE Chapter 54-01.1, as appropriate.

Replacement Housing Requirements:

All tenants receiving the replacement housing benefits must relocate to housing units that are decent, safe, and sanitary and not located in an Area "A" on the City of Minot flood hazard maps. The "decent, safe, and sanitary" standard is similar to HUD Housing Quality Standards. The City will also accept a current rental occupancy certificate for rental units and a certificate of occupancy for newly-constructed houses in lieu of a "decent, safe, and sanitary" inspection.

The decent, safe, and sanitary inspection is not a certification or guarantee of the housing unit's condition or of its major systems (such as heating, plumbing, and electrical). It is necessary to satisfy the requirements of the City's program funding sources.

Appeals:

Appeals of the relocation benefits for tenants and tenant-owned businesses will be handled in accordance with the Uniform Relocation Act (URA). See Attachment B: City Appeals Process-Displacement.

TERM OF VOLUNTARY ACQUISITION PROGRAM

This voluntary acquisition program is intended to begin on February 1, 2012 and terminate on September 30, 2012. Any property owner seeking to participate in the voluntary program must have an executed purchase agreement with the City prior to September 30, 2012. However, the dates of the program are subject to availability of funding.

Following closing, the City, in its sole discretion, will determine whether any structures remaining on the property will be demolished or relocated for a future use.