

# **CITY OF MINOT**

## **Program for Voluntary Acquisition of Real Estate**

**Approved January 18, 2012**

**Amended and Approved Sep 4, 2018**

**City Council Amended February 3, 2020**

**Effective February 5, 2020**

**City Council Amended October 4, 2021**

## **Table of Contents**

	PAGE#
Introduction .....	1
Voluntary Acquisition Program .....	1
Participation in the Voluntary Acquisition Program .....	1
Offer to Purchase .....	2
Counteroffer to Price .....	2
What is to be Acquired .....	2
Pre-Acquisition Activities.....	3
Timing of Offers .....	3
Offer Form .....	4
Conditions .....	4
Process After Offer is Accepted .....	6
Acquisition Staff.....	7
Relocation Benefits.....	7
Homeowner Benefits .....	7
Tenant Benefits .....	7
Eligibility.....	7
Determination of Benefits .....	8
Replacement Housing Requirements .....	8
Appeals.....	9
Term of Voluntary Acquisition Program .....	9

## **Attachments**

Attachment A: City Appeal Process - Displacement

## 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. The City may 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 post-flood market value of the property for this voluntary acquisition program. The City will determine the post-flood market value of the structure and property through independent appraisal and consultation by the City of Minot Assessor's office.

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. *For properties which meet the standards of spot blight caused by the flood and ownership is acquired through default by a government agency or financial institution, value set by City as initial purchase price offer is to be below current assessed value, reflects blighted condition to be demolished, and is sufficient to induce sale by entity holding title to the defaulted property. (added February 3, 2020)*

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

**Counteroffer to Price**

The City will make every attempt to accurately estimate the post-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 post-flood market value and propose a counteroffer for City consideration.

**What is to be Acquired:**

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 post-flood market value by independent appraiser and consultation by the City Assessor's office which will be used in making offers to purchase;
2. Identifying owners who want to be considered for acquisition.
3. Identifying 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.
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.

After completion of pre-acquisition activities, the City will:

1. Make offer to property owner.
2. Upon agreement for the property acquisition, order title information; and
3. Prepare closing documents.

### **Timing of Offers:**

Once program funding 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 post-flood market value of the real estate based upon independent appraisal and City Assessor opinion.
2. Statement regarding voluntary nature of acquisition and non-use of eminent domain.
3. Emphasis there is no connection between First District Health and City of Minot Inspection Department-related enforcement actions and this voluntary acquisition program.

### **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. Property acquisition negotiations may then begin again, pending funding availability.
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 property.
8. Environmental. The City shall take steps to ensure 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 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. 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 abandoned property of which the seller authorizes 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 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. Closing Costs. The City shall pay typical closing costs, except as noted in paragraph 4 (Abstracts).
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 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.
- \* 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

City staff will be primarily responsible for activity execution.

The City may obtain additional services to be performed on a contract basis to assist in the acquisition program. Services may 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 5401.1 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.**

### Tenant Benefits:

The City is 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 located 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 the business was legally operating (had the appropriate governmental permits, conformed 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 A: City Appeals Process-Displacement.

**TERM OF VOLUNTARY ACQUISITION PROGRAM**

This voluntary acquisition program is intended to begin on Sep 4, 2018 and terminate on December 31, 2018. Any property owner seeking to participate in the voluntary program must have an executed purchase agreement with the City prior to December 31, 2018. 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.

**ATTACHMENT A**

**Uniform Relocation Appeals**

The City of Minot will promptly review appeals in accordance with the requirements of applicable law and 49 CFR § 24.10 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act or URA) regulations.

Any person who has been displaced for a federally-assisted project may file a written appeal with the City of Minot if the person believes that the City of Minot failed to properly consider their application for assistance under the Uniform Act.

Relocation assistance issues that may be appealed include, but are not limited to, a person's eligibility for a relocation payment or the amount of a relocation payment provided. Relocation payments include payment for moving, replacement housing or commercial re-establishment expenses.

A person has the right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense. The City of Minot shall permit the person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential. The imposition of reasonable conditions on the person's right to inspect will be set consistent with applicable laws.

The time limit for filing a request for negotiations or appeal is thirty (30) days after the person receives written notification of the City of Minot's determination of the person's eligibility for assistance or the amount of assistance claimed.

Negotiations and appeals shall be considered unproductive if the city receives no response to an offer or counteroffer after 30 days. Negotiations and appeals may be terminated in writing by either party and eminent domain proceedings may begin.

A displaced person may contact the City of Minot if they wish to discuss filing an appeal. Written appeals shall be considered regardless of form. A written appeal must be submitted to:

Contact Person:            NDR Program Manager  
Address:                    P.O. Box 5006 Minot,  
                                  ND 58702-5006

The City of Minot will respond to the appellant within fifteen (15) calendar days of receipt of the appeal to acknowledge receipt of the appeal, to provide an opportunity to the person to submit additional information and to inform the person when they can expect a decision.

In deciding an appeal, the City of Minot will consider pertinent justification and material submitted by the person to ensure a fair and full review of the appeal. The City of Minot shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and provide a copy to the person within 45 days after receipt of all information submitted by the person in support of the appeal.

The City of Minot's response shall include, but need not be limited to:

1. The determination on review of the appeal;
2. The factual and legal basis upon which the decision is based, including any pertinent explanation;
3. If any payment or other relief to the person is required to be made, the amount and manner of payment should be outlined in the response to the individual along with a

statement of the person's right to seek the assistance in the event such relief is not provided within 45 days;

4. If the full relief requested is not granted a statement of the person's right to seek a judicial review; and
5. The final decision on the written appeal will be made by the NDR Program Manager.

**Request for Additional Time**

If a person makes a reasonable request for additional time to gather information and prepare for a written appeal or request a review by the City of Minot, he or she shall be granted a reasonable amount of time.

**Determination on Persons Not Displaced**

Review of a displacing Agency's determination that a person is not displaced is to be undertaken in the same manner as explained above.