



**The City of Colorado Springs
Procedure Manual for the
Acquisition and Disposition of
Real Property Interests**

A RESOLUTION APPROVING AMENDMENTS TO THE CITY OF COLORADO SPRINGS PROCEDURE MANUAL FOR THE ACQUISITION AND DISPOSITION OF REAL PROPERTY INTERESTS

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The identified sections of the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property interests are hereby amended as follows:

Manual § 4.3.d.i Shall be amended to read:

A value finding has been ~~or will be performed~~ **prepared** and that the City ~~established a~~ **estimates the** fair market value ~~at to be~~ less than ~~\$5,000.00~~ **\$20,000**, and the City does not intend to obtain ~~any other~~ **an** appraisal on its behalf; **while further identifying the property owner's right to an appraisal pursuant to CRS 38-1-121 if the estimated value of the property exceeds \$5,000;** or

* * *

Manual § 6.3.d.i Shall be amended to read:

A value finding has been ~~or will be performed~~ **prepared** and that the City ~~established a~~ **estimates the** fair market value of the easement ~~at to be~~ less than ~~\$5,000.00~~ **\$20,000**, and the City does not intend to obtain ~~any other~~ **an** appraisal on its behalf; **while further identifying the property owner's right to an appraisal pursuant to CRS 38-1-121 if the estimated value of the property exceeds \$5,000;** or

* * *

Manual § 8.2 shall be amended to read:

An appraisal may not be required when the value of the property interest is estimated to be ~~\$5,000.00~~ **\$20,000** or less, or when a total donation is planned.

* * *

Manual § 8.5 shall be amended to read:

If RES and the Project Manager determine that the estimated fair market value of an acquisition is ~~\$5,000.00~~ **\$20,000** or less, a value finding may be conducted in lieu of an appraisal.

Parcels or easements estimated to be valued at ~~\$5,000.00~~ **\$20,000** or less shall be valued using a Value Finding Form.

Manual § 8.6 shall be amended to read:

If the total acquisition amount is less than \$20,000, the Project Manager and Real Estate Services Manager may, without City Council acquisition approval, approve just compensation.

If the total acquisition amount is equal to or greater than \$20,000, the Project Manager and RES Manager may offer up to thirty percent (30%) over the fair market value of the property interest as just compensation without City Council acquisition ~~amount~~ approval when the total acquisition amount (fair market value + just compensation) does not exceed \$50,000. ~~Any time that the just compensation~~ **Whenever the total acquisition amount is determined to be ~~ever~~ **in excess of** thirty percent (30%) of the fair market value or if the total acquisition amount exceeds \$50,000, the Project Manager must seek City Council acquisition ~~amount~~ approval.**

Section 2. Except for the amendments notes above, all other sections of *The City Of Colorado Springs Procedure Manual For The Acquisition And Disposition Of Real Property Interests* shall remain in full force and effect.

Section 3. The City and its Colorado Springs Utilities, Memorial Health System, the municipal enterprises and purchasers of City-owned real property interest shall follow the procedures set forth in the Manual adopted by City Council on September 11, 2007 under Resolution no. 155-07 and the amendments stated above.

DATED at Colorado Springs, Colorado, this 24th day of January, 2012.



Scott Hente, Council President

ATTEST:



Cindy N. Conway, Interim City Clerk

On September 11, 2007, City Council passed Resolution 155-07 adopting The City of Colorado Springs Procedure Manual for the Acquisition and disposition of Real Property Interests ("Manual"). All real estate transactions must now comply with the Manual.

The City of Colorado Springs Department of Internal Support Services, Real Estate Services Division with the assistance of the City Attorney's Office and a stakeholder committee of 23 members reviewed existing rules and practices and recommended appropriate changes. The Committee was made up of 6 Utilities representatives, 3 representatives from the Memorial Health System and 14 representatives from the City.

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City Council Resolution Adopting this Manual

The Charter of the City of Colorado Springs Article X

City Code §§ 7.7.1801 - 1802

City Council Ordinance Amending and Ordaining §§ 7.7.1803 - 1807

Ordinance No. 06-221 Relocation Policy

C.R.S. § 38-1-121

CRE Rule 408

Chapter 1 - Introduction

- 1.1 **Purpose.** Pursuant to City Charter § 1-10, the City of Colorado Springs is authorized to own, acquire and dispose of real and personal property necessary for the exercise of any of its powers, privileges or functions. The City Council is vested with fiduciary responsibilities to manage all property that is owned in the name of the City of Colorado Springs in the best interests of the City. City Council intends this Manual to establish standard procedures and uniform practices for the acquisition and disposition of City-owned real property interests for any program, project or purpose. City Council finds and determines that the procedures and practices established by this Manual will accomplish the following objectives:
- a. Ensure the City makes every reasonable effort to acquire real property interests expeditiously through negotiated agreements. Although the City has inherent authority to exercise the power of eminent domain, condemnation should be an option of last resort.
 - b. Ensure the City receives fair market value for all property interests conveyed to third parties unless a public purpose is served through a conveyance at less than fair market value.
 - c. Ensure the City conducts its acquisition or disposition activities in a manner that minimizes hardships to owners, tenants and the City.
 - d. Ensure the City handles all real property acquisitions and dispositions fairly and consistently. Ensure that the City maintains appropriate record keeping for all real property interest transactions.
 - e. Promote public confidence in the City's land acquisition and disposition activities.
- 1.2 **How to use this Manual and Flow Charts.** This Manual sets forth the procedures necessary to acquire or dispose of real property interests on behalf of the City of Colorado Springs. The roles and responsibilities of Project Managers and Real Estate Services ("RES") are defined to ensure that all necessary steps are taken by the appropriate person at the appropriate time. The attached flow charts map the process required and outline the procedures to acquire, dispose of and value real property interests, and articulate the roles and responsibilities of each of the persons involved in these activities. The related chapters in the Manual provide detail to further explain the flow chart processes. The flow charts and Manual chapters should be read together for a complete understanding of the processes described.

Except in exigent circumstances which present an imminent threat to the public health, safety and welfare, compliance with the procedures and processes set forth in this Manual is required. In exigent circumstances, the RES Manager and Project Manager may modify the flow chart steps, but must comply with all provisions of this Manual pertaining to City Council approvals.

- 1.3 Supplemental Administrative Procedures. The City Manager, the Chief Executive Officer of Memorial Health System and the Chief Executive Officer of Colorado Springs Utilities may choose to establish supplemental administrative procedures, but those supplemental administrative procedures shall not supersede or substitute for the procedures and practices contained in this Manual. RES will support and comply with any supplemental administrative procedures to the extent those supplemental administrative procedures do not conflict with the provisions of this Manual.
- 1.4 Federally-funded Programs. If a project receives federal funds, RES shall assure that all rules and regulations including handbooks and manuals of the appropriate federal agency are followed. In the event of a conflict between procedures or provisions in this Manual and the rules and regulations of the federal agency, the rules, regulations and procedures of the federal agency shall control.
- 1.5 Relocation. Any City project that involves the relocation of businesses, farms/ranches, homeowners or tenants (commercial or residential) must comply with the provisions contained in Chapter 6, Article 13 of the Code of the City of Colorado Springs 2001, as amended ("City Code"). RES will assist the Project Manager in retaining the services of a professional relocation consultant to accomplish the relocation. Expenses for the relocation and any consultant will be paid from the project budget.
- 1.6 Rules of Construction. In the construction of phrases and terms used in this Manual, the rules found in City Code §1.1.104 shall be observed unless excluded by express provision or inconsistent with the intent of the City Council. Definitions contained in City Code §1.1.106 shall apply to terms not defined in this Manual.

Chapter 2 – Roles and Responsibilities of the Real Estate Services Office

- 2.1 **Custodian of Records.** RES is the custodian of the City’s real estate asset records and shall take all necessary steps to protect these records in perpetuity. RES is responsible for updating and maintaining an inventory of all City-owned property assets.
 - a. RES will receive records and will maintain a computer database to track and archive all files and records pertaining to City-owned real estate assets.
 - b. RES shall promulgate Standard Operating Policies (“SOPs”) for record maintenance and required documents to be included in real estate asset files.
 - c. Original deeds or other documents of transaction or conveyance must be filed with the City Clerk. RES will maintain a copy of the original document for ease of access.
- 2.2 **Legal Compliance.** RES is responsible for obtaining “approval as to form” from the City Attorney’s Office for all deeds, contracts and other documents pertaining to the City’s real property transactions and assets, including but not limited to contracts, deeds, leases, licenses, easements and Executive Agreements. Through consistent compliance with the requirements contained in this Manual, RES will assure that all City land transactions comply with the City Charter, City Code, Rules and Procedures of City Council, Colorado Springs Utilities Policy Governance, RES SOPs, and state and federal law. RES is authorized to work with the City Attorney’s Office to resolve any title or legal description issues that may arise.
- 2.3 **RES Manual, SOPs and City Real Estate Forms.** RES is responsible for maintaining and assuring compliance with this Manual, for promulgating SOPs to implement the procedures required by this Manual, and for maintaining an index of real estate contracts, deeds, leases and other form documents that have been “approved as to form” by the City Attorney’s Office. SOPs shall address the implementation, administration, operation and interpretation of this Manual. This Manual, RES SOPs and real estate forms and documents shall be available for public inspection in RES’ office.
- 2.4 **Service Level Agreements.** RES has authorization to enter into Service Level Agreements with Colorado Springs Utilities and Memorial Health System. The Service Level Agreement would define additional services not required by this Manual.
- 2.5 **Amendment.** The text of this Manual may only be amended by City Council resolution. RES SOPs, approved real estate forms, flow charts and appendices

to this Manual may be amended by the RES Manager and City Attorney's Office as needed.

- 2.6 Title Work. RES is responsible for obtaining and reviewing title commitments and policies in an effort to assure that all information pertaining to ownership, title history, surveys and other information is verified and correct. RES will notify the Project Manager and City Attorney's Office if any title document or information is a concern or may compromise the City's interest in the property. The City Attorney's Office, Project Manager and other appropriate City staff will take any necessary steps to resolve the concern and protect the City's interest.
- 2.7 Closing Documents. RES is responsible for reviewing and approving all closing documents to assure the documents are correct and accurately reflect the transaction prior to closing.
- 2.8 Consultants. RES is responsible for providing guidance as necessary in selecting consultants and for assisting the City's consultants to provide relocation, acquisition, disposition, leasing or other real estate related services.
- 2.9 Recording Verification. RES shall regularly review all filings with the El Paso County Clerk and Recorder naming the City of Colorado Springs as grantee or grantor. RES will verify that any conveyance naming the City as grantee was properly accepted by the City and has been removed from the tax rolls, and that any conveyance naming the City as grantor has been recorded and returned to the tax rolls, as appropriate.
- 2.10 Plat Review. As part of the land development review buckslip process, RES will review preliminary and final plats and replats prior to recording. RES will verify that any purported dedication of property to the City is properly articulated in the dedication statement and represented on the plat map, and that existing easements and other City property interests are identified and called out in replats.
- 2.11 Signature Authority. In accord with City Charter § 3-20, all deeds conveying City-owned property to third parties and all easement vacations must be signed by the Mayor. Unless otherwise provided by this Manual, the City Code, City Council resolution or City Manager delegation, the RES Manager, or designee, has signature authority for the following documents:
 - a. Licenses.
 - b. Leases.
 - c. Value findings.
 - d. Contracts to buy or sell.

- e. Closing documents.
- f. Easement encroachments.
- g. Acceptance statements or acceptance verifications.
- h. IRS documents acknowledging a donation to the City of Colorado Springs.
- i. Documents in support of a request for City Council approval.

Chapter 3 – Definitions

Acquisition	The process of acquiring real property interests in the name of the City of Colorado Springs for a project, public purpose or public need.
Administrative Settlement	An administrative settlement is reached during real property acquisition negotiations and is the last and best offer the City makes to acquire property. If an administrative settlement is rejected by the property owner, the City must determine whether it will exercise the power of eminent domain. The settlement is based on property value related evidence, administrative or project considerations or other factors approved by the Project Manager, RES Manager and the City Attorney's Office. Administrative settlements must be approved in accord with the provisions of this Manual.
Appraisal	A written statement or determination of what constitutes a fair price, valuation or estimation of worth for a described property as of a specific date prepared by a qualified independent appraiser. An appraisal should be supported by the presentation and analysis of relevant market data and information. The term appraisal is also used as a synonym for a written appraisal report.
Buckslip Department	The term used for the City and other governmental entities that are placed on a distribution list to review and comment on applications or requests.
Buckslip Process	A process by which the City and other governmental entities are provided information (plans, project statements, technical reports and other pertinent documents) regarding real estate transactions or requests, and in turn, are asked to provide comments by a certain date. These comments are used in the review and processing of acquisition and disposal of real property interests.
Consultant	Persons who are retained to provide acquisition, disposition, relocation, appraisal, survey, leasing and other real estate related services to the City.
Department	An administrative department, unit, office, work group or agency of the municipal government and its enterprises, Memorial Health System and Colorado Springs Utilities.

Department, Acquiring	A Department that seeks to acquire a real property interest.
Department, Controlling	A Department that has administrative stewardship responsibility for real property, or that is responsible for managing a project that requires the acquisition of a real property interest.
Department, Disposing	A Department that seeks to dispose of a real property interest.
Department, Landlord	A Department that has administrative responsibility for real property that is leased to third parties.
Department, Requesting	A Department that requests RES assistance or services in the acquisition or disposal of real property interests.
Department, Tenant	A Department that seeks to lease real property from third parties.
Easement	An interest in land not owned by the City, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose. Easements can be permanent or temporary. This term may be used to describe either the right of use itself or the document conferring the right.
Easement, Cure	An easement acquired to acknowledge a prescriptive right or to cure the trespass of an existing City infrastructure that was originally installed and currently operates without the express permission of the property owner.
Easement, Developer-Initiated	Authorization by a property owner for the use by another, for a specified purpose, of any designated part of the owner's property granted as a result of property development.
Easement, Temporary	Easement of limited duration acquired for the purpose of construction or repair of improvement, or other public uses not requiring a permanent easement.

Environmental Audit	(Phase I ESA –ASTM Standard E1527) Typically includes a detailed site description, physical setting review (aerial photographs, interviews, etc.) and a site reconnaissance visit. Also included are a hazardous materials review, photographic documentation and preparation of a detailed report with appropriate conclusions and recommendations.
Environmental Review	The process authorized by City Code § 7.7.1802, by which a department or project manager seeks to determine if a particular parcel of real property (including improvements) is subject to recognized environmental conditions. At the option of the Department or Project Manager, an environmental site review may include more inquiry than that constitutes all appropriate inquiry or, if the Department or Project Manager is not concerned about qualifying for LLP under CERCLA, less inquiry than that constituting appropriate inquiry. An Environmental Review is both different from and less rigorous than an Environmental Audit.
Fair Market Value	Fair, actual market value of the property. It is the price the property could have been sold for on the open market under usual and ordinary circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.
Joinder	The act of a person or entity of "joining" in a conveyance or agreement, as someone co-signing or co-executing it. It is not a separate agreement but rather participation in the already-existing agreement of another.
Just Compensation	The total price the City must pay to acquire an interest in real property. Just compensation includes the fair market value of the interest to be acquired plus any additional, reasonable and justified compensation paid. If it becomes necessary for the City to exercise the power of eminent domain, the amount paid through the court will be just compensation for the acquisition of the property interest.
Project	A City-funded program, project or activity that requires the acquisition or disposition of real property interests to complete the program, project or activity, and that benefits the public.

Project Manager or PM	A City staff member who is responsible for the management and completion of a project. The Project Manager has the authority to make decisions regarding the acquisition and disposition of real property interests necessary to the project. The Project Manager also has the responsibility to obtain any necessary approvals from City Council or other governing boards to commence or complete the project.
Real Estate Services or RES	The City office responsible for oversight of the City's acquisition, disposition and other activities related to the City's real property interests. This term may be used to describe either the Real Estate Services office or the Real Estate Services representative.
RES Manager	The administrative head of RES who is responsible for managing the activities and operation of the City's Real Estate Services Office.
Right-of-Way	Fee interest in a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, telephone line, shade trees or other similar uses. Rights-of-way are not easements; however, easements can be located within rights-of-way.
Standard Operating Policies or SOPs	Detailed, written instructions having the force of a directive, covering those features of operations that lend themselves to a definite or standardized procedure without loss of effectiveness.

Subordination Agreement	An agreement by a person or entity that owns a senior interest in or encumbrance on real property to make its interest junior to that of another. The most common example of a subordination agreement is one in which a mortgage lender agrees that its deed of trust or mortgage interest in a property, which would otherwise have been recorded first and be senior to an easement, will be junior to the easement. The effect of this agreement is that the easement cannot then be foreclosed by the deed of trust holder/mortgage lender, so the easement will "survive" a foreclosure and not be extinguished.
Surplus Property	Surplus property is City-owned property or real property interests that are found or determined to be unneeded for the proper conduct of City affairs.
Total Acquisition Amount	The sum of Fair Market Value and Just Compensation paid to a property owner to acquire an interest in the owner's real property.
USPAP	Uniform Standards of Professional Appraisal Practices. USPAP represents the generally accepted and recognized standards of appraisal practice.

Chapter 4 – Real Property Acquisition

- 4.1 **Authority to Acquire.** City Code § 7.7.1801 recognizes that certain types of real property acquisitions are completed wholly or partially outside the procedures set forth in this Manual. These acquisition types include plat dedications, acquisitions per annexation agreements, intergovernmental agreements or other agreements with public or private entities. All other acquisitions are subject to the procedures in this Manual.

Acquisitions that are included as a line item in an approved annual budget or as part of an overall City Council approved project do not need additional City Council approval unless the total acquisition amount of the property interest acquired in the transaction exceeds \$50,000.00. In that case, the Project Manager will seek City Council approval of the total acquisition amount by resolution. In all other acquisitions, the Project Manager must seek City Council approval of the acquisition.

From the onset of the acquisition process, the Project Manager must determine whether, in the event negotiations fail, condemnation is an option. If so, the acquisition process must conform to C.R.S. § 38-1-121.

- 4.2 **Identify Affected Properties.** After a decision to acquire is made, the Project Manager submits a Request to Acquire form to RES. The Project Manager and RES meet to discuss the request, the process, necessary forms and timing. Based on the extent of the project, a consultant may be used to complete the real property acquisition. The identification process shall generally begin with the following procedures.

- a. Verify property ownership. RES will order an Ownership and Encumbrance report (“O&E”) to determine the legal owners of the property.
- b. RES determines initial value. An estimation of value is performed to determine the valuation process to be followed.

- 4.3 **Negotiations.** The Project Manager is responsible for scheduling a pre-acquisition conference with the property owner. RES attendance is optional. This conference is intended to meet and familiarize the property owner with all aspects of the project and the proposed acquisition. This conference may be face-to-face, by telephone, letter or e-mail depending on the circumstances. All communications must be documented and forwarded to RES for the file.

- a. After the Project Manager’s pre-acquisition conference, RES will meet with the property owner. The Project Manager’s attendance is optional. If the property owner is not interested in selling the property, the decision to acquire the property should be re-evaluated by the Project Manager, who

may choose to terminate the acquisition. If terminated, the RES representative will send a "Withdrawal of Interest" letter to the property owner.

- b. If the property owner is not interested in selling the property and the Project Manager determines that the property is needed for the project, the Project Manager will determine if condemnation is an option.
- c. A title commitment may be ordered at any time in the process.

The title commitment is reviewed by RES and issues identified on the title commitment are discussed with the City Attorney's Office, if necessary. If there are title issues that may be detrimental to the City or the project, the Project Manager, with the advice of RES and the City Attorney's Office, may choose to terminate the acquisition. In that event, RES will send a "Withdrawal of Interest" letter to the property owner.

- d. RES sends a "Notice of Intent" letter to the property owner. This letter informs the property owner that either:
 - i. A value finding has been performed and that the City established a fair market value at less than \$5,000.00, and the City does not intend to obtain any other appraisals; or
 - ii. A City appraisal will be ordered by RES and the property owner may obtain one owner's appraisal at the City's expense. The property owner may decline to obtain an appraisal, but must notify the City of that decision in writing. Both appraisals are paid for by the Project budget. When both parties agree to pay for their own appraisals, the Project Manager will communicate this arrangement to RES and verify the agreement in writing.
- e. A Permission to Enter form is included with and explained in the "Notice of Intent" letter. A Permission to Enter form must be signed by the property owner and returned to RES before any consultants or appraisers can enter the property.
- f. If the property owner will not grant permission to enter for appraisal, environmental or other purposes, the Project Manager and the RES Manager may seek City Council approval to pursue condemnation and an immediate possession hearing. If City Council does not choose to pursue the acquisition it will be terminated. RES will send a "Withdrawal of Interest" letter to the property owner terminating the negotiations.

City Council may instruct staff to continue with negotiations, or may choose to approve the Possession and Use Agreement.

- g. Environmental Information. Per City Code § 7.7.1802, the Project Manager must accomplish an Environmental Review or Audit of the property.¹ The project budget will pay all costs associated with Environmental Reviews or Audits. At the Project Manager's discretion, the acquisition may be terminated if the environmental information received is not acceptable to the City. If the Project Manager terminates the acquisition, RES will send a "Withdrawal of Interest" letter to the property owner terminating the acquisition process.
- h. If the City and the property owner agree on an acquisition amount and any required approvals from governing boards have been given, RES will execute all documents necessary for closing and coordinate the closing through the chosen title company. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.
- i. The "Initial Offer Letter" and summary of fair market value are presented to the property owner only after the Project Manager and RES are satisfied that all information pertaining to the property is acceptable to the City and is beneficial to the project.
- j. Counteroffer. The property owner may submit a counteroffer in response to the initial offer. The Project Manager and the RES Manager will review the counteroffer and may request supporting documents.
- k. Final Offer/Administrative Settlement. If the counteroffer is rejected, the Project Manager and the RES Manager will develop an administrative settlement or a final offer to purchase and submit it to the property owner.
 - i. If the property owner does not accept the administrative settlement or final offer, the Project Manager and RES must make the determination if the property is still needed for the project. At this time the acquisition may be terminated. RES will send a "Withdrawal of Interest" letter to the property owner terminating the negotiations.
 - ii. If an administrative settlement or final offer is rejected, an offer of compromise under CRE Rule 408 may be submitted to the property owner for consideration. The offer of compromise provides a last offer prior to seeking City Council approval to initiate eminent domain proceedings.
- l. At this time the Project Manager and the RES Manager may choose to seek City Council approval to enter into a Possession and Use Agreement

¹ See Manual Chapter 12

with the property owner or continue negotiations. If City Council does not choose to pursue the acquisition, it will be terminated. RES will send a "Withdrawal of Interest" letter to the property owner. City Council may choose to instruct staff to continue with negotiations. City Council may choose to authorize the use of a Possession and Use Agreement. In the event the property owner chooses not to sign the Possession and Use Agreement, the Project Manager may seek City Council approval for condemnation.

- m. If City Council authorizes condemnation, all statutory procedures will be followed.

4.4 Donation Of Real Property. Property owners whose real property is to be acquired by the City for a public purpose may make a gift or donation of the property or all or any part of the compensation that would otherwise have been paid for the acquisition. A donation cannot be accepted by the City until the City Council passes a resolution authorizing the acceptance of the donation.

- a. The property owner should be advised to consult a tax professional, tax attorney, CPA or the Internal Revenue Service concerning donation tax implications. No City Staff shall offer any opinion or advice to any property owner as to the tax consequences of any transaction or donation.
- b. A donation is accepted when City Council passes a resolution formally accepting the donation. RES will forward an acceptance resolution to City Council after closing.

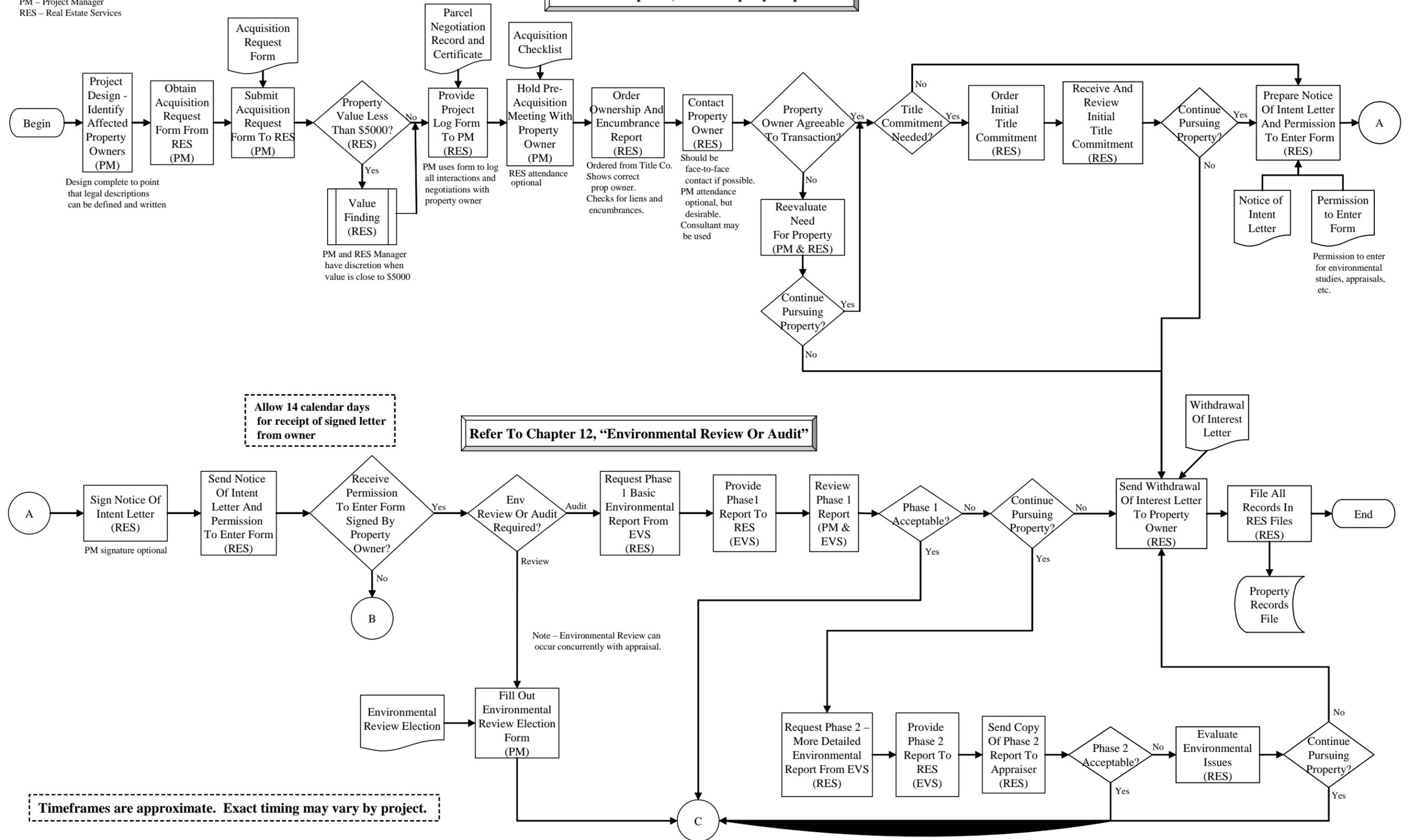
4.5. Land Exchanges. On occasion, the City may agree to convey property to an identified third party in exchange for acquiring other property from that same third party. These "land exchanges" must be reviewed by City Council and approved by resolution. City Council may impose reasonable conditions on the transfer or acquisition of any property by the City. If an advisory board has oversight or advisory responsibilities for the property to be conveyed or to be acquired, the advisory board must also review and make a recommendation to City Council prior to City Council consideration of the land exchange proposal. Any land exchange approved by City Council must comply with the provisions of this Manual pertaining to the acquisition and disposition of property. As the decision to enter into a land exchange is an administrative act, there is no right to appeal City Council's approval or denial of a land exchange proposal.

Terms and Abbreviations:
 EVS – Environmental Services Department
 PM – Project Manager
 RES – Real Estate Services

Real Property Acquisition (no Federal Funds)

Approved 9/11/2007

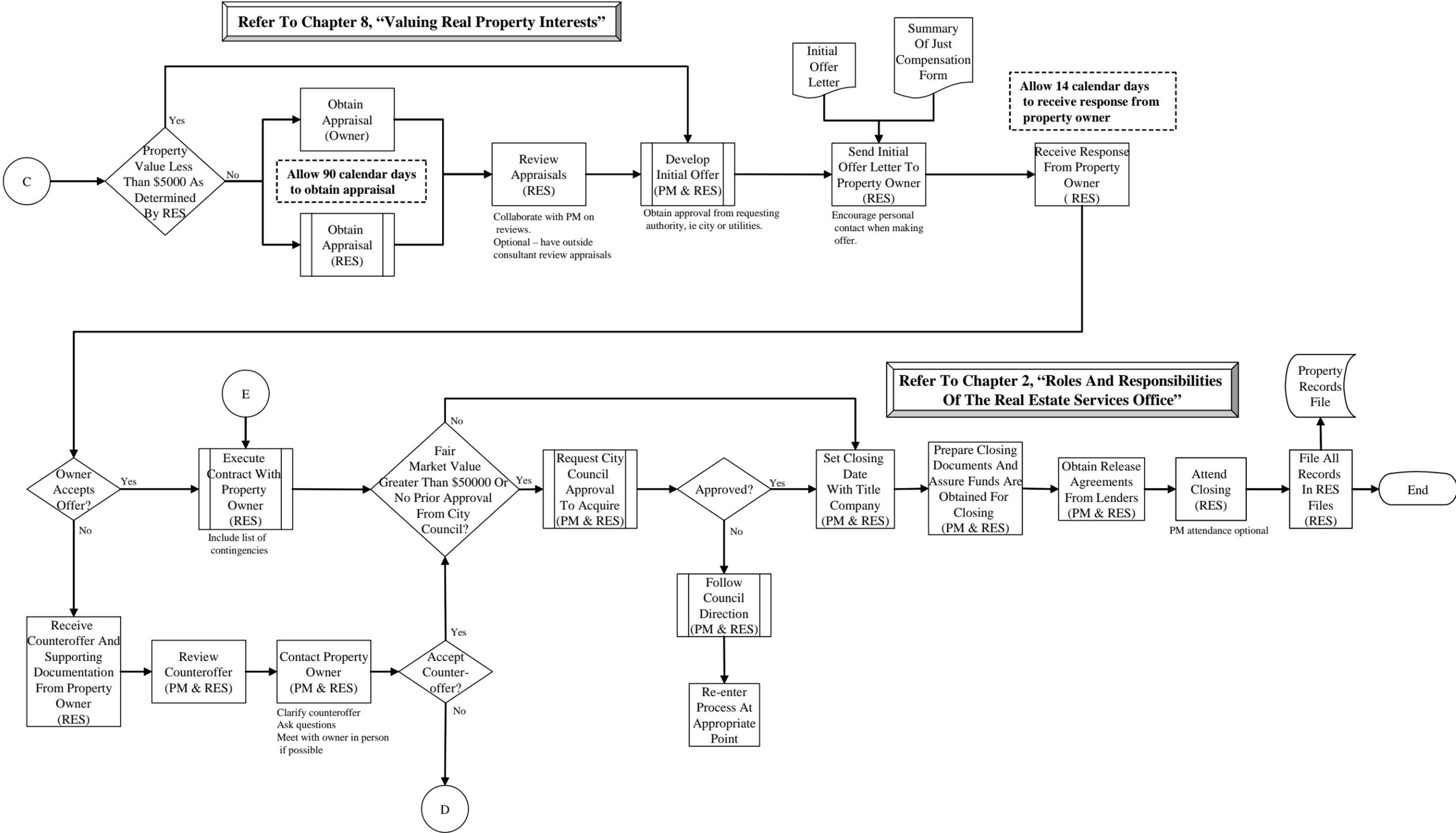
Refer To Chapter 4, "Real Property Acquisition"



Real Property Acquisition (no Federal Funds)

Terms and Abbreviations:
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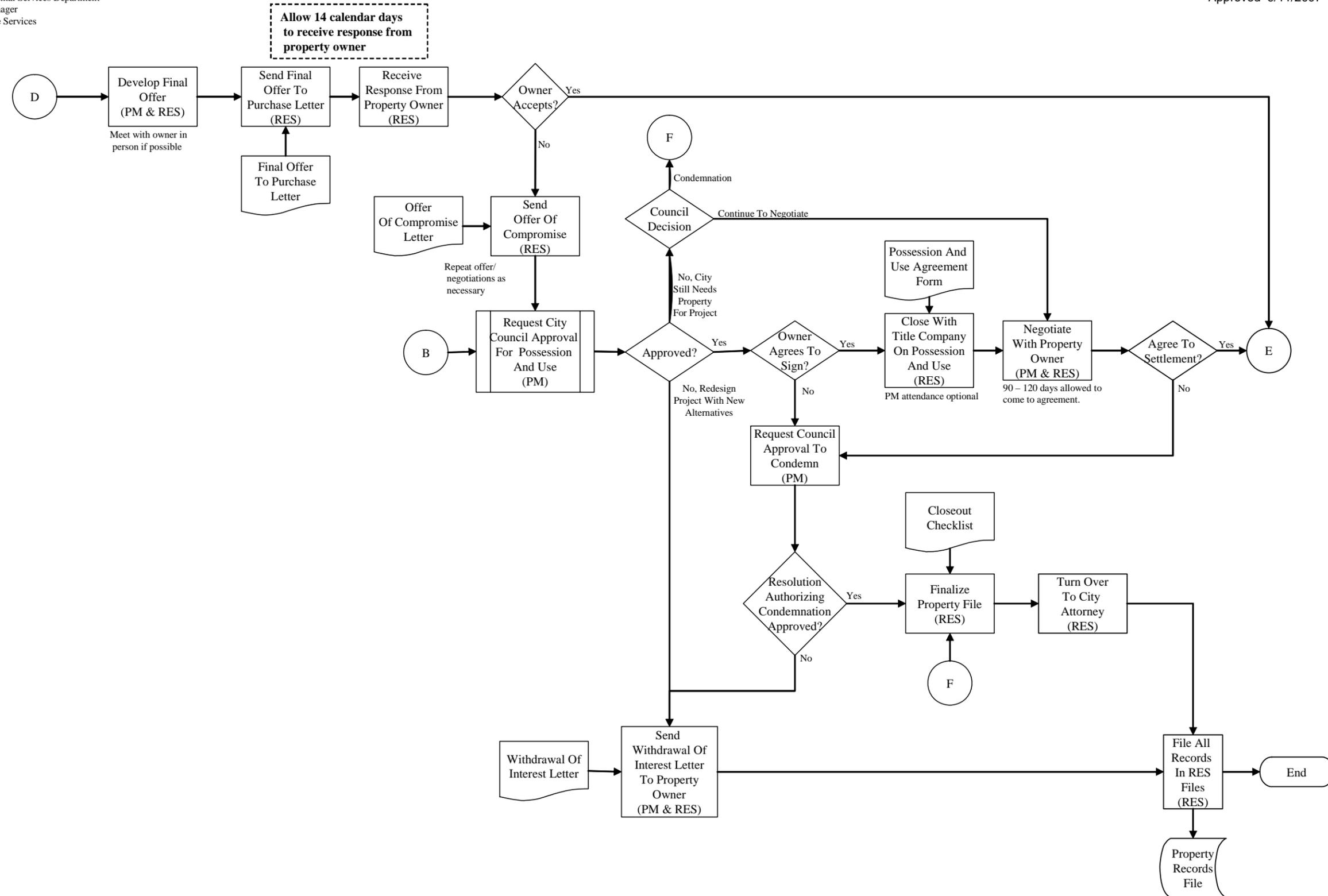
Approved 9/11/2007



Real Property Acquisition (no Federal Funds)

Approved 9/11/2007

Terms and Abbreviations:
 EVS – Environmental Services Department
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Chapter 5 – Disposal of Surplus Property

- 5.1 Initiate Disposal Of Surplus Property. RES may receive a request to dispose of surplus property owned by the City of Colorado Springs from the Controlling Department of the property or from the public. If the request is from a citizen, RES will contact the Controlling Department to verify the property is available for sale before further action is taken. If the City chooses not to dispose of the property, RES will notify the citizen. If the request is from a Controlling Department, they may choose to seek City Council approval to retain consultants to assist with the disposition or to sell the property.
- 5.2 Internal Interest, Terms And Conditions Of Sale. Once the Controlling Department notifies RES the property is surplus and may be sold, RES will solicit internal comments from an internal stakeholder list through a buckslip process. Comments will be used to determine if there is internal interest in obtaining the property, and will also be used to establish the terms and conditions of sale. Comments should include information about any interests, such as easements, to retain if the property is sold.
- Colorado Springs Utilities operates under Policy Governance that must also be followed as additional requirements to those of this Manual during the disposal of utility controlled property.
- 5.3 Intra-City Transfers. An intra-City transfer may be initiated by any department within the City that wishes to acquire property controlled by another department. The respective departments may negotiate terms and conditions of transfer, but RES must be notified and is responsible for assisting the departments in completing the transfer in accord with the provisions of this Manual. Both parties should be made aware of the terms and conditions of transfer, and interests to be retained by the Controlling Department if the property is transferred out of the City's ownership in the future.²
- 5.4 One Logical, Potential Purchaser. If there is only one logical, potential purchaser of the property, the Controlling Department may seek City Council authorization to sell the property to the identified purchaser subject to appropriate terms and conditions and the provisions of this Manual.³
- a. The purchaser is responsible for obtaining any necessary surveys and appraisals of the property at the purchaser's expense. The survey should identify interests, such as easements, the City will retain at closing, and the appraisal must conform to appraisal requirements in Chapter 8 of this Manual. The City may obtain an appraisal, at the Controlling Department's expense, to negotiate with the purchaser.

² See Manual Chapter 11

³ See City Code Section 7.7.1804(B)

- b. The City and the purchaser may enter into a contract for sale. The sales price must not be less than the fair market value and must be contingent upon City Council approval, unless Council approval has not been previously obtained.
- 5.5 Land Exchange. For disposal of City owned property as a result of a land exchange, see Chapter 4, § 4.5.
- 5.6 Sealed Bid Auction. If no internal interest in the property is expressed, or one logical potential purchaser is not identified, the Controlling Department may seek City Council approval to dispose of the property according to the following process.
- a. City Council must deem the property surplus. RES will obtain any necessary surveys and approvals at the Controlling Department's expense. The survey shall identify interests the City will retain at closing, and the appraisal must conform to appraisal requirements in Manual Chapter 8. The fair market value established in the appraisal will be the minimum bid price.
 - b. The public notice of the sealed bid auction will comply with RES SOPs.
 - c. RES and the Controlling Department will attend the sealed bid auction. The Controlling Department will review bids and determine if the highest bid is acceptable within one (1) business day. In case of a tie between the highest acceptable bids, the bid submitted first shall prevail.
 - d. Earnest money deposits submitted with unacceptable bids will be returned immediately to bidders. Low acceptable bids above the minimum bid amount shall remain continuing offers for one hundred twenty (120) days. The earnest money deposits of the low acceptable bids will also be returned immediately. The earnest money deposit submitted with the highest acceptable bid will be deposited in the RES escrow account. The high bidder is entitled to 90 days due diligence to determine whether the bidder wishes to enter into a sales contract for purchase of the property. If the highest acceptable bidder does not desire to enter into a contract for sale, RES will notify the next highest bidder of the opportunity to conduct ninety (90) days due diligence. In the event the highest acceptable bidder chooses to end the acquisition process, the next highest acceptable bidder will be asked to again deposit his earnest money with the City and begin the ninety (90) day due diligence process. This process will continue until there is no acceptable bidder remaining. Low acceptable bidders may opt out of the continuing offer period at any time by notifying RES in writing.

- i. The Finance Director-Municipal, the Chief Planning and Finance Officer-Colorado Springs Utilities or the Chief Financial Officer/Senior Vice-President-Memorial Health System, or designees, will determine if any or all of any earnest money deposited will be retained. Retained monies shall be used to offset extraordinary costs incurred during a sale and not the normal expenditures addressed in this Manual.
- ii. If no acceptable bids are received, or if a bidder with an acceptable bid does not desire to enter into a contract for sale, the Controlling Department may decide to retain the property or choose to seek City Council approval to retain consultants to assist with the disposition or to sell the property below the fair market value. City Council will set the terms for the below market disposal process.

5.7 Contract for Sale. The contract for sale must include the established terms and conditions and must be “approved as to form” by the City Attorney's Office before execution. The contract will expressly state that it is subject to City Council approval unless prior approval has been authorized by City Council.

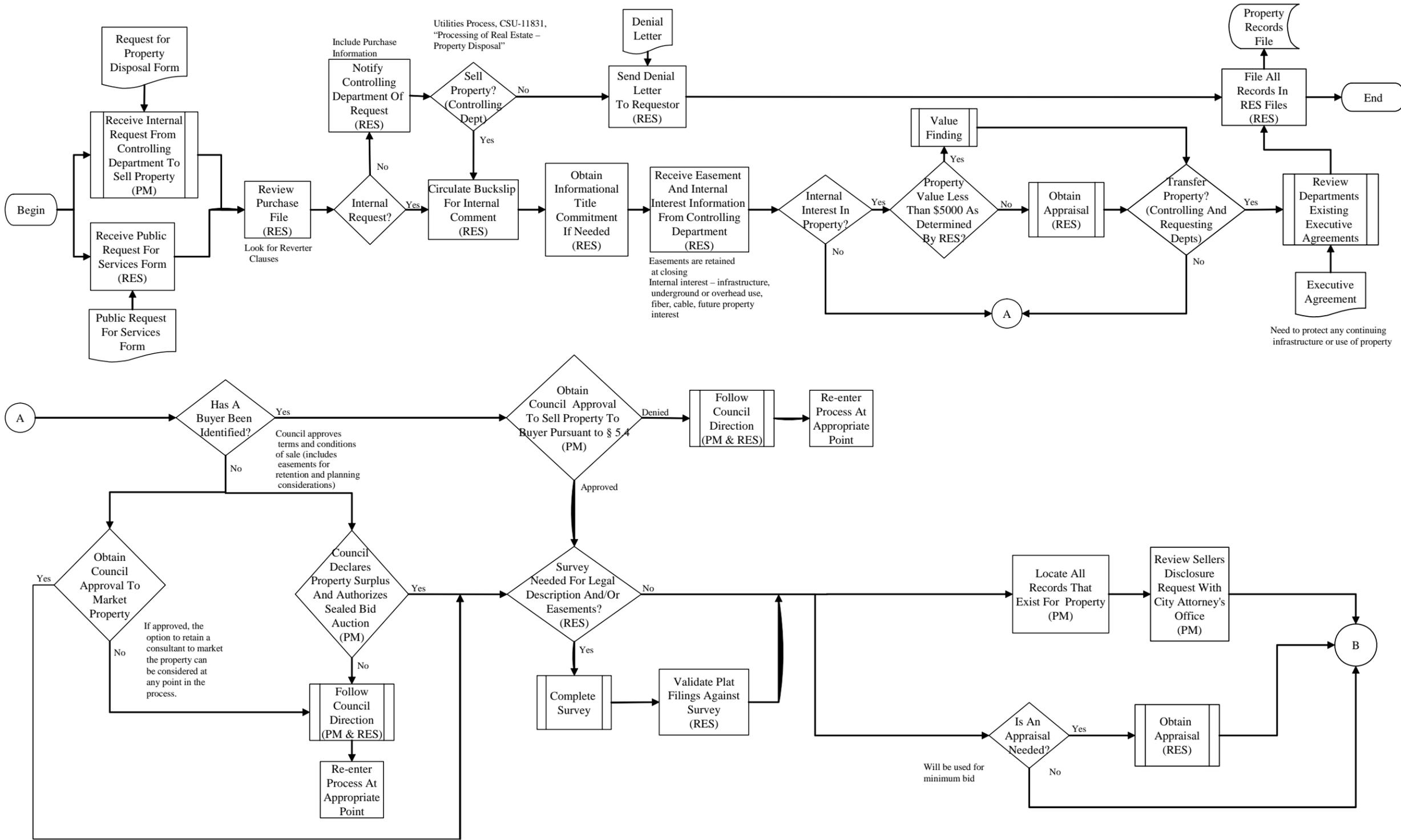
5.8 Closing. At time of closing, the buyer must bring certified acquisition funds to closing. The City Attorney's Office will determine if other arrangements will require City Council approval. Any earnest money held shall be credited to the sales price. See Chapter 2, Roles and Responsibilities of the Real Estate Services Office.

Terms and Abbreviations:
 PM = Project Manager
 RES = Real Estate Services

Disposal of Surplus Property

Approved 9/11/2007

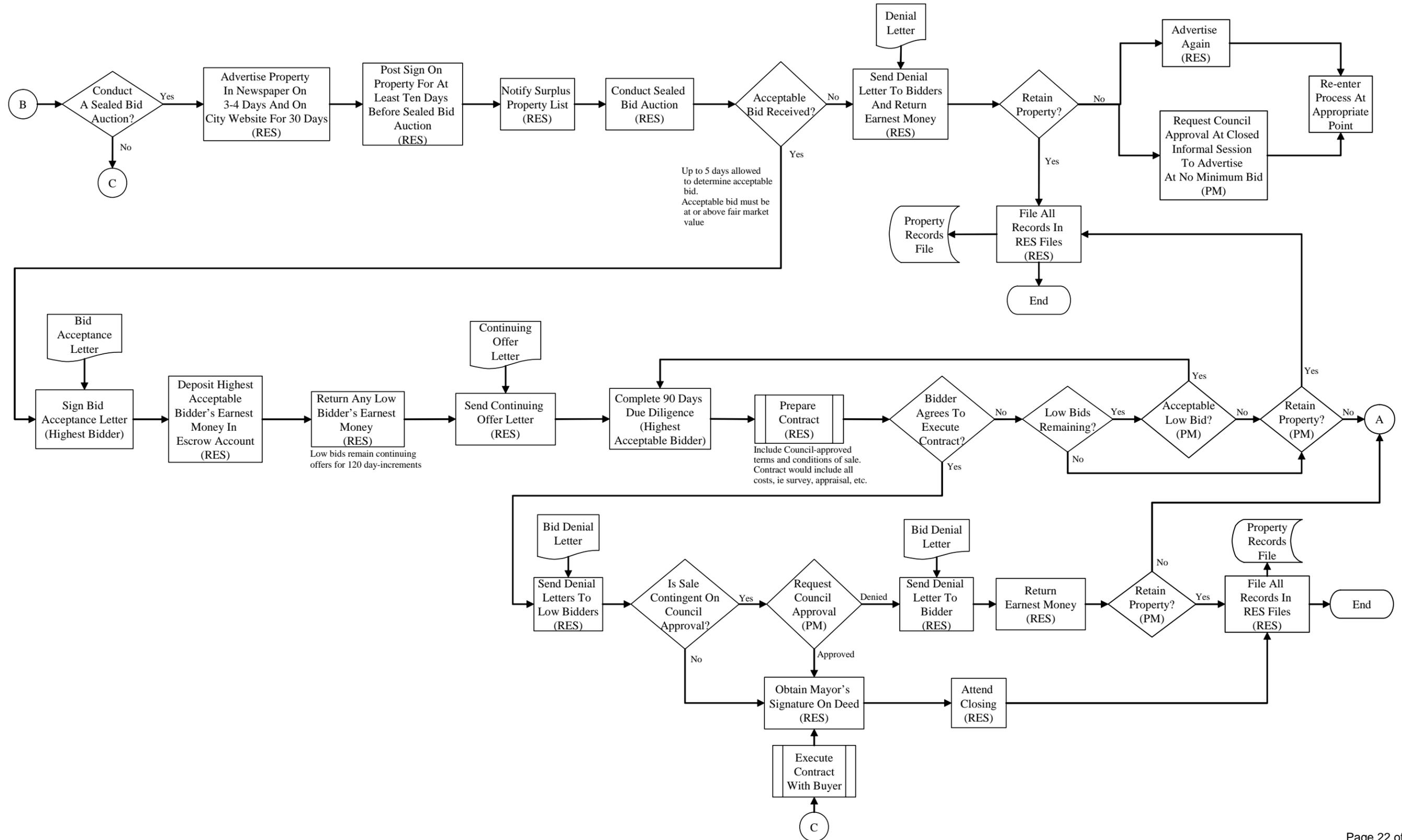
Refer To Chapter 5, "Disposal Of Surplus Property"



Terms and Abbreviations:
 PM = Project Manager
 RES = Real Estate Services

Disposal of Surplus Property

Approved 9/11/2007



Chapter 6 – Easement Acquisition

- 6.1 **Authority to Acquire.** City Code § 7.7.1802 recognizes that certain types of easement acquisitions are completed wholly or partially outside the procedures set forth in this Manual. These easement acquisition types include plat dedications, project specific easements, Developer-Initiated Easements and acquisitions per annexation agreements, intergovernmental agreements or other agreements with public or private entities. All other easement acquisitions are subject to the procedures in this Manual.

Easement acquisitions that are included as a line item in an approved annual budget or as part of an overall City Council approved project do not need City Council acquisition approval unless the total acquisition amount exceeds \$50,000.00. Cure Easement acquisitions for which funds have been budgeted or appropriated do not need City Council acquisition approval unless the total acquisition amount exceeds \$50,000.00. For all other easement acquisitions, the Project Manager must receive City Council authorization to acquire the easement and approval of any total acquisition amount over \$50,000.00.

From the onset of the easement acquisition process, the Project Manager must determine whether, in the event negotiations fail, condemnation is an option. If condemnation is an option, the easement acquisition process must conform to C.R.S. § 38-1-121.

- 6.2 **Identify Affected Properties.** After a decision to acquire an easement is made, the Project Manager submits a Request to Acquire form to RES. The Project Manager and RES will meet to discuss the request, the process, necessary forms and timing. Based on the extent of the easement needed, a consultant may be used to complete the easement acquisition.

The Project Manager and RES shall assure that easement exhibits are approved by staff qualified to review and approve information contained in the easement exhibits.

- a. Verify property ownership. RES will order an O&E report to determine the legal owners of the property and to determine, with the assistance of the City Attorney's Office, if a Subordination Agreement or Joinder is necessary.
 - b. RES determines initial value. An estimation of value is performed to determine the valuation process to be followed.⁴
- 6.3 **Negotiations.** The Project Manager is responsible for scheduling a pre-acquisition meeting with the property owner(s). RES attendance is optional. This meeting is intended to meet and familiarize the property owner with all aspects of

⁴ See Chapter 8 of this Manual.

the project and the proposed easement acquisition. This conference may be face-to-face, by telephone, letter or e-mail depending on the circumstances. All communications must be documented and forwarded to RES for the file.

- a. After the Project Manager's pre-acquisition meeting, RES will meet with the property owner. The Project Manager's attendance is optional. If the property owner is not interested in negotiating the easement acquisition, the need to acquire the easement should be re-evaluated by the Project Manager, who may choose to terminate the easement acquisition. If terminated, the RES representative will send a "Withdrawal of Interest" letter to the property owner.
- b. If the property owner is not interested in selling the easement and the Project Manager determines that the easement is needed for the project, the Project Manager will determine if condemnation is an option.
- c. If required, a title commitment may be ordered at any time in the process.

The title commitment is reviewed by RES and issues identified on the title commitment are discussed with the City Attorney's Office, if necessary. If there are title issues that may be detrimental to the City or the project, the Project Manager, with the advice of RES and the City Attorney's Office, may choose to terminate the easement acquisition. If terminated, RES will send a "Withdrawal of Interest" letter to the property owner.

- d. RES sends a "Notice of Intent" letter to the property owner. This letter informs the property owner that either:
 - i. A value finding has been performed and that the City established the fair market value of the easement at less than \$5,000.00, and the City does not intend to obtain any other appraisals; or
 - ii. A City appraisal will be ordered by RES and the property owner will be given the option to obtain one property owner's appraisal of the easement at the City's expense. The property owner may decline to obtain an appraisal, but must notify the City of that decision in writing. Both appraisals are paid for by the Project budget. When both parties agree to pay for their own appraisals, the Project Manager will communicate this arrangement to RES and verify the agreement in writing.
- e. A "Permission to Enter" form is included with and explained in the "Notice of Intent" letter. A "Permission to Enter" form must be signed by the property owner and returned to RES before any consultants or appraisers can enter the property.

- f. If the property owner will not grant permission to enter for an appraisal, Environmental Review or Audit or other purposes, the Project Manager and the RES Manager may seek City Council approval to pursue condemnation and an immediate possession hearing. If City Council does not choose to exercise the power of eminent domain, the easement acquisition will be terminated. RES will send a “Withdrawal of Interest” letter to the property owner terminating the easement acquisition.

City Council may instruct staff to continue with negotiations, or may choose to approve a Possession and Use Agreement.

- g. Per City Code § 7.7.1802, the Project Manager must obtain an Environmental Review or Audit of the property.⁵ The project budget will pay all costs associated with Environmental Reviews or Audits. At the Project Manager’s discretion the acquisition may be terminated if the Environmental Review or Audit information received is not acceptable to the City. If the Project Manager terminates the acquisition, RES will send a “Withdrawal of Interest” letter to the property owner terminating the easement acquisition process.
- h. If the City and the property owner agree on an acquisition amount and any required approvals from governing boards have been given, RES will execute all documents necessary for closing and coordinate the closing through the chosen title company, if applicable. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.
- i. The initial offer letter and summary of fair market value are presented to the property owner only after the Project Manager and the RES Manager are satisfied that all information pertaining to the property and the easement is acceptable to the City and is beneficial to the project.
- j. The property owner may submit a counteroffer in response to the City’s initial offer. The Project Manager and the RES Manager will review the counteroffer and may request supporting documents.
- k. If the counter offer is rejected, the Project Manager and the RES Manager will develop a final offer or administrative settlement. The final offer or administration settlement to acquire an easement will be submitted to the property owner.
- i. If the property owner does not accept the final offer the Project Manager and the RES Manager must make the determination if the easement is still needed for the project. At this time, the acquisition

⁵ See Chapter 12 of this Manual

may be terminated and RES will send a “Withdrawal of Interest” letter to the property owner terminating the easement acquisition.

- ii. If an administrative settlement or final offer is rejected, an offer of compromise under CRE Rule 408 may be submitted to the property owner for consideration. The offer of compromise provides a last offer prior to seeking City Council approval to initiate eminent domain proceedings.
 - l. If the City’s offer is not accepted, the Project Manager and the RES Manager may choose to seek City Council approval to enter into a Possession and Use Agreement with the property owner or continue negotiations. If City Council does not choose to pursue the easement acquisition, it will be terminated. RES will send a “Withdrawal of Interest” letter to the property owner terminating the easement acquisition process. City Council may choose to instruct staff to continue with negotiations with direction from City Council. City Council may choose to authorize the use of a Possession and Use Agreement. In the event the property owner chooses not to sign the Possession and Use Agreement the Project Manager may seek City Council approval to file a condemnation action.
 - m. If the property owner accepts the offer, and any approvals from governing boards have been issued, RES will execute all documents necessary for closing and coordinate the closing through the chosen title company, if applicable. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.
 - n. If City Council authorizes condemnation, all statutory procedures will be followed.
- 6.4. Donation of an Easement. Property owners from whom an easement is to be acquired by the City for a public purpose may make a gift or donation of the easement or all or any part of the compensation that would otherwise have been paid to acquire the easement. A donation cannot be accepted by the City until the City Council approves a resolution accepting the easement donation.
- a. The property owner should be advised to consult a tax professional, tax attorney, CPA or the Internal Revenue Service concerning donation tax implications. No City staff shall offer any opinion or advice to any property owner as to the tax consequences of any transaction or donation.
 - b. A donation is accepted when City Council approves a resolution formally accepting the donation. RES will forward an acceptance resolution to City Council after closing.

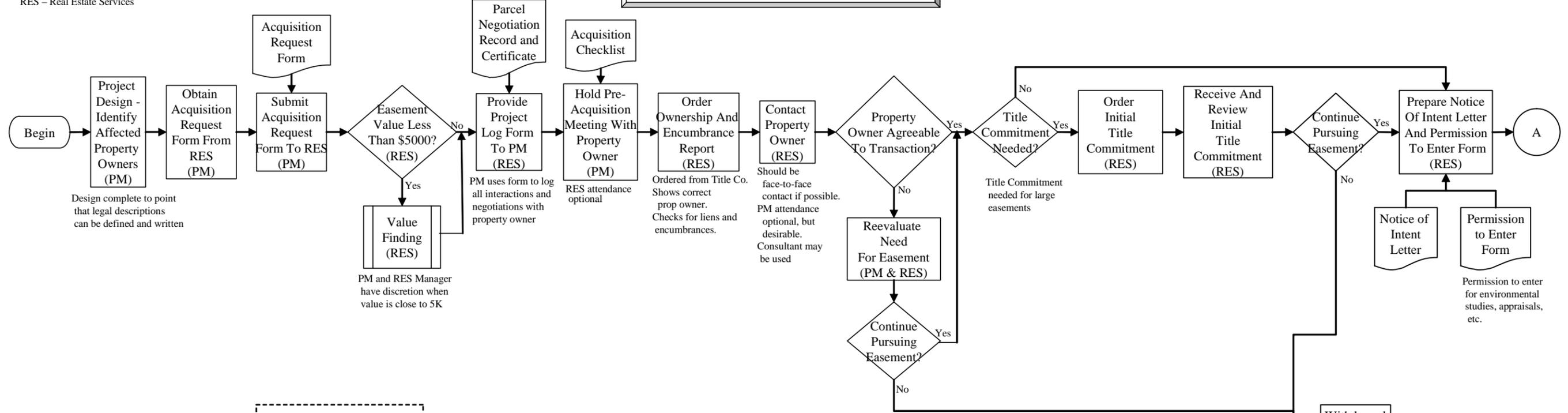
6.5 Maintenance. The Controlling Department is responsible for preserving and maintaining the easement for its intended use.

Terms and Abbreviations:
 EVS – Environmental Services Department
 PM – Project Manager
 RES – Real Estate Services

Easement Acquisition (no Federal Funds)

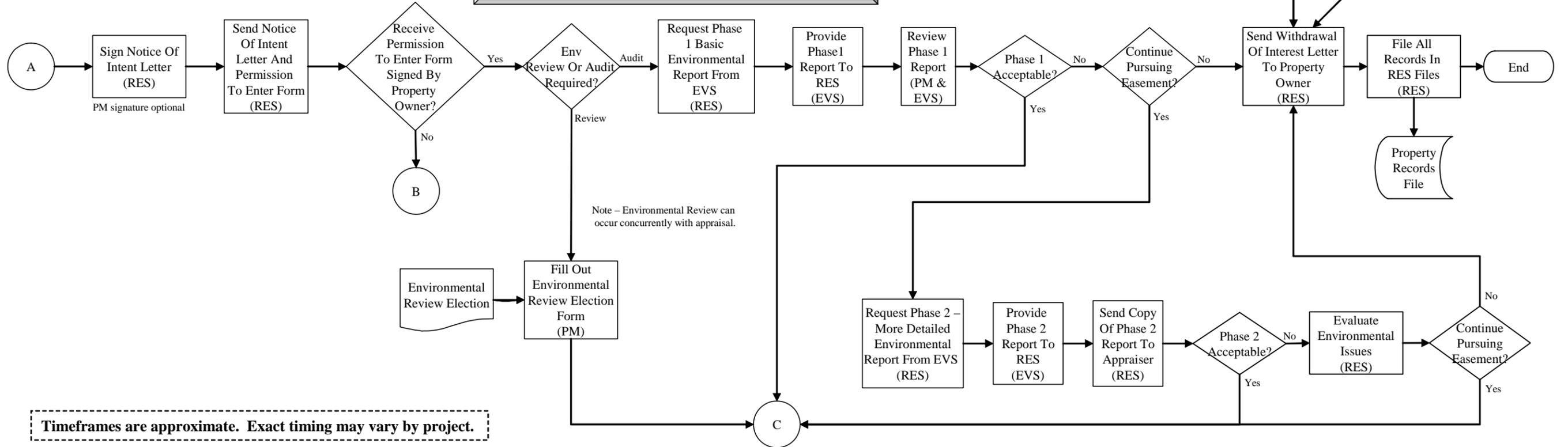
Approved 9/11/2007

Refer To Chapter 6, "Easement Acquisition"



Allow 14 calendar days for receipt of signed letter from owner

Refer To Chapter 12, "Environmental Review Or Audit"

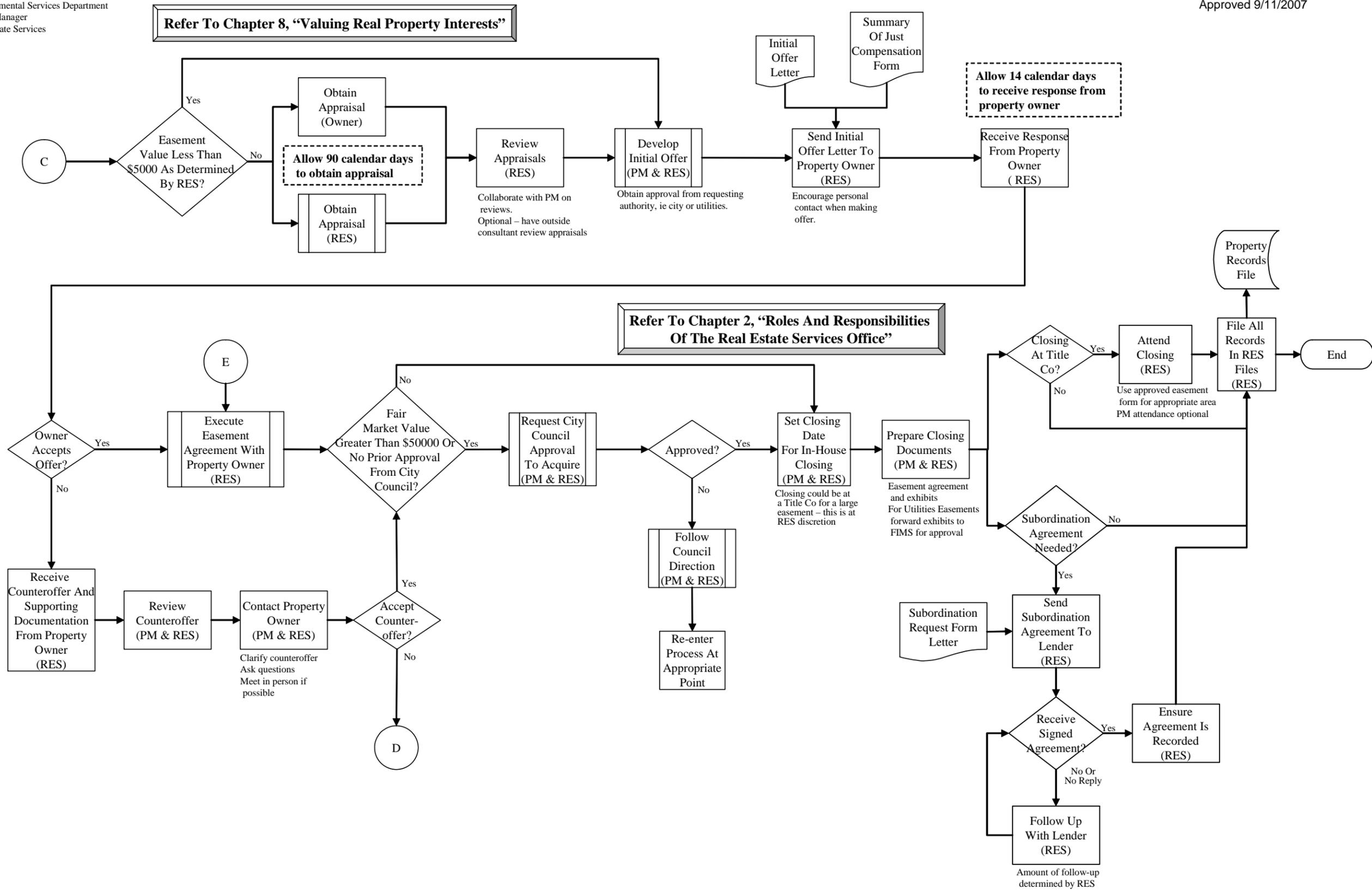


Timeframes are approximate. Exact timing may vary by project.

Terms and Abbreviations:
 EVS – Environmental Services Department
 PM – Project Manager
 RES – Real Estate Services

Easement Acquisition (no Federal Funds)

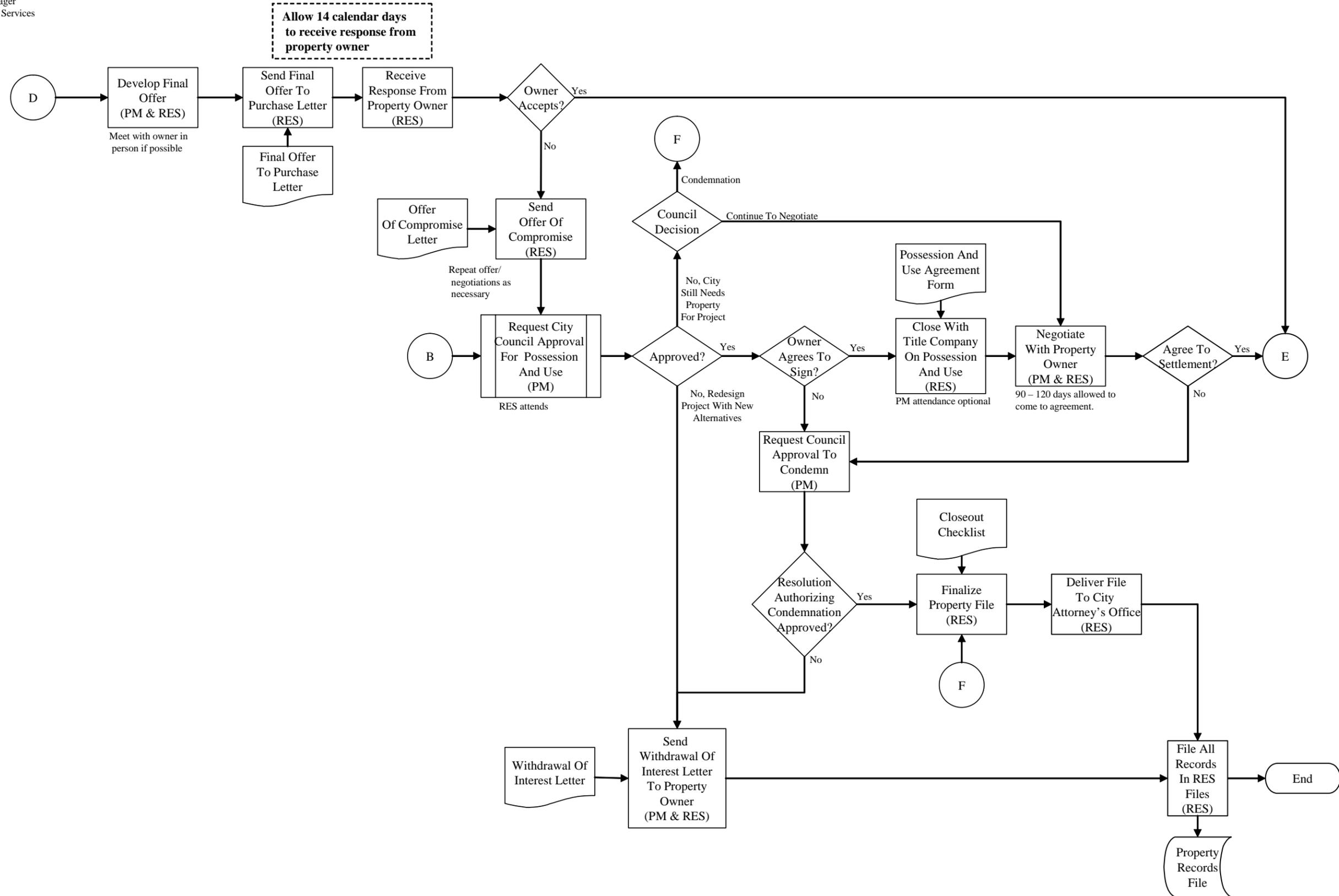
Approved 9/11/2007



Terms and Abbreviations:
 EVS – Environmental Services Department
 PM – Project Manager
 RES – Real Estate Services

Easement Acquisition (no Federal Funds)

Approved 9/11/2007



Chapter 7 - Conveyance Acceptance

7.1 Acceptance by City Council.

City Code § 7.7.1802 provides:

No deed, dedication or conveyance of land or any interest in land to the City for any purpose shall be effective unless expressly accepted or authorized by a City Council resolution or accepted by the City's Real Estate Manager in accord with approved City plans, projects or policies. Acceptance or authorization shall be subject to adequate title review, proration and payment of taxes, environmental review or audit and other conditions as appropriate. (Ord. 01-42)

The provisions of this Chapter 7 are intended to implement City Code § 7.7.1802.

7.2 Acceptance. The City may accept a deed, dedication or conveyance of property upon City Council approval or acceptance and satisfaction of any conditions of approval by one of the following methods:

- a. A resolution.
- b. A plat dedicating property to the City for a public use.
- c. A master planned public land or public property designation.
- d. An annexation agreement requiring the dedication or conveyance of property to the City.
- e. An intergovernmental agreement or another agreement with public or private entities requiring the dedication or conveyance of property to the City.
- f. Line item budget approval authorizing the acquisition of property.

7.3 Verification of Deed. Regardless of the timing of the delivery of a deed or conveyance of the property, no acceptance will be deemed to have been given by the City until RES has verified the following:

- a. Clear title to the property or an interest in the property will vest in the City in accord with Chapter 2, § 2.11 of this Manual.
- b. Any property taxes have been prorated and paid in accord with City Code § 7.7.1801.

- c. An Environmental Review or Audit has been conducted and the Controlling Department accepts the environmental condition of the property in accord with Chapter 12, Environmental Review or Audit.
 - d. Any other special conditions or contract terms have been satisfied.
- 7.4 Verification of Plat. If the property is conveyed by a plat dedication, acceptance will be in accord with City Code §§ 7.7.1801 and 1802.
- 7.5 Evidence of Acceptance. If the conveyance is by plat dedication, the City's execution and recording of the plat is deemed acceptance of the dedication. An acceptance statement for all other dedications or conveyances must be printed on the deed to the City as grantee and executed by RES at closing. If a deed purporting to convey title to the City has been recorded and RES has not executed an acceptance statement on the deed, RES will refer the matter to the City Attorney. If the City Attorney finds that the purported conveyance is not in compliance with the requirements of the City Code or this Manual, the City Attorney is authorized to execute and record a Notice of Disclaimer in the official records of the county clerk and recorder. If the City Attorney's Office is satisfied that the conveyance does comply with the requirements of the City Code and this Manual, the City Attorney's Office will notify RES to execute and record an appropriate acceptance statement. For those conveyances recorded prior to the effective date of this Manual, the RES Manager may execute a verification of acceptance for those conveyances that may not have been formally accepted by the City at the time of recording.

Chapter 8 – Valuing Real Property Interests

- 8.1 **Fair Market Value.** RES, in cooperation with the Project Manager, shall be responsible for determining the fair market value for each real property or interest to be acquired or disposed. The manner in which the determination of fair market value is established shall be considered on a project-by-project basis.
- 8.2 **Appraisal.** Before initiation of negotiations, the City must obtain at least one (1) appraisal of the real property interest. An appraisal may not be required when the value of the property interest is estimated to be \$5,000.00 or less,⁶ or when a total donation is planned.
- 8.3 **Appraisal Process.** With the assistance of the City Contracting Office RES shall maintain and periodically review an official roster of qualified and approved appraisers and review appraisers. When there is a circumstance in which an appraiser with specialized skills or knowledge is needed, the Project Manager and RES will document the need to use an appraiser that is not included on the approved roster. RES will follow the SOP for obtaining appraisal proposal bids and retaining any appraiser.

For acquisitions estimated to be more than \$5,000.00, the property owner has the right to obtain one (1) owner's appraisal. The City will pay a reasonable fee for the owner's appraisal and allow the property owner ninety (90) days to submit the appraisal to the City, unless otherwise agreed in writing. RES shall notify the property owner of this option.

Summary appraisal reports will comprise the majority of appraisal reports prepared for the City. These reports will contain the appraiser's concise, summarized and pertinent statements and analyses of the appraisal process. Each appraiser will be required to supply three (3) bound copies of the appraisal report. For a condemnation action, an updated, special report may be needed for trial purposes.

The City is not obligated to pay for the owner's appraisal until the City receives a copy of the owner's appraisal report. If the City finds that the fees charged by the property owner's appraiser are not "reasonable" as required in C. R. S. § 38-1-121(1), the City may dispute the fee amount by notifying the property owner and the owner's appraiser. The notice shall set forth the City's objection to the appraisal fee and shall state the reasonable amount the City will pay. The owner will be responsible for the remainder of the appraiser's fee.

- 8.4 **Appraisal Review.** An appraisal review process is required any time the fair market value determined by the City's appraiser and the fair market value determined by the property owner's appraiser are so far apart as to have a negative impact effect on negotiations. The City will be responsible for retaining

⁶ See Manual § 8.5

the review appraiser and the project budget shall be responsible for paying the review appraiser's fee, unless other arrangements are made and agreed upon by both parties in writing.

The review appraiser will review the City's and property owner's appraisers' computations, the nature and quality of the interest being appraised, deeds or option contracts when provided, size, maps, legal descriptions or construction plans when applicable. The review appraiser must: evaluate the City's and owner's appraisers' qualifications; identify any legal matters needing resolution; study the information, data and analyses presented for qualitative and quantitative adequacy; and determine whether the appraisal reports conform to law, regulations and USPAP.

The review appraiser must determine whether the facts cited in the original appraisal reports are correct, if the assumptions are valid and necessary, the analyses and approaches are properly processed and the appraisers conducted thorough appraisals. The review appraiser must determine that the appraisers' documentation, including valuation data and analyses of the data, demonstrates the soundness of the appraisers' opinion of value. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property.

The review appraiser shall identify each appraisal report reviewed as:

- a. Recommended. The recommended appraisal shall be used to establish the fair market value for the transaction.
- b. Acceptable. An acceptable appraisal meets all technical requirements, but should not be used to establish fair market value.
- c. Not acceptable.

If the review appraiser is unable to identify an appraisal as "recommended", as an adequate basis for the establishment of the fair market value, the City may obtain another appraisal or ask the review appraiser to present and analyze market information in conformity with 49 C.F.R. § 24.103 and USPAP Standard 3 to determine fair market value.

8.5 Value Finding. If RES and the Project Manager determine that the estimated fair market value of an acquisition is \$5,000.00 or less, a value finding may be conducted in lieu of an appraisal.

- a. Parcels or easements estimated to be valued at \$5,000.00 or less shall be valued using a Value Finding Form. The RES Manager shall review and sign the Value Finding Form as verification that the value finding is acceptable pursuant to SOPs.

- b. A value finding is not an appraisal. The value finding may be based on a review of available relevant data, such as comparable sales data and multiple listing service data, Assessor's Office information or other information.
 - c. The value finding procedure is intended to assure that property values are reasonably accurate estimations of fair market value and are consistent within the project.
 - d. A value finding of a fee simple interest shall not be less than \$500. A value finding of an easement or other interest in real property shall not be less than \$200.
- 8.6 The Project Manager and RES may offer up to thirty percent (30%) over the fair market value of the property interest as just compensation without City Council acquisition amount approval when the total acquisition amount (fair market value + just compensation) does not exceed \$50,000.00. Any time that the just compensation is determined to be over thirty percent (30%) of the fair market value or if the total acquisition amount (fair market value + just compensation) exceeds \$50,000.00, the Project Manager must seek City Council acquisition amount approval.

Chapter 9- Easement Encroachments and Vacations

9.1 **Authorization.** The City may authorize encroachments onto or vacation of City owned easements.

- a. Authorization of an easement encroachment will be in the form of a letter or a Utilities Easement Encroachment License. Recording of this document is optional.
- b. Authorization of an easement vacation will be in the form of a quitclaim deed which has been executed by the Mayor. Recording of this document is mandatory.
- c. A denial of either an easement encroachment or easement vacation request is not appealable.

9.2 **Request.** The request for encroachment or vacation and supporting documents will be submitted to RES by staff, a property owner or property owner's representative.

- a. RES will verify the ownership of the underlying fee.
- b. RES will review easement documents to determine whether an encroachment or vacation is possible under the terms and conditions of the documents. If not, RES will forward a denial letter to the requestor.

9.3 **Buckslip process.**

RES will route the request to appropriate Buckslip Departments.

- a. If RES receives a buckslip denial from any Buckslip Department, a denial letter will be forwarded to the requestor.
- b. If no objections to the request are received:
 1. For an easement vacation, RES will create and process the quitclaim deed.
 - i. RES will assure that all exhibits have been approved by the Controlling Department and the quitclaim deed is executed and recorded.
 - ii. RES will forward copies of recorded documents to all Buckslip Departments.
 - iii. RES will forward a copy of the documents to the requestor.

2. For an easement encroachment approval letter, RES will draft the encroachment letter and forward copies to the requestor and the Bucksliip Departments.
 3. If Colorado Springs Utilities requires an Easement Encroachment License, Utilities will draft the License and forward it to RES for processing. RES will forward a copy to the requestor and the Bucksliip Departments.
- c. RES may receive approval of the request with conditions.

If RES receives conditional approval of the request from the Bucksliip Departments, RES will forward a letter to the requestor with the conditions.

1. RES will coordinate with the requestor and the Bucksliip Department to reach an agreement on how the conditions will be satisfied.
2. If conditions are unacceptable or cannot be met by the requestor, RES will forward a denial letter to the requestor.

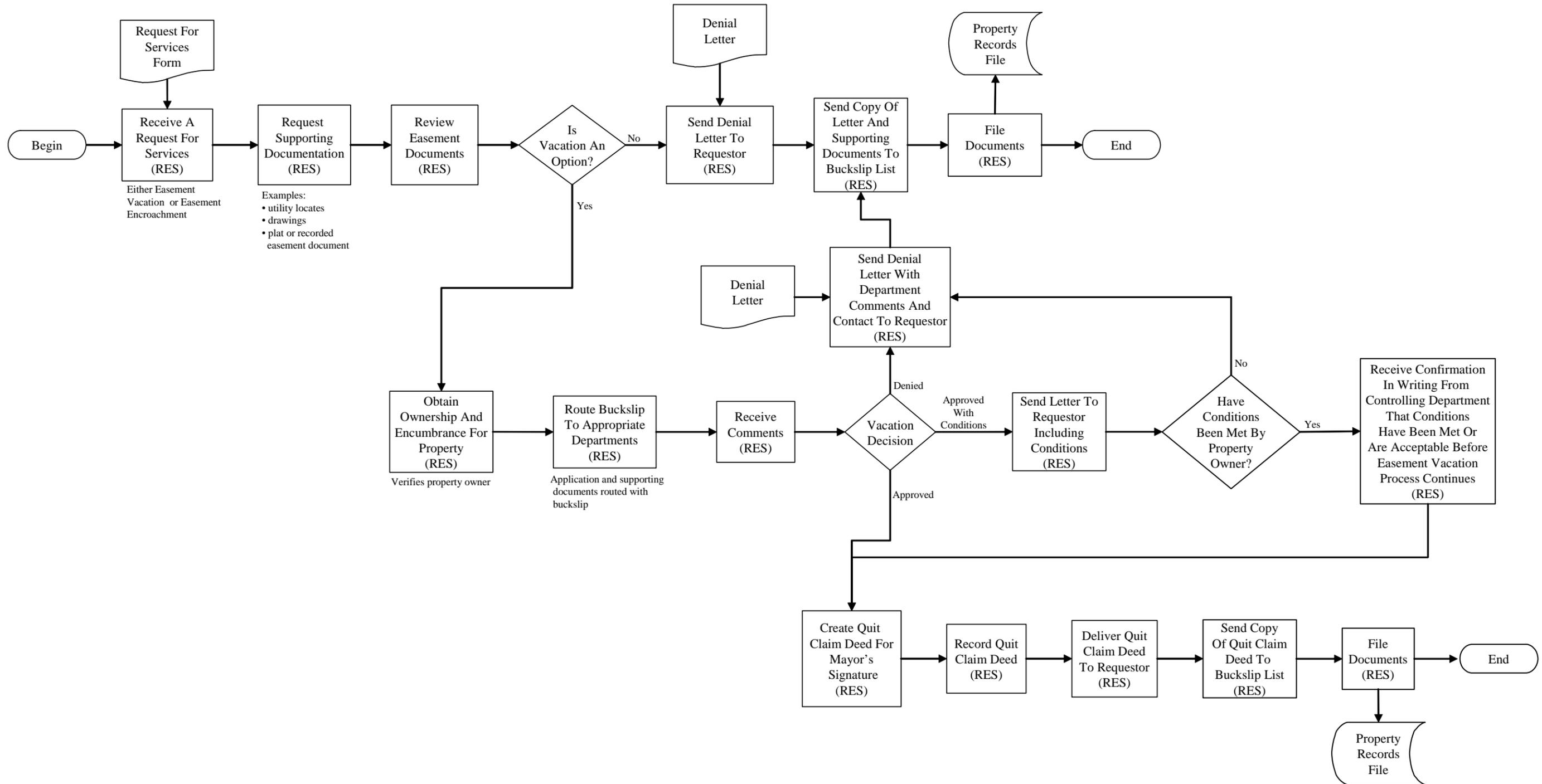
Easement Vacations

Terms And Abbreviations:

Requestor – Property owner or consultant representing property owner
 RES – Real Estate Services

Approved 9/11/2007

Refer To Chapter 9, "Easement Encroachments And Vacations"



Chapter 10 – Leases and Licenses

10.1 City as Tenant.

- a. For all leasehold interests except those described in § 10.1(c), below, the Tenant Department will meet with RES to identify lease needs. A consultant may be retained at the Tenant Department's expense. RES and the Tenant Department will negotiate the terms of the lease.
- b. Leases.
 - i. The lease (including specialized lease property) must be "approved as to form" by the City Attorney's Office and contain the following:
 1. Identify the tenant as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through the named Tenant Department.
 2. Identify the rent amount.
 3. Be subject to annual appropriation.
 4. Be governed by Colorado law.
 5. Identify the property tax status of the City's leasehold interest.
 6. Set forth all other relevant terms and conditions of the lease.
 - ii. Unless otherwise provided, the City Manager, Chief Executive Officer of Utilities, or the Chief Executive Officer of Memorial Health System, or designees, may execute leases as tenant.
 - iii. RES and the Tenant Department will maintain copies of the lease. Memorial Health System and the Colorado Springs Airport will maintain copies of their leases.
 - iv. Tenant Department is responsible for complying with terms and conditions of the lease.
- c. For medical office buildings and other specialized leased property, the Tenant Department will meet with RES to determine whether special consultants should be retained at the Tenant Department's expense. If a consultant is retained, the consultant will be subject to the procedures in this Manual. The Tenant Department is responsible for maintaining copies of all specialized lease documents. Certain Memorial Health System and

Colorado Springs Airport leases may contain special conditions and provisions that should be addressed outside the scope of this chapter.

10.2 City as Landlord.

- a. Pursuant to City Charter Article 10, the City is authorized to grant temporary or revocable permission to use City-owned property. This permission is in the nature of a temporary permit, license, easement or lease “in, on, above, through or under any street, alley or public place” and is expressly revocable at any time by City Council.
- b. Definitions.
 - i. A “temporary permit” is granted for the use of public rights-of-way or Colorado Springs Utilities’ property, is revocable at any time and is subject to the provisions of City Code §§ 3.2.201 *et seq.* and 12.1.117. Temporary permits issued for use of City parks, street closures, special events and other uses authorized by the City Code are not subject to the provisions of this Manual.
 - ii. A “license” is granted for the use of public property that is not right-of-way or Utilities property, is similar in nature to an easement, is revocable at any time, is generally limited to a term of twenty-five (25) years and is subject to the procedures in this Manual. There is no right to appeal the City’s grant or denial of a license.
 - iii. A “lease” is granted for the use of public property that has been designed for commercial or office use, is revocable at any time, is usually limited to a reasonable market term not in excess of twenty-five (25) years and is subject to the procedures in this Manual. There is no right to appeal the City’s grant or denial of a lease.
- c. Licenses.
 - i. A person may request a license for private encroachments onto City-owned property, City-owned easements, ingress/egress across City owned-property or for any other lawful purpose or use of City-owned property. RES will buckslip the license request. If the Controlling Department or another Buckslip Department objects to the license request, RES will notify the requestor and the license will be denied. If there are no objections to the request, RES will determine whether there are any restrictions or conditions to the proposed use of the City-owned property and will prepare a license document.

- ii. The license document must be “approved as to form” by City Attorney’s Office and must:
 - 1. Identify the grantor of the license as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.
 - 2. Identify any consideration paid.
 - 3. Be subject to City Charter § 10-100 and limited to an appropriate term in accord with City Charter § 10-60.
 - 4. Be governed by Colorado law.
 - 5. Set forth all relevant terms, conditions and restrictions of the license.
 - iii. Unless otherwise provided, RES, the City Manager, Chief Executive Officer of Colorado Springs Utilities, Chief Executive Officer of Memorial Health System, or designees, may execute licenses of City-owned property.
 - iv. RES and the Controlling Department will maintain copies of the license.
 - v. The license will be recorded at the grantee’s expense.
- d. Leases.
- i. For City-owned property, the Landlord Department will meet with RES to identify leasing options. A consultant may be retained at the Landlord Department’s expense. If a consultant is retained, the consultant will be subject to the procedures in this Manual, will work directly with the Landlord Department and will update RES as needed. Copies of all lease documents will be provided to RES and the Landlord Department.
 - ii. For specialized lease property, the Landlord Department is responsible, if needed, for retaining a consultant to assist in negotiating and managing all leases. RES may provide assistance if requested, but is not responsible for leasing specialized property. If a consultant is retained, the consultant will work directly with the Landlord Department and will update RES as needed. Copies of all lease documents will be provided to and maintained by the Landlord Department. Certain Memorial Health System and Colorado Springs Airport leases may contain special conditions and

provisions that should be addressed outside the scope of this chapter.

- iii. All leases of any City-owned property (including specialized lease property) must be “approved as to form” by City Attorney’s Office and contain the following:
 - 1. Identify the landlord as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through the named Landlord Department.
 - 2. Identify a fair market lease amount. If the lease amount is below market (excluding medical office buildings and medical lease properties), a City Council resolution finding a public purpose in the below-market lease must be approved and must comply with all applicable federal and state laws.
 - 3. Be subject to City Charter § 10-100 and limited to an appropriate term in accord with City Charter § 10-60.
 - 4. Be governed by Colorado law.
 - 5. Identify the property tax status of the leasehold.
 - 6. Set forth all other relevant terms, conditions and restrictions of the lease.
- iv. Unless otherwise provided, RES, the City Manager, Chief Executive Officer of Colorado Springs Utilities, Chief Executive Officer of Memorial Health System, or designees, may execute leases of City-owned property.
- v. Unless otherwise provided, RES and the Landlord Department will maintain copies of the lease.
- vi. At the tenant’s request and expense, the Landlord Department may record the lease of City-owned property (including specialized leased property).

Chapter 11 – Intra-City Real Property Transfers

- 11.1 Intra-City Real Property Transfers. An intra-City real property transfer occurs when the administrative responsibility for a parcel of land moves from one Controlling Department to another, but remains in the ownership of the City. This includes all property administered by municipal departments and enterprises and Colorado Springs Utilities and Memorial Health System.
- 11.2 Intra-City Transfer Process. The following shall occur before the transfer is complete.
- a. RES is notified of either the desire to dispose of or to acquire a parcel of land in the City's ownership.
 - b. RES will research the property's title history to determine whether the property can be transferred, whether a change of use is acceptable and whether the Disposing and Acquiring Departments' Finance Officer agrees to the transfer.
 - i. RES will send notification of the transfer request by buckslip to the applicable Finance Officers, or designees, for review and approval or denial. The Finance Officers are the Finance Director-Municipal, the Chief Planning and Finance Officer-Colorado Springs Utilities and the Chief Financial Officer/Senior Vice-President-Memorial Health System.
 - ii. If Finance Officer approval is given, RES will meet with the Disposing and Acquiring Departments to explain the Intra-City transfer process.
- 11.3 Valuing the Property For Transfer. Any property that will be transferred must be valued in accord with good government accounting principles. There are two ways in which a property may be valued.
- a. If RES estimates that a property's fair market value is \$5,000.00 or less, a value finding will be accomplished and no appraisal will be necessary.⁷
 - b. For property valued over \$5,000.00, the Disposing Department will be required to pay for all necessary appraisals. RES will assist the Disposing Department in obtaining any necessary appraisals. Depending on the funding source for the original acquisition or proposed transfer, there will be occasions when more than one appraisal will be required. There will also be occasions when a funding entity will require the appraisals to be reviewed.

⁷ See Chapter 8 of this Manual.

- 11.4 Environmental Review or Audit. The Disposing Department will share any available environmental information with the Acquiring Department. The Acquiring Department will then determine whether an additional Environmental Review or Audit will be required prior to the transfer. Any costs involved with the Review or Audit will be the responsibility of the Acquiring Department.
- 11.5 Executive Agreement. An Executive Agreement will document the administrative transfer of the asset.
- a. The terms of the Executive Agreement will be negotiated by the Disposing and Acquiring Departments.
 - i. For transfers between the municipal government (municipal departments or enterprises), Colorado Springs Utilities or Memorial Health System, the City Manager, Chief Executive Officer of Colorado Springs Utilities or the Chief Executive Officer of Memorial Health System must execute the Agreement.
 - ii. For transfers between two departments or enterprises within the municipal government or within Colorado Springs Utilities, the Acquiring and Disposing Department heads may sign the Agreement after obtaining approval from their respective City Manager or Chief Executive Officer, or their designees.
 - b. The Executive Agreement should include, but not be limited to, the following:
 - i. Legal description of the property being transferred.
 - ii. The established fair market value.
 - iii. Date of transfer.
 - iv. Easements or retained rights of use.
 - v. Identification of funding source, if applicable.
 - vi. City Council resolution, if applicable.
 - vii. Conditions on future transfers. If in the future the property is sold or transferred to a party outside of the City's ownership, the new Controlling Department or entity will be responsible for any costs associated with surveys, research and recording of any easements to be retained for the benefit of the City.⁸

⁸ See Chapter 5 of this Manual.

- viii. Any other pertinent information related to the transfer.
- 11.6 RES will maintain an intra-City property transfer file.

Chapter 12 - Environmental Review or Audit

12.1 The City Code requires an Environmental Review or Audit to be performed for any property interest that the City intends to acquire through the normal acquisition process per the SOPs of the RES office.

12.2 Environmental Process.

- a. The Project Manager will determine the extent of an Environmental Review or Audit. The project's budget must pay all costs associated with environmental reviews, audits and other environmental investigations or activities. If the nature of the property interest to be acquired is such that the City's interest would not be adversely affected, the Project Manager may choose to waive an audit after completing an Environmental Review. Any waiver must be completed in accord with RES SOPs.
- b. An Environmental Audit may be requested by the Project Manager or the Project Manager's designee. Colorado Springs Utilities' Environmental Services Department ("EVS") shall be responsible for overseeing Environmental Audits pertaining to the acquisition of property interests.
- c. Before an Environmental Audit can be conducted:
 - i. The property owner or the owner's representative must execute a Permission to Enter form before a contractor may enter the property to perform an Environmental Audit.
 - ii. A fifty (50) year title search must be obtained to determine whether there are any environmental liens or environmental concerns that may adversely impact the acquisition.
- d. EVS will order the Environmental Audit, analyze the results and send a report to RES and the Project Manager with the findings and recommendations, if any.

12.3 Acceptable Environmental Review or Audit. If the Environmental Review or Audit does not identify any recognized environmental conditions that will adversely impact the property, the acquisition may proceed.

12.4 Unacceptable Environmental Review or Audit.

- a. If the Environmental Review or Audit identifies recognized environmental conditions that adversely impact the property, the Project Manager shall notify RES of the decision to continue or terminate the acquisition. If the Project Manager decides to continue to pursue the acquisition, the acquisition may be done with or without further investigation. If further

investigations are conducted the project budget is responsible for all costs including additional Environmental Reviews, Audits, inspections, testing and documentation to determine the appropriate course of action.

- b. The estimated cost of cleanup or remediation of any recognized environmental condition will be considered in the determination of fair market value. The Acquiring Department shall negotiate clean-up or remediation responsibilities and costs, as necessary, with the property owner. Any negotiated agreement shall be reduced to writing and a copy provided to RES and EVS.

RESOLUTION NO. 155-07

**A RESOLUTION ADOPTING THE CITY OF COLORADO
SPRINGS PROCEDURE MANUAL FOR THE
ACQUISITION AND DISPOSITION OF REAL PROPERTY
INTERESTS**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF COLORADO SPRINGS:

Section 1. The City of Colorado Springs Procedure Manual for the Acquisition
and Disposition of Real Property Interests (the "Manual") is adopted.

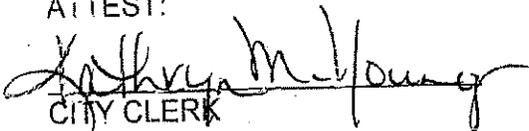
Section 2. The City and its Colorado Springs Utilities, Memorial Health
System, the municipal enterprises and purchasers of City-owned real property interests
shall follow the procedures set forth in the Manual for the acquisition or disposition of
real property interests by deed or other conveyance documents.

DATED at Colorado Springs, Colorado, this 11th day of September, 2007.



MAYOR

ATTEST:



CITY CLERK

ARTICLE X. FRANCHISES AND LICENSES

(Ed. note: In 1909 there were at least two (2) franchises in existence in the City - transportation (street railway) and light and power. In 1925, the outstanding light and power franchise terminated and the City acquired all assets of the company and has owned and operated the system since that time. In 1971, the transportation company voluntarily relinquished its franchise, and the City acquired all its assets. An excellent opportunity was thus provided to rewrite all existing franchise provisions of the Charter. No attempt has been made in this Article to maintain a numbering system consistent with the 1909 numbering.)

10-10. Definitions.

- (a) Franchise: For the purpose of this Charter, and the ordinances of the City of Colorado Springs, the term "franchise" shall mean a special right or privilege granted by vote of the electorate of the City of Colorado Springs to any person, firm, or corporation to erect, construct, operate, carry on, or maintain an electric power plant, communication system, gas plant or system, rail or mass transit system, or any other business activity affective of the public interest which permanently occupies and obstructs the public streets, rights-of-way, alleys, or properties, together with such other uses as are determined by ordinance to be of such a public concern that want of regulation and control will injuriously affect the public in its general interest. (1977)
- (b) License: For the purposes of this Charter, and the ordinances of the City of Colorado Springs, the term "license" shall mean a temporary or revocable permission granted to all other activities not a franchise. (1977)

10-20. General Powers.

The City shall have and exercise with regard to all franchises, all municipal powers, including, without limitation, all powers now existing and which may hereafter be provided by the Constitution and Statutes. In every franchise the right of the City to construct, lease, purchase, acquire, condemn, or operate any public utility, work, or way, shall be expressly reserved. Except as otherwise provided by the Constitution or this Charter, all powers concerning the method of granting, amending, revoking, or otherwise dealing in franchises shall be exercised by the Council. (1977)

10-30. Granting of Franchises.

- (a) No franchise shall be granted except upon approval by a majority of the electors voting thereon. ¹⁰ (1977)
- (b) Except when the terms, fees, compensation, conditions, or any other matters relating to the granting of franchises are set by the vote of the electorate, the Council shall establish by ordinance the terms, fees, compensation, conditions, and any other matters relating to the granting of franchises. (1977)

10-40. Tax.

The City shall have the right to license or tax the equipment of any franchise. The license or tax shall be exclusive of and in addition to all other lawful taxes upon the property of the holder thereof. (1909; 1977) (Ed. note: Formerly Section 68.)

10-50. No Franchise Leased, Exception.

No franchise granted by the City shall ever be leased, assigned, or otherwise alienated without express consent of the City, and no dealing with the lessee or assignee on the part of the City to require the performance of any act or payment of any compensation by the lessee or assignee shall be deemed to operate as such consent. (1909; 1977) (Ed. note: Formerly Section 74.)

10-60. Term Not Longer Than Twenty-Five (25) Years.

No franchise, lease, or right to use the property of the City shall be granted by the City, except as in this Charter provided, for a longer term than twenty-five (25) years. For the purpose of economic development, the City may grant a lease or right to use the property of the City for up to ninety-nine (99) years. This shall not apply to City owned parklands for which the term of a franchise, lease, or right to use shall never exceed twenty-five (25) years. (1909; 1977; 1987) (Ed. note: Formerly Section 80.)

10-70. No Exclusive Franchise--Renewal.

No exclusive franchise shall ever be granted, and no franchise shall be renewed before one (1) year prior to its expiration. (1909; 1977) (Ed. note: Formerly section 73.)

10-80. City May Purchase.

Every grant of franchise shall provide that the City may purchase and take over the property of the holder in whole or in part. (1909; 1977) (Ed. note: Formerly section 81.)

10-90. Franchise Records.

The City Clerk shall keep an indexed franchise record in which shall be transcribed copies of all franchises heretofore and hereafter granted. The index shall give the name of the grantee and any assignees. The franchise record shall include a comprehensive and convenient reference to all actions at law affecting the same, and copies of all annual reports and such other matters of information and public interest as the Council may, from time to time, require. (1909; 1977) (Ed. note: Formerly section 78.)

10-100. License or Temporary Permits.

The Council may grant a temporary permit, a license, or an easement at any time, in, on, above, through, or under any street, alley, or public place, provided such license, temporary permit, or easement shall be revocable at any time, and that such right to revoke shall be expressly reserved in every temporary permit, license, or easement which may be granted hereunder. (1909; 1977) (Ed. note: Formerly section 83.)

PART 6 - LAND ACQUISITIONS

1. SALE OF CITY-OWNED REAL PROPERTY

If the Council has found or determined that City-owned real property or interests are unneeded for the proper conduct of City affairs, the City's manager handling Real Estate Services shall cause the same to be appraised by a competent land appraiser. Upon receipt of such appraisal, the City's Real Estate Manager shall advertise such real property for sale by sealed bid. The advertisement must be published one time in the official City newspaper at least ten (10) days prior to the date set for the opening of such bids and by posting upon a sign, notice of the sale at least ten (10) days prior to the date set for the opening of such bids. The sign shall be placed at points along the perimeter of the property so as to be visible from any adjacent ways or streets, and located so as to provide opportunity for notice to owners of surrounding properties and the public. Posting may be outside the perimeter if in the opinion of the City's Real Estate Manager, the posting offers more visibility for public notice. Such real property shall be sold to the highest bidder at a price not less than the appraised value. (1982; 1994; 2000)

2. ACQUISITION OF REAL PROPERTY

Acquisition of real property shall follow the procedures set forth in the Handbook for Land Acquisition approved by Resolution No. 103-74, dated April 23, 1974, as the same may be hereafter amended. (1982; 2000)

3. CONVEYANCES NOT REQUIRING COUNCIL APPROVAL

Whenever the Council has approved the conveyance of a parcel of land or an interest in land that fails by reason of a technical imperfection or error or by reason of failure of the conveyance to perfectly carry out the intention of the Council, the Mayor is authorized to execute another conveyance and the City Clerk to attest the same in the same manner and intent as approved by the prior Council action without further Council approval. (1982; 2000)

4. UTILITIES PROPERTY

Matters involving Utilities land acquisitions, conveyances and sale of excess property are subject to Utilities Board policies or by-laws. (2000)

CITY CODE
CHAPTER 7, ARTICLE 7, PART 18
CONVEYANCE OF LAND

7.7.1801: PAYMENT OF TAXES REQUIRED:

Except as hereinafter set forth, no deed, dedication or conveyance of land or any interest in land to the City shall be effective unless all taxes owing on such land or interest thereon are paid by the grantor to the date of conveyance. The grantor may tender to the City a pro rata share of the current taxes to the date of conveyance based upon the total taxes payable in the year of conveyance at the time of tendering the deed or conveyance. In its discretion, the City may expressly waive payment of taxes by the grantor in the event of:

- A. A negotiated purchase of the land in which payment of all current taxes by the City is a consideration of the purchase; or
- B. Where the deed or conveyance is a true gift to the City and not in payment of or in lieu of any required fee or obligation owing to the City. (Ord. 96-44; Ord. 01-42)

7.7.1802: ACCEPTANCE BY CITY COUNCIL:

No deed, dedication or conveyance of land or any interest in land to the City for any purpose shall be effective unless expressly accepted or authorized by a City Council resolution or accepted by the City's Real Estate Manager in accord with approved city plans, projects or policies. Acceptance or authorization shall be subject to adequate title review, proration and payment of taxes, environmental review or audit and other conditions as appropriate. (Ord. 01-42)

CITY ATTY'S OFFICE
CODE CHANGE REVIEW
ATTY INIT. PLA
DATE 8/23/07

ORDINANCE NO. 07- 135

AN ORDINANCE AMENDING PART 18 (CONVEYANCE OF LAND) OF ARTICLE 7 (SUBDIVISION REGULATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO CONVEYANCE AND ACQUISITION OF LAND

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That Part 18 (Conveyance of Land) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended to read as follows:

Part 18: Acquisition and ~~Conveyance~~ Disposition of LandReal Property Interests

Section 2. That a new Section 1803 (Acquisition of Real Property Interests) of Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby created to read as follows:

7.7.1803: Compliance with Manual:

The City and its Colorado Springs Utilities, Memorial Health System, the municipal enterprises and purchasers of City-owned real property interests shall follow the procedures set forth in the Procedure Manual for the Acquisition and Disposition of Real Property Interests (the "Manual") for the acquisition or disposition of real property interests by deed or other conveyancing document.

Section 3. That a new Section 1804 (Disposition of City Owned Real Property) of Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision

Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby created to read:

7.7.1804: Disposition of City Owned Real Property:

A. If the Council has found or determined that City-owned real property is unneeded for the proper conduct of City affairs, the City's Real Estate Services Manager shall cause the property to be valued in accord with the Manual. Upon determination of value, the City's Real Estate Manager shall advertise the property for sale in accord with the provisions of the Manual.

B. If there is only one logical, potential purchaser of the City owned property, City Council may by motion authorize the sale of the property to the identified buyer subject to appropriate terms, conditions and the provisions of the Manual.

Section 4. That a new Section 1805 (Conveyances Not Requiring Council Approval) of Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby created to read as follows:

7.7.1805: Dispositions Not Requiring Council Approval:

A. Vacation of City owned easements¹ shall not require City Council approval so long as the vacation is conducted in accord with the provisions of the Manual.

B. Whenever the Council has approved the conveyance of a parcel of land that fails by reason of a technical imperfection or error or by reason of failure of the conveyance to perfectly carry out the intention of the Council, the Mayor is authorized, without further Council action, to execute and the City Clerk to attest another deed or other conveyancing document in the same manner and intent as approved by the prior Council. (1982; 2000)

Section 5. That a new Section 1806 (Utilities Property) of Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision Regulations) of

¹ Vacation of right-of-way shall be in accord with Part 4 of this Article 7.

Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby created to read as follows:

7.7.1806: City-Owned Property for the Benefit of Utilities:

Matters involving Utilities land acquisitions, conveyances and sale of excess property are subject to City Charter § 6-80, the Manual and Utilities Board policies or by-laws. (2000)

Section 6. That a new Section 1807 (Real Estate Manual) of Part 18 (Acquisition and Disposition of Real Property Interests) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is hereby created to read as follows:

7.7.1807: Rules, Regulation and Procedures:

A. Any proposed amendments to the Manual shall be reviewed and finally approved by City Council resolution.

B. The City's Real Estate Services Manager is authorized, with the City Attorney's counsel, to promulgate and adopt reasonable rules, regulations and standard operating procedures regarding the administration and operation of the Real Estate Services Office and management of the City's real property assets. Additional rules and regulations may be adopted as necessary to implement applicable Federal and State laws. Any rules or regulations adopted by the Manager shall be available for public inspection in the Real Estate Services Office.

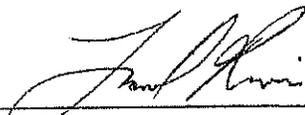
C. The City and its Colorado Springs Utilities, Memorial Health System, the municipal enterprises, the general public and purchasers and sellers of City-owned real property interests shall abide by all rules and regulations promulgated by the Real Estate Services Manager or approved by City Council resolution.

D. The City Manager, the Chief Executive Officer of Memorial Health System and the Chief Executive Officer of Colorado Springs Utilities may choose to establish supplemental administrative procedures, but those supplemental administrative procedures shall not supersede or substitute for the procedures and practices contained in this Manual. Real Estate Services will support and comply with any supplemental administrative procedures to the extent those supplemental administrative procedures do not conflict with the provisions of this Manual.

Section 7. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

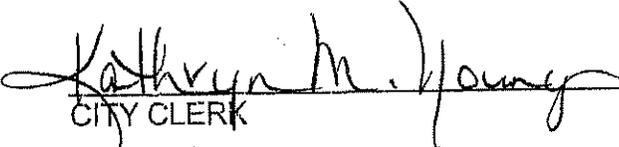
Section 8. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 28th day of August _____, 2007.



MAYOR

ATTEST:



CITY CLERK

Finally passed, adopted and approved this 11th day of September, 2007.

ATTEST:



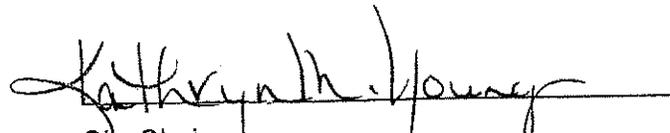
Mayor



City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled "AN ORDINANCE AMENDING PART 18 (CONVEYANCE OF LAND) OF ARTICLE 7 (SUBDIVISION REGULATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO CONVEYANCE AND ACQUISITION OF LAND" was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on August 28, 2007; that said ordinance was passed at a regular meeting of the City Council of said City, held on the 11th day of September, 2007, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Daily Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 11th day of September, 2007.



City Clerk



15
08-10

DATE: August 28, 2007
TO: Mike Anderson, Interim City Manager 
FROM: Ron Cousar, Director, Internal Support Services 
Darlene Kennedy, Real Estate Services Manager 
RE: **AN ORDINANCE AMENDING PART 18 (CONVEYANCE OF LAND) OF ARTICLE 7 (SUBDIVISION REGULATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO CONVEYANCE AND ACQUISITION OF LAND**

SUMMARY:

The City Attorney has recommended that the Real Estate Services Office request approval of an ordinance to amend Part 18 (Conveyance of Land) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the City Code, to incorporate current Council rules concerning the acquisition and conveyance of real property interests.

PREVIOUS COUNCIL ACTION:

In 2006, City Council directed staff to update and revise the Procedure Manual for the Acquisition and Disposition of Real Property Interests (the "Manual"). Before the Manual could be revised, changes to the relocation provisions found in City Code Chapter 6, Articles 12 and 13 were needed. In November 2006, City Council approved Ordinance No. 06-221 revising Chapter 6, Articles 12 and 13. On March 26, 2007 and August 13, 2007, City Council reviewed the draft Manual during informal meetings. At the August 13, 2007 meeting, the City Attorney requested the acquisition and conveyance rules in the Rules and Procedures of City Council be moved to the City Code for ease of reference.

BACKGROUND:

A committee comprised of twenty-five staff members including six (6) representatives of Colorado Springs Utilities, one (1) representative of Memorial Health System, fourteen (14) representatives of the City and its enterprises, two (2) representatives of the Utilities Division of the City Attorney's Office and two (2) representatives of the Municipal Division of the City Attorney's Office, began revising the Manual in September 2006. The committee's recommended changes have been presented to City Council during informal meetings, and the Council has indicated its support for the revised Manual. Staff intends to present the completed Manual to City Council for formal approval at its September 11 meeting.

Accompanying the approved Manual is this proposed ordinance that codifies the acquisition and conveyance of real property rules currently found in Part 6 of the Rules and Procedures of City Council. To this end, Part 18 (Conveyance Of Land) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development And Building) of the Code of the City of Colorado Springs 2001, as amended, will be amended by adding a new section 1803 to require all acquisitions or dispositions of City-owned property interests to comply with the Manual. A new section 1804 sets forth the requirements to dispose of City owned property. A new section 1805 will be added to address easement vacations and correction of imperfections or errors in conveyance documents. A new section 1806 will articulate Colorado

Springs Utilities' distinct governing rules and section 1807 will be added to address additional rules and regulations

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

City Council could deny the Code change request and choose to maintain the acquisition and disposition rules in the Rules and Procedures of City Council.

RECOMMENDATION:

The City Attorney and staff recommend the adoption of the proposed ordinance.

PROPOSED MOTION:

Move adoption of the proposed ordinance.

ORDINANCE NO. 06- 221

AN ORDINANCE AMENDING ARTICLE 12 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH), REPEALING PART 1 (CODE ENFORCEMENT) AND REPEALING AND REORDAINING PART 2 (CITY PROGRAM OR PROJECT) OF ARTICLE 13 (RELOCATION POLICY AND PROGRAM) OF CHAPTER 6 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE CITY'S DISPLACEMENT AND RELOCATION POLICIES AND PROGRAM

Section 1. That Article 12 (Housing Code) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended by adding a new Part 7 (Code Enforcement Displacement Program) to read as follows:

Article 12 Housing Code
Part 7 Code Enforcement Displacement

6.12.701: DEFINITIONS:

The following terms, as used in this part, shall have the meanings designated, unless the context specifically indicates otherwise, or unless the meaning is excluded by express provision:

DISPLACED PERSON: Any occupant who, through no personal fault, must move from real property as a result of that property not being in compliance with applicable Housing codes found in article 12 of this chapter. (Ord. 85-240; Ord. 86-214; Ord. 01-42)

6.12.702: ADMINISTRATIVE GUIDELINES:

The Administrator shall administer the policy set forth in part 7 and shall from time to time promulgate guidelines, rules and regulations for the operation of this policy. Any guidelines, rules or regulations promulgated by the Administrator shall be subject to City Council approval. (Ord. 85-240; Ord. 91-92; Ord. 96-110; Ord. 01-42)

6.12.703: EXPENSES FOR DISPLACED PERSONS:

A. Moving and Related Expenses for Displaced Persons: When displacing occupants from real property due to applicable Housing codes, the City shall make fair and reasonable displacement payments to occupants for:

1. A fixed settlement determined according to a schedule pre-established by the City to compensate the displaced person for physical moving expenses.
2. Actual reasonable expenses incurred in renting a replacement dwelling.
3. Actual reasonable costs incurred in moving leased equipment. (Ord. 85-240; Ord. 96-214; Ord. 01-42)

6.12.704: EMERGENCY REHABILITATION ASSISTANCE:

The City may provide financial assistance for rehabilitation of properties to eliminate imminently hazardous housing conditions and to assure the protection of the health, safety and welfare of the occupants. Financial assistance as provided in this part shall be administered in accord with the guidelines as shall be established by the Administrator or the Director. (Ord. 85-240; Ord. 96-110; Ord. 01-42)

6.12.705: APPEALS:

Any person aggrieved by the final administrative determination concerning displacement payments or benefits under this part may have that determination reviewed by the Municipal Court Referee in accord with section 11.5.106. (Ord. 85-240; Ord. 86-214; Ord. 91-92; Ord. 96-110; Ord. 98-85; Ord. 01-42; Ord. 03-15)

6.12.706: ASSESSMENT OF DISPLACEMENT EXPENSES:

A. Whenever occupants are displaced from real property pursuant to this part as a result of the property's failure to comply with applicable Housing codes due to the owner's failure to maintain the property, and the City is required to make displacement, moving and related expense payments to those occupants, then the actual amount of those displacement payments incurred by the City shall become the responsibility of the real property owner. After determination of the actual displacement expenses incurred by the City in any given case the owner of the real property which is the subject matter of the displacement shall be billed for the actual amount of the City's costs incurred in the displacement of all displaced occupants.

B. In the event that the owner of the property, which is the subject matter of the displacement proceedings as set forth above, shall fail to reimburse the City within twenty (20) days after billing for its actual costs incurred in the displacement, a lien may be assessed against the property for reimbursement of displacement expenses in accord with the City's Sales and Use Tax Code. The lien created shall be superior and prior to all other liens excepting liens for general and special taxes. (Ord. 85-240; Ord. 96-110; Ord. 98-85; Ord. 01-42)

Section 2. That Part 1 (Code Enforcement) of Article 13 (Relocation Policy and Program) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is hereby repealed.

Section 3. That Part 2 (City Program or Project) of Article 13 (Relocation Policy and Program) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, is hereby repealed and reordained to read as follows:

Article 13 Relocation Policy and Program

6.13.101: RELOCATION DUE TO CITY PROGRAM OR PROJECT:

A. Persons or businesses relocated from real property as a result of a City program or project shall be entitled to relocation assistance which complies with the provisions of the Uniform Relocation and Assistance Policies, 42 USC §4621, *et seq.*, as amended.

B. Leasehold interests will not be eligible for relocation assistance as a result of a City program or project if the leasehold interest is terminated prior to the date of the City's written offer to acquire the fee interest underlying the leasehold. (Ord. 01-42)

6.13.102: RELOCATION ASSISTANCE:

A. Whenever a program or project is to be undertaken by the City that will result in the relocation of persons or businesses from real property, the City shall assure that relocation assistance will be available. The assistance may include staff, measures and facilities necessary or appropriate to provide each relocated person or business with a full range of information, services and options to ensure that relocation will occur. (Ord. 85-240; Ord. 01-42)

B. When initiating any City program or project that will result in the relocation of persons or businesses, the administrator responsible for managing the City's real estate assets shall coordinate and provide relocation assistance. (Ord. 85-240; Ord. 01-42)

6.13.103: DUPLICATE PAYMENTS PROHIBITED:

No payment or assistance provided for in this article shall be required if the displaced person receives a payment required by the laws of eminent domain which is determined by the City Council to have substantially the same purpose and effect as payment under this policy. (Ord. 85-240; Ord. 01-42)

6.13.104: APPEALS:

Any aggrieved person may appeal any case in which the person believes that the City has failed to properly consider the person's application for personal or business relocation assistance under § 6.13.201 of this Code. Assistance may include, but is not limited to, eligibility for, or the amount of, a required relocation payment.

A. Administrative Appeal. The aggrieved person may file a written notice of appeal with the administrator of the City's real estate assets. The City shall consider the written notice of appeal regardless of form.

1. The written appeal must be filed within sixty (60) days of the date of the City's final written offer of relocation assistance. The administrator shall set a hearing before the administrator and the project manager not less than thirty (30) nor more than sixty (60) days from the date of the appeal.
2. Prior to the administrative appeal hearing, the City shall permit the appellant to inspect and copy all materials pertinent to the appeal, except materials that are confidential. Inspection and copying shall be in accord with the Colorado Open Records Act.
3. At the administrative appeal hearing, the appellant may, at the appellant's own expense, be represented by legal counsel or another person in connection with the appeal.
4. The administrative appeal hearing shall be recorded and the appellant, at the appellant's option and expense, may request a transcript of the recorded hearing.

5. The administrator and project manager shall consider all pertinent justification and other material submitted by the appellant, and all other information that is needed to ensure a fair and full review of the administrative appeal. Within ten (10) days of the conclusion of the administrative appeal hearing, the administrator and project manager 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 appellant. If the full relief requested is not granted, the written determination shall advise the appellant of the right to a final administrative appeal.

B. Final Administrative Appeal. An appellant aggrieved by the decision of the written determination resulting from an administrative appeal may appeal that decision to a final administrative appeal panel (the "panel") by filing a written notice of appeal with the administrator of the City's real estate assets within ten (10) days of the date of mailing of the written determination resulting from the administrative appeal hearing. The City shall consider the written notice of appeal regardless of form.

1. The administrator shall forward the notice to the panel which shall set a hearing not less than thirty (30) nor more than sixty (60) days from the date of the appeal. The panel shall consist of the City Manager, the Executive Director of Utilities and the Chief Executive Officer of Memorial Health System, or their designees, none of whom shall have had any prior involvement in the relocation.
2. The appellant may, at the appellant's expense, be represented by legal counsel or another person at the final administrative appeal hearing.
3. The panel shall review the relocation file, the justification and material presented at the administrative hearing and the resulting written determination. The panel, in its sole discretion, may receive additional information, documents or other material necessary to ensure a fair and full review of the appeal or to assist the panel in determining whether the City failed to properly consider the application for assistance under § 6.13.201 of this Code, including, but not limited to, eligibility for, or the amount of, a required relocation payment. The final administrative appeal hearing shall be recorded and the appellant, at the appellant's option and expense, may request a transcript of the recorded hearing.
4. Within ten (10) days of the conclusion of the final appeal hearing, the panel shall issue a final written determination on the appeal,

including an explanation of the basis on which the decision was made, and provide a copy to the appellant. If the full relief requested is not granted, the written determination shall advise the appellant of the right to seek judicial review of the panel's decision.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 5. Council deems it appropriate that this ordinance shall be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 14th day of November, 2006.

MAYOR

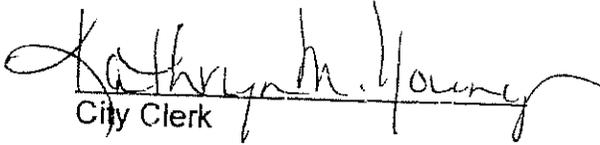
ATTEST:

CITY CLERK

Finally passed, adopted and approved this 28th day of November, 2006.

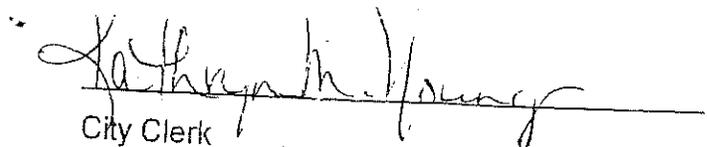
ATTEST:


Mayor


City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled "AN ORDINANCE AMENDING ARTICLE 12 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH), REPEALING PART 1 (CODE ENFORCEMENT) AND REPEALING AND REORDAINING PART 2 (CITY PROGRAM OR PROJECT) OF ARTICLE 13 (RELOCATION POLICY AND PROGRAM) OF CHAPTER 6 (NEIGHBORHOOD VITALITY/COMMUNITY HEALTH) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE CITY'S DISPLACEMENT AND RELOCATION POLICIES AND PROGRAM" was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on November 14th, 2006; that said ordinance was passed at a regular meeting of the City Council of said City, held on the 28th day of November, 2006, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Daily Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 28th day of November, 2006.


City Clerk

Colorado Revised Statute 38-1-121 – Appraisals – negotiations.

(1) As soon as a condemning authority determines that it intends to acquire an interest in property, it shall give notice of such intent, together with a description of the property interest to be acquired, to anyone having an interest of record in the property involved. If the property has an estimated value of five thousand dollars or more, such notice shall advise that the condemning authority shall pay the reasonable costs of an appraisal pursuant to subsection (2) of this section. Such notice, however, need not be given to any of such persons who cannot be found by the condemning authority upon the exercise of due diligence. Upon receipt of such notice, such persons may employ an appraiser of their choosing to appraise the property interest to be acquired. Such appraisal shall be made using sound, fair, and recognized appraisal practices which are consistent with law. The value of the land or property actually taken shall be the fair market value thereof. Within ninety days of the date of such notice, such persons may submit to the condemning authority a copy of such appraisal. The condemning authority immediately upon receipt thereof shall submit to such persons copies of its appraisals. If the property interest is being acquired in relation to a federal aid project, then the appraisals submitted by the condemning authority shall be those which have been approved by it pursuant to applicable statutes and regulations, if such approval is required. All of these appraisals may be used by the parties to negotiate in good faith for the acquisition of the property interest, but neither the condemning authority nor such persons shall be bound by such appraisals.

(2) If an appraisal is submitted to the condemning authority in accordance with the provisions of subsection (1) of this section, the condemning authority shall pay the reasonable costs of such appraisal. If more than one person is interested in the property sought to be acquired and such persons cannot agree on an appraisal to be submitted under subsection (1) of this section, the condemning authority shall be relieved of any obligation herein imposed upon it to pay for such appraisals as may be submitted to it pursuant to this section.

(3) Nothing in this section shall be construed as in any way limiting the obligation of the condemning authority to negotiate in good faith for the acquisition of any property interest sought prior to instituting eminent domain proceedings or as in any way limiting the discovery rights of parties to eminent domain proceedings.

(4) Nothing in this section shall prevent the condemning authority from complying with federal and state requirements to qualify the authority for federal aid grants.

(5) Nothing in this section shall be construed to limit the right of the condemning agency to institute eminent domain proceedings or to obtain immediate possession of property as permitted by law; except that an eminent domain proceeding may not proceed to trial on the issue of valuation until the ninety-day period provided in subsection (1) of this section has expired or the owner's appraisal has been submitted to the condemning authority, whichever is sooner.

(6) If the parties involved in the negotiations fail to reach agreement on the fair market value of the property being acquired, the condemning authority, prior to proceeding to trial on the issue of valuation, shall furnish all owners of record a written final offer.

Source:

Colorado Court Rules/COLORADO RULES OF EVIDENCE /CHAPTER 33 COLORADO RULES OF EVIDENCE/ARTICLE IV RELEVANCY AND ITS LIMITS /Rule 408. Compromise and Offers to Compromise

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(Federal Rule Identical.)

ANNOTATION

Law reviews. For article "ADR: Explanations, Examples and Effective Use", see 18 Colo. Law. 843 (1989). For article, "Admissibility of a Party's Own Settlement Offer", see 21 Colo. Law. 1893 (1992).

This rule applies to every offer of settlement and makes such offers inadmissible to prove liability. Therefore, the rule does not impose a condition on an offer of settlement. Further, an offer may be admissible under this rule for purposes other than to prove liability. *Dillen v. HealthOne, L.L.C.*, ___ P.3d ___ (Colo. App. 2004).

Whether the statements contained in a letter plaintiff's counsel had written were actually made in the course of a "settlement negotiation" or "compromise" is a question of fact, and since there was evidentiary support for the trial court's finding that the letter was part of an effort to compromise the plaintiff's claims, that finding is binding on appeal. *H&H Distributors v. BBC Intern.*, 812 P.2d 659 (Colo. App. 1990).

Even if the letter plaintiff's counsel had written constituted an "admission of fact", plaintiff's "admission" would be excludable under CRE 408 because it was made in a letter offering to settle the dispute. *H&H Distributors v. BBC Intern.*, 812 P.2d 659 (Colo. App. 1990).

A document entitled "Settlement Detail" was admissible because it was a status report for defendant's use in the ordinary course of business, not for the purpose of discussing settlement with plaintiff. *Scott Co. of California v. MK-Ferguson*, 832 P.2d 1000 (Colo. App. 1991).

Situations in which someone acknowledges that a certain claim is valid or is valid to a certain extent, or statements to the effect: "I think your claim is worth ‘X’ number of dollars," are not offers within the meaning of CRE 408. *Scott Co. of California v. MK-Ferguson*, 832 P.2d 1000 (Colo. App. 1991).

The threshold question, which is a question of fact for the trial court, is whether the conduct or statements were made in settlement negotiations, for if they were not, the rule is inapplicable. *Scott Co. of California v. MK-Ferguson*, 832 P.2d 1000 (Colo. App. 1991).

Evidence supported trial court's finding and was binding on appeal that the document was admissible because it was a status report prepared for defendants' use in the ordinary course of business, not for the purpose of discussing settlement with plaintiff. *Scott Co. of California v. MK-Ferguson*, 832 P.2d 1000 (Colo. App. 1991).