



**MAUMEE RIVER BASIN
FLOOD CONTROL MASTER PLAN
(IMPLEMENTATION PHASE)**

**VOLUNTARY BUYOUT
COST-SHARE ASSISTANCE PROGRAM**



For

**MAUMEE RIVER BASIN COMMISSION
ROOM B-80 CITY-COUNTY BUILDING
FORT WAYNE, INDIANA 46802**

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prepared for

The Maumee River Basin Commission

by



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MAUMEE RIVER BASIN FLOOD CONTROL MASTER PLAN VOLUNTARY BUYOUT COST-SHARE ASSISTANCE PROGRAM

Introduction

Voluntary Buyout of eligible residential structures within the floodplain is one of the major recommended components of the Maumee River Basin Flood Control Master Plan (Reference 1). For the purpose of the Maumee River Basin Commission (MRBC), voluntary Buyout is defined as the acquisition of real property, relocation of site occupants, and the clearance and removal of improvements located on the acquired property.

In general, the buyout plans recommended as part of the Master Plan are to be implemented over time and on a voluntary basis. As noted in the Master Plan Main Report, buyout is considered where floodproofing is inappropriate due to various reasons such as excessive flooding depth or the location of the property in relation to the regulatory floodway. Therefore, if a property is recommended for buyout, it would be ineligible for any future floodproofing assistance. The properties subject to buyout would be appraised and purchased according to methods acceptable to the federal, state, and local governments.

The intent of this document is to establish criteria by which each owner and resident of property designated by the MRBC to be acquired will, in all respects, be afforded fair, equitable, and consistent treatment. This document establishes the details of the MRBC Voluntary Buyout Cost-Share Assistance Program, guidelines, and instructions on how to apply for such assistance. The actual acquisition is to be handled by local government units with the MRBC's technical and financial assistance.

The MRBC funding will be distributed through local participating governmental unit, i.e., appropriate department or plan commission of the county, city, or town within the Basin having jurisdiction over the Voluntary Buyout site ("Local Jurisdiction"). To promote efficient communication with the MRBC, **each participating Local Jurisdiction must designate a floodproofing/buyout coordinator** ("Local Coordinator") who would represent the Local Jurisdiction in all matters related to MRBC's Floodproofing and Voluntary Buyout Cost-Share Assistance Program.

It is understood that some local jurisdictions may presently lack appropriate apparatus or personnel to efficiently carry out their MRBC-related responsibilities called for in this document. Depending on each local jurisdiction's ability and preparedness, MRBC staff may be able to provide assistance or, if necessary, even assume some of the responsibilities of the Local Coordinator, as specified in this document.

The Local Coordinator, with assistance from the MRBC staff, would coordinate the work and be responsible for the final approval of acquisition, residents relocation, structure

removal, and recommendation for release of funds. Homeowners or their respective counties, cities, and towns can apply for the MRBC funding assistance according to the procedures established in this document. To receive financial and technical assistance, the applicants must follow the MRBC Voluntary Buyout Guidelines contained herein.

Several reference material have been consulted and utilized for preparation of this report. In particular, base material relating to Appraisals, Evidence of Title, Offer to Purchase, Closing of Purchase, Property Management, Security and Maintenance, Moving Assistance, Site Clearance, and Demolition/Removal were taken directly from procedures established by City of Tulsa (Oklahoma) for their Flood Mitigation Acquisition Plan (Reference 2). The noted reference may be consulted for further information regarding the City of Tulsa Program.

Eligibility

To be eligible for the Voluntary Buyout program, the following criteria must be met. These criteria are established so that the available funds may be used in the most effective manner.

1. Property **must lie within the 100-year regulatory floodplain or other known flood hazard area** and meet the MRBC Voluntary Buyout Criteria. According to the MRBC Voluntary Buyout Criteria, a residential property may be bought out if one or more of the following conditions apply:
 - The structure is subject to three (3.0) feet or more of flooding from the 100-year flood,
 - The structure is identified to be in the regulatory floodway (or in other extreme hazard areas, such as a dam-break inundation zone), or
 - The structure has been recommended for acquisition based on the available park plans or other property acquisition plans, has been designated as a repetitive loss property by Federal Emergency Management Agency (FEMA) or the Local Jurisdiction, or has been specifically authorized by the MRBC Board to be purchased in order to promote Commission's flood damage reduction goals;
2. Property must be located within an area designated by the MRBC (through the Master Plan or subsequent studies) as being subject to floodproofing or buyout. Areas planned to be protected by levees/floodwalls are not eligible for Voluntary Buyout assistance;
3. Property must be located within the Maumee River Basin jurisdictional area in Indiana;

4. County, town, and city within which the property is located must have already adopted both the Flood Hazard Areas and Storm Drainage Ordinances. These ordinances must meet the minimum MRBC model ordinance requirements.

Identification, Publicizing, and Application Procedures

It is anticipated that the properties to be acquired will be identified by each Local Coordinator, with assistance from MRBC staff, using the Master Plan recommendations as a guideline. Normally, eligible structures will be identified through the process set forth in the MRBC Floodproofing Cost-Share Assistance Program as those structures that may not be eligible for floodproofing cost-share assistance due to meeting the MRBC Buyout Criteria. The following steps are expected to be followed to publicize the program and gather necessary information for MRBC action:

1. Areas where the Voluntary Buyout assistance is planned to be offered will be prioritized by the MRBC staff and the Local Coordinator (normally, these areas coincide with those areas targeted for floodproofing assistance). Target areas will then be chosen for the current phase of the implementation plan.
2. A team, consisting of staff from the MRBC and the Local Coordinator, will publicize the Floodproofing and Voluntary Buyout programs in the targeted areas and distribute applications to the affected property owners. An application form specifying the minimum required information to enable proper review by the Local Jurisdictions and the MRBC has been developed for this purpose and is enclosed as Appendix 1.
3. The applicant (either a property owner or the Local Coordinator) will complete Part 1 of the application form. Part 1 includes required information regarding the homeowner, the location of the property, type of structure (foundation, number of floors, type of use), and information regarding any prior flooding damages to the property.
4. The Local Coordinator will perform a preliminary screening of the application to confirm that the property is located in the targeted area and that it would appear to be eligible for the MRBC funding assistance.
5. The Local Coordinator, with assistance from the applicant and the MRBC staff (if needed), will collect/determine the needed information/data and completes Part 2 of the application form. Part 2 consists of needed information which are typically more difficult for the homeowner to gather. This portion of the form is, therefore, planned to be completed by the Local Coordinator with assistance from the homeowner and, if needed, from the MRBC. Information required in Part 2 include property's location with regard to the regulatory floodplain zone/designation, lowest floor elevation, elevation of the lowest adjacent grade (LAG), if the property is in the FEMA's repetitive loss property lists, and whether or not the property is included in any known acquisition plan.

6. Upon proper completion of parts 1 and 2 of the application form, the Local Coordinator will be able to verify that the application submittal is complete, the structure meets the established buyout criteria, and that the proposed project is consistent with the Local Jurisdiction's floodplain development programs. If satisfied, the Local Jurisdiction will signify its support for the project by completing Part 3 of the Application Form and will then forward the completed form to the MRBC.

Note that the MRBC Voluntary Buyout and Floodproofing Assistance programs are closely related and are designed to work hand in hand. Part 1 and the top portion of Part 2 of the application is the same for both programs. If, based on the detailed data gathered, it is determined that the structure is not eligible for buyout but would be eligible to receive floodproofing assistance, the information provided may be used to complete the Floodproofing Assistance Application. Conversely, If the application is originally made on the Floodproofing Application Form but the structure is determined not eligible for floodproofing due to meeting the MRBC Buyout Criteria, the information may be utilized to complete the Voluntary Buyout Application Form. Any of the above two situations would require the notification and concurrence of the property owner.

MRBC Review and Selection Process

Upon receipt of application packages from different jurisdictions, the MRBC staff will make a final review and, with assistance from the Local Coordinator and the property owner, will investigate and apply for any potential matching grants from outside funding sources, if applicable. The MRBC staff will then be able to determine the amount of funding assistance that the MRBC can provide. This determination will be based on the estimated total acquisition costs, availability of outside funding, household income levels, and any applicable MRBC funding cap.

After the above review and determination process is completed, recommendations are made by staff based on the geographical location of the site, the severity of flooding, potential flood damages, adherence to established guidelines, requirement for permits, ability to qualify for outside matching funds, and availability of funds. The recommended projects will be presented to the full MRBC Board for selection and authorization.

Upon authorization by the MRBC, the Local Coordinator will be notified of the amount of assistance that will be available from the MRBC as well as from any potential outside funding source (if such outside funding was pursued directly by MRBC) so that a formal offer to purchase the property may be made. The Local Coordinator or the MRBC staff may then proceed with notifying the property owner and obtaining appraisals.

Notice to Property Owner

Once the property is authorized by MRBC for purchase, the property owner should be notified of the MRBC/Local Jurisdiction's interest in acquiring the real property on a voluntary basis. Basic protections and benefits applicable, including securing of necessary appraisals or any applicable assistance in relocation should be explained to the owner. Based on this preliminary contact, the Local Coordinator or the MRBC may be able to determine /confirm the owner's general interest in selling the property on a voluntary basis before further expenditures such as appraisals, title search, legal fees, or other necessary expenses are incurred.

Appraisals

Before the initiation of negotiations, the real property to be acquired shall be appraised. The owner, or the owner's designated representative, may be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

The Local Jurisdiction, with assistance from MRBC staff, will be authorized to contract for and obtain all necessary appraisals. Each property to be acquired shall be appraised by at least two (2) qualified appraisers, except those to be acquired by federal funds (such as FEMA funds or HUD-CDBG funds) will conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). Detailed information regarding URA may be found in the U.S. Department of Housing and Urban Development (HUD) Handbook 1378 (Reference 3). A copy of Chapter 5 of the noted handbook is provided in Appendix 2.

As may be noted from paragraph 5.1(a.) provided in Appendix 2, the requirement set forth in the Chapter 5 of HUD handbook do not necessarily apply to the MRBC Voluntary Buyout Program. However, it is recommended that these requirements are adhered to, to the extent possible, so that a uniform approach is exercised whether the property is being acquired by MRBC, Local Jurisdiction, or FEMA. For further consistency in approach, it is also recommended that the "Agreement for the Appraisal Services" provided in Appendix 4 is used as a contract document between the Local Jurisdiction and the Appraiser. The use of the noted document is optional.

If, after careful review of the initial appraisals, the Local Coordinator or the MRBC has questions concerning the value estimate, another review by the appraisers or a 3rd appraisal may be obtained. Except as otherwise noted below, appraisers will be instructed to appraise the property in fee simple without regard to any observed damage resulting from a recent flooding event. The owner of a property, may, at his sole expense, obtain his own appraisal. If the appraisal is prepared by an appraiser who is approved by the Local Jurisdiction and the appraisal is prepared on a form that is acceptable to the Local Jurisdiction, then the appraisal report may be considered in determining the fair market value of the property.

Evidence of Title

After confirming the property owner's general interest in selling the property and after (or concurrent with) appraisals, Local Jurisdiction shall obtain a preliminary evidence of title through the services of a qualified title insurance agent who will:

- (1) Issue a preliminary title search report prior to the closing (this service is normally provided by most title insurance agents without cost), and if necessary,
- (2) Furnish a title insurance policy (final title certificate) in the amount of purchase price after closing the purchase.

Offer to Purchase

Upon receipt of acceptable appraisals and preliminary evidence of title, prepared in the appropriate manner as described above, the Local Coordinator or the Local Jurisdiction's purchasing officer shall make reasonable efforts to contact the owner or the owner's representative and verbally discuss its offer to purchase the property at its fair market value based on appraisals, including the basis for offer of just compensation. Whenever feasible, personal face to face contact and discussion shall take place. A purchase offer, similar to the form provided in Appendix 3, shall be provided to the property owner along with a contract of sale for the owner to sign. The owner shall be given reasonable opportunity to consider the offer and present material supporting any potential modifications in the proposed terms and conditions of purchase. The person making the offer shall consider the owner's presentation and update the offer, within authorized limits, as appropriate.

Closing of Purchase

After acceptance of an offer by the property owner, and provided that the Local Jurisdiction's legal counsel determines that the property owner's title is merchantable, the Local Jurisdiction shall, as quickly as possible, consummate the purchase of the property. Owners will be required to pay the cost for title clearance measures. Taxes will be prorated to the first of the month following the date of closing.

Prior to closing, the Local Coordinator shall determine, and the owner shall so certify, the amount of any insurance proceeds received for repair of damages to the real property to be acquired for which repairs have not been made and any amount of outstanding insurance claims due and receivable for damages to the real property to be acquired. In the event such payments have been received and/or are due the owner, the purchase price shall be reduced by an amount equal to such payment; or, in lieu of said reduction in purchase price, the amount receivable by the owner shall be assigned for payment to the Local Jurisdiction and deposited in the appropriate account.

Property Management During the Transitional Period

Every effort should be made to vacate the acquired properties as soon as possible. However, MRBC recognizes that sometimes a transitional period may be necessary until reasonable arrangements for relocation of the property owner or tenant occupants may be made. **The transitional period is limited to sixty (60) days from the date of closing** unless the Local Coordinator or the MRBC staff determine that a hardship would be created if the occupants were forced to move at the end of the 60-day period. In no circumstances shall the transitional period exceed a period of six (6) months. Rent charged during the transitional period would be as follows:

Owner actually occupying the acquired property at the date of closing will be given 30 days of rent free occupancy from the date of purchase of the property. After such 30-day period, the former owner shall pay rent as determined by the Local Jurisdiction.

Tenant occupants shall commence paying rent to the Local Jurisdiction on the next rent due date following purchase of the property. Rental agreements for the transitional period setting forth the conditions of occupancy and rental amount shall be signed at the time of closing or as soon thereafter as possible. Sixty-day vacate notices will be issued immediately after closing to all site occupants. Upon failure to pay rent or at such time as it is determined that the property must be vacated in order to carry forth the Acquisition Plan, the Local Coordinator will request that legal counsel initiate eviction proceedings and offset any delinquent rent against any relocation payments for which the occupant may be eligible.

Security and Maintenance

Reasonable measures, including boarding of doors and windows and/or the hiring of a security patrol, may be taken to insure that all acquired properties are secured to prevent vandalism and theft. Steps will be taken to maintain the acquired properties so as not to create a nuisance or hazardous condition. Except as otherwise provided, maintenance, particularly of occupied properties, will be held to a responsible minimum.

Moving Assistance

Since the MRBC Buyout Program is strictly voluntary, moving assistance is not mandatory. However, to encourage voluntary selling or donating of flood-prone properties, MRBC is prepared to assist the owner or tenant occupant with the moving costs. Unless a different procedure or funding cap is required to be adhered to by an outside funding agency, moving benefits will consist of either actual cost of moving or reasonable moving expense allowance based on Indiana DOT "fixed moving expense schedule" (Reference 4), not to exceed \$750, and a \$250 fixed moving expense payment to cover any incidental costs. The maximum moving assistance by MRBC **shall not**

exceed \$1000. Moving payments may be made to all displacees whether acquired by the Local Jurisdiction, MRBC, or FEMA, and conditioned upon not relocating in floodplain area.

Relocation Assistance

The MRBC Buyout Program is strictly voluntary. As such, relocation assistance is not mandatory. However, to further encourage voluntary selling or donating of flood-prone properties, MRBC is prepared to assist the owner or tenant occupant with the relocation costs. Relocation benefits will be based on the "Purchase Price Differential", determined based on guidelines presented in HUD Handbook 1378 (Reference 3). Unless a different procedure or funding cap is required to be adhered to by an outside funding agency, payments for relocation assistance, **not to exceed \$4000**, may be considered by the purchasing officer. Relocation payments may be made to all displacees whether acquired by the Local Jurisdiction, MRBC, or FEMA, and conditioned upon not relocating in floodplain area.

Sale of Structures/Improvements Located on Acquired Properties

Structures and other improvements will be disposed of so as to yield the highest return (or lowest cost) as determined by the Local Coordinator, consistent with the objective of carrying out the Acquisition Plan in the most expeditious manner possible. Structures and/or other real property may be retained and moved by the former owner with the purchase price being the "value to remove" of retained real property.

The Local Jurisdiction may conduct sealed bids or public auctions to dispose of acquired structure/real property, dispose of acquired structure/real property through negotiation, provided that no negotiated sale may be less than its appraised "value to remove", or retain such acquired structure/real property for removal by the Local Jurisdiction for other public purpose uses. "Value to remove" is defined as being that consideration which a given structure/real property would sell for given sufficient exposure on the open market, considering condition of the real property, cost of removal, resultant damages, and the cost of reinstallation, hookup of utilities and other related and resultant costs. "Value to remove" shall be determined by a contract appraiser or a qualified staff of the Local Jurisdiction.

The Local Jurisdiction is authorized to execute Bills of Sale on all structure/real property disposed of in accordance with the procedures set forth herein. Purchasers of all structure/real property will be required to remove same within a reasonable period of time; or, if not, said structure/real property may be resold or demolished.

Demolition and Removal

All acquired land, whether by Local Jurisdiction, MRBC, or FEMA, shall be cleared of all improvements. Those improvements not sold and removed will be demolished and the land cleared. Legal Jurisdiction is authorized to contract for such demolition and removal, as necessary.

After the structure is removed, the site is cleaned of debris and graded to match the adjacent yards and seeded or planted with trees. The foundation below this elevation will be left in place.

Future Ownership and Upkeep of Acquired Properties

Depending on the restrictions associated with the local, state, or federal agency providing the buyout funding, the property could be deeded to either the community, a local parks department, local neighborhood association, or other appropriate agency or group which will be responsible for future upkeep and maintenance of the property. In some instances, the property may be deeded over to the adjacent property owner(s) to be added to their lot and be maintained by them. In any event, the property will have a deed restriction limiting its use or alteration so that potential flooding damages are not increased in the future.

Funding

The MRBC funding will be distributed through Local Jurisdictions and is primarily intended as a matching fund to attract various federal and state grants. The amount of the MRBC funding, **not to exceed \$40,000**, is limited to the total cost of the buyout (including costs associated with the appraisals, title evidence, real property purchase, moving assistance, relocation assistance, site clearance, demolition, and removal) minus that portion of the cost that may be covered by other federal or state funding sources. Local Coordinator, with assistance from MRBC, shall pursue all available funds and grants so that the amount of direct MRBC contributions may be minimized. In no event shall the MRBC contribution/funding exceed \$40,000 per property. MRBC funding is subject to availability of funds at the time of purchase.

Revision or Modification of Guidelines

The guidelines, policies, and procedures (including applicable funding caps) provided in this document are subject to change or revision from time to time by approval of the MRBC full board.

Questions

If you have any questions, please write to: Maumee River Basin Commission, Room B-80, City-County Building, Fort Wayne, IN 46802 or call (219) 449-7226.

References

1. Maumee River Basin Flood Control Master Plan. May 1995
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2. From Harm's Way: Flood-hazard mitigation in Tulsa, Oklahoma. December 1993
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3. Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition.
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U.S. Department of Housing and Urban Development (HUD)
Office of Community Planning and Development
4. Indiana Department of Transportation Relocation Manual. 1991
Indiana Department of Transportation
100 N. Senate Ave., Room N755, Indianapolis, Indiana 46204-2249
5. Maumee River Basin Floodproofing Cost-Share Assistance Program. January 1996
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Maumee River Basin Commission
Room B-80, City-County Building, Fort Wayne, IN 46802

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APPENDIX 1
APPLICATION FORM

APPENDIX 2

Real Property Acquisition Requirements (Copy of Chapter 5 of HUD Handbook 1378)

CHAPTER 5. REAL PROPERTY ACQUISITION

5-1. APPLICABILITY OF ACQUISITION REQUIREMENTS (49 CFR 24.101).

- a. General. The requirements of this chapter apply to any acquisition of real property for a project, except:
- (1) An acquisition by a State agency (i.e., an entity with the power of eminent domain) that is clearly a voluntary, arm's length transaction. Such transactions must meet each of the following conditions:
 - (a) The State agency determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and
 - (b) No specific site or property is designated for acquisition, although the State agency may limit its search for alternative sites to a general geographic area. Where a State agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly. The property to be acquired shall not be part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits; and
 - (c) The State Agency informs the owner of its estimate of the fair market value of the property. The notice must be in writing and provided before the seller enters into the contract for sale on which the purchase is based. An appraisal is not required; however, the estimate must be prepared by a person familiar with real estate values and the State agency's files must include an explanation of the basis for the estimate.
 - (2) An acquisition by an Agency (e.g., a person) that does not have authority to acquire the property by eminent domain, if, before the seller enters into the contract of sale, the Agency (person) informs the seller:

- (a) That it does not have the power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
- (b) Of its estimate of the fair market value of the property. An appraisal is not required; however, the grantee's files must include an explanation, with reasonable evidence, of the basis for the estimate.

Whenever feasible, this information shall be provided before making the purchase offer. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

- (3) An acquisition of real property from a Federal agency, State, or State agency, if the Agency making the purchase does not have authority to acquire the property through condemnation.
- b. Less-Than-Full-Fee Interest in Real Property. In addition to acquisitions of fee simple title, the provisions of this chapter apply to: the acquisition of fee title that is subject to retention of a life estate or a life use; acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and the acquisition of permanent easements. (The provisions of this Chapter do not apply to the acquisition of a temporary easement.)
 - c. Applicability of Paragraphs 5-2 through 5-5. The provisions of Paragraphs 5-2, 5-3, 5-4, and 5-5 apply to the greatest extent practicable under State law.
 - d. Person Acting as Agent of State Agency. In some cases, a State agency determines that a property must be acquired for a project, but allows a person that does not have the power of eminent domain (e.g., private developer) to attempt to acquire the property directly. If the person fails, the State agency undertakes the purchase. In such cases, the person is performing as the agent of the State agency and the acquisition must be treated as a State agency acquisition that is subject to the requirements of Paragraphs 5-2 through 5-8 of this chapter.
 - e. Flow Chart of URA Acquisition Process. A flow chart outlining the URA acquisition process is included as Appendix 19.

5-2. BASIC ACQUISITION POLICIES (49 CFR 24.102).

- a. Expeditious Acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.
- b. Notice to Owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections applicable, including the Agency's obligation to secure an appraisal. (Public Agencies may meet the requirement to notify the owner of the basic protections available by providing and explaining, as appropriate, the HUD information brochure, "When a Public Agency Acquires Your Property" (HUD-1041-CPD). It is available from HUD Field Offices.) If the Agency does not wish to trigger eligibility for relocation assistance at the time of this notice, it should ensure that this notice is not a "notice of intent to acquire" (see Paragraph 1-15a(1)).
- c. Appraisal and Invitation to Owner.
 - (1) Before the initiation of negotiations the real property to be acquired shall be appraised, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property, unless:
 - (a) The property is acquired pursuant to the donation provision in Paragraph 5-8 and the owner, after being informed in writing of his or her right to receive just compensation based on an appraisal, releases the Agency from the obligation to appraise the property; or
 - (b) The Agency determines, after reviewing available data, that the valuation problem is uncomplicated and that the fair market value of the property does not exceed \$2,500. The determination shall be based on review by a person who is familiar with real estate values and the basis for the determination shall be documented. (If the owner requests an appraisal, the Agency shall obtain an appraisal.)
 - (2) Agencies are encouraged to obtain at least two appraisals of high value properties and properties requiring a complicated valuation process.

- (3) When acquiring commercial property and/or property with tenant-owned improvements, the Agency should provide the appraiser with appropriate legal guidance with respect to the classification as to ownership and type of property, of all buildings, structures, fixtures and other improvements. Instructions for preparing a property analysis are contained in Article 4(j) of Appendix 20. Such classification is essential to determining just compensation, complying with Paragraph 5-2e(3), and carrying out the relocation process.
 - (4) The tenant-owner of a real property improvement should be invited to accompany the appraiser on his/her inspection of the improvement.
- d. Establishment and Offer of Just Compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property (or the review appraiser's recommended fair market value), taking into account the value of allowable damages or benefits to any remaining property. (See also Paragraph 5-4.) Promptly thereafter, the Agency shall make a written offer to the owner (including tenant-owners) to acquire the property for the full amount believed to be just compensation.
- e. Summary Statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:
- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
 - (2) A description and location identification of the real property and the interest in the real property to be acquired.
 - (3) An identification of the buildings, structures, and other improvements (including building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

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- f. Basic Negotiation Procedures. The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation. The Agency shall explain the basic acquisition policies and procedures that apply, including its payment of incidental expenses in accordance with Paragraph 5-6. Whenever feasible, personal face-to-face contact and discussion shall take place. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.
- g. Updating Offer of Just Compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property and it is possible that a material increase in the value of the property has occurred, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.
- h. Coercive Action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.
- i. Administrative Settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification explaining the basis for the settlement (e.g., recent court awards exceeding an Agency's testimony as to value, estimated trial costs, or valuation problems) shall be included in the Agency's files. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying a settlement. Such action would invalidate the appraisal process.
- j. Payment Before Taking Possession. Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase
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price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

- k. Uneconomic Remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. For purposes of this requirement, the term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, which has little or no value or utility to the owner, as determined by the Agency.
- l. Inverse Condemnation. If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.
- m. Fair Rental. If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (NOTE: Generally, the Agency's right to terminate occupancy on short notice, whether or not the renter also has that right, supports the establishment of a lower rent than that for a longer, fixed term.)

5-3. CRITERIA FOR APPRAISALS (49 CFR 24.103).

- a. Definition of Appraisal. The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- b. Standards of Appraisal. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established

and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

- (1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
- (2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
- (3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
- (4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- (5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- (6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

c. Influence of the Project on Just Compensation.

- (1) To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (In other words, a property owner should not be penalized because of a decrease in value caused by the project, nor reap a windfall at public expense because the announcement of a project caused an increase in value.)
- (2) If permitted by State law, the value for a partial taking is the amount by which the fair market value of the entire property, disregarding the increase or decrease in value caused by the project, exceeds the fair market value of the remainder, taking into account the increase or decrease caused by the project.

d. Owner Retention of Improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at Paragraph 1-21) of the retained improvement.

Example: If a residential property is valued at \$20,000 and the salvage value of the house to be retained and relocated by the owner is \$1,000, the owner will net \$19,000 at the closing. (Paragraph 3-3d(5) provides guidance on computing a replacement housing payment for an owner-occupant that retains, relocates and reoccupies a dwelling.)

e. Qualifications of Appraisers.

- (1) The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified. A contract (fee) appraiser making a "detailed appraisal" under a contract executed after December 31, 1992 must be certified under State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).

- (2) To help identify the best qualified appraisers for particular assignments, the Agency should make appropriate inquiries to users of appraisal services, particularly other public agencies and condemnation trial attorneys for the Agency and other public agencies. Appraisals, including review appraisals, may be performed by fee appraisers or staff appraisers.
- f. Conflict of Interest. No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the interest acquired is \$2,500, or less.
- g. Guideform Appraisal Contract. A guideform appraisal contract is included as Appendix 20. The guideform is optional.
- 5-4. REVIEW OF APPRAISALS (49 CFR 24.104). The Agency shall have an appraisal review process and, at a minimum:
- a. A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions. Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value.
- b. If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with Paragraph 5-3 and determine or recommend fair market value.
- c. The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. (The level of explanation depends on the complexity of the appraisal problem. For a low value property requiring an uncomplicated

valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.) Any damages or benefits to any remaining property shall also be identified in the statement.

5-5. ACQUISITION OF TENANT-OWNED IMPROVEMENTS (49 CFR 24.105).

- a. Acquisition of Improvements. When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, and other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.
- b. Improvements Considered to be Real Property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Paragraph 5-5.
- c. Appraisal and Establishment of Just Compensation for Tenant-Owned Improvements.
 - (1) Just compensation for a tenant-owned improvement is the greater of: the amount which the improvement contributes to the fair market value of the whole property, or its salvage value. The term "salvage value" is defined in Paragraph 1-21.)
 - (2) If the Agency concludes that neither the contributory (enhancement) value nor the salvage value of the improvement provides fair and equitable compensation, it may elect to determine, and offer to the owner, the depreciated value in place of the improvement installed.
- d. Special Conditions. No payment shall be made to a tenant-owner for any real property improvement unless:
 - (1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and
 - (2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

- (3) The payment does not result in the duplication of any compensation otherwise authorized by law.

If the owner of the land and a tenant disagree as to the ownership of an improvement, the Agency may institute a condemnation proceeding. The court would then resolve the issue.

- e. Alternative Compensation. Nothing in this Chapter shall be construed to deprive the tenant-owner of any right to reject payment under this Chapter and to obtain payment for such property interests in accordance with other applicable law.

5-6. EXPENSES INCIDENTAL TO TRANSFER OF TITLE TO THE AGENCY (49 CFR 24.106).

- a. The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:
- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary survey and legal description of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;
 - (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
 - (3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.
- b. Whenever feasible, the Agency shall pay for the incidental expenses directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency. To avoid duplicate expenditures, the property owner shall be informed early in the acquisition process of the Agency's intent to make such arrangements.

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- 5-7. CERTAIN LITIGATION EXPENSES (49 CFR 24.107). The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:
- a. The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or
 - b. The condemnation proceeding is abandoned by the Agency other than under an agreed upon settlement; or
 - c. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.
- 5-8. DONATIONS (49 CFR 24.108). Notwithstanding the provisions of this Chapter, a property owner may, after being fully informed by the Agency of a person's right to receive just compensation for property taken for a project, donate his or her property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency must obtain an appraisal of the real property unless the owner, in writing, releases the Agency from such obligation, or, as provided in Paragraph 5-2c(1)(b), the valuation problem is uncomplicated and the fair market value does not exceed \$2,500. Whenever a State agency acquires real property under this donation provision, it must obtain the written consent of the owner. Such consent must indicate that the owner understands that under the URA he/she cannot be required to sell the real property to the State agency for less than its appraised fair market value.
- 5-9. PROPERTY OWNER WITH CONFLICT OF INTEREST.
- a. Policy. A conflict of interest exists whenever the owner of an interest in real property that is to be acquired for a HUD-assisted project serves as an officer of the grantee or its designated acquiring agent or exercises any other responsible function in connection with that project. A grantee must establish safeguards to prohibit employees from using positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they

have family, business, or other ties. The grantee must document its files to enable HUD to review the adequacy of actions taken.

- b. Examples of Safeguards. Among the various measures which a grantee could adopt to prevent the possibility of undue personal enrichment by real property owners who may be in a conflict of interest position are:
- (1) Disclosure. The grantee may require disclosure of any potential conflict of interest to the governing body of the locality, to the grantee's legal counsel, and as otherwise may be appropriate.
 - (2) HUD Price Concurrence. The grantee may request that HUD review the appraisals and the determination of just compensation and concur in the proposed and final acquisition prices.
 - (3) Condemnation. The grantee may acquire the property through condemnation and let the court determine just compensation for the property. This is especially appropriate if the owner is unwilling to sell his or her property for its appraised fair market value.

APPENDIX 3

**Voluntary, Arm's Length Purchase Offer Form
(Copy of Exhibit 5-1 of HUD Handbook 1378)**

GUIDEFORM NOTICE -- Disclosures to Seller with
Voluntary, Arm's Length Purchase Offer

Dear _____:

This is to inform you that (Agency/Person) would like to purchase the property located at (Street Address or Other Property Identification) , if a satisfactory agreement can be reached. We are prepared to pay \$_____ for clear title to the property under the conditions described in the attached proposed contract of sale.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

1. The sale is voluntary. If you do not wish to sell, the (Agency/Person) will not acquire your property. The (Agency/Person) does not have the power to acquire your property by condemnation (i.e., eminent domain) [will not use the power of eminent domain to acquire the property].
2. We estimate the fair market value of the property to be \$_____.

Since the purchase would be a voluntary, arm's length transaction, you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation. Also, as indicated in the contract of sale, this offer is made on the condition that no tenant will be permitted to occupy the property before the sale is completed.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property under the conditions described in the attached contract of sale, please sign the contract and return it to us.

If you have any questions about this matter, please contact _____.
His/Her telephone number is _____.

Sincerely,

(Name/Title)

Enclosure

APPENDIX 4

Agreement for Appraisal Services for Acquisition (Copy of Appendix 20 of HUD Handbook 1378)

AGREEMENT FOR APPRAISAL SERVICES (ACQUISITION)

THIS AGREEMENT entered into this _____ day of _____, 19_____, by and between _____ of the City of _____, State of _____, hereinafter referred to as the "Agency," and _____, hereinafter referred to as the "Appraiser."

WITNESSETH THAT:

WHEREAS, the Agency proposes to acquire certain real property and desires that the Appraiser furnish the Agency certain services with respect to such property, including an appraisal of each parcel of the property, and the Appraiser represents that he or she is fully qualified to perform such services and will furnish such services personally; and

WHEREAS the services to be provided under this Agreement are necessary to achieve the purposes of _____ and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

NOW, THEREFORE, the Agency and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE 1. Property To Be Appraised. A description of the real property to be appraised, including an identification of any interests in the real property to be specifically excluded from appraisal, are set forth in the attached Exhibit A. A separate appraisal is to be furnished for each "parcel." (The term "parcel" means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel to be acquired by the Agency shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered.) Each parcel shall be considered to include all right, title, and interest of the owner in or to any adjacent or abutting streets, alleys, or other public rights of way.

ARTICLE 2. Purpose and Basis of Valuations.

(a) Purpose and Significance of Appraisals. The appraisals to be furnished under this agreement are required by the Agency for its guidance in making fair and impartial determinations of fair market value and the just compensation to be offered to each property owner. The Appraiser shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the Agency. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and his analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how he reached his valuation conclusions.

(b) Appraisal Standards. The appraisals under this agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin, or to racial, religious or ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

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(c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of the report unless the Agency has specified some other date of valuation.

(d) Relocation Assistance. The Appraiser's analyses and opinions of property value shall not reflect any allowance for the relocation payments and other assistance provided under the URA.

(e) Influence of Project on Property Value. In forming opinion(s), the Appraiser shall disregard any decrease or increase in the fair market value of the real property to be acquired, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner. (In the case of a partial acquisition, using the before-and-after method of valuation, the Appraiser's opinion of the value of the remaining not-to-be-acquired portion of the property shall reflect any increase or decrease in value attributable to the project.) If the determination of changes in value caused by the project is a problem, the Appraiser's report shall cite the ruling followed and its source and shall explain the effect of the ruling on his opinion of value.

ARTICLE 3. Scope of Appraiser's Services. The Appraiser agrees to perform the following services:

(a) Appraise each parcel and prepare and deliver to the Agency, within _____ calendar days after the date of this agreement, _____ copies of the appraisal report(s) conforming to the provisions of this agreement. The Appraiser shall personally inspect each parcel, including all buildings, structures, fixtures, and other improvements to the property. The Appraiser shall give the owner or his designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, to the extent practicable, ascertain the rights of all parties in possession and note for consideration all factual information and comments furnished by the owner or his representative relevant to the appraisal.

(b) Testify as an expert witness in behalf of the Agency in any judicial proceeding involving any property appraised under this agreement. Such services shall include such reasonable time as may be required for reinspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the Agency, and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article 6.

(c) Modify or furnish supplements to any appraisal report furnished under this agreement, without additional cost to the Agency, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the Agency, or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the Appraiser signed the report. If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraiser shall, if requested by the Agency, furnish the Agency a supplementary report updating this valuation and the supporting data and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article 6.

(d) Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to

continue occupancy for an extended period after the Agency acquires the property, or the right to remove any building, structure, fixture, or other improvement. The compensation to be paid to the Appraiser for furnishing any such valuation shall be determined in accordance with Article 6.

(e) Consult with the Agency and its legal counsel regarding services to be performed by the Appraiser, at such time(s) as may be mutually convenient for the parties to this agreement. The Appraiser shall initiate such consultations whenever the Appraiser is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this agreement. There shall be no charge by any party for such consultations.

ARTICLE 4. Contents of Appraisal Reports. Each appraisal report to be furnished by the Appraiser under this agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

(a) A summary headed "Appraisal Report for _____" that provides the following:

- (1) Project name and number.
- (2) Date of the report.
- (3) Parcel number, address of the property, brief identification of all interests in the property appraised, and the name of the owner(s) including any tenant-owners.
- (4) Date(s) of the Appraiser's inspection of the property with the owner or the owner's designated representative. Include the name of each owner or representative of an owner who accompanied the Appraiser during the inspection and the interest held in the property or the representative capacity of each such person.
- (5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.
- (6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the Agency, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the Agency.
- (7) The certifications of the Appraiser (i) that the Appraiser personally made a thorough inspection of the property, (ii) that, to the best of the Appraiser's knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither the Appraiser's employment nor compensation is contingent on the valuation reported, and (iv) that the Appraiser has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any

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other interest that would conflict in any way with the services performed or the making of an impartial report.

- (8) A certification that, in the Appraiser's opinion, the fair market value of the property is [an amount to be stated] as of [the date of valuation].
- (9) The signature of the Appraiser.
- (b) The name and address of the owner of the property and the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.
- (c) The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the Agency's project. If there are any separately held interests in a parcel, which are to be acquired with other interests in the same parcel, such as leaseholds, tenant-owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.
- (d) Off-record title information concerning interests or instruments that affect title, but are not of record, such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the Agency and defer completion of the appraisal until the question is resolved.
- (e) Basic property data including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography, dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designed use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.
- (f) Report of any condition or occupancy of the property in violation of law that may affect the value of the property.
- (g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the Appraiser's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the

Appraiser reached the conclusions as to the highest and best use of the property and as to its suitability or adaptability for any other use(s). The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.

(h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching the conclusion as to value and all data and analyses needed to explain and support the valuation. The supporting data and analyses furnished in the appraisal report shall include the following:

- (1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.
- (2) An identification of the most recent sale of each property appraised and any other sales of such property during the last five (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming the opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.
- (3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the Appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraiser's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.
- (4) All other information, analyses, and estimates considered by the appraiser to be relevant to the estimation of the fair market value of the property.
- (5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part or interest to be taken is such a small part of the whole property that

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the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the Appraiser shall be supported in the report by the data and analyses by which the Appraiser reached his/her conclusions.

For information purposes, the appraisal report shall also contain the Appraiser's estimate of the fair market value of the to-be-acquired part or interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser shall furnish a separate estimate of the fair market value of a "parcel" comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)

- (6) Such maps, plans, photographs, or other exhibits as are necessary to explain or illustrate the analyses of the Appraiser.
- (7) The Appraiser's evaluation of the indications of value deduced from the separate analyses of the various evidences of value and an explanation of how the Appraiser reached his/her final conclusion as to the fair market value of the property.

(i) The opinion of the Appraiser as to the fair market value of the land, as if vacant. The value shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which the Appraiser reached his/her conclusions as to the highest and best use of the land and the land value.

(j) A property analysis if the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of the lease term). The property analysis must be approved by the Agency before the appraisal is completed and, as approved by the Agency, shall be included as an exhibit in the Appraiser's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property as follows:

- (1) Ownership.
 - (i) Owner of the land.
 - (ii) Each tenant in occupancy.
 - (iii) Each non-occupant owner of any fixtures or other improvements, or personal property on the premises.

- (2) Type of property.
- (i) Building, structure, or fixed improvement.
 - (ii) Building equipment, removable.
 - (iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.
 - (iv) Personal property, identified as to types and approximate amounts, or otherwise, as needed to prevent misunderstandings as to the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the Agency's project, and will not be required by the Agency to be removed, such as a pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal.

(k) If machinery and equipment or other fixtures used in a trade or business, farm operation, or institutional or governmental function constitute part of the real property, the appraisal report shall contain a separate schedule which provides separate estimates for each such item, as prescribed below. If there is more than one owner of such items, a separate schedule shall be furnished for each owner. The information and conclusions to be furnished on each item are as follows:

- (1) Description of the item, including, as appropriate, the manufacturer, model and serial number, size or capacity, age and condition, and degree of obsolescence. Accessories and spare parts, special foundations, and power wiring and process piping generally shall be listed separately, following the listing of the item(s) to which they apply.
- (2) Estimate of the replacement cost installed of the item as listed and identified (excluding any elements listed separately). Separately identify the basis of estimated replacement cost (new or used).
- (3) The contributive (enhancement) value of the item to the fair market value of the real property as a whole.
- (4) Estimated fair market value of the item for removal from the property at a purchaser's expense. Such value shall be considered to be the probable selling price if the item were offered for sale for removal from the property at the purchaser's expense, allowing a reasonable time to find a purchaser buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including salvage for serviceable components and scrap when it appears that will provide the highest value.

The schedule(s) of estimates shall be consistent with the property analysis approved by the Agency, as provided in Paragraph 4(j). The Appraiser is permitted to use the services of such technical specialists as may be needed to enable the Appraiser to provide valid estimates and sound valuations. The schedule(s) shall be supported by an explanation of the procedures followed in gathering the necessary market information and technical data. The principal purpose of the Appraiser's accompanying narrative, however, must be to explain his analyses and his evaluations of the dollar amount of the overall contribution of the machinery, equipment, and fixtures to the fair market value of the real property as a whole. The report shall contain any layout plans, sketches, or photographs that are reasonably necessary for locating or identifying the facilities or illustrating the Appraiser's analyses.

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(l) If there are separately held interests in the real property to be acquired, such as easements, leaseholds, air rights, life estates, and oil, gas, or mineral rights, and the division of ownership is not of such character as to destroy the practical unity of the property, the Appraiser shall apportion his estimate of the fair market value of the property (all interests in the property to be acquired) to each separately held interest. (However, tenant-owned improvements shall be valued in accordance with Paragraph 4(m) below.) The report shall contain the data, analyses, and reasoning by which the Appraiser made the apportionment. If the "unit rule" is regarded as not applicable because the division of ownership is such as to diminish the fair market value of the property as a whole, the separate interests involved shall be appraised separately.

(m) Tenant-owned improvements. If any building, structure, fixture, or other improvement to the property is identified as being the property of a tenant who has the right or obligation to remove it at the expiration of the lease term, the Appraiser's estimate of the fair market value of the improvement shall be the greatest of (1) the amount which the improvement contributes to the fair market value of the property, (2) the in-place value of the improvement as part of the real property (the depreciated replacement cost of the improvement installed), or (3) the fair market value of the improvement for removal from the property at the purchaser's expense. The appraisal report shall state the basis for the valuation of the improvement and furnish the data and analyses on which the valuation was made.

(n) If the property is a multifamily or mixed-use (residential and nonresidential) property and an owner of a compensable interest in the property also occupies a dwelling in the property, the Appraiser shall furnish an apportionment of the estimate of the fair market value of the whole property to such dwelling and to the remainder of the property. For the purpose of this paragraph, an occupant of a dwelling shall be considered to own a compensable interest in the property if he or she holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of valuation, or holds an interest in a cooperative housing project which includes the right to occupy the dwelling, or is the contract purchaser of any of the foregoing estates or interests, or has a leasehold interest with option to purchase. The Appraiser's report shall explain how the apportionment was made.

ARTICLE 5. Services To Be Provided by Agency. The Agency agrees to furnish the Appraiser the following:

(a) A map or plat, based on official records, of the property described in Article 1, showing the boundaries and dimensions of the parcels to be appraised. Each parcel shall be designated by a number, and the parcel numbers shown on the Appraiser's reports shall correspond to the parcel numbers shown on the map or plot. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the Agency of any such additions.

(b) An ownership data report for each parcel. That report will show all estates and interests in the parcel as shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:

- (1) The name (and address, if available) of the owner appearing on record;
- (2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title;
- (3) Identification of the conveyance(s) by which the present owner acquired title, including: the date of the conveyance(s); the date, book and page numbers, and place of recordation; the name (and the address, if available) of the grantor of such conveyance; the stated consideration; the amount of any mortgages or encumbrances placed of record or to which

title was subject at time of conveyance (so far as determinable from an examination of the conveyance); and the amount of any State or local transfer taxes that were based on the amount of the consideration;

- (4) Outstanding estates and other rights or interests of record, including easements, use restrictions, mineral rights, leases, and any known, but unrecorded, interests of other parties. Sufficient information shall be furnished to disclose the probable effect of such outstanding interests on the title of the record owner;
 - (5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks, public utilities, and similar public facilities;
 - (6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.
- (c) Legal advice, upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

ARTICLE 6. Payment. In consideration of the services provided by the Appraiser under this agreement, the Agency agrees to make payments to the Appraiser upon the submission to the Agency of properly certified invoices, as follows:

(a) For appraisal reports accepted by the Agency, and for all other services furnished in accordance with Article 3, except services furnished in connection with judicial proceedings under Paragraph 3(b), the updating of appraisals under Paragraph 3(c), and the valuation of reservations of rights in owners under Paragraph 3(d), the lump sum of _____ dollars, which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

(b) For services furnished by the Appraiser in connection with judicial proceedings as provided in Paragraph 3(b) (except services as an expert witness in such a proceeding), the updating of appraisals as provided in Paragraph 3(c), and the valuation of reservations of rights in owners as provided in Paragraph 3(d), _____ dollars per hour or fraction of an hour actually engaged in performing the services, including travel time. All expenses of the Appraiser, including travel expense and subsistence, shall be borne by the Appraiser.

(c) For services as an expert witness for the Agency in judicial proceedings as provided in Paragraph 3(b), the Appraiser and the Agency hereby agree that the fair and reasonable compensation for the Appraiser's services shall be _____ dollars for each day's attendance in court.

ARTICLE 7. Agreements of Appraiser. As an inducement to the execution of this agreement by the Agency and in consideration of the agreements to be performed by the Agency, the Appraiser agrees that:

(a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform. Attached as Exhibit B, is a statement by the Appraiser, certified by the Appraiser to be true and correct, setting forth the Appraiser's technical qualifications, general appraisal experience, specific experience in appraising properties of the type involved

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in this agreement, the courts in which he or she has testified as an expert witness, and other information pertinent to establishing his or her technical qualifications.

(b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this agreement and has not made and will not make any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this agreement.

(c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Article 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this agreement, any person having any such interest. Until the property is acquired by the Agency or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the Agency, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.

(d) Services To Be Confidential. All services, including reports, opinions, and information, to be furnished under this agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Agency, without prior written approval of the Agency, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of the Appraiser's staff or organization divulges any such information except as may be required by law.

(e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of a property appraised under this agreement, the employment of such person or persons for such purpose shall not place the Agency under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished under this agreement.

(f) Equal Employment Opportunity. During the performance of this agreement:

- (1) The Appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Appraiser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
- (2) The Appraiser will, in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(g) Assignment. The Appraiser's rights, obligations, and duties under this agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this agreement to a bank or financial institution. This agreement may be assigned by the Agency to any corporation, agency, or instrumentality having authority to accept the assignment.

(h) Subcontracting. None of the work or services covered by this agreement shall be subcontracted without the prior approval of the Agency.

(i) Records. The Appraiser shall maintain records of all details with respect to the services to be performed under this agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the Agency or the acquisition is abandoned, whichever is later.

(j) Affidavits of Compliance. The Appraiser will, if requested by the Agency, furnish the Agency affidavits certifying compliance with the provisions of this Article 7.

ARTICLE 8. Changes. The Agency, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

ARTICLE 9. Termination of Agreement for Cause. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner his or her obligations under this agreement, or if the Appraiser shall violate any of the provisions of this agreement, the Agency may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Appraiser liable for any damages caused to the Agency by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this agreement shall, at the option of the Agency, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Agency. The Appraiser, however, shall not thereby be relieved of liability to the Agency for damages sustained by the Agency by reason of any breach of the agreement by the Appraiser, and the Agency may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the Agency from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Article solely for reasons of delay if the delay is due to causes beyond his or her control and without his or her fault or negligence, but this shall not prevent the Agency from terminating this agreement because of such delay.

ARTICLE 10. Interest of Members of Agency. No member of the Agency shall participate in any decision relative to this agreement affecting, directly, or indirectly, his or her personal interests. No such member and no other officer, agent or employee of the Agency having any responsibility or function in connection with this agreement shall have any private interest, direct or indirect, in this agreement or the proceeds of this agreement.

ARTICLE 11. Officials Not To Benefit. No Member of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

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ARTICLE 12. Notices. Any action by the Agency under this agreement may be taken by _____, or such other person(s) as the Agency may, by written notice to the Appraiser, designate for such purpose. All notices to the Appraiser shall be considered to be properly given if mailed to the address specified below, or delivered personally to the Appraiser. All notices or other papers given to the Agency shall be considered to be sufficiently given if mailed, postage prepaid to _____, at _____, or to such other representative or address as the Agency may designate to the Appraiser in writing.

IN WITNESS WHEREOF, the Agency and the Appraiser have executed this agreement on or as of the date first above written.

(Appraiser)

(Street Address)

(City) (State) (Zip code)

(Agency)

By:

(Title)