

RESOLUTION NO. 39-21

A RESOLUTION REPEALING RESOLUTION 155-07 AND ADOPTING THE CITY OF COLORADO SPRINGS PROCEDURE MANUAL FOR THE ACQUISITION AND DISPOSITION OF REAL PROPERTY INTERESTS, REVISED 2021

WHEREAS, on September 11, 2007, City Council passed Resolution No. 155-07, adopting The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests (the "2007 Manual"); and

WHEREAS, Real Estate Services, a Division of the Planning and Community Development Department, reviewed existing rules and practices, and recommended appropriate changes to the existing Manual; and

WHEREAS, a stakeholder committee of twenty-three (23) members, comprised of two (2) City Councilmembers, five (5) Utilities representatives, and sixteen (16) representatives from various City Departments/Enterprises revised the 2007 Manual to produce the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021 (the "2021 Manual"), a copy of which is attached hereto as Exhibit A.

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

Section 1. That the City Council of Colorado Springs hereby rescinds Resolution No. 155-07 dated September 11, 2007, and all other amendments, and hereby adopts the 2021 Manual.

Section 2. That the City, its Departments and Enterprises and purchasers of City-owned real property interests shall follow the procedures set forth in the 2021 Manual for the acquisition and disposition of real property interests by deed or other conveyance documents.

Dated at Colorado Springs, Colorado this 23rd day of March, 2021.



Council President

ATTEST:



Sarah B. Johnson, City Clerk





City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021

Real Estate Services
March 2021



Table of Contents

Chapter 1	Introduction	Page 1-2
Chapter 2	Roles and Responsibilities of the Real Estate Services Office	Page 3-5
Chapter 3	Definitions	Page 6-12
Chapter 4	Real Property Acquisition	Page 13-16
Chapter 5	Disposal of Surplus Property	Page 17-21
Chapter 6	Land Exchange	Page 22-24
Chapter 7	Easement Acquisition	Page 25-28
Chapter 8	Conveyance Acceptance	Page 29-30
Chapter 9	Valuing Real Property Interests	Page 31-33
Chapter 10	Easement Encroachments, Vacations and Assignments	Page 34-35
Chapter 11	Leases and Licenses	Page 36-39
Chapter 12	Intra-City Real Property Transfers and Uses	Page 40-42
Chapter 13	Environmental Review or Environmental Audit	Page 43-44
Appendices	<ol style="list-style-type: none"> 1. City Council Resolution No. ____-21 Adopting this Manual 2. City Council Resolution No. 22-15 - Use of Colorado Springs Airport Property 3. The Charter of the City of Colorado Springs Article X 	

Chapter 1 - Introduction

- 1.1 **Purpose.** Pursuant to City Charter § 1-20, the City of Colorado Springs is authorized to own, acquire and dispose of real and personal property necessary for the exercise of any of its powers, privileges or functions. The City Council is vested with fiduciary responsibilities to manage all property that is owned in the name of the City of Colorado Springs in the best interests of the City. City Council intends this Manual to establish standard procedures and uniform practices for the Acquisition and Disposition of City-owned real property interests for any program, Project or purpose. City Council finds and determines that the procedures and practices established by this Manual will accomplish the following objectives:
- a. Ensure the City makes every reasonable effort to acquire real property interests expeditiously through negotiated agreements. Although the City has inherent authority to exercise the power of eminent domain, condemnation should be an option of last resort.
 - b. Ensure the City receives Fair Market Value for all property interests conveyed to third parties unless a public purpose is served through a conveyance at less than Fair Market Value.
 - c. Ensure the City conducts its Acquisition and Disposition activities in a manner that minimizes hardships to property owners, tenants and the City.
 - d. Ensure the City handles all real property Acquisitions and Dispositions fairly and consistently. Ensure that the City maintains appropriate record keeping for all real property interest transactions.
 - e. Promote public confidence in the City's real property Acquisition and Disposition activities.
- 1.2 **How to Use this Manual.** This Manual sets forth the procedures necessary to acquire or dispose of real property interests on behalf of the City of Colorado Springs and its enterprises. The roles and responsibilities of Project Managers and Real Estate Services ("RES") are defined to ensure that all necessary steps are taken by the appropriate person at the appropriate time.

Except in exigent circumstances which present an imminent threat to property or the public health, safety and welfare or as provided in Sections 1.3, 1.4 and 1.5 below, compliance with the procedures and processes set forth in this Manual is required, and the RES Manager and Project Manager may modify the processes and procedures included in this Manual, but must comply with all provisions pertaining to City Council approvals.



- 1.3 **Supplemental Administrative Procedures.** The Mayor and the Chief Executive Officer of Colorado Springs Utilities may choose to establish supplemental administrative procedures, but those supplemental administrative procedures shall not supersede or substitute for the procedures and practices contained in this Manual. RES will support and comply with any supplemental administrative procedures to the extent those supplemental administrative procedures do not conflict with the provisions of this Manual.
- 1.4 **Restricted-Funded Programs.** If a Project receives restricted funds, RES shall assure that all rules and regulations including handbooks and manuals of the applicable agency are followed. In the event of a conflict between procedures or provisions in this Manual and the rules and regulations of the applicable agency, the rules, regulations and procedures of the applicable agency shall control.
- 1.5 **Transactions Outside of the Manual.** Certain real property transactions are wholly or partially outside of the procedures set forth in this Manual. These transactions include Acquisitions by way of plat dedications, Acquisitions in accordance with annexation agreements, Acquisitions involving Cure Easements, or developer initiated Easements, transactions pursuant to intergovernmental agreements, transactions involving water rights and/or mineral rights, tax lien sales, other public sales, foreclosures, required conveyances, transactions required to clear title issues, or other agreements with public or private entities. Acquisitions above the Acquisition threshold (as defined in Chapter 9) and disposals of fee interests in real property shall require City Council approval even if the transaction is otherwise outside of the Manual, unless the disposal is required to clear a title issue.
- 1.6 **Relocation.** Any City Project that involves the relocation of businesses, farms/ranches, homeowners or tenants (commercial or residential) must comply with the provisions contained in Chapter 6, Article 13 of the Code of the City of Colorado Springs 2001, as amended ("City Code"). RES will assist the Project Manager in retaining the services of a professional relocation Consultant to accomplish the relocation. Expenses for the relocation and any Consultant will be paid from the Project budget.
- 1.7 **Rules of Construction.** In the construction of phrases and terms used in this Manual, the rules found in City Code §1.1.104 shall be observed unless excluded by express provision or inconsistent with the intent of the City Council. Definitions contained in City Code §1.1.106 shall apply to terms not defined in this Manual.
- 1.8 **No Appeal.** Any determination made by the City pursuant to this Manual is not appealable unless otherwise provided by law.



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

- 2.1 **Custodian of Records.** RES is the custodian of the City's real estate asset records and shall take all necessary steps to protect these records in perpetuity. RES is responsible for updating and maintaining an inventory of all City-owned real property assets, except as otherwise provided in this Manual
- a. RES will receive records and will maintain a computer database to track and archive all files and records pertaining to City-owned real estate assets.
 - b. RES shall promulgate Standard Operating Policies ("SOPs") for record maintenance and required documents to be included in real estate asset files.
 - c. Original deeds or other documents of transaction or conveyance must be filed with RES.
 - d. Utilities' Developer Initiated Easements will be obtained and maintained in accordance with Utilities' policies and standards.
 - e. Easements or other Real Property interests dedicated by plat shall be as indicated in the recorded plat.
- 2.2 **Legal Compliance.** RES is responsible for obtaining "approval as to form" from the City Attorney's Office for all deeds, contracts and other documents pertaining to the City's real property transactions and assets, including but not limited to contracts, deeds, leases, licenses, and easements. Through consistent compliance with the requirements contained in this Manual, RES will assure that all City land transactions comply with the City Charter, City Code, Rules and Procedures of City Council, Colorado Springs Utilities Board Policies, RES SOPs, and state and federal law. RES will work with the City Attorney's Office to resolve any title or legal description issues that may arise.
- 2.3 **RES Manual, SOPs and City Real Estate Forms.** RES is responsible for maintaining and assuring compliance with this Manual, for promulgating SOPs to implement the procedures required by this Manual, and for maintaining an index of real estate contracts, deeds, leases and other form documents that have been "approved as to form" by the City Attorney's Office. SOPs shall address the implementation, administration, operation and interpretation of this Manual.
- 2.4 **Service Level Agreements.** RES has authorization to enter into Service Level Agreements with Colorado Springs Utilities. The Service Level Agreement would define additional services not required by this Manual.



- 2.5 **Amendment.** The text of this Manual may only be amended by City Council resolution. RES SOPs, approved real estate forms, and appendices to this Manual may be amended by the RES Manager and City Attorney's Office as needed.
- 2.6 **Title Work.** RES is responsible for obtaining and reviewing Title Commitments and policies in an effort to assure that all information pertaining to ownership, title history, surveys and other information is verified and correct. RES will notify the Project Manager and City Attorney's Office if any title document or information is a concern or may compromise the City's interest in the property. The City Attorney's Office, Project Manager and other appropriate City staff will take any necessary steps to resolve the concern and protect the City's interest.
- 2.7 **Closing Documents.** RES is responsible for reviewing and approving all closing documents to assure the documents are correct and accurately reflect the transaction prior to closing.
- 2.8 **Consultants.** RES is responsible for providing guidance as necessary in selecting Consultants and for assisting the City's Consultants to provide Relocation, Acquisition, Disposition, leasing or other real estate related services.
- 2.9 **Recording Verification.** RES shall regularly review all filings with the El Paso County Clerk and Recorder naming the City of Colorado Springs as grantee or grantor. RES will verify that any conveyance naming the City as grantee was properly accepted by the City and has been removed from the tax rolls, and that any conveyance naming the City as grantor has been recorded and returned to the tax rolls, as appropriate.
- 2.10 **Plat Review.** As part of the land development review Buckslip Process, RES will review plats and replats prior to recording. RES will verify that any purported dedication of property to the City is properly articulated in the dedication statement and represented on the plat, and that existing Easements and other City property interests are identified and called out in plats and replats.
- 2.11 **Signature Authority.** In accord with City Charter § 4-10, all Deeds conveying City-owned property to third parties and all Easement Vacations must be signed by the Mayor. Unless otherwise provided by this Manual, the City Code, City Council resolution or Mayor, the RES Manager, or designee, has signature authority for the following documents:
- a. Licenses.
 - b. Leases.
 - c. Value findings.
 - d. Contracts to buy or sell.



- e. Closing documents.
- f. Easement Encroachments.
- g. Acceptance statements or acceptance verifications.
- h. IRS documents acknowledging a Donation to the City of Colorado Springs.
- i. Documents in support of a request for City Council approval.
- j. All other documents related to Real Estate matters, except as otherwise provided for in this Manual.



Chapter 3 – Definitions

Acquisition	The process of acquiring real property interests in the name of the City of Colorado Springs for a Project, public purpose or public need.
Administrative Settlement	An administrative settlement is reached during real property interest Acquisition negotiations and is the last and best offer the City makes to acquire property interests. The settlement is based on property value related evidence, administrative or Project considerations or other factors approved by the Project Manager, RES Manager and the City Attorney's Office.
Appraisal	A written statement or determination of what constitutes a fair price, valuation or estimation of worth for a described property interest as of a specific date prepared by a qualified independent appraiser. An appraisal should be supported by the presentation and analysis of relevant market data and information. The term appraisal is also used as a synonym for a written appraisal report.
Assignment of Easement	The transfer of all or a portion of an easement from the easement holder to a third party.
Buckslip Department	The term used for Departments and other entities that are placed on a distribution list to review and comment on applications or requests.
Buckslip Process	A process by which Departments and other entities are provided information (plans, Project statements, technical reports and other pertinent documents) regarding real estate transactions or requests, and in turn, are asked to provide comments by a certain date. These comments are used in the review and processing of the Acquisition and Disposition of real property interests.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act



Community Benefit	A traditional governmental function or a charitable endeavor that City Council determines will contribute to the well-being of the State, Region, or City, or any of their institutions or residents.
Consultant	Persons or entities who are retained to provide Acquisition, Disposition, Relocation, Appraisal, survey, leasing and other real estate related services to the City.
Department	An administrative Department, unit, office, work group or agency of the municipal government and its enterprises.
Department, Acquiring	A Department that seeks to acquire real property interests.
Department, Controlling	A Department that has administrative stewardship responsibility for real property interests.
Department, Disposing	A Controlling Department that seeks to dispose of real property interests.
Department, Landlord	A Department that has administrative responsibility for real property that is leased to a tenant.
Department, Requesting	A Department that requests RES assistance or services in the Acquisition or Disposition of real property interests.
Department, Tenant	A Department that seeks to lease real property.
Disposition	The process of disposing of City-owned real property interests.
Donation	A conveyance of a real property interest to the City that may qualify as a non-cash charitable contribution, pursuant to IRS rules.



<p style="text-align: center;">Easement</p>	<p>An interest in land not owned by the City, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose. Easements can be permanent or temporary. This term may be used to describe either the right of use or the document conferring the right.</p>
<p style="text-align: center;">Easement, Cure</p>	<p>An Easement acquired to acknowledge a prescriptive right or to cure the trespass of existing City infrastructure that was originally installed and currently operates without the express permission of the property owner.</p>
<p style="text-align: center;">Encroachment, Easement</p>	<p>The placement of a privately owned structure over, under, across, or within a City-owned easement.</p>
<p style="text-align: center;">Easement, Temporary</p>	<p>Easement of limited duration acquired for the purpose of construction or repair of improvement, or other public uses not requiring a permanent easement. A Temporary Easement, is not included in the definition of Lease.</p>
<p style="text-align: center;">Environmental Audit</p>	<p>(Phase I ESA –ASTM Standard E1527) Typically includes a detailed site description, physical setting review (aerial photographs, interviews, etc.) and a site reconnaissance visit. Also included are a hazardous materials review, photographic documentation and preparation of a detailed report with appropriate conclusions and recommendations.</p>
<p style="text-align: center;">Environmental Review</p>	<p>The process authorized by City Code § 7.7.1802, by which a Department or Project Manager seeks to determine if a particular parcel of real property (including improvements) is subject to recognized environmental conditions. At the option of the Department or Project Manager, an environmental site review may include more inquiry than that constitutes all appropriate inquiry or, if the Department or Project Manager is not concerned about qualifying for LLP under CERCLA, less inquiry than that constituting appropriate inquiry. An Environmental Review is both different from and less rigorous than an Environmental Audit.</p>

<p>Fair Market Value</p>	<p>The price the property could have been sold for on the open market under usual and ordinary circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.</p>
<p>Funding Authority</p>	<p>Entities providing funding for the Acquisition of real property interests by the City which may or may not impose additional conditions on such Acquisitions.</p>
<p>Gift</p>	<p>A conveyance of a real property interest to the City for less than Fair Market Value where the grantor is not seeking classification of a non-cash charitable contribution, pursuant to IRS rules.</p>
<p>Joinder</p>	<p>The act of a person or entity of "joining" in a conveyance or agreement, as someone co-signing or co-executing it. It is not a separate agreement but rather participation in the already-existing agreement of another.</p>
<p>Just Compensation</p>	<p>The total price the City must pay to acquire an interest in real property. Just Compensation includes the Fair Market Value of the interest to be acquired plus any additional, reasonable and justified compensation paid. If it becomes necessary for the City to exercise the power of eminent domain, the amount paid through the court will be Just Compensation for the Acquisition of the property interest.</p>
<p>Lease/City as Landlord</p>	<p>Granted to allow the possession of public property, is usually limited to a reasonable market term not in excess of twenty-five (25) years (except as provided in § 10-60 of the City Charter) and is subject to the procedures in this Manual. Leases may or may not be revocable, in the discretion of the City.</p>
<p>Lease/City as Tenant</p>	<p>A contract by which one party (landlord, or lessor) gives to the City or its Enterprises the use and possession of lands, buildings, property, etc. for a specified time.</p>

<p>License</p>	<p>A "license" is granted for the use of public property that is not Right-of-way, is similar in nature to an Easement, is revocable at any time, is generally limited to a term of twenty-five (25) years and is subject to the procedures in this Manual.</p>
<p>LLP</p>	<p>Landowner Liability Protections</p>
<p>One Logical Purchaser</p>	<p>A single identified party who is willing and able to acquire a property and is an obvious purchaser due to one or more of the following:</p> <ul style="list-style-type: none"> • Location; • Title issues; • Furthers City Projects; • Dominant condemning authority; • De Minimis Transactions (see Section 5.6).
<p>Project</p>	<p>A City-funded program, project or activity that requires the Acquisition or Disposition of real property interests to complete the program, Project or activity, and that benefits the public.</p>
<p>Project Manager or PM</p>	<p>A City staff member who is responsible for the management and completion of a Project. The Project Manager has the authority to make decisions regarding the Acquisition and Disposition of real property interests necessary to the Project. The Project Manager also has the responsibility to obtain any necessary approvals from City Council or other governing boards to commence or complete the Project.</p>
<p>Real Estate Services or RES</p>	<p>The City office responsible for oversight of the City's Acquisition, Disposition and other activities related to the City's real property interests. This term may be used to describe either the Real Estate Services office or the Real Estate Services representative.</p>
<p>Relocation</p>	<p>The process of relocating individuals and/or businesses due to an acquisition by a condemning authority pursuant to applicable law.</p>



RES Manager	The administrative head of RES who is responsible for managing the activities and operation of the City's Real Estate Services Office.
Right-of-Way	Fee interest in a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, telephone line, shade trees or other similar uses. Rights-of-Way are not Easements; however, Easements can be located within rights-of-way.
Standard Operating Procedures or SOPs	Detailed, written instructions adopted by RES that establish processes for activities governed by this Manual.
Subordination Agreement	An agreement by a person or entity that owns a senior interest in or encumbrance on real property to make its interest junior to that of another. The most common example of a Subordination Agreement is one in which a mortgage lender agrees that its deed of trust or mortgage interest in a property, which would otherwise have been recorded first and be senior to an Easement, will be junior to the Easement. The effect of this agreement is that the Easement cannot then be foreclosed by the deed of trust holder/mortgage lender, so the Easement will "survive" a foreclosure and not be extinguished.
Surplus Property	Surplus Property is City-owned property or real property interests that are found or determined to be unneeded for the proper conduct of City affairs.
Title Commitment	Title insurer's commitment to provide an owner's title insurance policy.
Total Acquisition Amount	The total amount sum of Fair Market Value and Just Compensation paid to a property owner to acquire an interest in the owner's real property.
USPAP	Uniform Standards of Professional Appraisal Practices. USPAP represents the generally accepted and recognized standards of appraisal practice.



Utilities	Colorado Springs Utilities, the City's utility enterprise.
Vacation, Easement	Permanently relinquishing the City's ownership interest in a portion of or entire Easement by recording a Quitclaim Deed that has been signed by the Mayor.
Value Finding	An opinion of value which constitutes a fair price, valuation of estimation of worth for a described property interest as of a specific date prepared by Real Estate Services Staff and supported by confirmed values of comparable properties.

Chapter 4 – Real Property Acquisition

- 4.1 **Authority to Acquire.** Pursuant to 1-20 of the Charter of the City of Colorado Springs, the City has authority to acquire real property on behalf of its Departments and Enterprises.

If the Total Acquisition Amount exceeds the thresholds as set forth in Chapter 9 of this Manual, the Project Manager will seek City Council approval and, if an advisory board has oversight or advisory responsibilities for the property to be acquired, the advisory board must also review and make a recommendation to City Council prior to City Council consideration of the Acquisition.

From the onset of the Acquisition process, the Project Manager must determine whether, in the event negotiations fail, condemnation is an option. If so, the Acquisition process must conform to C.R.S. § 38-1-101 *et seq.*

Notwithstanding anything else in this Chapter to the contrary, where property is listed or offered for sale by the owner, the City may enter into a contract to purchase the property at the list or offer price contingent on the Value Finding or Appraisal resulting in a value that is equal to or more than the list or offer price. In the event the valuation is at or above the Acquisition threshold for City Council, the Acquisition shall be subject to City Council approval.

- 4.2 **Identify Affected Properties.** After a decision to acquire is made, the Project Manager submits a Request form to RES. The Project Manager and RES will meet to discuss the request, the process, necessary forms and timing. Based on the extent or funding source of the Project, a Consultant may be required to complete the real property Acquisition. The identification process shall generally begin with the following procedures.
- a. **Verify Property Ownership.** RES will order an ownership and encumbrance report (“O&E”) or Title Commitment to determine the legal owners of the property. The Title Commitment is reviewed by RES and issues identified on the Title Commitment are discussed with the City Attorney’s Office, and the Project Manager if necessary. If there are title issues that may be detrimental to the City or the Project, the Project Manager, with the advice of RES and the City Attorney’s Office, may choose to terminate the Acquisition. In that event, RES will send a “Withdrawal of Interest” letter to the property owner.
 - b. **Initial Value.** RES determines initial value. An estimation of value is performed to determine the valuation process to be followed.
- 4.3 **Negotiations.** The Project Manager is responsible for scheduling a pre-acquisition meeting with the property owner(s). RES attendance is optional. This meeting is intended to meet and familiarize the property owner with all aspects of the Project



and the proposed Acquisition. This meeting may be conducted by any appropriate communication method. All communications must be documented and forwarded to RES for the file.

- a. **Initial Contact.** After the Project Manager's pre-acquisition meeting, RES will contact the property owner. The Project Manager's attendance is optional. If the property owner is not interested in selling the property, the decision to acquire the property should be re-evaluated by the Project Manager, who may choose to terminate the Acquisition. If terminated, the RES representative will send a "Withdrawal of Interest" letter to the property owner.
- b. **Condemnation an Option.** If the property owner is not interested in selling the property and the Project Manager determines that the property is needed for the Project, the Project Manager will determine if condemnation is an option.
- c. **Notice of Intent.** RES sends a "Notice of Intent" letter to the property owner. This letter informs the property owner that either:
 - i. A Value Finding has been or will be prepared and that the City estimates the Fair Market Value to be less than or equal to \$20,000, and the City does not intend to obtain an Appraisal on its behalf; while further identifying the property owner's right to an Appraisal pursuant to C.R.S. 38-1-121 and Manual Chapter 9 if the estimated value of the property exceeds \$5,000, and condemnation is an option or;
 - ii. A City Appraisal will be ordered by RES. The property owner may obtain one owner's Appraisal at the City's expense in accord with Manual Chapter 9. The property owner may decline to obtain an Appraisal. Both Appraisals are paid for by the Project budget.
- d. **Permission to Enter.** A Permission to Enter form may be signed by the property owner and returned to RES before any Consultants, appraisers or City staff can enter the property. If the property owner will not grant permission to enter for Appraisal, environmental work or other purposes, the Project Manager and the RES Manager may seek City Council approval to pursue condemnation. If City Council does not choose to pursue the Acquisition it will be terminated. RES will send a "Withdrawal of Interest" letter to the property owner terminating the negotiations.
- e. **Environmental Information.** Per City Code § 7.7.1802, the Project Manager must accomplish an Environmental Review or Environmental Audit of the



property.¹ The Project budget will pay all costs associated with Environmental Reviews or Audits. At the Project Manager's discretion, the Acquisition may be terminated if the environmental information received is not acceptable to the City. If the Project Manager terminates the Acquisition, RES will send a "Withdrawal of Interest" letter to the property owner terminating the Acquisition process.

- f. Initial Offer Letter. The "Initial Offer Letter" and summary of Fair Market Value are presented to the property owner only after the Project Manager and RES are satisfied that all information pertaining to the property is acceptable to the City and is beneficial to the Project.
- g. Counteroffer or Rejection of Initial Offer Letter. The property owner may submit a written counteroffer in response to the initial offer, or may reject the initial offer. The Project Manager and the RES Manager will review the counteroffer and may request supporting documents.
- h. Final Offer/Administrative Settlement. If the counteroffer is rejected, the Project Manager and the RES Manager may develop an Administrative Settlement or a final offer to purchase and submit it to the property owner.
 - i. If the property owner does not accept the Administrative Settlement or final offer, the Project Manager and RES must make the determination if the property is still needed for the Project. At this time the Acquisition may be terminated. RES will send a "Withdrawal of Interest" letter to the property owner terminating the negotiations.
 - ii. If an Administrative Settlement or final offer is rejected, an offer of compromise under C.R.E. Rule 408 may be submitted to the property owner for consideration. The offer of compromise provides a last offer prior to seeking City Council approval to initiate eminent domain proceedings.
- i. Possession and Use Agreement. At this time, or at any time during the negotiation process where the property owner indicates an unwillingness or refusal to negotiate, the Project Manager and the RES Manager may choose to seek City Council approval to enter into a Possession and Use Agreement with the property owner or continue negotiations. If City Council does not choose to pursue the Acquisition, it will be terminated. RES will send a "Withdrawal of Interest" letter to the property owner. City Council may choose to instruct staff to continue with negotiations. City Council may choose to authorize the use of a Possession and Use Agreement and /or authorize the Project Manager and RES to use eminent domain to acquire

¹ See Manual Chapter 13



the property. If City Council initially only authorizes the use of a Possession and Use Agreement and the property owner chooses not to sign the Possession and Use Agreement, the Project Manager may seek further City Council approval for condemnation.

- j. **Closing.** If the City and the property owner agree on a Total Acquisition Amount and any required approvals from governing boards have been given, RES will execute all documents necessary for closing and coordinate the closing through the chosen title company. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.
- k. **Condemnation.** The property owner will be notified in advance of any formal City Council meeting where Council will consider authorizing condemnation. If City Council authorizes condemnation, all statutory procedures will be followed.

4.4 **Gifts and Donations of Real Property.** Property owners whose real property is to be acquired by the City for a public purpose may make a Gift or Donation of the property in lieu of all or any part of the compensation that would otherwise have been paid for the Acquisition. A Donation cannot be accepted by the City until the City Council passes a resolution authorizing the acceptance of the Donation and gives the RES Manager the authority to execute Donation documents.

- a. **Donation.** A Donation is accepted when City Council passes a resolution formally accepting the Donation. The Project Manager will forward an acceptance resolution to City Council contingent on closing.
- b. **Property Owner Tax Implications.** The property owner should be advised to consult a tax professional, tax attorney, CPA or the Internal Revenue Service concerning Donation tax implications. No City Staff shall offer any opinion or advice to any property owner as to the tax consequences of any transaction or Donation.

Chapter 5 – Disposal of Surplus Property

- 5.1 **Initiate Disposal of Surplus Property.** RES may receive a request to dispose of Surplus Property owned by the City of Colorado Springs from the Controlling Department of the property or from the public.
- 5.2 **Public Request.** If the request is from a member of the public, RES will contact the Controlling Department to verify the property is available for sale before further action is taken. If the City chooses not to dispose of the property, RES will notify the requestor.

Internal Interest, Terms and Conditions of Sale. Once the Controlling Department has obtained any necessary written approval(s) from any Funding Authority(s) and/or any advisory board having oversight or advisory responsibilities for the property, the Controlling Department will notify RES that the property is surplus. RES will solicit internal comments from an internal stakeholder list through a Bucksip Process. Comments will be used to determine if there is internal interest in obtaining the property, and will also be used to establish the terms and conditions of sale. Comments should include information about any interests, such as Easements, to retain if the property is sold. A separate request for review and approval will be sent to the Chief Financial Officer for the City or Colorado Springs Utilities, whichever is applicable.

Colorado Springs Utilities operates under Policy Governance that must also be followed as additional requirements to those of this Manual during the disposal of Utilities controlled property.

- 5.3 **Prerequisites to Disposal.** City Council must deem the property surplus. RES will obtain any necessary title work and valuation at the Controlling Department's expense. RES may obtain a survey, if needed. Prior to disposal, RES shall identify interests the City will retain at closing. The valuation must conform to requirements in Chapter 9 of this Manual. The valuation must be approved by the Chief Financial Officer and the Controlling Department's Director.
- 5.4 **Intra-City Transfers.** An intra-City transfer may be initiated by any Department within the City that wishes to acquire property controlled by another Department. The respective Departments may negotiate terms and conditions of transfer, but RES must be notified and is responsible for assisting the Departments in completing the transfer in accord with the provisions of this Manual. Both Departments should be made aware of the terms and conditions of transfer, and interests to be retained by the Controlling Department if the property is transferred out of the City's ownership in the future.²

² See Manual Chapter 12



- 5.5 **Right of First Refusal.** Where the Controlling Department has initiated the disposal of Surplus Property pursuant to this Chapter 5 and the property is subject to a right of first refusal, the City Attorney's Office will determine whether the property may be used by another Department or enterprise of the City or whether the property must first be offered to the holder of the right of first refusal.

If it is determined that the property may be offered to another City Department or enterprise prior to making an offer to the right of first refusal holder, RES will solicit internal comments from the internal stakeholder list in accordance with Section 5.3 of this Chapter and may work with the Departments to pursue an intra-City transfer of the property.

If it is determined that the property must first be offered to the holder of the right of first refusal, the City shall make an offer to sell the property to the holder of the right of first refusal at the Fair Market Value, or such other amount as may be approved by City Council. If the offer is rejected, then RES and the Controlling Department may pursue disposal of the property in accordance with the remaining sections of this Chapter 5. Notwithstanding anything else in this Chapter 5 to the contrary, conflicting terms in a right of first refusal will supersede this Section.

- 5.6 **One Logical Purchaser.** If there is only One Logical Purchaser of the Surplus Property, the Controlling Department may seek City Council authorization to sell the property to the identified purchaser subject to appropriate terms and conditions and the provisions of this Manual.³

- a. The purchaser may be required to obtain any necessary surveys and shall provide the City with copies of the same prior to closing. The survey should identify visible interests or infrastructure which the City wishes to retain after closing. The City will be responsible for reviewing the survey and will prepare any Easement documents required to preserve the City's rights.
- b. If required by Manual Chapter 9, the City will obtain an Appraisal of the property at the City's expense.
- c. Any disposal shall be subject to a written contract. The sales price is subject to City Council approval.
- d. Guidelines for One Logical Purchaser: City Council may find that a purchaser is One Logical Purchaser if any or all of the following circumstances have been met:

- i. Location:

1. the property is not independently developable; and,

³ See City Code Section 7.7.1804(B)



2. the property could reasonably be owned or maintained by only one adjacent property owner or only one adjacent property owner is willing and able to purchase the property;
 - ii. Title: the transaction resolves a bona fide title dispute;
 - iii. Furthers City Project: the sale of the property is to a partner who was selected pursuant to a competitive evaluation process that is set forth in a duly-adopted City or enterprise policy or is required by local, state or federal law;
 - iv. Dominant Condemning Authority: the purchaser has authority to condemn the property under State or Federal law;
 - v. De Minimis Transactions:
 1. the property is not independently developable; and,
 2. the Fair Market Value is less than \$100,000.
- 5.7 **Listing for Sale.** The Controlling Department and RES may dispose of Surplus Property by listing the property for sale with a real estate Consultant. If the property is listed for sale, the list price shall not be less than the Fair Market Value. At any time after listing the property for sale, if the City receives a bona fide offer to purchase the property at a price that is acceptable to the Controlling Department, the City may enter into a contract for sale.
- 5.8 **Sealed Bid Auction.** As an alternative to the other disposal methods described in this Chapter, the Controlling Department and RES may seek to dispose of the property according to the following sealed bid auction process.
- a. The public notice of the sealed bid auction will comply with RES SOPs. This minimum bid price shall be the Fair Market Value.
 - b. RES and the Controlling Department will attend the sealed bid auction. The Controlling Department will review bids and determine the acceptable bid within one (1) business day.
 - c. RES will notify the successful bidder.
RES will notify the unsuccessful bidder(s).
RES will draft and submit a contract that complies with Section 5.10 below to the successful bidder for execution.
RES will collect an earnest money deposit in an amount to be approved by the City's or Utilities' Chief Financial Officer, Real Estate Services Manager and the Controlling Department.



- d. If no acceptable bids are received, or if a bidder with an acceptable bid fails to close on the purchase, the Controlling Department may decide to retain the property or dispose of the property by some other method.
- 5.9 **Consultants.** RES and the Controlling Department may choose to retain Consultants to assist with the Disposition or to sell the Surplus Property.
- 5.10 **Contract for Sale.** The contract for sale must include the established terms and conditions and must be “approved as to form” by the City Attorney’s Office before execution. The contract will expressly state that the Disposition is subject to City Council approval unless prior approval has been authorized by City Council.
- 5.11 **Closing.** At time of closing, the buyer must bring certified Acquisition funds to closing. The City Attorney’s Office will determine if other arrangements will require City Council approval. Any earnest money held shall be credited to the sales price. RES will determine if closing will occur at a title company. See Chapter 2, Roles and Responsibilities of the Real Estate Services Office.
- 5.12 **Restrictions.** In the event the property was acquired subject to any deed restrictions or contract terms that affect the disposal, such deed restrictions or contract terms will supersede conflicting requirements of this Manual.
- 5.13 **Community Benefit.** If the Controlling Department wishes to transfer the property to an individual or organization for the purpose of facilitating a Project that would be a Community Benefit, the Controlling Department may seek City Council authorization to transfer the property after undertaking the following process.
- a. **Deem as Surplus.** City Council must deem the property surplus for a Community Benefit and authorize it for transfer. Such authorization may be reserved until a later City Council meeting. RES will obtain any necessary surveys or Appraisals at the Controlling Department’s expense. The survey shall identify interests that the City will retain at closing. Any Appraisal must conform to the appraisal requirements in Manual Chapter 9.
 - b. **Deem for Transfer.** City Council may condition a transfer on the adoption of certain terms and conditions in any contract for sale. City Council may also determine whether the property will be transferred at or below Fair Market Value, subject to any other rules of City Council, City Ordinances or restrictions on the transfer of the property.
 - c. **Value less than \$20,000.** If the value of the property is less than \$20,000, then the Controlling Department may, through appropriate due diligence, identify a person or organization that is capable of achieving the Controlling Department’s desired Community Benefit; provided, however, City Council



may direct the Controlling Department to use the request for qualifications process outlined herein for any property, regardless of value.

- d. Value more than \$20,000. If the value of the property is \$20,000 or greater, the Controlling Department will advertise a request for qualifications from individuals or organizations capable of achieving the desired Community Benefit. The request for qualifications should be advertised in a manner reasonably calculated to reach potential applicants, which may include presentations to community groups, advertisement in publications or direct solicitation of proposals from individuals or organizations. The request for qualifications will include a statement of the desired Community Benefit(s) and any restrictions that the Controlling Department proposes to place on the transfer. The Controlling Department will have discretion to determine the individual or organization that it believes is most capable of achieving the desired Community Benefit with the greatest effect. The Controlling Department may review, among other qualifications, the applicants' experience with similar projects, funding sources and project plans or concepts, and the Controlling Department may conduct independent research to supplement any application.

- e. Deed Language. The contract for sale and/or the deed should contain appropriate terms to restrict the use of the property to the intended Community Benefit for a reasonable term of years, given the circumstances.



Chapter 6 – Land Exchange

- 6.1 Land Exchanges. On occasion, the City may agree to convey property to an identified party in exchange for acquiring other property. These Land Exchanges must be reviewed by City Council and approved by resolution. City Council may impose conditions on the Land Exchange. If an advisory board has oversight or advisory responsibilities for the property to be conveyed or to be acquired, the advisory board must also review and make a recommendation to City Council prior to City Council consideration of the Land Exchange proposal. Any Land Exchange approved by City Council must comply with the provisions of this Manual pertaining to the Acquisition and Disposition of property.
- 6.2 Initiate Exchange Of Property. RES may receive a request to exchange property owned by the City of Colorado Springs for property owned by another party. If the request is from an external party, RES will contact the Controlling Department to determine whether the Controlling Department would consider a Land Exchange.
- 6.3 Internal Interest, Terms And Conditions Of Exchange. If the Controlling Department wishes to pursue the Land Exchange, the Controlling Department will obtain any necessary written approval(s) from any Funding Authorities. RES will solicit internal comments from an internal stakeholder list through a Buckslip Process. Comments will be used to determine if there is internal interest in retaining the property, and will also be used to establish the terms and conditions regarding any interests, such as Easements, to retain if the Land Exchange is affected. A separate request for review and approval will be sent to the Chief Financial Officer for the City or Colorado Springs Utilities, whichever is applicable.
- Colorado Springs Utilities operates under Policy Governance that may also be applicable as additional requirements to those of this Manual during the exchange of Utilities controlled property.
- 6.4 Prerequisites to Land Exchange. RES will obtain any necessary title work and valuations for both properties involved in the pending Land Exchange, at the Controlling Department's expense. The valuations must conform to requirements in Manual Chapter 9. The valuation of the City property must be approved by the Chief Financial Officer and the Controlling Department's Director. If Appraisals are required, RES and the Controlling Department shall select the appraiser for both parcels. RES may obtain a survey, if needed. Prior to conveyance of the City property, RES shall identify interests the City will retain at closing. Where the Land Exchange is initiated by a third party, the third party shall be responsible for the cost of the Appraisals and the surveys, if needed, at or before the time of closing, unless otherwise agreed to by the City and the Land Exchange partner. In other situations, such costs may be shared by the City and the Land Exchange partner.
- a. Verify Property Ownership. RES will order a Title Commitment of the property to be conveyed to the City. The Title Commitment is reviewed by



RES and any issues identified on the Title Commitment are discussed with the City Attorney's Office, and the Project Manager if necessary. If there are title issues that may be detrimental to the City, the Project Manager, with the advice of RES and the City Attorney's Office, may choose to terminate the Land Exchange discussions. In that event, RES will send a notice to the Land Exchange partner.

- b. Permission to Enter. A Permission to Enter form must be signed by the Land Exchange partner and returned to RES before any Consultants, appraisers or City staff can enter the property to be conveyed to the City.
- c. Environmental Information. Per City Code § 7.7.1802, the Project Manager must accomplish an Environmental Review or Audit of the property to be conveyed to the City.⁴
- d. Closing. Once the City and Land Exchange partner have entered into the Land Exchange Agreement, and any required approvals from governing boards have been given, RES will execute all documents necessary for closing and coordinate the closing through the chosen title company. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.

- 6.5 Right of First Refusal. If it is determined that the City property must first be offered to the holder of a right of first refusal, the City shall make an offer to sell the property at the Fair Market Value of the property to be conveyed to the City, or such other amount as may be approved by City Council. If the offer is rejected, then RES and the Controlling Department may pursue the Land Exchange.

Notwithstanding anything else in this Chapter 6 to the contrary, any terms of the right of first refusal that conflict with this section will supersede this section.

- 6.6 Restrictions. In the event the property was acquired subject to any deed restrictions or contract terms that affect the Land Exchange, such deed restrictions or contract terms will supersede conflicting requirements of this Chapter.
- 6.7 Exchange of Properties of Differing Monetary Values. Where the two properties subject to a Land Exchange are not of equal monetary value, the following shall apply:
- a. If the property being acquired by the City as part of a Land Exchange is valued less than the City property being disposed of, the City shall either receive payment from the Land Exchange partner for the difference between the Fair Market Value of the City property and the property being

⁴ See Manual Chapter 13



conveyed to the City, or obtain approval from City Council of a disposal for less than the Fair Market Value in accordance with Chapter 5 of this Manual.

b. If the City property being disposed of is valued less than the property being received as part of a Land Exchange, City shall, subject to City Council approval:

- i. pay the difference in value to the Land Exchange partner; or
- ii. accept the property being received as a partial Gift; or
- iii. accept the difference in value of the property being received as a partial Donation.

6.8 Land Exchange Agreement. The Land Exchange Agreement must include the established terms and conditions and must be “approved as to form” by the City Attorney’s Office before execution. The agreement will expressly state that it is subject to City Council approval unless prior approval has been authorized by City Council.



Chapter 7 – Easement Acquisition

- 7.1 **Authority to Acquire.** Easement Acquisitions that are included in an approved annual budget or as part of an overall City Council approved Project do not need additional City Council approval pursuant to Section 9.6. The Project Manager will seek City Council approval of the Total Acquisition Amount by resolution. Other City Council Acquisition approval thresholds are set forth in Chapter 9 of this Manual.

From the onset of the Easement Acquisition process, the Project Manager must determine whether, in the event negotiations fail, condemnation is an option. If so, the Acquisition process must conform to C.R.S. § 38-1-101 *et seq.*

- 7.2 **Identify Affected Properties.** After a decision to acquire an Easement is made, the Project Manager submits a Request form to RES. The Project Manager and RES will meet to discuss the request, the process, necessary forms and timing. Based on the extent or funding source of the Project, a Consultant may be required to complete the Easement Acquisition. The identification process shall generally begin with the following procedures.

- a. **Easement Exhibits.** The Project Manager and RES shall assure that Easement exhibits are approved by staff qualified to review and approve information contained in the Easement exhibits.
- b. **Verify Property Ownership.** RES will order an ownership and encumbrance report (“O&E”) or Title Commitment to determine the legal owners of the property. The Title Commitment is reviewed by RES and issues identified on the Title Commitment are discussed with the City Attorney’s Office, and the Project Manager if necessary. If there are title issues that may be detrimental to the City or the Project, the Project Manager, with the advice of RES and the City Attorney’s Office, may choose to terminate the Acquisition. In that event, if negotiations have begun, RES will send a “Withdrawal of Interest” letter to the property owner.
- c. **Initial Value.** RES determines initial value. An estimation of value is performed to determine the valuation process to be followed.

- 7.3 **Negotiations.** The Project Manager is responsible for scheduling a pre-acquisition meeting with the property owner(s). RES attendance is optional. This meeting is intended to meet and familiarize the property owner with all aspects of the Project and the proposed Easement Acquisition. This meeting may be conducted by any appropriate communication method. All communications must be documented and forwarded to RES for the file.

- a. **Initial Contact.** After the Project Manager’s pre-acquisition meeting, RES will meet with the property owner. The Project Manager’s attendance is



optional. If the property owner is not interested in selling the Easement, the need to acquire the Easement should be re-evaluated by the Project Manager, who may choose to terminate the Easement Acquisition. If terminated, the RES representative will send a “Withdrawal of Interest” letter to the property owner.

- b. Condemnation an Option. If the property owner is not interested in selling the Easement and the Project Manager determines that the Easement is needed for the Project, the Project Manager will determine if condemnation is an option.
- c. Notice of Intent. RES sends a “Notice of Intent” letter to the property owner. This letter informs the property owner that either:
 - i. A Value Finding has been or will be prepared and that the City estimates the Fair Market Value of the Easement to be less than \$20,000, and the City does not intend to obtain an Appraisal on its behalf; while further identifying the property owner’s right to an Appraisal pursuant to C.R.S. 38-1-121 and Manual Chapter 9 if the estimated value of the property exceeds \$5,000, and condemnation is an option, or;
 - ii. A City Appraisal will be ordered by RES. The property owner may obtain one owner’s Appraisal of the Easement at the City’s expense in accord with Manual Chapter 9. The property owner may decline to obtain an Appraisal, but must notify the City of that decision in writing. Both Appraisals are paid for by the Project budget.
- d. Permission to Enter. A “Permission to Enter” form may be signed by the property owner and returned to RES before any Consultants, appraisers or City staff can enter the property.
- e. Condemnation and Immediate Possession. If the property owner will not grant permission to enter for an Appraisal, Environmental Review or Audit or other purposes, the Project Manager and the RES Manager may seek City Council approval to pursue condemnation and an immediate possession hearing. City Council may authorize staff to pursue condemnation, or instruct staff to continue with negotiations, or may choose to approve a Possession and Use Agreement. If City Council does not choose to exercise the power of eminent domain, instruct staff to continue negotiations, or approve a Possession and Use Agreement, the Easement Acquisition will be terminated. RES will send a “Withdrawal of Interest” letter to the property owner terminating the Easement Acquisition.



- f. **Environmental Information.** Per City Code § 7.7.1802, the Project Manager must accomplish an Environmental Review or Audit of the property.⁵ The Project budget will pay all costs associated with Environmental Reviews or Audits. At the Project Manager's discretion, the Easement Acquisition may be terminated if the Environmental review or Audit information received is not acceptable to the City. If the Project Manager terminates the Acquisition, RES will send a "Withdrawal of Interest" letter to the property owner terminating the Easement Acquisition process.
- g. **Initial Offer Letter.** The initial offer letter and summary of Fair Market Value are presented to the property owner only after the Project Manager and the RES Manager are satisfied that all information pertaining to the property and the Easement is acceptable to the City and is beneficial to the Project.
- h. **Counteroffer or Rejection of Initial Offer Letter.** The property owner may submit a written counteroffer in response to the City's initial offer. The Project Manager and the RES Manager will review the counteroffer and may request supporting documents.
- i. **Final Offer/Administrative settlement.** If the counter offer is rejected, the Project Manager and the RES Manager will develop a final offer or Administrative Settlement. The final offer or Administrative Settlement to acquire an Easement will be submitted to the property owner.
- i. If the property owner does not accept the Administrative Settlement or final offer, the Project Manager and the RES Manager must make the determination if the Easement is still needed for the Project. At this time, the Easement Acquisition may be terminated. RES will send a "Withdrawal of Interest" letter to the property owner terminating the Easement Acquisition.
- ii. If an Administrative Settlement or final offer is rejected, an offer of compromise under C.R.E. Rule 408 may be submitted to the property owner for consideration. The offer of compromise provides a last offer prior to seeking City Council approval to initiate eminent domain proceedings.
- j. **Possession and Use Agreement.** At this time, or at any time during the negotiation process where the property owner indicates an unwillingness or refusal to negotiate, the Project Manager and the RES Manager may choose to seek City Council approval to enter into a Possession and Use Agreement with the property owner, pursue condemnation, and/or continue negotiations. If City Council does not choose to pursue the Easement Acquisition, it will be terminated. RES will send a "Withdrawal of Interest"

⁵ See Chapter 13 of this Manual



letter to the property owner. If City Council initially only authorizes the use of a Possession and Use Agreement and the property owner chooses not to sign the Possession and Use Agreement, the Project Manager may seek further City Council approval for condemnation.

- k. Closing. If the City and the property owner agree on an Easement Acquisition amount and any required approvals from governing boards have been given, RES will execute all documents necessary for closing, including any necessary Joinders and Subordination Agreements, and coordinate the closing through the chosen title company, if applicable. The Project Manager is responsible for assuring that all funds needed for closing have been approved and are available prior to closing.
- l. Condemnation. The property owner will be notified in advance of any formal City Council meeting where Council will consider authorizing condemnation. If City Council authorizes condemnation, all statutory procedures will be followed.

7.4 Gifts and Donations of Easements. Property owners whose Easement is to be acquired by the City for a public purpose may make a Gift or Donation of the Easement for all or any part of the compensation that would otherwise have been paid for the Easement Acquisition. A Donation cannot be accepted by the City until the City Council passes a resolution authorizing the acceptance of the Donation and gives the RES Manager the authority to execute Donation documents.

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

7.5 Maintenance. The Controlling Department is responsible for preserving and maintaining the Easement for its intended use.



Chapter 8 - Conveyance Acceptance

The provisions of this Chapter 8 are intended to implement City Code § 7.7.1802.

8.1 **Acceptance.** The City may accept a deed, dedication or conveyance of property pursuant to any of the following:

- a. City Council approval of a resolution.
- b. A plat dedicating property to the City for a public use that has been approved by the City.
- c. A master planned public land or public property designation.
- d. An annexation agreement requiring the dedication or conveyance of property to the City.
- e. Approval by City Council of an intergovernmental agreement or another agreement with public or private entities requiring the dedication or conveyance of property to the City.
- f. Line item budget approval authorizing the Acquisition of property or approval of a Project necessitating the Acquisition of property.
- g. Gifts, Donations and devises to the City.
- h. Conveyances required by City or Utilities policies or regulations.

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

- a. Clear title to the property or an interest in the property that will vest in the City in accord with Chapter 2, Section 2.11 of this Manual.
- b. Any property taxes have been prorated and paid in accord with City Code § 7.7.1801.
- c. An Environmental Review or Audit has been conducted and the Controlling Department accepts the environmental condition of the property in accord with Chapter 13, Environmental Review or Environmental Audit.
- d. Any other pre-closing special conditions or contract terms have been satisfied.



- 8.3 Evidence of Acceptance. If the conveyance is by plat dedication, the City's execution and recording of the plat is deemed acceptance of the dedication. An acceptance statement for all other conveyances must be printed on the conveyance document to the City as grantee and executed by RES at closing. If a conveyance document purporting to convey title to the City has been recorded and RES has not executed an acceptance statement on the conveyance document, RES will refer the matter to the City Attorney. If the City Attorney finds that the purported conveyance is not in compliance with the requirements of the City Code or this Manual, the City Attorney is authorized to execute and record a Notice of Disclaimer in the official records of the county clerk and recorder. If the City Attorney is satisfied that the conveyance does comply with the requirements of the City Code and this Manual, the City Attorney will notify RES to execute and record an appropriate acceptance statement. For those conveyances recorded prior to the effective date of this Manual, the RES Manager may execute a verification of acceptance for those conveyances that may not have been formally accepted by the City at the time of recording.



Chapter 9 – Valuing Real Property Interests

- 9.1 **Fair Market Value.** RES, in cooperation with the Project Manager, shall be responsible for determining the Fair Market Value for each real property interest to be acquired or disposed except in the case of Gifts and Donations. The manner in which the determination of Fair Market Value is established shall be considered on a Project-by-Project basis.
- 9.2 **Valuation.** For Acquisitions or Dispositions, except in the case of Gifts or Donations, the City must determine the Fair Market Value of the property. For properties estimated to be valued at \$20,000 or less, RES shall prepare a Value Finding or obtain an Appraisal. For properties estimated to be valued above \$20,000, RES shall obtain an Appraisal.
- 9.3 **Appraisal Process.** RES will follow an SOP for selecting appraisers and obtaining Appraisal proposal bids and retaining an appraiser.

Where the Project Manager has determined that condemnation may be used for Acquisitions estimated to be more than \$5,000, and pursuant to C.R.S. § 38-1-121 (1), the property owner has the right to obtain one (1) owner's Appraisal. The City will pay a reasonable fee for the owner's Appraisal in accord with this Section and allow the property owner ninety (90) days to submit the Appraisal to the City, unless otherwise agreed in writing. The property owner may waive the right to obtain an owner's Appraisal as provided in this paragraph.

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

Appraisal reports will contain, at a minimum, the appraiser's concise, summarized and pertinent statements and analyses of the Appraisal process. In the event of condemnation, an updated, special report may be needed for trial purposes.

- 9.4 **Appraisal Review.** An Appraisal review process is required any time the Fair Market Value determined by the City's appraiser and the Fair Market Value determined by the property owner's appraiser are so far apart as to have a negative impact on negotiations. The City will be responsible for retaining the review appraiser and the Project budget shall be responsible for paying the review appraiser's fee, unless other arrangements are made and agreed upon by both parties in writing.



The review appraiser will review the City's and property owner's Appraisals pursuant to standards for Appraisal review under USPAP, and determine whether the Appraisal reports conform to law, regulations and USPAP.

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

The review appraiser shall identify each Appraisal report reviewed as:

- a. Recommended. The recommended Appraisal shall be used to establish the Fair Market Value for the transaction.
- b. Acceptable. An acceptable Appraisal meets all technical requirements, but should not be used to establish Fair Market Value.
- c. Not acceptable.

If the review appraiser is unable to identify an Appraisal as "recommended", as an adequate basis for the establishment of the Fair Market Value, the City may obtain another Appraisal or ask the review appraiser to present and analyze market information in conformity with 49 C.F.R. § 24.104 and USPAP to determine Fair Market Value.

9.5 Value Finding. If RES and the Project Manager determine that the estimated Fair Market Value of an Acquisition is \$20,000 or less, a Value Finding may be conducted in lieu of an Appraisal.

- a. Parcels or Easements estimated to be valued at \$20,000 or less shall be valued using a Value Finding Form. The RES Manager shall review and sign the Value Finding Form as verification that the Value Finding is acceptable pursuant to SOPs.
- b. A Value Finding is not an Appraisal. The Value Finding may be based on a review of available relevant data, such as comparable sales data and multiple listing service data, Assessor's Office information or other information.
- c. The Value Finding procedure is intended to assure that property values are reasonably accurate estimations of Fair Market Value and are consistent within the Project.



- d. A Value Finding of a fee simple interest shall not be less than \$500. A Value Finding of an Easement or other interest in real property shall not be less than \$200.
- 9.6 If the Total Acquisition Amount is \$100,000 or less, the Project Manager and Real Estate Services Manager may, without City Council approval, approve Just Compensation. If the Total Acquisition Amount is greater than \$100,000, City Council must approve the Total Acquisition Amount.



Chapter 10- Easement Encroachments, Vacations and Assignments

10.1 **Authorization.** The City may authorize encroachments onto, vacation of, or assignment of, City-owned Easements. This Chapter does not apply to unauthorized Easement Encroachments.

- a. Authorization of an Easement Encroachment within a City-owned Easement will be in the form of an Easement Encroachment License. Easement Encroachment Licenses will be recorded by RES.
- b. Authorization of an Easement Vacation will be in the form of a quitclaim deed which has been executed by the Mayor. Quitclaim deeds will be recorded by RES.
- c. Authorization of an Easement Assignment, or partial Assignment, will be in the form of an Assignment of Easement. Assignments of Easements will be recorded by RES.
- d. For an Easement Encroachment within an Easement held by an entity other than the City, RES will process an Easement Encroachment letter and forward copies to the requestor and the Buckslip Departments.

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

- a. RES will verify the ownership of the underlying fee.
- b. RES will review Easement documents to determine whether an Encroachment, Vacation, or Assignment is possible under the terms and conditions of the documents. If not, RES will send a written denial to the requestor.

10.3 **Buckslip Process.**

RES will route the request to appropriate Buckslip Departments.

- a. If RES receives a buckslip denial from any Buckslip Department, RES will notify the requestor of the denial.
- b. If no objections to the request are received:
 - i. For an Easement Vacation, RES will create and process the quitclaim deed.



- ii. RES will assure that all exhibits have been approved by the Controlling Department and the quitclaim deed is executed and recorded.
 - iii. RES will forward a copy of the recorded document to all Buckslip Departments.
 - iv. RES will forward the recorded document to the requestor.
- 10.4 If an Easement Encroachment License is required, RES will prepare the License and forward a copy to the requestor and the Buckslip Departments.
- a. RES will assure that all exhibits have been approved by the Controlling Department and the License is executed and recorded.
 - b. RES will forward a copy of the recorded License to all Buckslip Departments.
 - c. RES will forward a copy of the recorded License to the requestor.
- 10.5. For an Easement assignment, or partial assignment, RES will create and process the Assignment of easement.
- a. RES will assure that all exhibits have been approved by the Controlling Department and the Assignment of Easement is executed and recorded.
 - b. RES will forward a copy of the recorded Assignment of Easement to all Buckslip departments.
 - c. RES will forward a copy of the recorded Assignment of Easement to the requestor.
- 10.6 RES may receive approval of the request with conditions.
- If RES receives conditional approval of the request from the Buckslip Departments, RES will notify the requestor of the conditions in writing.
- a. RES will coordinate with the requestor and the Buckslip Department to reach an agreement on how the conditions will be satisfied.
 - b. If conditions are unacceptable or cannot be met by the requestor, RES will send a written denial to the requestor.

Chapter 11 – Leases and Licenses

11.1 City as Tenant.

- a. The Tenant Department will meet with RES to identify Lease needs. A Consultant may be retained at the Tenant Department's expense. RES and the Tenant Department will negotiate the terms of the Lease.
- b. Leases.
 - i. The Lease (including specialized Lease property) must be "approved as to form" by the City Attorney's Office and contain the following:
 1. Identify the tenant as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, by and through the named Tenant Department.
 2. Identify the rent amount.
 3. Be subject to annual appropriation.
 4. Be governed by Colorado law.
 5. Identify the property tax status of the City's leasehold interest.
 6. Set forth all other relevant terms and conditions of the Lease.
 - ii. Unless otherwise provided, the Mayor, Chief Executive Officer of Utilities, or designees, may execute Leases as tenant.
 - iii. RES and the Tenant Department will maintain copies of the Lease.
 - iv. Tenant Department is responsible for complying with terms and conditions of the lease.

11.2 City as Landlord.

- a. Pursuant to City Charter Article 10, the City is authorized to grant temporary or revocable permission to use City-owned property. This permission may be in the nature of a temporary permit, License, or Lease "in, on, above, through or under any street, alley or public place." Temporary permits shall be granted in accordance with City Code. Licenses shall be revocable at any time by the Controlling Department. Leases may or may not be revocable. The term of Licenses, and Leases shall not exceed the limitations in City Charter § 10-60.
- b. Licenses.



- i. A person may request a License for private encroachments onto City-owned property, City-owned Easements, ingress/egress across City-owned property or for any other lawful purpose or use of City-owned property. RES will buckslip the License request to the Controlling Department(s) and any Buckslip Departments. If the Controlling Department(s) objects to the License request, RES will notify the requestor and the License will be denied. If there are no objections to the request by the Controlling Department(s), RES will determine whether there are any restrictions or conditions to the proposed use of the City-owned property based on the buckslip comments and property research and will prepare a License document.
 - ii. The License document must be “approved as to form” by City Attorney’s Office and must:
 1. Identify the grantor of the License as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of the applicable Controlling Department.
 2. Identify any consideration paid.
 3. Be subject to City Charter § 10-100 and limited to an appropriate term in accord with City Charter § 10-60.
 4. Be governed by Colorado law and City Code.
 5. Set forth all relevant terms, conditions and restrictions of the License.
 - iii. Unless otherwise provided, RES, the Mayor, Chief Executive Officer of Colorado Springs Utilities, or designees, may execute Licenses of City-owned property.⁶
 - iv. RES and the Controlling Department will maintain copies of the License.
 - v. RES may record the License at the grantee’s expense.
- c. Leases.

⁶ See Resolution No. 22-15 regarding use of Colorado Springs Airport property.



- i. For City-owned property, the Landlord Department will meet with RES to identify leasing options. A Consultant may be retained at the Landlord Department's expense. If a Consultant is retained, the Consultant will be subject to the procedures in this Manual, will work directly with the Landlord Department and will update RES as needed. Copies of all Lease documents will be provided to RES and the Landlord Department.
- ii. The Landlord Department is responsible, if needed, for retaining a Consultant to assist in negotiating and managing all Leases. RES may provide assistance if requested, but is not responsible for leasing property. If a Consultant is retained, the Consultant will work directly with the Landlord Department and will update RES as needed. Copies of all lease documents will be provided to and maintained by the Landlord Department.
- iii. All Leases of any City-owned property (including specialized Lease property) must be "approved as to form" by City Attorney's Office and contain the following:
 1. Identify the landlord as the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of the named Landlord Department.
 2. Identify a Fair Market Value rental amount. If the rental amount is below market value, a City Council resolution finding a public purpose or a Community Benefit, as defined in Chapter 5, in the below Fair Market Value Lease must be approved and must comply with all applicable federal and state laws.
 3. Be limited to an appropriate term in accord with City Charter § 10-60.
 4. Be governed by Colorado law and City Code.
 5. Identify the property tax status of the leasehold.
 6. Set forth all other relevant terms, conditions and restrictions of the Lease, including any special conditions and provisions.
- iv. Unless otherwise provided, RES, the Mayor, Chief Executive Officer of Colorado Springs Utilities, or designees, may execute Leases of City-owned property.⁷

⁷ See Resolution No. 22-15 regarding use of Colorado Springs Airport property.



- v. RES and the Landlord Department will maintain copies of the Lease.
- vi. The Landlord Department may record the Lease of City-owned property and may recover the cost of recording from the tenant.



Chapter 12 – Intra-City Real Property Transfers and Uses

- 12.1 Intra-City Real Property Transfers and Secondary Uses.** An intra-City real property transfer occurs when the administrative responsibility for a parcel of land moves from one Controlling Department to another, but remains in the ownership of the City. A Secondary Use of Real Property occurs when one Department uses property controlled by another Department.
- 12.2 Intra-City Real Property Transfer or Secondary Use Process.**
- a. RES is notified by a Department of the desire to dispose of, acquire, or make a Secondary Use of a parcel of land in the City's ownership.
 - b. RES will research the property's title history and original funding source to determine whether the property can be transferred, or whether a change of, or additional use, is acceptable.
 - i. RES will send notification of the transfer request by Buckslip to the applicable Finance Officers, or designees, for review and approval or denial. Secondary Uses do not require Finance Officer approval.
 - ii. If Finance Officer approval is given, RES will meet with the Disposing and Acquiring Departments to explain the Intra-City transfer process.
 - c. The property will be valued in accordance with this Chapter.
 - d. The applicable Departments will prepare a TPS Report, as defined in Section 12.5 below, or Executive Agreement as required by this Chapter.
 - e. Staff shall notify City Council and/or Utilities Board in advance of an Intra City real property transfer valued over \$100,000.
- 12.3 Valuing the Property for Transfer.** Any property that will be transferred must be valued pursuant to this Section if monetary consideration is required.
- a. If RES estimates that a property's Fair Market Value is \$20,000 or less, a Value Finding may be accomplished and no Appraisal will be necessary. ⁸
 - b. For property valued over \$20,000:
 - i. Where an Appraisal is required, the Department that initiates the intra city transfer process will be required to pay for the Appraisal.
 - ii. RES will assist in obtaining any necessary Appraisals. Depending on the funding source for the original Acquisition or proposed

⁸ See Chapter 8 of this Manual.



transfer, there may be occasions when more than one Appraisal will be required. There may also be occasions when a funding entity will require the Appraisals to be reviewed.

12.4 Environmental Review or Audit. The Disposing Department will share any available environmental information with the Acquiring Department. The Acquiring Department will then determine whether an additional Environmental Review or Audit will be required prior to the transfer. Any costs involved with the Review or Audit will be the responsibility of the Acquiring Department.

12.5 Documentation. An Executive Agreement or Transfer of Property Simplified Report ("TPS Report") will document the administrative transfer of the property or secondary use.

- a. A TPS Report is a memorandum documenting the purpose of a secondary use of property by a Department or enterprise other than a Controlling Department or an intra-city transfer between two Municipal Departments and/or Municipal enterprises. The TPS Report shall also document any necessary consideration and requirements agreed to by the parties.
- b. The terms of the Executive Agreement or TPS Report will be negotiated and documented by the Disposing and Acquiring Departments as indicated:

Dept 1	Dept 2	Documentation	Approvals ⁹	Consideration?
Municipal Dept/Enterprise	Utilities	Executive Agreement	Mayor & CEO	Yes
Municipal Dept/Enterprise	Municipal Enterprise	TPS Report	CFO	Yes
Municipal Dept	Municipal Dept	TPS Report	CFO	No ¹⁰

- c. The Executive Agreement/TPS Report should include, but not be limited to, the following, as applicable:
 - i. Description of the property being transferred.
 - ii. The established Fair Market Value or other consideration.
 - iii. Effective date of transfer.
 - iv. Easements or retained rights of use.
 - v. Identification of Funding Authority, if applicable.

⁹ Secondary Uses may be approved by Department Heads

¹⁰ Unless required by Funding Authority



- vi. Conditions on future transfers. If in the future the property is sold or transferred to a party outside of the City's ownership, the new Controlling Department or entity will be responsible for any costs associated with surveys, research and recording of any Easements to be retained for the benefit of the City.¹¹
- vii. Any other pertinent information related to the transfer.

12.6 Where consideration is required, it may be satisfied by in-kind services, unless a funding source or other restriction prohibits in-kind services.

12.7 RES will maintain appropriate records.

¹¹ See Chapter 5 of this Manual.

Chapter 13 - Environmental Review or Environmental Audit

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

13.2 Environmental Process.

- a. The Project Manager will determine whether to perform either an Environmental Review or Environmental Audit. The Project's budget must pay all costs associated with Environmental Reviews, Audits and other environmental investigations or activities. If the Project Manager chooses to perform an Environmental Review, it must be completed in accord with RES SOPs. After completing an Environmental Review, the Project Manager may also choose to perform an Environmental Audit.
- b. If the Project Manager chooses to perform an Environmental Audit, the Project Manager shall engage Colorado Springs Utilities' Environmental Services Department ("EVS") to assist with the Environmental Audit process.
- c. Before an Environmental Audit can be conducted:
 - i. The property owner or the owner's representative must execute a Permission to Enter form before a contractor may enter the property to perform an Environmental Audit.
 - ii. The Project Manager shall work with RES to engage a title company to undertake a review of reasonably ascertainable recorded land title records and lien records for environmental liens and activity and use limitations currently recorded against or relating to the property.
- d. The Project Manager will work with EVS to obtain the Environmental Audit. EVS will analyze the results and send a report to RES and the Project Manager with the findings and recommendations, if any.

13.3 Environmental Review or Environmental Audit Findings.

- a. After completion of the Environmental Review or Environmental Audit, the Project Manager shall notify RES of the decision to continue or terminate the Acquisition. If the Project Manager decides to continue to pursue the Acquisition, the Acquisition may be done with or without further investigation. If further investigations are conducted, the Project budget is responsible for all costs including additional Environmental Reviews, Environmental Audits, inspections, testing and documentation to determine the appropriate course of action.



- b. In the event the Environmental Review or Environmental Audit identifies any concerns or Recognized Environmental Conditions, the estimated cost of cleanup or remediation of any recognized environmental condition may be considered in the determination of Fair Market Value. The Acquiring Department shall negotiate clean-up or remediation responsibilities and costs, as necessary, with the property owner. Any negotiated agreement shall be in writing and a copy provided to RES and EVS.

- c. For real property Acquisitions with a Total Acquisition Amount of \$100,000 or greater only, if
 - i. any environmental condition that will result in a reporting, investigation, and/or remediation requirement under federal, state or local law is discovered prior to closing,
 - ii. the cost of such requirement will exceed the lesser of \$100,000 or 15% of the previously approved Total Acquisition Amount of the subject property, and
 - iii. City Council has not previously been briefed on the environmental condition,then prior to closing, the Acquiring Department shall brief City Council (in executive session if permitted by law and desired by the City) regarding the environmental condition.