

**RESOLUTION NO. 1797**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON ADOPTING POLICIES AND PROCEDURES FOR REAL PROPERTY ACQUISITION FOR FHWA FUNDED TRANSPORTATION PROJECTS**

WHEREAS, real property acquisitions for transportation projects receiving financial assistance from the Federal Highway Administration (FHWA) must comply with the state Uniform Relocation Assistance and Real Property Acquisition Act (Ch. 8.26 RCW), state regulations (Ch. 468-100 WAC), and applicable federal regulations; and

WHEREAS, in order to comply with the above requirements it is necessary for the City to adopt policies and procedures for handling such acquisitions; and


WHEREAS, the City previously adopted acquisition policies and procedures by Resolution No. 1422 in 2011; and

WHEREAS, since that time federal and state acquisition regulations have changed, requiring the City to update its policies and procedures accordingly; now therefore,

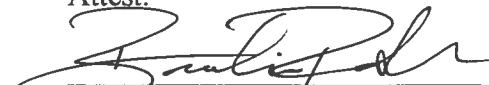
BE IT RESOLVED that the policies and procedures attached hereto as Exhibit A are hereby adopted as the real property acquisition policies and procedures of the City of Fife for transportation projects receiving funding from the Federal Highway Administration, superseding the policies and procedures adopted by Resolution No. 1422.

BE IT FURTHER RESOLVED that the attached policies and procedures are subject to approval by WSDOT, and the City Manager is hereby authorized to make any changes to the attached policies and procedures as may be required by WSDOT for approval.

ADOPTED by the City Council at an open public meeting held on the 14<sup>th</sup> day of November. 2017.

  
\_\_\_\_\_  
Kim Roscoe, Mayor

Attest:

  
\_\_\_\_\_  
Angela Woods, City Clerk  
Brodie Rota, Acting City Clerk

## **EXHIBIT A**

### **CITY OF FIFE ACQUISITION POLICIES AND PROCEDURES IN PROJECTS RECEIVING FUNDING FROM THE FEDERAL HIGHWAY ADMINISTRATION**

#### **SECTION 1: Right of Way Procedures.**

The Public Works Department of the City is responsible for the real property acquisition and relocation activities on transportation and other public works projects administered by the City. To fulfill the requirements of the state Uniform Relocation Assistance and Real Property Acquisition Act (Ch. 8.26 RCW), state regulations (Ch. 468-100 WAC), and applicable federal regulations, for projects receiving financial assistance from the Federal Highway Administration, the City will acquire right-of-way in accordance with the policies set forth in the Washington State Department of Transportation Right of Way Manual (M 26-01) and Local Agency Guidelines.

1. The various functions in the acquisition and relocation process shall be accomplished as follows:

a. PROGRAM ADMINISTRATION

Public Works Director or Assistant Public Works Director

Oversee delivery of the R/W Program on federal aid projects for the agency.  
Ensures R/W functions are carried out in compliance with federal and state laws, regulations, policies and procedures.

**Responsibilities/Expectations:**

- Ensures the City's approved R/W Procedures are current, including staff qualifications, and provides copies to consultants and agency staff;
- Oversight of ROW consultants;
  - use of consultant contract approved by WSDOT (under construction)
  - management of ROW contracts
  - management of ROW files
  - reviews and approves actions and decisions recommended by consultants
  - Overall responsibility for decisions that are outside the purview of consultant functions
- Sets Just Compensation prior to offers being made;
- Approves administrative offer summaries per policy;

- Ensure agency has a relocation appeal process in place prior to starting relocation activities;
- Oversight of Administrative Settlements;
- Obligation authority for their agency;
- Obtain permits (Non-Uniform Relocation Act (URA));
- Ensures there is a separation of functions to avoid conflicts of interest.
- Verifies whether or not ROW is needed, and that the property rights and/or interests needed are sufficient to construct, operate and maintain the proposed projects (see LAG Appendix 25.176).

b. APPRAISAL

Qualified consultant, another local agency with approved procedures, or WSDOT. Prepare and deliver appraisals on federal aid projects for the agency. Ensures that appraisals are consistent and in compliance with state and federal laws, regulations, policies and procedures.

**Responsibilities/Expectations:**

- Use only qualified agency staff approved by WSDOT to perform appraisal work;
- Use appraiser from WSDOT’s Approved Appraiser List if agency does not have qualified staff;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

c. APPRAISAL REVIEW

Qualified consultant, another local agency with approved procedures, or WSDOT. Review appraisals on federal aid projects for the agency to make sure they are adequate, reliable, and have reasonable supporting data, and approve appraisal reports. Ensures appraisals are adequately supported and represent fair market value and applicable costs to cure and are completed in compliance with state and federal laws, regulations, policies and procedures.

**Responsibilities/Expectations:**

- Use only qualified agency staff approved by WSDOT to perform appraisal review work;

- Use review appraiser from WSDOT’s Approved Appraiser List if agency does not have qualified staff;
- Ensures project wide consistency in approaches to value, use of market data and costs to cure;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

d. ACQUISITION

Qualified consultant, City Attorney or Assistant City Attorney, another local agency with approved procedures, or WSDOT.

Acquire, through negotiation with property owners, real property or real property interests (rights) on federal aid projects for the agency. Ensures acquisitions are completed in compliance with federal and state laws, regulations, and policies and procedures.

**Responsibilities/Expectations:**

- Use only qualified staff to perform acquisition activities for real property or real property interests, including donations;
- To avoid a conflict of interest, when the acquisition function prepares an AOS, only acquires property valued at \$10,000 or less;
- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare administrative settlement justification and obtain approval;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Review title, and recommend and obtain approval for acceptance of encumbrances;
- Ensure acquisition documents are consistent with ROW plans, valuation, and title reports;
- Provide a negotiator disclaimer;
- Coordinate with engineering, program administration, appraisal, relocation, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each acquisition.

e. RELOCATION

Qualified consultant, another local agency with approved procedures, or WSDOT.

Provide relocation assistance to occupants of property considered displaced by a federally funded projects for the agency. Ensures relocations are completed in compliance with federal and state laws, regulations, policies and procedures.

**Responsibilities/Expectations:**

- Prepare and obtain approval of relocation plan prior to starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for agency approving authority prior to making payment;
- Provide and maintain a comprehensive written account of relocation activities for each parcel;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW.

f. PROPERTY MANAGEMENT

Public Works Director or his/her delegate.

Establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired on federal aid projects for the agency. Ensures property management activities are completed in compliance with federal and state laws, regulations, policies and procedures.

**Responsibilities/Expectations:**

- Account for use of proceeds from the sale/lease of property acquired with federal funds on other title 23 eligible activities;
- Keep R/W free of encroachments;
- Obtain WSDOT/FHWA approval for change in access control along interstate;
- Maintain property records;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW.

2. The City shall provide WSDOT with a list of the individuals with the City who currently fill the above positions and a brief summary of their qualifications. This list will need to be updated whenever staffing changes occur. The City will be approved by WSDOT to acquire based upon staff qualifications.

3. Any functions for which the City does not have qualified staff, the City will contract with another local agency with approved procedures, an outside contractor, or WSDOT. If the City proposes to use outside contractors for any of the above functions it will work closely

with the WSDOT Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the City proposes to have a staff person approved to negotiate who is not experienced in negotiation for FHWA funded projects, the LAC must be given a reasonable opportunity to review all offers and supporting data before they are presented to the property owners.

4. All projects shall be available for review by the FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages, and for a three year period following acceptance of the projects by WSDOT.

5. Approval of the City's procedures by WSDOT may be rescinded at any time the City is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

## **SECTION 2: Appraisal Waiver**

The City desires to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives, and desires to take advantage of the \$25,000.00 appraisal waiver process approved by FHWA for Washington State, and agrees to follow the procedure approved for WSDOT as follows:

1. Rules
  - a. The City may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the Project Funding Estimate (PFE) is \$25,000.00 or less including cost-to cure items. A True Cost Estimate shall not be used with this procedure.
  - b. The City must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
  - c. The City must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
  - d. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.
2. Procedures
  - a. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
  - b. The AOS is submitted to the Public Works Director or Assistant Public Works Director for approval.

- c. The Public Works Director or Assistant Public Works Director signs the AOS authorizing a first offer to the property owner(s).

### **SECTION 3: Administrative Settlement Policy**

1. The City shall make every reasonable effort to expeditiously acquire real property by negotiation. Negotiation implies an honest effort by the City to resolve differences with property owners. Offers can be flexible and negotiations should recognize the inexact nature of the process by which just compensation is determined. The City shall endeavor to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

2. The City shall carefully consider and maximize the use of administrative settlements in appropriate situations. An administrative settlement or stipulated settlement is a negotiated settlement of a right-of-way acquisition case in which the City has administratively approved payment in excess of fair market value as shown on the City's approved determination of value (aka review appraisers certificate). The City shall carefully consider and maximize the use of administrative settlements in appropriate situations.

3. Administrative settlements may be approved when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the following nonexclusive factors may be considered:

- a. All available appraisals, including the owner's, comparable sales not included in an appraisal, and the probable range of testimony in a condemnation trial.
- b. Ability of the City to acquire the property, or possession, through the condemnation process to meet the construction schedule.
- c. Impact of construction delay pending acquisition.
- d. The negotiator's recorded information, including parcel details and the owner's rationale for increased compensation.
- e. Recent court awards in cases involving similar acquisition and appraisal problems.
- f. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
- g. Estimate of trial cost weighed against other factors.

### **SECTION 4: Authority**

1. The Public Works Director or Assistant Public Works Director shall have the authority to sign City concurrence with the waiver valuation as Just Compensation and authorize the commencement of negotiations.

2. The Public Works Director or Assistant Public Works Director shall have authority to sign City concurrence with the Appraisal Review (Determination of Value) as Just Compensation and authorize the commencement of negotiations.

3. Administrative settlements that do not exceed \$5,000.00 or 10% of the City's Determination of Value, whichever is greater, may be approved by the Public Works Director or Assistant Public Works Director. A diary entry, signed by the Public Works Director or Assistant Public Works Director, shall be placed in the file.

4. Administrative settlements that exceed \$5,000.00 or 10% of the City's Determination of Value, whichever is greater, may be approved by the City Manager. A memorandum in support of the settlement, signed by the City Manager, shall be placed in the file.

## **SECTION 5: Relocation Appeal Procedures**

A. General. Any aggrieved person may file a written appeal with the City of Fife in any case in which the person believes that the City has failed to properly consider the person's eligibility for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under the Uniform Relocation and Real Property Acquisition Policies Act, Chapter 12 of the Washington State Department of Transportation Right of Way Manual, or a relocation payment required under WAC 468-100-010.

### **B. Preliminary Review Procedure.**

1. Request for Review. A written appeal, stating with specificity the grounds for the appeal, must be filed with the Public Works Director within sixty (60) days following written notification of the City's determination on the person's claim. The appeal must contain at a minimum the following:

- a. Date relocation notice that is being appealed was received.
- b. Name of the displaced persons.
- c. Project title.
- d. Parcel number.
- e. An explanation of what the displaced person is claiming; all facts, reasons, and any supporting evidence as to why the displaced person believes the claim should be paid; or why the displaced person is otherwise aggrieved.
- f. Address, telephone number, and signature of the displaced person or the displaced person's attorney or representative in this matter.

2. Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

3. Response to Preliminary Review. If the Public Works Director finds that the displaced person's request for review is unclear or insufficient, the Public Works Director may require the displaced person to correct, clarify or amend the request or provide additional



information. If the displaced person fails to make any required corrections, etc., within a reasonable specified time, the Public Works Director should respond to the original request according to its merits. The Public Works Director's response on the merits may either accept or reject, in whole or in part, the claim, or may authorize an alternative agreement with the aggrieved person. This response shall notify the aggrieved person of the right to an administrative hearing before the Hearing Examiner.

C. Appeal to Hearing Examiner.

1. Request for Administrative Hearing. The aggrieved person shall have 30 days from the date of the Public Works Director's response to the original review within which to request, in writing, a formal open record hearing before the Hearing Examiner.

2. Notice of Hearing. Upon receive of a written request for a formal hearing, the Hearing Examiner notifies the aggrieved person of the time and place of the hearing at least twenty (20) days in advance of the hearing. The hearing shall be conducted in accordance with such rules as the Hearing Examiner may adopt.

3. The Hearing Examiner holds a hearing to analyze all evidence in the request for review, and renders its decision which may be to either accept or reject, in whole or in part, the claim, or may authorize an alternative agreement with aggrieved person.

4. Within 10 business days of the hearing, the Hearing Examiner will issue a written decision. The written decision shall specify that any further appeal must be filed in Pierce County Superior Court within 21 calendar days of the date of the written decision.

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**

Approved By: \_\_\_\_\_  
**Real Estate Services** **Date**