

## RELOCATION AND RECONSTRUCTION PROGRAM RECONSTRUCTION ON CITY OWNED PROPERTY (RCOP)

The RCOP CDBG-DR Program encompasses the reconstruction of housing for impacted applicants that are in areas not eligible for rebuild or where the improvements are owned by the applicant but not the land. The City under the CDBG-DR program desires to assist the Applicants with stick built housing on City owned allowable build lots. Applicants eligible for the RCOP program are typically going to be single family homes that currently reside in a floodway that are not eligible for reconstruction at their current location and applicants who own flood impacted manufactured housing units (MHU) on land they do not own (could be land designed for MHU rentals or an MHU placed on land by agreement with the property owner). Other property owners in substantially similar circumstances may be considered for participation in RCOP on a case-by-case basis at the sole discretion of the City.

### ELIGIBILITY

In addition to the eligibility criteria and documentation noted in the Threshold Eligibility Determination Step for the other approved Housing Programs the RCOP Program includes the following criteria to be considered for the next step in eligibility for the program:

- The homeowner must be located on property not eligible for rebuild by City or HUD policy
- The property is an MHU that is on land not owned by the Applicant (rental or agreed placement)
- The owner must own the property or MHU without any liens or they must obtain a waiver of liens that allow the City to have priority lien position in the property records upon the transfer of property.

### THE INTERVIEW

If on the City of San Marcos CDBG-DR Intake Application in question 6., the Applicant has stated “yes” to “is the address an MHU” and “No” to “do you own the land?” then the Applicant may be eligible for the RCOP Program. Regardless of the type of dwelling if the Applicant has stated “Yes” to “Is the property located in the floodplain?” then the Applicant may be eligible for the RCOP Program if the property is in a floodway or other ineligible build lot. In the event the Applicant stated “Don’t know” to the flood plain question, the Program will investigate further to determine if the Applicant is eligible for the RCOP.

- If the Applicant is eligible for the RCOP Program, the CMPC-CW interviewer should ask about liens or mortgages on the property.
- The CMPC-CW interviewer should provide a copy of CDBG-DR Form 0021 to the Applicant that highlights the RCOP Program and ask the Applicant if they are interested in a relocation program to city property that will include a 30 year restrictive covenant limiting the sale of the property under certain conditions.
- If the Applicant says “yes” then the CMPC-CW interviewer should collect the information necessary for the RCOP Program and indicate that the Applicant has been made aware of the conditions on the program before proceeding.

## ENVIRONMENTAL REVIEW

The City Lot selected by the Applicant when the eligibility and score for RCOP has been determined will undergo a Tier II review for the lot to be utilized for stick-built construction.

## SCORING AND LOT SELECTION

The City has a limited number of residential properties that they have acquired through various means. The City has voluntarily agreed to allow a certain number of these lots to be made eligible for the CDBG DR program in conjunction with a HUD style 100% Homebuyer Assistance Program in the form of the RCOP where the Applicant must be relocated. Once the eligibility of the Applicant for the RCOP Program has determined, the Applicant Score will be used in two ways. The Applicant must first qualify for the program under the overall program scoring process. Once the City has made a determination that the funds are available to serve the applicant in the Program, the Applicant's score will also be used to determine the City Owned Lot Selection process.

As Applicants eligibility is determined, those with the higher eligibility score will be allowed to make the initial selection between the available lots for the Program. Those applicants with the highest scores will be allowed to select the City Owned lot they most prefer on a first come first served basis. The Applicants will be allowed three (3) days to select a Primary preference lot before the next level score of applicant is allowed to select from the lots. As all similarly scored applicants will be choosing between the lots at the same time, a lot that was available at the initial time of selection may be taken by another applicant with a similar score without notice. Between applicants with similar scores, the lots will be awarded on a first-come-first-served basis as to Primary Preference or if the available lots have been opened to secondary pool after the three day time for decision they will be in a first-come-first-served position. If an applicant would like to select a previously selected Primary Preference lot of another Applicant in the event that the Applicant who selected the lot does not qualify, or chooses not to participate or build on that lot, they may do but only as a Secondary Preference lot. The applicant with the Secondary Preference selection will need to select a Primary Preference lot. An Applicant may have one Primary Preference selected lot and not more than one Secondary Preference lot at any time. There is no limitation to how many Applicants may declare a single lot as a Secondary Preference Lot, but all applicants must select an available lot as a Primary Preference lot to move forward in the Program.

Once an Applicant has been approved and the construction plan signed, all secondary lot selections for that Applicant will be removed as will any secondary lot choices on the lot approved for construction.

In the event of a lot selection that is declared ineligible for building due to a Tier II review, the Applicant will be allowed to select from all remaining non-selected lots.

## MAXIMUM BENEFIT FOR THE RCOP

The RCOP Program has three distinct elements that all must be completed above and beyond basic CDBG-DR program eligibility or the Applicant will not be able to move forward in RCOP Program. These are:

- Selection of Lot and TIER II approval of that lot for construction
- Transfer of Ownership of ineligible build lot or MHU to the City
- Demolition of any improvements on ineligible lot or MHU once transferred to the City

For purposes of the RCOP Program the cost of the Tier II review, transfer of Ownership (both City lot to Applicant and Applicant property to city) and the demolition will not be included in the Maximum Award available as determined above.

An Applicant may not participate in the RCOP Program unless the property (Land or MHU) is transferred. In the event of a mortgage is on the underlying property or MHU, it is the responsibility of the Applicant to obtain all necessary forms to allow the City to have the first lien position. The City will allow a mortgage to move to the new property provided the Land Use Restriction Agreement is in the first lien position.

For purposes of existing improvements in illegible properties or MHUs, the city will conduct a Request for Proposals for the demolition of existing stick-built and lot clearance required for the transferred property. The property will then be transferred to the City as public land and used appropriately (open space, wetlands, flood protection, etc.) in perpetuity. At no point will the property be used for redevelopment of housing. For MHUs, the city will seek a Request for Proposals for the removal, destruction and potential salvage of eligible materials of the MHU. In no cases will the MHU continue under its existing registration to be used as housing. The demolition of the stick-built housing on ineligible Property and the MHU must follow all HUD environmental standards including Asbestos and Lead Based Paint standards. The City will consider the cost of the disposal as a demolition program, but not charged against any Maximum Award to Owner, but will be factored into the overall cost of the Housing Program for determining the number of applicants to participate within the RCOP program based on funds available.

#### RESTRICTIVE COVENENANT AND NOTE REQUIRED

The City is providing the RCOP Program recognizing that under the existing program rules, some Applicants would not have the ability to participate in the Program and therefore would remain in flood damaged homes—with the potential for future flood damage in future flooding events. The City desires to assist these Applicants to move into decent safe and sanitary housing that will replace their existing damaged housing where possible. The City has established a limited Homebuyer Assistance Program for relocating Applicants where their property is ineligible for rebuild or for Applicants that do not own the property where their Manufactured Housing Units are placed.

This program is subject to the availability of City owned lots being available for redevelopment. To meet the City goals of increasing affordable housing in the community, the City is requiring that the donated lots and the CDBG-DR funded reconstruction remain eligible for Low to Moderate Income Households for at least 30 years. The City is requiring that Applicants utilizing the RCOP program sign a 30 year Promissory Note and agree to and sign a Restrictive Covenant in the form of a Land Use Restriction Agreement (LURA) that will limit the transfer of the property to Low-to-Moderate Income Households for 30 years. The Applicant may remain in the home for 30 years and have the promissory Note extinguished regardless of household income.

Both the deferred forgivable Promissory Note and the LURA must be signed by the Applicant prior to the beginning of construction. The effective date of the LURA will be based on an estimated time of construction based on the home. If the home is completed before the Effective Date, the Effective Date of the LURA will amended to the earlier date. The capitalized terms are defined in the LURA.

## Right of First Refusal

The City has an established policy to develop affordable housing within San Marcos. To ensure that the City gets maximum affordability, the City is requiring that they receive a “First Right of Refusal” in the event the Owner wants to sell the City Owned Lot property with improvements constructed with CDBG-DR funds. The Owner must contact the City one hundred and twenty (120) days prior to the anticipated listing date of the Property and inform them of the anticipated sale. The City will have the right to Purchase the Property for Fair Market Value, less the amount remaining on the Promissory Note, so that the Owner will be paid for their “equity” established in the home during the Compliance Period. IF the City elects not to purchase the Property, the Owner may list it for sale to a qualified LMI person or persons. The Owner cannot demand the City buy the property.

## Key Terms of the LURA and Promissory Note

The **Promissory Note** will be in the form of a Deferred Forgivable Loan over a 30 year period. The Loan will be forgiven at the rate of 3.33% a year until the Loan is extinguished. The Applicant will receive a credit against the amount for each full year they remain in the Property (if absent more than 120 days in any year will count as having abandoned the property). they will be credited with a **3.33%** reduction in the Note up to 30 years. If at the end of the 30 year period the Applicant has remained in the home the Loan and the LURA will be released and the home will have no further restrictions. If the Applicant elects to move out of the Property, during the course of the 30 Year LURA, they must first offer the City the Home at Fair Market Value or sell to an LMI Household for an amount that allows the household to acquire the home without exceeding the Home Affordable Housing Amount (not more than 30% of Gross Income going to Housing). The amount remaining on the Note will not need to be repaid to the City if the buyer is an LMI family if the LURA remains in effect. If not, the Applicant will need to repay the City for the full amount remaining on the Note. The Note will feature a cost for the land.

The recapture amount is the actual percentage of the amount of the original appraised value and shall be adjusted annually as set forth in the following table:

Date of sale or transfer	Percentage to be Recaptured
Less than year from date	100%
More than 1 year but less than 2 years	96.67%
More than 2 years but less than 3 years	93.34%
More than 3 years but less than 4 years	90.01%
More than 4 years but less than 5 years	86.68%
More than 5 years but less than 6 years	83.35%
More than 6 years but less than 7years	80.02%
More than 7 years but less than 8 years	76.69%
More than 8 years but less than 9 years	73.36%
More than 9 years but less than 10 years	70.03%
More than 10 years but less than 11 years	66.70%
More than 11 years but less than 12 years	63.37%
More than 12 years but less than 13 years	60.04%
More than 13 years but less than 14 years	56.71%
More than 14 years but less than 15 years	53.38%
More than 15 years but less than 16 years	50.05%

More than 16 years but less than 17 years	46.72%
More than 17 years but less than 18 years	43.39%
More than 18 years but less than 19 years	40.06%
More than 19 years but less than 20 years	36.73%
More than 20 years but less than 21 years	33.40%
More than 21 years but less than 22 years	30.07%
More than 22 years but less than 23 years	26.74%
More than 23 years but less than 24 years	23.41%
More than 24 years but less than 25 years	20.08%
More than 25 years but less than 26 years	16.75%
More than 26 years but less than 27 years	13.42%
More than 27 years but less than 28 years	10.09%
More than 28 years but less than 29 years	6.76%
More than 29 years but less than 30 years	3.44%

Qualifying period for forgiveness will be in full year increments. In order to qualify for a year of forgiveness, all 365 (or 366 in leap years) days will determine the year, not a calendar year. For example if the Promissory Note and LURA are signed on June 30, the annual credit will be earned on June 29 the following year. The Applicant will need to meet the Internal Revenue Service definition of being a resident of the home to qualify for forgiveness.

Example: The homeowner seeks to sell the property after occupying it continuously for 15 years. The property owner would contact the City 120 days prior to putting the property up for sale. If the City exercises its option, they will determine a Fair Market Price and buy the property and restart the LURA for a 30 year period with a new LMI household. If the City does not exercise its Right of First Refusal, then the Applicant may list the property for sale with the stipulation that the property must be sold to a LMI household for a price that allows an LMI family to pay for the house without exceeding 30% of the gross income of LMI family of four (or six for a larger home) in the Metropolitan Statistical Area containing San Marcos. If the Applicant is not able to sell the home to an LMI Household, the Applicant can sell the home on the open market, but must repay the City the balance of the Promissory Note—in this case 15 years or 50% of the original balance of the Promissory Note.

#### Key terms of the LURA

The LURA is a legally binding covenant that runs with the land and will be enforceable for up to 30 years. The LURA will limit the ability to sell the Property and the improvements on the land. The Applicant should be provided an opportunity to discuss the transfer with their own legal counsel if they desire. The City will provide a lot approved for residential construction and will utilize CDBG-DR funds to construct a home for the Applicant. In exchange for the City Owned property and the CDBG-DR construction, the Applicant must surrender all rights to their prior property (land or MHU) and agree to the Promissory Note and the LURA. The LURA is available for review as CDBG-DR-00 -25. Key Provisions of the LURA include:

#### TERM OF DECLARATION

- (a) The LURA, even if not filed in the Property Records until a later date, shall become effective with respect to Property on the Effective Date.

(b) Notwithstanding subsection (a) above the terms of this agreement shall be modified as applicable in certain limited circumstances described below in section (2), this Declaration shall terminate:

(1) If the assisted homeowner continues to occupy the home until the term of the note expires, the owner pays nothing and there are no conditions on the disposition of the property. If the property is sold, transferred or vacated by the assisted homeowner for any period that exceeds One-hundred twenty (120) days during the term of the forgivable loan period, the repayment terms of the Note will be enforced. If the assisted homeowner for any reason (other than the cases illustrated in 2. below) ceases to reside in the assisted unit during the City's CDBG-DR contract period, only LMI persons may reoccupy the unit until the contract is administratively closed by the City or the CDBG-DR contract period expires, whichever is earlier.

(2) Accelerated Forgiveness in Certain Cases: In the event of (a) the death, (b) relocation to a managed care facility, or (c) relocation resulting from documented mental or physical incapacitation of the sole remaining assisted homeowner identified in the original application, the City may, at its sole discretion, forgive any remaining loan balance or exercise the City's Right of First Refusal.

#### ENFORCEMENT, ADMINISTRATION AND COMPLIANCE

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of the LURA.

(b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the LURA is to assure compliance with the Policy for Right of First Refusal and the 30 year Compliance Period.

(c) The Owner agrees the City may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or post occupation, enter and inspect the Development to evaluate its physical and financial condition, construction, rehabilitation, operation, management, and maintenance.

(d) The Owner agrees that it will respond to requests for proof of ownership and habitation by the City.

#### ESTABLISHING THE SALES PRICE OF THE PROPERTY

The LURA anticipates three (3) different pricing models:

City Right of First Refusal Fair Market Price— Will be established based on the value of three recently sold houses within a four block area surrounding the home less the amount of funding remaining for not completing the Compliance Period on the Promissory Note. If not a sufficient number of homes have been sold in an arms-length transaction within the past year, then at the city's expense, an independent appraiser registered with the State of Texas shall conduct an appraisal on the current value of the home. This option occurs only when the City, in its sole discretion, exercises its Right of First Refusal. The Applicant cannot demand that the City buy the home.

Purchase Price for Sale to LMI Household—Means the best price the Seller can obtain that allows an LMI person(s) to acquire the Property for an amount that will allow the home to remain as Affordable Housing where the payment (not to include taxes of insurance) of any note or mortgage to not exceed 30% of the gross income of an LMI Family of four (4) for two bedrooms or an LMI Household of six (6) based on the San Marcos MSA in the year of the sale.

Market Rate Sale Price—Means the best available price for the home based on an arms-length third party Buyer in Good Faith. Market Rate Price anticipates that the home will no longer be affordable housing and requires a recapture to the City for the balance of the Promissory Note.

## REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner must be willing to provide the following representations, covenants and warranties as part of the Land Use Restriction Agreement:

- a) The Owner possesses all legal right, power and authority to execute and deliver a Land Use Restriction Agreement as is provided as CDBG-DR Form 0025.
- b) The Owner has, at the time of execution and delivery of the Land Use Restriction Agreement, good and indefeasible fee simple title to, or a leasehold interest, free and clear of any lien, charge, or other encumbrance, except those created by any loan documents relating to the Program, or those which are created pursuant to this Declaration for the Transferred Property to be transferred to the City. If a Lien exists it will be extinguished or transferred under program rules before transfer to the City.
- c) The Owner agrees to notify the City in writing of any sale, transfer, or exchange of the property, and to provide to the City the name(s) and address(es) of such prospective buyer before the sale is complete for City approval. In the case of a First Right of Refusal allowed to the City, the Owner will notify the city prior to listing. If the Owner fails to notice the City prior to a listing for sale, the Owner shall be responsible to any fees due to a party who has signed a contract to assist with the sale and will not be included in the Fair Market Value price.
- d) The Owner represents, warrants, and agrees they will maintain sufficient casualty and hazard insurance on the new CDBG-ER property so that if any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the property to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and to continuously act in accordance with the terms of this Declaration.
- e) The Owner will continue to maintain the property in good repair and pay all taxes and assessments due against the Property.
- f) For the duration of the Compliance Period if the Property was provided to the Owner as part of the Program, the Owner agrees that the sale of this property is subject to the Right of First Refusal by the City at Fair Market Price. In the event the City does not exercise its First Right of Refusal, during the Compliance Period, the Owner must offer the property for sale to LMI

person(s) at a Purchase Price that allows the Buyer in Good Faith to occupy the property as Affordable Housing. The Owner has no right to demand the City purchase the Property.

- g) The Owner will cooperate with the City for annual Compliance Period materials as requested.
- h) No secondary financing instruments may be filed against this property without express authorization from the City. In addition, in the event that the City authorizes a secondary financing instrument, this LURA will remain superior to any subsequent instruments.

#### OWNER MAY OCCUPY HOME UNTIL CONSTRUCTION COMPLETE

The Owner may continue to occupy the original home (ineligible lot improvements or damaged MHU) until the construction is completed. The Owner must maintain insurance on the property during the construction period if they chose to live in the damaged improvements or MHU. The Property will transfer to the City eight (8) days after the Owner is provided with keys to the new Property. The Owner must evacuate and take all belongings from the Property within seven (7) days from the key passing meeting. Any property remaining will be disposed of as part of the demolition. Any bulk items (old appliances, cars on the lot, trash) will be disposed of and billed to the owner for the disposal.

#### CONSTRUCTION OF PROPERTY

Once the Applicant has been qualified in the RCOP Program and a lot chosen, the construction will follow all the rules of the CDBG-DR program and all processes will be the same as though the home was rebuilt on the owner's land.