

6.0 Right of Way

6.1 Introduction

This section is focused on the beginning of the right of way process. Right of way activities begin before any actual construction or fieldwork is started. Like any other project, success with right of way usually depends on planning. This section will discuss the following topics:

- roles
- planning and lead time
- federal funding guidelines
- records and parcel files
- contracting work and agreements
- qualifications of right of way personnel, and
- minimum value purchases

6.1.1 Roles and Responsibilities

Local, State and Federal Agencies all have roles in an LPA project.

6.1.1.1 Federal Highway Administration

Acquiring right of way for a public project often requires several partners. A project may require a cooperative effort involving the LPA, KDOT and Federal Highway Administration (FHWA). KDOT and FHWA currently have the agreement that KDOT oversees the acquisition of right of way on projects receiving federal funds for compliance with federal acquisition and relocation guidelines.

FHWA has reviewed and approved KDOT's right of way processes for compliance with federal laws and regulations. Therefore, it is to the benefit of the LPA to model their right of way processes on KDOT policies. The LPA must be in compliance with both state and federal laws and regulations.

6.1.1.2 KDOT

In order for a project to receive state and federal funding, there are a multitude of laws and regulations to which the LPA must adhere. One of KDOT's primary functions is to advise the LPA concerning right of way acquisition so that the federal funding is not jeopardized. KDOT right of way manuals are available upon request to assist the LPA in the acquisition of right of way. Additionally, the PM is a member of BLP staff specializing in right of way acquisition and is available as a resource.

An LPA may develop a written policy and procedure manuals for right of way acquisition. Any written policy and procedure manuals for right of way acquisition developed by the LPA will be subject to KDOT and FHWA review *prior* to use on a federal-aid project.

6.1.1.3 FHWA and KDOT

KDOT has a responsibility to monitor right of way acquisitions done by a LPA when federal or state funds are participating in a project on the behalf of KDOT and FHWA. One of KDOT's objectives when monitoring a project is to assist the LPA to secure the benefit of the federal or state funding they have requested.

The areas to be monitored include management, design, appraisal, acquisition, relocation assistance, title and closing, condemnation and property management. If, during the course of monitoring the right of way acquisition, KDOT becomes aware of potential problems, the potential problems will be pointed out to the LPA and alternatives to remedy the problems will be discussed. The LPA can utilize KDOT's suggestions or develop their own resolutions. Ultimately the LPA is responsible for maintaining eligibility for any state and federal funding participating in the project.

Yearly FHWA will identify seven local projects in the state of Kansas that are federally funded in any phase and for which right of way was acquired for a review of the LPA's right of way files. One project is selected out of each of the six KDOT Districts and an additional project is selected out of either the Wichita (WAMPO) or Kansas City (MARC) MPO area. The LPA will be notified in writing if their project is selected for review and a time for review will be scheduled. The LPA will make available their staff that was involved in the acquisition for the project. Failure to provide proper documentation to support the fact state and federal guidelines were followed in the acquisition of right of way could jeopardize funding for that project.

6.1.1.4 LPA's Responsibility

The LPA is responsible for acquiring the necessary right of way for the construction and maintenance of the proposed facility in accordance with all applicable federal and state laws and regulations. The LPA must consider not only right of way acquired in fee simple, but also permanent easements (slopes, drainage, etc.), temporary easements (construction, borrow, etc.), licenses and any other agreements required for the entering on or use of land or property rights for construction and maintenance activities.

The LPA may or may not choose to involve federal funds in the acquisition of right of way. If the LPA is utilizing federal funds in *any* portion of the project (not just right of way), all requirements of the [Code of Federal Regulations \(CFR\) Title 49 Part 24](#), "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs", also known as "**The Uniform Act**", apply to the acquisition of right of way. KDOT's PM is available to assist the LPA with compliance with The Uniform Act, however compliance with The Uniform Act is the responsibility of the LPA.

After the required right of way for a project has been acquired and cleared for construction, the LPA **must** certify compliance with all applicable laws and regulations by submitting a ["Right of Way Clearance for Federal Aid Projects"](#) (KDOT Form 1306). Failure to comply with this submission will jeopardize the LPA's funding requests and may delay the letting of a project. If no right of way was acquired for the project, the LPA must still submit a completed KDOT Form 1306. Any required field can be marked with a "0".

6.1.2 Planning / Lead Time

One of the most significant challenges in acquiring right of way is the LPA is dependent on factors over which they may have little or no control. Delays may be encountered from property owners, title companies and the court system, just to mention a few. Because of the potential for time delays KDOT recommends scheduling plenty of lead time for the acquisition of right of way.

The following is a sample schedule for right of way activities for an average project such as a widening job containing ten parcels or so. Some time frames for functions may overlap, and complex projects will require more time. Not provided are estimates for Relocation Assistance, as these types of parcels can only be estimated on a case by case basis. Relocation Assistance will require significant time, and the PM is available to help the LPA estimate the time needed.

Layout & Legal - Preparation of the right of way plans, plats, legal descriptions and title reports. 4 Months

Appraisal and Appraisal Review - Time to prepare and review appraisals. 4 Months

7 Months

Negotiations – Notice of Proposed Public Improvement and Authorization to Acquire (per KSA 26-518) Negotiator making contact, securing signatures on contract, and closing transaction.

6 Months

Condemnation - Preparation of Condemnation notice, requesting selection of commissioners, making service, and making payments. Filing necessary notices required publications and property owner mailings.

TOTAL - 21 Months

6.1.3 Federal Funding Eligibility

23 CFR 710.203, 710.307 and 710.309 requires that costs for appraisal, negotiation and condemnation *will not* be eligible for federal funding ***without prior authorization from the FHWA*** to proceed with the activity. This authorization request is made through BLP. Costs incurred prior to the appraisal phase such as right of way estimates, title work, preliminary survey and plat and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity or as an incidental right of way expense only if the costs are incurred after authorization.

Costs eligible for reimbursement include: real property acquisition, incidental costs of the acquisition, pro rata taxes and/or special assessments, permanent and temporary easements, damages to remainder of real property, court awards and cost of tenant-owned improvements, uneconomic remnants, and construction in exchange for donation. All documents relating to acquisition of the right of way must be available for

inspection. Plans, contracts, deeds, appraisals, options, vouchers, correspondence and all other documents and papers must carry the federal-aid project number for identification.

6.1.4 Records/Parcel Files

The LPA must maintain a separate parcel file for each acquisition of real property and all the people displaced (see discussion of Parcel--What Is It? in Miscellaneous Topics). LPA records must be sufficient to demonstrate compliance with all applicable laws and requirements and be available for inspection by KDOT, FHWA and possibly other divisions of state and federal government. The LPA must retain records for at least **three years** after the final payment is made for any ROW phase of the project.

Provided below is a list of the minimum records needed to be retained:

- All Correspondence
- Title Documents
- Design Summary Information and Plat
- Appraisals and Review Appraisals
- Agency Approval to Make Offers
- Written Offer Letter
- Negotiator's Notes
- Administrative Settlement (if used)
- Copy Signed Contracts
- Conveyance and Closing Documents
- Proof of Payment to Landowners/Tenants
- Relocation Forms
- Relocation Agent's Notes
- Condemnation Documents (if used)
- Right of Way Record Checklist (see Form Q in *Appendix B - Forms*).
- Proof of Payment to Landowner(s) and Tenant(s)

6.1.5 Contracting Work/Intergovernmental Agreements

If the LPA does not have sufficient internal staff necessary to complete the necessary right of way functions they may contract with a private contractor or with other governmental agencies. When the LPA contracts with outside resources, they should allow additional coordination time in the overall schedule for right of way acquisition.

6.1.6 Contracting Work

KDOT Bureau of ROW maintains a list of consulting firms that may be used by the LPA for ROW activities. These services should be contracted in compliance with the applicable requirements for contracting with private contractors, fee appraisers or other specialists. KDOT provides the list of consultants for informational purposes only, and does not warrant the services supplied by consultants.

6.1.7 Intergovernmental Agreements

KDOT may be available to assist the LPA with the right of way acquisition for their project as workload permits. KDOT's assistance may be provided in appraisal, appraisal review, acquisition, relocation, condemnation, property management, and other miscellaneous tasks such as preparing plans, estimates, and title documents. In addition, other neighboring local agencies may also be an option for additional right of way resources, for example, neighboring city or county staff.

To hire KDOT staff, the LPA must submit a written request to the PM specifying the function with which they are requesting help. They must also ask for information pertinent to the scope of the requested function as well as the projected completion schedule.

If KDOT staff is available to complete the assignment within the requested time frame, KDOT will prepare a cost estimate for the LPA. KDOT will then prepare an Intergovernmental Agreement outlining the functions KDOT will perform for the LPA along with the estimated costs. The LPA will be responsible for all actual costs incurred. Sample copies of Intergovernmental Agreements may be obtained from the PM.

6.1.8 Qualification of Right of Way Personnel

The LPA should have qualified personnel supplying the necessary right of way services. Provided below are minimum qualifications for persons performing right of way program functions. There are right of way functions for which no qualifications have been provided, including property management, land plat and description preparation, and condemnation and project management. If you find you require any of these services, or others, consult with the PM for assistance in determining the necessary qualifications. Additionally, KDOT maintains a list of persons who provide services for appraising, review appraising, negotiating and relocation assistance. KDOT does not make recommendations from this list.

Appraisers must

- Have successfully completed technical appraisal training and have experience in appraising the type of property to be appraised. When in doubt, a sample appraisal can be requested.
- Have previous experience preparing appraisals for eminent domain right of way acquisition.
- Be a certified or licensed appraiser.

Review Appraisers must

- Possess the ability to logically analyze the appraiser's approach to value and recognize deficiencies in the appraisal report.
- Be certified or licensed appraiser.

NOTE: Should you decide to utilize the services of a fee review appraiser, your agency retains the responsibility to approve the amount believed to be just compensation.

Negotiators must

- Have documented experience in performing acquisitions which complies with the requirements of the Uniform Act or be a full-time employee of the LPA or the DOT.
- Be familiar with the requirements of the Uniform Act.
- Demonstrate the ability to understand appraisals and appraisal reviews.
- Be proficient in researching courthouse records and understand the legal title process.
- Demonstrate the ability to interpret right-of-way plans.
- Possess effective communication skills.

Relocation Assistance Agents must have

- Documented experience in performing relocation assistance which complies with the requirements of the Uniform Act.
- Sufficient right of way knowledge.
- Knowledge of related project disciplines (work within a team).

6.1.9 Minimum Value Purchase

When the administration cost of securing the right of way for a parcel approaches or exceeds the value of the acquisition itself, the procedure for acquiring right of way may become disproportionate and cumbersome. Minimum value purchase procedures have been developed in an effort to reduce cost and time necessary to acquire less complex parcel acquisitions.

Minimal value purchases are uncomplicated acquisitions estimated not to exceed \$10,000 in value, excluding agriculture fence and crops. Minimal value purchases allow for waiving the requirement that an appraisal be used to determine just compensation. An administrative estimate, called an “Estimate of Just Compensation”, is used to establish the amount to be offered as just compensation. The format for an estimate of just compensation is described in [Section 6.2](#) of this Manual. If a negotiated agreement is not reached with the property owner and condemnation is necessary, it would benefit the LPA to have an appraisal made of the property. FHWA has approved the use of minimal value purchases on federally funded projects. By following the compensation estimate process as defined in this Manual, the LPA should be in compliance with state and federal guidelines.

6.1.10 PROCEDURAL GUIDELINES

The goal of the Uniform Act is to encourage and expedite the acquisition of real property by agreement with the owner, avoid litigation and relieve congestion in the courts, assure fair and equal treatment for all owners, and promote the confidence of the public in land acquisition for public use. In order to achieve that goal, certain procedures must be followed when acquiring right of way.

This section provides a brief overview of items required to be performed so funding is not jeopardized. The activities are listed in the approximate order in which they should be performed. See [Checklist C - Local Public Agency Project Checklist](#) in [Appendix A](#).

- Contact BLP to inform and perform preliminary startup procedures and determine the scope of the project including what, if any, additional right of way will be needed.
- Prepare the parcel files, secure title information, plot existing and proposed right of way lines on construction plans, calculate the acquisition areas, and review access control needs. Estimate the acquisition amount for each parcel to determine the complexity of the valuation issue and the appropriate valuation procedure. One item to be wary of is the presence of hazardous waste and contaminated properties, see [Section 6.9.5](#).
- Complete the public notification and involvement requirements.
- Request authorization for reimbursement of incidental expenses including appraisals from KDOT and FHWA if participation in payment of these right of way expenses is sought.
- Comply with notification requirements per 49 CFR Part 24.5.
- Determine the amount to be offered as just compensation by an appropriate method (appraisal or through the appraisal waiver process).
- Submit information necessary to request authorization to acquire from KDOT and FHWA if state or federal funding participation in right of way is sought.
- Acquire the right of way and close each transaction.
- If relocation is involved, assist all displaced persons (Please note that per K.S.A. 58-3502, all acquiring agencies are required to provide relocation assistance to eligible recipients on all projects.)
- If necessary, complete Condemnation proceedings.
- Certify the project.

A guide detailing the right of way process may be found in [Appendix A, Checklist G](#). This checklist is called the [Right of Way Record Check Sheet](#) and is a helpful tool in managing the right of way process. At any time in this process, if right of way related issues need to be discussed, contact the PM.

The following information will describe in more detail suggestions on “how” the right of way functions should be performed to comply with federal funding.

- *Title Search*

There must be an examination of the county records, and a title report requested for each parcel to determine the owner of the property, including mortgage holders and other interested parties. This title

report is used to determine the status of title so that merchantable title for the land required can be obtained. The report is also used as an information source for describing land and identifying all persons or entities with an interest in and/or the authority to contract for deed and/or release real estate interests. When examining the county records, the report must show a five (5) year sales history of property. If there was a transfer of title within the last five (5) years, this requires the researcher to go beyond this five (5) year window to the previous deed transferring ownership. These records are maintained as a part of the parcel file. (Reference 49 CFR Part 24.103 (a) (2))

- *Legal Descriptions/Plats*

Legal descriptions and plats must be prepared in accordance with Kansas Minimum Standards for Boundary Surveys and Mortgage Title Inspections Standards of Practice (latest revision).

- *Authorization for Right of Way Activities*

For participating ROW acquisition activities, the offers cannot be made before a written notice of FHWA Environmental Concurrence is issued. The DSD is used to provide permission to proceed with property acquisition.

For non-participating ROW acquisition activities, it is recommended that the right of way process is not initiated prior to the DSD being issued.

6.2 The Valuation Process

6.2.1 Introduction

This section is intended to serve as a brief description of the Valuation Process. The KDOT Bureau of Right of Way, Appraisal Section maintains a detailed “Appraisal Manual” providing additional information. A copy may be requested from the PM.

When the LPA has received authorization to acquire right of way for the project, the Valuation Process is the next step. Fair and just compensation must be considered for all interests regarding acquired property rights.

The Valuation Process may be described in four basic areas:

- Whether to use an appraisal or implement the appraisal waiver process.
- Appraisal Process/Appraisal Waiver Process
- Review Process
- Agency Establishment of Approved Offer

6.2.2 To Appraise or Not To Appraise

The first decision the LPA will need to make during the Valuation Process is whether to obtain an appraisal or utilize the appraisal waiver process. This section of the Manual will discuss both types of valuations. The PM is available to answer any questions regarding either process. Decisions regarding which process to utilize should be reached in compliance with all state and federal criteria on this subject to avoid conflicts that may adversely affect federal eligibility for the project.

6.2.3 The Appraisal Process

This sub-section provides detailed information concerning the appropriate use of both the Appraisal Process and the Appraisal Waiver Process. The following information provides the basis to determine which valuation process is appropriate to use on specific parcels.

Before the initiation of negotiations, the property must generally be appraised. There are two exceptions: (1) if the owners decide to donate the property and waive their right to an appraisal (see [Section 6.9.3](#)) or (2) if the simplicity of the acquisition indicates that an appraisal is not necessary (see [Section 6.2.4](#)).

The format and level of documentation in an appraisal depends on the complexity of the appraisal problem. There are two appraisal report formats that satisfy Kansas DOT and FHWA standards; short form or standard form. The appraiser is expected to use the most appropriate format. The format to be used should generally be specified in the appraisal assignment.

- *Short Form Report*

A brief narrative discussion must be included covering the overall property, the acquisition, and the acquisition's effect on the remainder. The extent of documentation should be commensurate with the complexity of the appraisal, and values involved. In the event of condemnation, the appraiser may be requested to provide before and after values for the property on the short form report. The estimate of just compensation arrived at in a value finding appraisal report reflects the appraiser's opinion of the difference between the before and after values.

The standard three approaches (Market Sales, Income and Cost) should be considered, but often only the Sales Comparison Approach will be developed. The land valuation requires a minimum of two sales, documented, identified, and confirmed in the same manner as comparable sales for a detailed appraisal report.

All items of the acquisition are to be listed on the short form report, even those for which the compensation value is zero. When access control is acquired, it should be listed as "Access Rights" under "Damage to the remaining property".

The Uniform Residential Appraisal Report (URAR), with certain additions, may be used for appraising residential properties when a "Total Acquisition" is involved, or when a "before value" must be developed for a partial acquisition. Photographs of both interior and exterior, as well as a floor plan sketch with

approximate dimensions are recommended for any building to be acquired, along with comparable sales sheets with photographs and a sales location map.

All or part of this form may be used to value a residential portion, as defined, of a multi-use property and incorporated in larger report covering the entire property.

- *Standard Form Report – Detailed Appraisal Report*

Detailed Appraisal Reports are required on either total or partial acquisitions of properties when other less detailed formats are not applicable. In the case of partial acquisitions, this report is referred to as a “Before and After” appraisal.

This type of report should include all applicable approaches to value. Reasons for omitting any traditional approach to value should be clearly stated in the report. The Appraiser may be instructed to limit appraisal analysis to a specific valuation approach or approaches when inclusion of additional approaches to value would not significantly add to reliability and support of final value estimates, or when recommended by legal counsel.

It is not acceptable to produce an after acquisition value by subtracting the estimated value of acquisition and damages from the before acquisition value conclusion.

- *Opportunity to accompany the appraiser*

Regardless of the form used, the appraiser **must** offer the property owner, or their designated representative, a reasonable opportunity to be present during the inspection of the property. All appraisals are prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" (USPAP) as promulgated by the Appraisal Foundation, except as they may conflict with the state and federal requirements for eminent domain, in which case the jurisdictional exception provision of USPAP is applicable.

Provided are some items to consideration when determining fair market value, including appraiser selection and qualifications, some general requirements, number of appraisals, and appraisal updates.

- *Appraiser Selection and Qualifications*

Prior to the selection of an appraiser, each parcel to be acquired must be reviewed to determine the complexity of the acquisition, the desired appraisal form and a problem statement must be written. These determinations and the statement must be provided by someone with expertise and knowledge in these matters. The appraiser selected must be a Kansas licensed or certified appraiser and have demonstrated: real estate appraisal experience, successful completion of real estate appraisal training, experience in eminent domain appraisals, and experience appraising the type of property being acquired.

In those instances when the services of a KDOT appraiser or a fee appraiser are being used, the LPA must enter into a written agreement for the contracted services. If a fee appraiser is hired, the agreement must

contain a schedule of the fees, itemized by parcel. The fee appraiser's proposal for services should be based on the LPA's determination of what type of value report is required. It is advisable that the agreement also contain a completion date and payment schedule for possible court testimony.

- *Conflict of Interest*

No appraiser or review appraiser may have any interest, direct or indirect, in the real property being appraised for the LPA that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal cannot be based on the amount of the valuation (say, as a percentage of or on a charted basis) and an appraiser cannot act as a negotiator for a property he/she has appraised.

LPAs must establish an appeal procedure for all contractors who feel they have not been treated fairly during the selection process and/or in the administration of a contract. Please see [Appendix C, Appeal Procedure](#) for an example.

- *Required Number of Appraisals*

In general, only one appraisal is required for each non-complex tract acquired. In the event that there is an extremely controversial or complex appraisal, a change in highest and best use occurs, or a high dollar purchase is contemplated, the LPA may determine that a second appraisal or review is necessary. If federal funds are used in the appraisal costs, the LPA will need to obtain prior approval from KDOT before obtaining the second appraisal if reimbursement will be requested.

- *Appraisal Update*

An appraisal should be updated or a new appraisal obtained if: (1) additional value information is presented by the owner, (2) a material change in the property or proposed acquisition indicates the need to modify the appraisal, or (3) if a significant delay (depending on market conditions) has occurred since the date of the original appraisal.

6.2.4 The Appraisal Waiver Process

The Appraisal Waiver process estimates fair and just compensation, and has also been referred to as an Estimate of Just Compensation. The estimate of just compensation is not a formal appraisal and is used with minimal value purchases. It requires only a one-page form which you can find as [Form G](#) in [Appendix B](#). This form can be used for *minor, uncomplicated acquisitions* where compensation to the property owner does not exceed \$10,000. The \$10,000 figure is exclusive of payments for the cost of tillage, fertilizer, growing crops, agricultural right of way fence.

Please note that simply because the compensation value is less than \$10,000 does not mean that an estimate of just compensation may be used rather than an appraisal. The potential complexity of the acquisition must also be considered. In [Appendix A](#) is a checklist entitled [Checklist for Determining Complex](#)

Parcel for Appraisal Purposes. This checklist can help in determining if an acquisition is complex enough to require an appraisal or, if not, that a compensation estimate may be used.

Consultants may prepare and sign an estimate of just compensation **ONLY IF THEY ARE A LICENSED OR CERTIFIED APPRAISER**. Otherwise, an authorized agent for the LPA must sign it.

It is not necessary that the estimator offer the property owner or the owner's representative an opportunity to be present during the property inspection.

The estimator can also serve as the acquisition agent. An administrative approval must be obtained before the offer is made. The administrative approval must be provided by an official of the LPA other than the person making the compensation estimate. If the agency maintains a right of way staff, the agency might assign a qualified licensed or certified appraiser to approve these estimates. Although not required to do so, the local agency may wish to maintain a listing of approved compensation estimates along with who approved the estimates.

This report form can also be used for simple partial acquisitions when damages to the remainder are non-existent or are relatively minor, are easily measured or explained, or are measurable by cost-to-cure. An example of a "simple partial" acquisition would be a strip acquisition from a large property, which does not approach close enough to any improvements to cause possible proximity damages. Any partial acquisition which necessitates reconfiguration of improvements or which damages the improvements cannot use this form. Any partial acquisition which changes the highest and best use of remaining property also could not be appraised using this form.

There is \$10,000.00 limit to the total value of land and damages when using this form. This type of form does not express before and after values, but only indicates compensation due to the property owner and/or lessee. Value of the land and/or improvements acquired must be supported by applicable data. Any large cost-to-cure items must also be appropriately supported.

6.2.5 The Review Process

If the LPA does not have a qualified review appraiser on staff, the LPA will need to secure the services of a contracted reviewer. The reviewer's responsibility is to ensure consistency of property values on a project, an adequate investigation of the local market to support the appraisal and that the appraisal conforms to applicable eminent domain appraisal standards. The LPA will need to designate a local official to subsequently approve the amount to be offered as just compensation following review of the appraisal.

All appraisals require review by a qualified review appraiser. The person performing the appraisal review function must be thoroughly familiar with the Uniform Act and eminent domain requirements under the law. An appraisal review may not be performed by the appraiser that made the appraisal of fair market value. The review appraiser will examine the appraisal to determine it:

- has been completed in accordance with the approved appraisal specifications,
- follows accepted appraisal principles and techniques in valuation of real property in accordance with the USPAP and state law for eminent domain acquisitions,
- contains information necessary to explain, and substantiate the conclusion and estimate of fair market value,
- includes consideration of compensable items, damages, if any, and does not include compensation for items not compensable under state law,
- contains an identification of the buildings, structures and improvements on the land as well as the fixtures which were considered as part of the real property (see discussion of Tenant-Owned Improvements and Leasehold Interests),
- contains an estimate of fair market value for the acquisition and, where appropriate in the case of a partial acquisition, an allocation of the estimate between the real property and damages to the remainder property.

Upon completion of the review and any corrections or modifications necessary by the appraiser to make the appraisal conform to these guidelines, the review appraiser will attach to the appraisal and place in the parcel file a signed and dated statement setting forth the following:

- whether the appraisal is accepted and approved, accepted and not approved,
- the approved amount recommended to be offered as just compensation,
- the understanding that the determination is to be used in connection with a federal-aid highway project,
- the extent of the visual inspection of the parcel to be acquired and of the applicable comparable sales,
- that no direct or indirect, present or contemplated future personal interest in the property exists nor that any benefit from the acquisition of the property appraised will occur,
- that this determination has been reached independently based on appraisals and other factual data of record without collaboration or direction,
- the determination shall be documented to show its basis

6.2.6 Agency Establishment of Approved Offer

The LPA must determine the amount of the approved offer of just compensation. This responsibility cannot be transferred to a consultant or contractor. Each file should document a determination of the approved offer signed by an official of the LPA.

49 CFR Part 24.102(d) requires the LPA to establish an opinion of fair and just compensation, offer the full amount believed to represent fair and just compensation, and that the approved amount cannot be lower than the lowest appraisal received.

6.2.7 Summary of Valuation Process

The following steps have been provided as a quick guide to help the LPA through the valuation process.

- Determine the appropriate type of valuation needed. Rely on local staff expertise
- Consult with KDOTs PM

- Assign the work to the appropriate people.
 - Appraisers with expertise for the type of appraisal problem.
 - Acquisition agents with sufficient expertise to develop compensation estimates.
 - An appraiser can complete the Estimate of Just Compensation and serve as the acquisition agent.

- Complete the necessary review
 - Qualified review appraiser for appraisal review.
 - Qualified staff for administrative review of compensation estimates.

- Establish the agency's approved estimate of fair and just compensation.
 - Must be an official of the LPA.
 - Amount must be, at a minimum, the lowest appraisal received.
 - Should be written and documented in parcel file.

6.3 The Acquisition Process

6.3.1 Introduction

The Acquisition Process has presented challenges for many acquiring agencies and property owners alike. KDOT's Bureau of Right of Way Acquisition Section developed a brochure "[Real Property Acquisition for Kansas Highways, Roads, Streets, and Bridges](#)" to provide more information regarding the process.

This section has been divided into five specific areas. The areas that will be reviewed are:

- Overview and getting started
- Offers/Notices
- Contracts/agreements
- Notes/documentation
- Administrative settlements

Sample forms are provided in [Appendix B](#) below.

6.3.2 Overview and Getting Started

- *Title information*

Prior to the initiation of the Acquisition Process, adequate title information must be obtained. The LPA will need to recognize early in the process all the interests to be acquired including but not limited to owners, lien holders, tenants, easement holders, and taxing authorities.

- *Good Faith Negotiations*

Code of Federal Regulations (CFR) Title 49 Part 24.102 (f) requires the LPA to negotiate in good faith and present each owner with a statement of their rights. A copy of a statement of rights pamphlet "[Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges](#)" is available on the KDOT website. It is to the benefit of the LPA to make the pamphlet a part of a packet that is provided to every property owner.

Negotiating in good faith contemplated providing all parties the opportunity to discuss their views, opinions, and concerns. All parties should also have the opportunity to have their thoughts seriously considered, and their questions answered. All parties must be given reasonable opportunity to consider the information and seek counsel if they wish. At the end of good faith negotiations all parties will need to determine what they believe to be an appropriate outcome.

Any knowledgeable and qualified member of LPA staff may be the negotiator. It is helpful if the negotiator is a Notary Public for notarizing documents signed by property owners, but not a requirement.

The negotiator should personally contact the property owner and tenant of each property on the project. The initial contact with the owner(s) as part of the Acquisition Process will depend on which form of the Valuation Process you have selected. Remember the Valuation Process is completed either by an appraisal or the Appraisal Waiver Process.

If the Appraisal Waiver Process is used for valuation purposes, the initial contact will be when the acquisition agent completes the compensation estimate form after meeting with the owner. Compensation estimates should not be completed by one representative and delivered by another. Remember, the goal of the Appraisal Waiver Process is to reduce the time and expense for the owner and acquiring agency.

If reasonable efforts have been made, and an agreement cannot be reached, the LPA may need to initiate eminent domain (condemnation) proceedings to acquire the required property rights. The negotiator cannot do or say anything that may be construed as being coercive in nature to obtain the owner's agreement. However, a brief explanation of the eminent domain procedure should be provided to the owner along with the brochure titled "[Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges](#)". This will assist the owner in understanding the process.

- *Miscellaneous Acquisition Expenses*

State and federal regulations require all LPA's acquiring right of way to reimburse expenses incidental to and necessary for the transfer of property. A partial list of these expenses include: recording fees, transfer taxes, documentary stamps, and evidence of title. These and other eligible expenses may be reimbursed to the owner, or preferably, paid directly to the person(s) entitled to payment. The LPA is not required to pay costs required solely to perfect title or assure that the title to the real property is entirely without defect, surveys and legal descriptions of the real property, penalty costs and other charges for prepayment of any preexisting recorded mortgage encumbering the real property entered into in good faith.

- *Items to present to the owner*

The person negotiating on behalf of the LPA should be prepared to explain the project plans and the impact of the project on the owner's property. As required by Federal law the following must also be presented and explained:

- The written offer of just compensation for not less than the full amount of the reviewed and approved appraisal, and approved by the LPA with the amounts for land, improvements, fence and damages separately listed.
- If the acquisition includes relocation of personal property or individual a statement should be provided informing the owner or tenant that they will not be required to move their personal property earlier than 90 days from the date of the notice, nor earlier than 30 days from the date compensation has been made available, as long as the 30 days from date of payment does not supersede the 90 day notice.
- An informational brochure, "[Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges](#)" or an approved alternative.
- The documents to be signed by the owner once the LPA's offer is accepted.

6.3.3 Offers/Notices

Owners and tenants are entitled to written offers reflecting the LPA's approved estimate of fair and just compensation. In the event of relocation, owners and tenants are also entitled to notices informing them of when they will be required to move from the property.

Should the LPA subsequently approve a revised appraisal review or estimate of just compensation for a different amount, a revised written offer must be provided to the owner and/or tenant. [Form D](#) in [Appendix B](#) may be used for this requirement.

The date of the offer must reflect the date the written offer of just compensation was presented and all required notices provided. If the offer is accepted, the LPA must pay the agreed purchase price **BEFORE** taking possession of the property.

6.3.4 Contracts/Agreements

The goal of the Acquisition Process is to reach a mutually acceptable agreement which will be memorialized in a legally binding contract. As a tool for reference, samples of contracts and contract clauses are provided. These samples are for reference only and the LPA should consult with local legal counsel as to specific contract and conveyance needs.

6.3.5 Notes/Documentation

It is important that after each phone call with a property owner, the local negotiator completes a written negotiator's contact report, sometimes called negotiator's notes. These notes should summarize each contact and interview with the property owner and should remain in the parcel file. These reports will eventually become available for inspection by the public. See *Form F* in *Appendix B* for a sample. Each report should contain as a minimum:

- project number,
- parcel number,
- date of contact,
- type of contact (phone or in person),
- name, address and telephone number of person contacted,
- special instructions, if necessary, for locating that person,
- names of all other persons present,
- names, addresses and phone numbers of attorney or other representatives,
- main points discussed, questions and commitments made by agent,
- principal objections to offer or taking,
- whether offer was accepted or rejected,
- requests made by owners,
- any other highlight discussions of the contact including special instructions for closing, relocation or property management,
- negotiator's signature and date

6.3.6 Administrative Settlements

The Uniform Act requires that "The head of the agency shall make every reasonable effort to acquire expeditiously real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Offers to purchase should not reflect a "take it or leave it position."

The LPA may determine that it is in the public's best interest to make a negotiated settlement with the owner for more than the approved appraisal amount. All negotiated settlement increases must be documented. A written report called an "Administrative Settlement" should explain and provide justification why this settlement is in the public's best interest.

Administrative settlements should describe the acquisition, state the offer of just compensation and the proposed negotiated settlement amount, and introduce information which supports the settlement and the requested approval from the proper authority. The settlement may also include information on recent court awards for similar type property, the property owner's appraisal data, an estimate of trial cost or an opinion of legal counsel. The settlement must be approved by an officer of the LPA acquiring the right of way and not by the negotiator. The person approving the settlement should be able to judge the risk/benefit issues of a potential court action.

If a revised appraisal review showing new valuation or extent of damage information is performed, then a written revised offer must be made and presented to the owner reflecting the updated consideration. See [Form D](#) in [Appendix B](#). If the revised written offer is accepted, an administrative settlement is NOT required.

6.3.7 Summary of Acquisition Process

The following steps have been provided as a quick guide to help the LPA through the acquisition process:

- Overview and getting started
 - Title information, consider everyone that has an interest in the property.
 - Good Faith Negotiations, providing the opportunity; time; and consideration to attempt to reach an acceptable agreement.
 - Miscellaneous Acquisition Expenses, costs incurred by the owners as a result of the acquisition.
 - Provide to the owner the materials necessary to provide good faith negotiations.
- Offers/Notices
 - Provide written offers in the amount of the agency's approved estimate of fair and just compensation.
 - Provide the written notices as to when the property must be vacated.
 - Contracts are written instruments that secure the property rights needed for the project.
 - KDOT has samples available upon request.

- Notes/Documentation
 - Provide written documentation of negotiations
 - Provides documentation for future inquiries
 - Future problem solving resource
- Administrative Settlements
 - Describe acquisition
 - Describe reasons for settlement
 - Ensures future participation

6.4 Relocation Assistance

6.4.1 Introduction

K.S.A. 58-3502 requires all agencies acquiring right of way to provide relocation assistance benefits to all eligible persons on all projects. Eligible persons include owners and anyone else lawfully occupying the property. Whenever the LPA anticipates displacements requiring Relocation Assistance, the PM should be notified as soon as possible.

Rights and entitlements of individuals, families, businesses, farms and nonprofit organizations displaced by federal-aid projects are defined by and discussed Uniform Act. State Relocation requirements for all other projects being acquired under the threat of Eminent Domain are provided in K.S.A. 26-501 to 26-516. Generally, all persons occupying property to be acquired on the date negotiations begin who are required to move, are eligible for relocation assistance and payments to reimburse the costs of moving personal property to locations off the right of way. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments to offset increased costs of obtaining replacement housing payments.

No person lawfully occupying real property shall be required to move from a dwelling or to move from a business or farm operation without at least a 90-day written notice from LPA. Additionally, the landowner/tenant is given a 30-day written notice to vacate after payment has been made by LPA. If condemned, the 30-day written notice to vacate cannot be issued until the compensation has been finally determined and paid into court by the LPA. See [49 CFR, Part 24.102 \(j\)](#). Since time for right of way acquisition is a major concern for most projects, relocatees should be dealt with as early as possible.

The appeal process described in [Appendix C](#) applies to relocation benefit resolution as well as incidental expenses. The LPA will need to ensure that the relocatee is aware of the right to appeal and be given an explanation of the process.

The KDOT Bureau of Right of Way maintains a policy and procedure manual for Relocation Assistance approved by FHWA. KDOT recommends the LPA work closely with the PM on Relocation Assistance matters, retain a consultant with the necessary experience, and/or obtain a copy of the [KDOT Relocation Assistance Manual](#).

6.4.2 Personal Property Move

Quite often personal property is located on land being acquired. The owner of the personal property is entitled to relocation assistance and payment for the actual and reasonable costs to move the personal property. The owners of personal property may or may not be the owners of the real estate. The move may be reimbursed through itemized bills and receipts paid to a contractor for the move, or a self-move based upon an agreed to amount considered to be fair and reasonable. Additionally, the 90 and 30 day notices discussed in the Acquisition Section of this Manual ([Section 6.3](#)) apply to these types of moves.

6.4.3 Residential Moves

The Residential Relocation program was intended to leave the displaced person(s) in a similar situation after the displacement. Eligibility is determined by occupancy, not ownership. Only displaced persons are eligible for the payments to be discussed, which may or may not be the owner of the property.

The following information is not intended to provide all the necessary information pertaining to Residential Moves. Please refer to the [KDOT Relocation Assistance Manual](#), or the PM for more specific information.

- *Replacement Housing Requirements*

Comparable replacement housing must be made available before a displaced person can be required to move from their home. Comparable replacement housing is defined as being functionally similar, in as good or better condition and in a similar area to the house being acquired. The replacement housing must also meet decent, safe and sanitary criteria.

- *Replacement Housing Payments*

The purpose of this payment is to provide funds if a shortfall exists between the fair market value and the cost of replacement housing. Replacement housing payments may be calculated as supplemental purchase payments or supplemental rental payments.

Supplemental purchase payments are developed for owner occupants by studying the local market to determine what is available at the time of displacement. The cost of replacement is compared to the amount paid for the house by the LPA. The difference between the two costs is considered the Replacement Housing payment. Specific criteria for developing payments, establishing limits and describing requirements are available through the PM.

Supplemental rental payments are available for displaced non-owner occupants and owner occupants that elect not to purchase replacement housing. The present market rent of the property being acquired is compared to adequate replacement housing present for lease in the local market. The present lease value is

then compared to the replacement lease value. The difference between the two costs is considered the supplemental rental payment. Displaced tenants may in certain situations apply their supplemental rental payments as a down payment in the purchase of replacement housing. Specific criteria for developing payments, establishing limits and describing requirements are available through the PM.

Please note, the replacement dwelling considered by the Relocation Agent is only for establishing the amount of payment the eligible displacee is entitled. The displacee shall always choose the replacement housing they will occupy. The reimbursement shall be made based upon the amount actually spent by the displaced, not to exceed the relocation agent's study.

- *Increased Mortgage Payments*

This payment is calculated when displaced owner occupants must refinance at a higher mortgage rate than the mortgage on the property being acquired. The payment is limited to the amount owed and the remaining life of the original mortgage.

- *Normal and Customary Closing Costs*

These are costs that are normal and customary for real estate transactions in the local market. Qualifying expenses may include abstracting costs, recording fees, and credit reports. Certain other expenses may be excluded, such as "points" or prepaid interest. Contact the PM about specific expenses.

- *Moving Expenses*

In addition to other payments, displaced persons are entitled to reasonable moving expenses. These payments may be based upon reimbursement of itemized bills and receipts from qualified movers, or a scheduled payment system. Contact the PM for current federally approved payment schedules and criteria.

6.4.4 Non-Residential Moves

Displaced farms, businesses, and non-profit organizations are also eligible for Relocation Assistance benefits, but the benefits are different than those provided for residential moves. The basic concepts of the major benefits are provided in this Manual. The LPA will need further information from the PM before attempting to provide all the appropriate benefits to a displaced farm or business.

- *Re-establishment expenses*

These payments are designed to reimburse the actual expenses incurred to re-establish the farm, business, or non-profit organizations in the new location. The present maximum reimbursement for these types of expenses is \$20,000. Offering and providing these services will require specific knowledge and experience. If the LPA has questions contact the PM or other qualified relocation resource.

- *Searching Expenses*

In some cases the displacee is entitled to searching expenses in the search for a new location for their farm, business, or nonprofit organization. The present maximum reimbursement is \$2,500. Offering and

providing these services will require specific knowledge and experience. If the LPA has questions contact the PM or other qualified relocation resource.

- *Incidental Expenses*

Other costs incurred in the move may also be eligible for reimbursement. For example: the reprinting of stationary presently on hand with the new address; loss of personal property as a result of the move or discontinuance of the operation; or the purchase of subsequent personal property required as part of the move. Implementation and offering these services will require specific knowledge and experience. If the LPA has questions contact the PM or other qualified relocation resource.

- *Moving Expenses*

The displaced non-residential occupant is entitled to actual and reasonable moving expenses. The payments may be based upon itemized bills and receipts from a qualified mover, or payments may be made to the displacee as part of a self-move. If the displacee opts for a self-move the LPA should contact the PM for assisting establishing payment.

- *In Lieu of Payment*

The displacee may opt to receive a payment based upon the net income of the displacee over the last two years. This type of payment is in lieu of all other payments and only available to non-residential displacements. The minimum payment is presently \$1,000 with a maximum payment of \$40,000. Offering and providing these services will require specific knowledge and experience. If the LPA has questions contact the PM or other qualified relocation resource.

6.4.5 Summary of Relocation Process

- *Types of moves*

- Personal property move
- Residential move
- Non-residential move
- Displacee may be eligible for all three types on the same property.
- More than one displacee may be involved on the same property.

- *Personal Property move*

- Costs to remove personal property from land being acquired.
- Fixed payment or reimbursement for qualified mover.

- *Residential move*

- Decent, safe and sanitary replacement housing must be available
- Replacement housing payments
- Replacement rental payments
- Customary and usual closing costs
- Moving expenses

- *Non-residential move*
 - Re-establishment expenses
 - Searching expenses
 - Incidental expenses
 - Moving expenses
 - In lieu of payment

6.5 Title and Closing

6.5.1 Introduction

This section will discuss Title and Closing and the Condemnation Processes. Both processes may be described as the act converting possession and/or ownership of property. Title and closing concentrates on transactions where there is a mutual agreement, while Condemnation focuses on those situations where an agreement is not achieved.

6.5.2 Title and Closing

Title and Closing involves examining the legal title to property, determining what actions must be taken to obtain clear title to the right of way and working with the owner to complete the transaction. The desired results are to secure all the documents necessary to ensure clear title of the land is conveyed to the LPA.

The LPA may have their City or County Attorney handle this work a real state specialist or a professional title and closing agency. The closing agent should be someone other than the person who negotiated and/or drafted the contract with the property owner.

If the contract for deed method is used by the LPA (first a contract is signed by the owner accepting the offer and later a deed is signed conveying the land), then the title documents must be drafted from the language of the contract. Sometimes the deed is prepared in advance and signed at the time the offer is accepted. At the time of offer being presented, mortgage holders, lien holders, and taxing authorities must be notified and their interests waived or released as it pertains to the property acquired by the LPA. All conveyances should be recorded in the Office of the Register of Deeds.

Providing payment to the owners is an integral part of the Title and Closing process. The timing of the payment must ensure title has been passed to the LPA, but the owner of the property cannot be required to surrender possession until payment has been received.

KSA 75-6201, 75-6202 and 75-6203 requires agencies to assist in the collection of property taxes and assessments when the property is being acquired for a public use. Applicable taxing authorities should be included during the title and closing process. Payments for Relocation Benefits are exempt from this

requirement as set out in KSA 58-3507. Additionally, since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The LPA must provide appropriate 1099's to the IRS and all parties receiving payments. Even when State funds are used for payment, the 1099 reporting responsibility remains with the local agency. IRS guidelines for this reporting are available from the PM.

6.5.3 Summary of the Title and Closing Process

- *Examine Title*
 - Secure qualified closing assistance
 - Research county records
 - If necessary, update Certificate of Title or Title Report

- *Resolve title issues with owners*
 - Review title for “clouds”
 - Remove “clouds”

- *Acquire all interests*
 - Leaseholds
 - Lien holders
 - Mortgages
 - Easement holders
 - Taxing authorities

6.6 Eminent Domain-Condemnation

Condemnation is the exercise of the power of eminent domain. This power has been reserved to the state, municipalities, political subdivisions and others by federal and state constitutions and law. Guidelines, authorities and procedures are outlined in the KDOT Administrative Condemnation Instructions Manual, prepared by the Office of Chief Counsel.

An administrative condemnation begins with the filing of a petition in the District Court of the county where the property is situated. After statutory notice is given a hearing is conducted by a District Court Judge who determines, upon the face of the petition, that the condemning authority has the power of eminent domain and that the taking is within the lawful purposes of the authority. At that hearing the Judge appoints three disinterested residents of the county to serve as Court Appointed Appraisers and establishes a date on which the appraisers shall file their report. An appraisers hearing is the conducted by the Court Appointed Appraisers to determine just compensation to be awarded by the appraisers. Following the hearing, each party to the condemnation has the right to appeal the appraisers' award to district court.

During condemnation it is important to acquire all interests at the condemnation hearing. This includes those interests that may not have a market or compensable interest. Applicable taxing authorities should be included in the listing of interested parties identified in the petition for each tract.

Providing payment to the property owners is an integral part of Condemnation process. The Court Appointed Appraisers award must be paid to the Clerk of the District Court before the LPA can require the owner to surrender possession of the property. The award must be paid regardless of any appeals to District Court. Failure to pay this amount into the court within 30 days will “Vacate” the proceeding. If vacated, the LPA must start the condemnation process all over again and also be responsible to pay the defendants legal fees.

6.6.1 Summary of the Condemnation Process

- **Identify all interests in the property.**
 - Leaseholds
 - Lien holders
 - Mortgages
 - Easement holders
 - Taxing authorities

- **Payment to the Clerk of the District Court**
 - Once monies are deposited in the Court, ownership is immediately transferred to condemning party.

- **Record applicable documents**
 - Appraisers Report is filed in District Court as a part of proceedings.
 - Copy of Appraisers Report **must** be recorded in the Register of Deeds Office.

- **IRS Notification/1099's**
 - Acquiring agency responsibility
 - Provide to IRS
 - Provide to all parties receiving payments

6.7 Property Management

6.7.1 Introduction

A well planned property management program can enhance the efficiency of LPA projects by avoiding construction delays involving demolition work and maximizing the value of the LPA's assets. The LPA will encounter two phases in managing property: pre-construction and post-construction.

6.7.2 Pre-Construction

- *The Inventory*

An inventory of the land and/or buildings or other fixtures acquired can be developed as the right of way is identified for the project. This inventory may then be used throughout the project to identify the assets the LPA has acquired. The inventory should include an explanation of how land and/buildings or other fixtures are disposed of, an accounting of management expenses, rental receipts, and payments received for the sale of the land and/or buildings or other fixtures.

- *Planning*

Pre-construction planning involves the time period between property acquisition and the beginning of project construction. During this time, the LPA will be responsible for the management of the property in a manner consistent with public safety and, acting as a steward of the public's assets, defray or reduce overall costs to the public. There are three basic approaches to property management:

- Leasing

Land and/or buildings or other fixtures may be leased prior to being needed for construction or ultimate disposal. Residential buildings must conform to decent, safe, and sanitary criteria to be leased if federal funds are to be used in any part of your project.

Leasing can reduce the LPAs overall maintenance expenses, as the tenant assumes responsibility for mowing, snow removal and other similar types of usual expenses. Market rent should be received for the properties.

- Sale of improvements to be moved

If leasing the acquired buildings or other fixtures is not desirable, the LPA may wish to consider selling the buildings that are to be removed by the contractor. The successful purchasers are then required to move the improvements from the required right of way.

- Demolition

The LPA could elect to demotion any buildings or other fixtures. If this is the chosen option, ongoing maintenance such as mowing and snow removal should be considered.

6.7.3 Post-Construction

Structures not removed by demolition or public sale should be placed on the construction plans for removal by the Contractor.

6.7.4 Management of Airspace

Temporary or permanent use of airspace may be granted if use is in the public interest and does not interfere with the construction, operation, maintenance, ventilation, and safety of the highway facility.

Use of airspace is subject to prior approval by FHWA when federal funds are participating in the acquisition of right of way, unless granted, without charge, to a publicly owned mass transit authority for public transit purposes.

All airspace leases and submissions for approval must follow the policy requirements contained in the Airspace Guidelines to 23 CFR 710.405 – 710.407.

6.7.5 Other Useful Property Management Information

- *Lead based paint Requirements*

Residential buildings constructed prior to 1978 are subject to Environmental Protection Agency (EPA) rules. If pre-1978 residential dwellings are sold or leased, the LPA will need to comply with EPA mandated notification requirements. All prospective purchasers or tenants must be informed of any knowledge the LPA has concerning the presence of lead-based paint. However, the LPA does **not** have to inspect the property to determine if lead based paint is present. The LPA must provide a brochure outlining the EPA rules. The pamphlet must be approved by EPA. The LPA may obtain brochures from the PM. In addition, any prospective buyer or tenant must be provided an opportunity to have a pre-1978 residence inspected to determine if lead-based paint is present. The cost of the inspection is the responsibility of the buyer or tenant. Forms documenting this offer are available from the PM.

6.7.6 Summary of Property Management Process

- *Pre-Construction*
 - Develop Inventory
 - Lease
 - Sell improvements to be moved
 - Demolition
- *Post Construction*
 - Add structures to plans for removal

- *Lead- based paint*
 - Applies to pre-1978 residential housing
 - Provide known information
 - Provide opportunity to buyers or tenants to test, but at their expense

6.8 **Certification of Right of Way**

The [Right of Way Clearance for Federal Aid Projects \(KDOT Form 1306\)](#) is required from the LPA prior to advertising for construction bids to build the project. BLP must receive this certificate signed by the LPA **four months** prior to the actual letting of the project. This certificate **must** be completed as follows:

- The identification information including, city, county, project number and date.
- The location of improvements and the scope of the project.
- Statement that requirements of paragraph 1 have been met.
- Completion of all six (6) areas of Paragraph 2. If no tracts are needed for the project, then either entering a “None” or “0” response is acceptable.
- Any railroad and utility companies that are affected by the project must have agreements drafted and signed. These agreements will reflect the arrangements made with the company(s) for coordination of work on the project.
- Signature block is signed and dated by the LPA. (Unless required by local by-laws or ordinances, Certification does not have to be signed by governing body).
- Returned to the PM **four months** prior to letting.

6.9 **Miscellaneous Right of Way Topics**

This portion of the Manual provides information on miscellaneous topics that the LPA could find useful. These include:

- Access control
- Advanced acquisition
- Donations
- Easements
- Hazardous waste/contaminated properties
- Parcel or Tract -What is it?
- Tenant-owned improvements and leasehold interests
- Frequently asked questions
- Potential problems
- Where do I find?
- Outdoor Advertising Procedures
- Summary

6.9.1 Access Control

Access rights are the rights of adjoining property owners to have unrestricted access to and from the highway. Access Control is the term used when these rights are restricted or controlled. Controlled Access Facilities are discussed in K.S.A. 68-1901, 68-1902, 68-1903, 68-1904 and 68-1905.

Cities and highway authorities may establish controlled-access facilities. When such facilities are established, property owners adjoining the road do not have the right to enter or leave this road unless specifically granted by the highway authority at the time of, or subsequent to the establishment. For existing roadways that have not been previously designated controlled-access, the rights of the adjoining property owner(s) may be acquired. State law specifically states that these rights may not be acquired by prescription or adverse possession--they must be acquired.

In general, acquiring the rights of access to a property does not reduce its market value as long as reasonable access remains after the acquisition. Therefore, quite often the value or worth of restricting access across a property and allowing access at certain specific locations is zero dollars. There are some cases though where a change in potential property use and market value occurs and the appraiser must determine the difference in the value before and after the acquisition due to the restriction of access.

6.9.2 Advanced Acquisitions

An advanced acquisition is the acquisition of right of way before the final environmental document is approved or before the final design of a highway has been approved. There are two main types of advanced acquisitions, hardship acquisition and protective buying.

If federal funds are to be used in the acquisition of the right of way, the KDOT and FHWA must approve both hardship and protective buying acquisitions. Neither hardship nor protective buying acquisitions will be approved before: (1) public notice has been given of the preferred location of the facility or (2) the public hearing/notification requirements have been met. If state funds are to be used in the acquisition of the right of way, KDOT must give prior approval for the advanced acquisitions.

➤ Hardship Acquisition

Hardship acquisitions usually occur when a property owner makes a written request to the LPA to acquire the property in advance of the normal time scheduled for acquisition due to a "hardship". The hardship acquisition request to the KDOT by the LPA must include the estimated cost of the acquisition, relocation and incidental costs along with supporting documentation. Justifications must include reasons why the project causes a condition for the owner that is different from or disproportionate to the inconvenience suffered by the majority of others in the project area. Also, a statement is necessary indicating that reasonable alternatives are not open to the property owner that would accomplish relief of the situation without acquiring the property at this time.

Once the LPA initiates the acquisition process a serious commitment has been given to the property owner. The LPA has accepted an obligation to proceed with the acquisition, even if the property must be acquired

through condemnation. Federal participation is dependent upon the agency's ability to condemn if necessary. Requests from owners for hardship acquisitions must contain a waiver of all impediments to a condemnation and an agreement to be condemned should negotiations prove unsuccessful. This is to safeguard against the LPA not being able to accomplish their condemnation due to the early nature of a hardship acquisition.

➤ *Protective Buying*

Protective buying is purchasing property in advance of the project to preserve a preferred or essential location for the proposed project. Requests to KDOT for protective buying must include the estimated cost of the acquisition. The LPA must give reasons why the request should be considered such as, the costly development or physical alteration of a property is imminent, a zoning change is occurring which will add substantial costs to the parcel acquisition, or a reconstruction of improvements damaged by fire or natural disaster is imminent.

Care must be taken so the final project design is not changed or influenced as the result of an advanced acquisition. If the early acquisition of a parcel is approved but the right of way is ultimately not needed for the project, the LPA will be responsible for the total cost of the acquisition.

6.9.3 Donations

There are occasions when property owners have expressed a willingness to donate the right of way needed for a project, especially when the project will provide a benefit to the property and the community in general. The LPA may also accept an owner's offer to donate the right of way in exchange for services rendered that will benefit the owner. If federal funds are involved in right of way, DSD approval must have occurred.

The owner must always be informed of the right to be paid just compensation for the acquisition, as determined by an appraisal. If agreeable to the donation, the owner may waive the right to an appraisal in which case [Form L](#) shall be completed. If the landowner requests an appraisal in association with donating the property, [Form M](#) must be completed. These forms must be kept in the parcel file. (See [Form L](#) and [Form M](#) in [Appendix B](#)).

The requirements of this provision do not apply to dedications of land for public purposes that may be required as part of the platting process pursuant to K.S.A. 12-752.

6.9.4 Easements

Easements are interests in real property that permit the use, but not the ownership, of land. Easements are rights to perform specific acts on land. They may be temporary or permanent in nature. Temporary easements may be held for a specific or an indefinite time period. The purposes of easements are as varied as there are uses for real estate. Each easement must be examined to determine the reduction in value to

the land directly affected the remaining property, and how much compensation is due the owner. In some cases they may not cause a damage to or reduction in the value of property.

All easements, whether temporary or permanent, must be considered as a right in land which must be acquired. All easements must be acquired and certified prior to the PS&E phase of the project.

6.9.5 Hazardous Waste/Contaminated Properties

Contamination of property by hazardous materials has become an area of great concern in the development of highway projects. Early detection of contamination of the right of way to be acquired is extremely important in determining project cost, project timing and potential liability. There must be a visual inspection of the possible contamination very early in the project development. Contaminants or items of concern may be as common as petroleum products, above ground or underground fuel storage tanks (UST's), battery waste, building material containing asbestos, certain paints and their residues.

Contamination may appear as soil which is oozing, an area bare of vegetation, an area which is sunken, an area containing junk containers or other less obvious junk material, or in even less obvious ways. Former gas stations may be identified by UST vent pipes, pump islands or characteristic structural features. Signs of contamination or awareness of prior uses (such as gas station, a manufacturing plant, a dry cleaner, a body shop, homes built prior to 1975, etc.) should lead to further study of the possibility of contamination.

In the event that there are signs of contamination, or if there are underground storage tanks present on the property, good business practices require the property be further evaluated with regard to recommended remedial measures and costs prior to proceeding with the acquisition of the property. In addition, state and federal laws administrated through the Kansas Department of Health and Environment and the EPA may need to be considered. Should a property already be acquired at the time contamination is verified, former owners may be determined to be responsible for the clean-up costs, but recouping of such costs can prove difficult.

If you encounter any indications of contamination of any necessary right-of-way, **IMMEDIATELY** contact the PM for further advice and assistance on how to proceed.

6.9.6 Parcel or Tract - What is it?

A parcel may also be described as a tract or tracts of land, or an improvement, or a legal property right owned by a single entity or multiple entities and operated as a single unit. All or part of the larger unit may be required for highway right of way or damaged by highway construction or maintenance.

There are three tests used to determine what constitutes a parcel or tract; unity of use, proximity, and unity of ownership. Unity of use is not limited to the existing use but also the highest and best use to which the property may be put. Proximity is not limited to tracts abutting each other, but rather tracts within proximity that a larger parcel is still a practical, economic unit. Unity of ownership may or may not prove indicative of what makes up a parcel or tract.

- Example - 240 acres of a farm (Farm A) is in the name of just John Smith who is married to Mary. John and Mary Smith jointly own a 240-acre farm (Farm B) one mile away from the first farm, but the properties do not share a common property line. Both of these farms are farmed together by the couple, but Mary is only on the title for Farm "B". Therefore, these would be two (2) separate tracts due to the fact they have two separate owners and the parcels are not contiguous with each other.

6.9.7 Tenant-Owned Improvements and Leasehold Interests

Tenants are owners of an interest in real property and must be dealt with. Their interests cannot be overlooked and should be identified as early as possible. Leases can be either oral or written and they transfer the rights to use land and/or buildings or other fixtures to the tenant for a specified rent and for a specified period of time. The first step in determining a leasehold interest is to obtain a copy of the lease, if possible. Other items to look for and consider are sales tax permits (commercial property) and asking who "owns" the crops on agricultural land or who resides in residential property.

Compensation for a tenant-owned improvement is the amount the land and/or buildings or other fixtures contributes to the fair market value of the whole property or its salvage value, whichever is greater. The appraiser should secure the signatures of both the owner of the land and the tenant on a written agreement stating the land and/or buildings or other fixtures owned by each party. This agreement will be included in the appraisal with a suggested allocation of the appropriate amount for the land and/or buildings or other fixtures to be purchased. The tenant is entitled to accompany the appraiser during an inspection of the tenant-owned land and/or buildings or other fixtures.

If the landowner and tenant don't agree on who owns what, then the LPA needs to include the names of all the owners and tenants together on the same contract and/or acquisition proceeds check, permitting the parties to divide the total amount themselves. The appraiser's suggested allocation of the estimate of just compensation for the tenant and landlord is just that--a suggestion only.

Where there is no dispute on who owns what, the tenant may sign a tenant contract separate from the owner's. This serves as a release of the tenant's interests in the lease. If there are tenant-owned improvements being acquired, these should be itemized on the contract and a subsequent Bill of Sale signed by the tenant transferring ownership of the items to the local agency.

The LPA may not want to accept contracts from an owner or the tenant unless an agreement has been reached with both of them. If an agreement cannot be reached, both interests can be combined and acquired in a single condemnation proceeding, although either the tenant or the owner are entitled to ask for separate awards at the condemnation hearing. Exceptions may include minor acquisitions, tenants with 30-day verbal leases or farm year-to-year leases for either cash or crop share have a minimal financial interest. In these cases the acquisition may be accomplished by having the tenant sign a separate tenant

contract. When dealing with landowners and tenants separately the LPA will need to coordinate the surrender of possession from the various interest holders so as not to delay the project.

For example, an LPA finds a tenant who agrees to relinquish his rights of possession on January 1 and the landowner has not agreed to settle. On January 1, the owner is in a precarious situation for the tenant has left the property and rent is no longer being paid. Would it not be wise for the owner to find a new tenant and collect rent until settlement is reached with the acquiring authority? Relocation payments made to tenants are not payments of just compensation. In the situation described above, if a new tenant arrives on the scene, this new-interested party may be entitled to relocation payments. It will be necessary to determine what relocation benefits, if any, the new tenant qualifies for.

6.9.8 Typical Questions

Provided below are frequently asked questions and answers:

How does an LPA find an appraiser, a relocation agent or some other right of way professional?

Answer: The PM can provide a list of right of way services consultants who perform and who are familiar with federal and state policies/guidelines.

Can an LPA use a local appraiser?

Answer: If the local appraiser is certified or licensed and qualified to do eminent domain appraisals, then a local appraiser can be used.

Can an employee of the LPA do an appraisal?

Answer: No, but they may complete an "Estimate of Just Compensation" form for acquisitions that are "simple" and compensation is \$10,000 or less per tract.

How long does it take to do an appraisal?

Answer: Depending on the complexity of the parcel and the availability of appraisers, the process may take from 6 to 8 weeks or longer.

How long does it take to review an appraisal?

Answer: Depending on the complexity, it can take from 3 to 4 weeks.

Who can act as the agency's negotiator?

Answer: A qualified full-time employee of the LPA, or a fee negotiator.

Can the negotiator offer less than the approved appraisal?

Answer: No.

Can the final agreed compensation exceed the approved appraisal?

Answer: Yes, provided written documentation in the form of an Administrative Settlement is furnished. It is recommended that the PM be consulted prior to the LPA's commitment to the increased amount.

Can the LPA use its own legal staff for condemnation in the name of the state?

Answer: Yes, but first contact the PM to make them aware of the situation.

When is possession of condemned property secured?

Answer: When the proceeds of the condemnation proceeding are deposited with the court. If Relocation is involved, the 90 day and 30 day rules do apply as set out in [Section 6.6](#) of this Manual.

Does the LPA have to acquire temporary easements before we can let our project or can a "Right of Entry" be used?

Answer: Yes, these interests must be acquired and certified prior to the construction of the project. The use of Rights of Entry is not an acceptable alternative to acquiring a temporary easement. (See the [Section 6.9.4](#).)

If there is no Federal funding in right-of-way acquisition, must I follow these procedures?

Answer: Yes, if there is Federal funding in **any** phase of the project or program, federal law requires many of these procedures to be followed regardless of federal funding involvement. Additionally, it is recommended that these procedures be followed for all projects, regardless of the funding source.

6.9.9 Potential Problems

The following are LPA potential problem areas frequently encountered on projects. These issues need to be addressed by the LPA.

- *Project Size/scope* -- These concepts need to be seriously considered when a project is contemplated. If done properly, planning and project scoping can save considerable extra work later on. If the LPA lacks sufficient expertise to size and scope the parcel and/or project accurately, it is advisable to contact the PM for assistance.
- *Adequate title search* -- An early and accurate title search is necessary to determine all ownership interests. An accurate title search must be made for each parcel early in the right of way process. This search must identify the owner and also mortgage holders, lessees, judgment holders and major tenants.
- *Right of way plans* -- LPA project planning and construction design must include consideration of existing right of way and construction needs to determine all necessary land and property rights are fully acquired the first time.

- *Lead time identification* -- Attention must be paid to lead time needs. Failure to understand right of way acquisition procedures can add additional time and delay the letting of the project.
- *Local right of way administration or management* -- Many LPA's are not sufficiently staffed to handle anything other than minor or routine "strip-type" acquisitions. Some LPA's may be limited to low value, uncomplicated acquisitions valued by the use of a Compensation Estimate.
- *Part-time and inexperienced professional staffs* -- Many LPA's cannot justify or generate the necessary funding to retain full-time staffs which may only be involved with right of way projects from time to time. Consequently, when a project occurs your agency may be understaffed. In these situations the LPA may want to consider using KDOT assistance and/or consultant resources.
- *Appraisal process and product questions* -- Some LPA's have expressed a desire to ignore in disbelief the value of the appraisal process and the appraisal itself, the product of this process. Federal and state laws and regulations have been written, passed and implemented to reinforce the premise that the appraisal process works, helping to protect both the public in general and the individual property owner affected by public works projects.

6.9.10 Where Do I Find....?

Included is a list of references and an abstract of what is contained in those resources. Many of these references may be obtained from BLP, KDOTs Bureau of Right Way, or the FHWA.

- *KDOT Bureau of Right of Way Policy and Procedures Manuals* -- These manuals collectively cover all aspects of the right of way process. Topics covered include Appraisal, Acquisition, and Relocation Assistance.
- *Kansas Statutes Annotated* – K.S.A. has many chapters and sections which apply to the purchase of right of way for highway purposes. The manner prescribed for most procedures are found in Chapters 12, 13, 75 and 76.
- *Federal Regulations* -- The primary ones are 23 CFR and 49 CFR Part 24. 23 CFR deals with highways in general. 49 CFR Part 24 is implementing regulation covering the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- *Department of Treasury, Internal Revenue Sec. 1.6045-4* -- The IRS regulations describing the reporting of real estate transactions are found in this section.

6.9.11 Outdoor Advertising Procedures for Right of Way Acquisition

If any portion of the sign structure protrudes into the right of way it must be either removed or relocated. The sign(s) shall be appraised if determined to be eligible for compensation or relocation by the KDOT Beautification Section.

A digital picture of the sign(s) affected by the highway project must be taken and submitted to the Beautification Section along with the location of the sign including highway project number and station with approximate mile marker. The Beautification Section will determine the classification of the structure and if it is eligible for compensation or relocation.

If the sign is determined by KDOT to be illegal or otherwise not compensable or re-settable, the Beautification Section will inform the sign owner of the project and status of the sign.

6.9.11.1 Sign Classes

There are four classes of outdoor advertising structure that could be found on any highway project:

1. Legal Conforming
 - a. This structure is a sign that is in zoned or un-zoned commercial or industrial areas.
 - b. It can be made of any material and may be of any size up to 1200 square feet which was allowed prior to July 2006.
2. Legal non-conforming
 - a. These are signs constructed prior to 1972 and are generally in agriculture or residential zoned or un-zoned areas.
 - b. This structure is generally compensable but not eligible to be re-set.
3. Service signs
 - a. Signs for churches and non-profit organizations.
 - b. Are generally small (32 square feet or less).
 - c. Are compensable if determined by KDOT to be eligible.
 - d. The sign owners should contact KDOT prior to resetting the sign off the new right of way.
4. On Premise Signs
 - a. Are located on the property advertised by the sign.
 - b. Are considered part of the property and should be included in the appraisal of the tract they are on. (Note: There are cases when the sign owner may be different than the land owner.)

6.9.11.2 Process

Sign is determined to be “off premise” and is in the new right of way (any portion of the sign).

Steps for Appraiser

- Appraiser to take digital picture
- Determine MM if available
- Determine Location (station) on plans (Include project number)
- Provide Sign Tag Number (Green tag should be visible on most signs)
- E-mail or mail picture and information above to KDOT Beautification Section

KDOT Beautification will respond with:

- Status/class and Eligibility of sign to be compensable or reset
- Sign owner information will be forwarded to the appraiser
- Land owner information verified
- Specifications on file for size (may need to be verified by Appraiser)
- **Illegal or non-compensable Signs will be addressed by the Beautification Section**

Appraiser:

- Notification letter sent to sign owner of status by appraiser for compensable/movable signs
- ****Appraisal to be turned in separate Tract file to Chief Appraiser**

**** Note:** The sign owner must submit a new application to move the sign that is determined to be re-settable but the State application fee will not be required. However the owner will be responsible for local permits required to re-set any sign.

Appendix A – Checklists

Appendix B – Forms

Appendix C – Appeal Procedure

Appendix D – Kansas Statutes

Appendix A - Checklists

The following checklists are included in this appendix:

Checklist A - Checklist for Determining Complex Parcel for Appraisal Purposes

Checklist B - Local Public Agency Right of Way Staffing Needs Inventory

Checklist C - Local Public Agency Project Checklist

Checklist D - Parcel Specific Valuation Process Review

Checklist E – Parcel Specific Acquisition Process Review

Checklist F – Parcel Specific Relocation Process Review

Checklist G – Right of Way Record Check Sheet

Checklist A - Checklist for Determining Complex Parcel for Appraisal Purposes

LPA: _____ Project No.: _____

Name of Person Contacted: _____ Title: _____

Phone No.: _____ Date of Contact: _____ Time: _____

It is the responsibility of the LPA to determine the complexity of a parcel. The following are yes/no questions, to provide guidance and assistance in making that determination. If the answer to any of these questions is yes (or even maybe), the parcel may have sufficient complexity to classify it as "complex". A "yes" answer should be an alert that more questions need to be asked.

1. Why is the acquisition over \$10,000?
2. Is the acquisition anything more than a "strip acquisition"?
3. Are there any buildings, wells, signs, etc. being affected?
4. Is the acquisition severing any buildings from the remainder?
5. Are trees, shrubs, or any other landscaping involved?
6. Is the right of way line closer to any building after the acquisition to require analysis of possible proximity damages?
7. Is access to the property changed or limited?
8. Is the current highest and best use of the property going to be changed as a result of the acquisition?
9. Does a significant amount of the total compensation involve items other than land value?
10. Are there any borrow areas?
11. Is there reason to believe this parcel will proceed to condemnation?
12. Is more land than is actually needed being acquired?
13. Are there any other considerations that complicate the valuing of this parcel?

Checklist B - Local Public Agency Right Of Way Staffing Needs Inventory

LPA: _____

Project No.: _____ Date: _____

Project Location: _____

Limits: _____

Contact Person: _____ Telephone #: _____

Signature: _____ Title: _____

CHECK BELOW IF YOU REQUIRE ASSISTANCE IN THE AREAS ITEMIZED	
<p>MANAGEMENT</p> <p><input type="checkbox"/> Training in ROW functions and procedures</p> <p><input type="checkbox"/> Determining sufficient Lead Time necessary to acquire Right of Way properly</p> <p><input type="checkbox"/> Measuring Scope or difficulty of Right of Way Acquisition</p> <p>ENGINEERING AND DESIGN</p> <p><input type="checkbox"/> Adequate title search</p> <p><input type="checkbox"/> Improvements located on plans</p> <p><input type="checkbox"/> Plans cross sections</p> <p><input type="checkbox"/> Property legal descriptions</p> <p><input type="checkbox"/> Land Surveyor's property plats</p> <p>ENVIRONMENTAL ASSESSMENT</p> <p><input type="checkbox"/> Underground storage tanks</p> <p><input type="checkbox"/> Hazardous waste</p> <p><input type="checkbox"/> Asbestos</p>	<p>NEGOTIATIONS</p> <p><input type="checkbox"/> Contract drafting for acquisitions</p> <p><input type="checkbox"/> Tenant interests</p> <p><input type="checkbox"/> Required procedures to follow</p> <p><input type="checkbox"/> Required record keeping</p> <p>CONDEMNATION</p> <p><input type="checkbox"/> General procedures</p> <p><input type="checkbox"/> Notice preparation</p> <p><input type="checkbox"/> Establishing a hearing date</p> <p><input type="checkbox"/> Conduction hearing in-Agency</p> <p>RELOCATION ASSISTANCE</p> <p><input type="checkbox"/> Moving personal property</p> <p><input type="checkbox"/> Residential relocations</p> <p><input type="checkbox"/> Business moves</p> <p>TITLE AND CLOSING</p> <p><input type="checkbox"/> Determining all interests in land acquisition</p> <p><input type="checkbox"/> Title transfer procedures</p> <p><input type="checkbox"/> Payment of transfer costs</p> <p><input type="checkbox"/> Payment of acquisition costs</p>

<p>APPRAISALS</p> <p><input type="checkbox"/> Minor parcels (\$10,000 or less)</p> <p><input type="checkbox"/> Regular partial acquisitions (\$2500 to \$15000)</p> <p><input type="checkbox"/> Major significant acquisitions (over \$15000)</p> <p>APPRAISAL REVIEW</p> <p><input type="checkbox"/> Minor parcels (\$2500 or less)</p> <p><input type="checkbox"/> Regular partial acquisitions (\$2500 to \$15000)</p> <p><input type="checkbox"/> Major significant acquisitions (over \$15000)</p>	<p>PROPERTY MANAGEMENT</p> <p><input type="checkbox"/> Asbestos removal and disposal</p> <p><input type="checkbox"/> Renting property</p> <p><input type="checkbox"/> Building demolition contracting</p> <p><input type="checkbox"/> Selling unneeded (excess) Right of Way</p> <p>LEGAL</p> <p><input type="checkbox"/> Administrative advice - Title and Closing, Condemnation hearing, appeals to District Court</p>
<p>OTHER PERTINENT INFORMATION</p> <ol style="list-style-type: none"> Number of parcels involved in this project Is Relocation Assistance involved in this project? Date of last public improvement acquisition <ol style="list-style-type: none"> What type of project was acquired? Was the DOT Right of Way Office involved? Do you have copies of current DOT ROW Office Manuals? Names of and functions performed by persons assigned to this project: <p>COMMENTS/QUESTIONS?</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	

Checklist C - Local Public Agency Project Checklist

LPA: _____

Project: _____

	YES	NO	N/A
<i>PLANNING AND PREPARATION:</i>			
Notified DOT of project			
Contact DOT PM for Right of Way information			
Scope project and consider right of way needs			
Prepare parcel files			
Research title			
Layout right of way needs			

<i>REQUESTS AND APPROVALS:</i>			
Request authorization for incidental right of way reimbursement			
Apply for hardship/advance purchases (if any)			
Receive environmental clearances			
Receive authorization to acquire right of way			

<i>COMPLETING THE ROW PROCESS:</i>			
Provide 30 day notices of Public Hearings			
Provide landowners Statement of Rights			
Value property rights (Appraisal or Appraisal Waiver Process)			
Values reviewed (Appraisal or Appraisal Waiver Process)			
Develop Relocation Assistance Offers			
Send full appraisals 10 days before opening negotiations			

Provide good faith negotiations			
Offer Relocation Assistance			

<i>WRAPPING UP:</i>			
All parcels acquired or condemned			
Secure possession of all parcels			
Clear all properties			
Plan turn in			
Let project			

Other remarks:

Checklist D - Parcel Specific Valuation Process Review

Project: _____ Parcel No: _____
 LPA: _____

	Acceptable	Concern	Problem	N/A
<i>Basics of Appraisal:</i>				
Owner offered opportunity to accompany				
5-year delineation of title provided				
Tenants identified and considered				
Adequate property information provided				
Appropriate selection of appraisal format				
<i>The Report:</i>				
Applicable approaches to value developed				
Discussion as to why approaches not developed				
Persuasive highest and best use analysis				
Adequate support for all conclusions				
Non-compensable items ignored				
Tenant owned improvements identified				
Allocation of major leasehold interests				
<i>Review Appraiser:</i>				
Reviewer competent for assignment				
Errors were identified				
Fair Market Value supported				
Differences between appraisals reconciled				
Appropriate actions taken on appraisal inadequacies				

Appraisal Waiver (Compensation Estimates)				
Uses of C.E.'s were appropriate				
Approved process utilized				
Competent person provided estimate				
Compensation Estimate reviewed				

Other remarks:

Checklist E - Parcel Specific Acquisition Process Review

Project: _____

Parcel No: _____

County: _____

LPA: _____

	<i>Acceptable</i>	<i>Concern</i>	<i>Problem</i>	<i>N/A</i>
OFFERS:				
Original offer not less than approved value				
Revised offers if original offer modified				
30-day and 90-day notices within offers				
Statement of Rights provided				
Tenant offers				

DOCUMENTATION:				
Completed contracts or agreements				
Negotiation contact notes				
Copies of all negotiation correspondence				
Explanatory administrative settlement				
Breakdown of payments				
Applicable estimates				
Evidence of good faith negotiations				
Compensation estimates approved				

Other comments or concerns:

Checklist F - Parcel Specific Relocation Process Review

Project: _____

Parcel No: _____

County: _____

LPA: _____

	Acceptable	Concern	Problem	N/A
GENERAL:				
General Information provided				
Services offered and furnished to displacee				
Relocation benefits explained to displacee				

NOTICES:				
Comparable dwellings available at displacement				
Notice of eligibility issues				
90-day and 30-day notices issued				

OFFERS:				
Offers of all applicable benefits to owner				
Offer of all applicable benefits to tenant				
RHP or basis of offer provided in writing				
Replacement DSS inspection prior to move				

REIMBURSEMENTS:				
Moving costs paid				
Appropriate incidentals paid				
Increased mortgage computed and paid				
RHP paid to owner				
RHP paid to tenant				

<i>CONCLUSIONS:</i>				
Appeal process explained				
Appellant notified in writing of determination				
Absence of discrimination				

Other remarks:

Checklist G - Right of Way Record Check Sheet

County: _____ Project No.: _____

Parcel No.: _____ Owner(s): _____

LPA: _____

Tenant(s): _____

Dates: _____

<u>Step</u>	<u>Month/Day/Year</u>	<u>Procedure</u>
1	_____	Environmental Concurrence from KDOT (received prior to any right of way negotiations)
2	_____	Owner and tenant (if applicable) notified of City/County interest in acquiring property (as soon as feasible)
3	_____	Notice given to owner or owner's representative of opportunity to accompany the appraiser (N/A if not applicable)
4	_____	Appraisal conducted at property
5	_____	Appraisal completed by _____ as per certification
6	_____	Review appraisal completed by _____ as per certification (Must NOT be the same person as the appraiser or negotiator)
7	_____	Agency approval of just compensation
8	_____	Written offer and written statement of the basis for the offer given to owner (at least ten days prior to contact by negotiator)
9	_____	Owner and tenant contacted by _____ as negotiator (Must be different person than the appraiser or review appraiser)
10	_____	Offer accepted/rejected by owner
11	_____	Offer accepted/rejected by tenant
12	_____	Condemnation notice (if agreement is not reached) (N/A if not applicable)
13	_____	Payment made to owner & tenant or, if condemnation (deposited with the Clerk of the District Court)
14	_____	Possession of Property

NOTE: Sheet should be completely filled out for each parcel and attached to parcel documentation.

Appendix B – Forms

Form A - Initial Agency Contact Letter - Informs property owner that part of their property is to be acquired for the project and that an appraiser will be contacting them soon.

Form B - Appraisal Mailing Letter

Form C - Offer Letter to Purchase

Form D - Revised Offer Letter to Purchase

Form E - Tenant's Release of Damage

Form F - Right of Way Acquisition and Negotiation Notes

Form G - Estimate of Just Compensation – used to document estimate

Form H - Standard Appraisal Report

Form I - Short Form Appraisal Report

Form J - Appraisal Assumptions, Compliances and Facts

Form K - Certificate of Appraiser – contains certification statements of appraiser

Form L - Donation Form, Appraisal Waived – Property owner signs this donation form to waive rights to just compensation. This form also waives right to an appraisal.

Form M - Donation Form, Appraisal Not Waived – Same as Form L except the right to an appraisal is not waived.

Form N - City/County Certification Form

Form O - Administrative Settlement

Form P - 90-Day Guarantee

Form Q - 30-Day Notice to Vacate

Form A - Initial Agency Contact Letter

Date

Landowners Name

Address

City, State Zip

Re: Project Number

Tract Number

Dear Landowner:

The Agency is planning a Street, Intersection, Etc. project which requires the purchase of a portion of your property. A survey has been conducted to determine the amount of your land which the project requires.

In the near future, an appraiser will be contacting you to secure your permission to inspect your property for the purpose of valuing it. The appraiser will offer you the opportunity to be present during this inspection if you so desire.

Sincerely,

Agency

Form B - Appraisal Mailing Letter

Date

Landowners Name

Address

City, State Zip

Re: Project Number

Tract Number

Dear: Landowner

The Agency is planning a Street, Intersection, Etc... project which will require additional Right-of-Way along the route. County records indicate that you have ownership interest in land that is affected by the proposed construction project.

I have been assigned to appraise the land to determine value of the acquisition required from your property. The purpose of this letter is to give you the plan information for your land and offer to meet with you or your representative to inspect your property and discuss the project.

The enclosed booklet explains the process we use in acquiring property for highway projects. Additionally, I have included a legal description and drawing of the planned project as related to your property.

Please contact me at Phone Number to arrange an appointment.

Sincerely,

Appraisers Name

Right of Way Property Appraiser

Enclosures

Cc: Tract File

Form C - Offer Letter to Purchase

PROJECT:

DATE:

COUNTY:

TRACT NO:

LOCATION: A tract of land in

Dear _____ :

The Agency Name has approved a program for the construction and improvements of the above mentioned project. To accomplish the anticipated improvements, it will be necessary to acquire certain real property as indicated on the engineering plan and more particularly described in the instruments which will be presented to you for signature(s), if you are receptive to the offer.

Based upon the fair market value of such real property, as determined by established procedures, the Agency Name offer you the sum of _____ Dollars (\$_____) for your real property, which has been determined to be just compensation for your property, or the portion thereof to be acquired.

The amount quoted includes the following items:

Real property to be acquired as right of way: _____ (Acres)

Buildings acquired with right of way: _____

Other easements, if any: Permanent _____ (Acres), Temporary _____ (Acres)

The following tenant owned improvements are not included in the above quoted amount(s):

If you desire to retain the buildings located on the proposed right of way, the amount of the offer is reduced to _____ Dollars (\$_____). Also, if the buildings are retained, you will be required to post a bond to insure the removal of improvements in the amount of \$_____.

The basis of the offer was established by an appraisal made by personnel trained in real estate appraisal techniques. The appraisal process is designed to establish the fair market value of the property. The original appraisal is further considered and reviewed by one of the State's reviewing appraisers who will also perform a visual inspection of the property. The appraiser disregards any decrease or increase in the before value caused by the project for which the property is being acquired.

The above offer will not be altered unless additional value information or evidence is presented or otherwise becomes known to the Agency Name. In such case, it will then be necessary to have an administrative review to determine if the offer should be changed. Should our offer not be acceptable to you, our only alternative under established procedure is to proceed under the laws of eminent domain (sometimes known as "condemnation" procedure).

In the event of either negotiation or condemnation, the landowner will be paid in the full amount of the negotiated settlement, or the amount of just compensation allowed by the court appraisers, prior to the time the Agency Name will require the landowner to vacate the property.

The fifteen items set forth in K.S.A. 26-513 (listed below), if applicable to your property, were considered in ascertaining the amount of compensation and damages. Other factors may also have been considered. They were not considered as separate items of damages, but were considered only as they affect the total compensation and damages established by our appraiser.

1. The most advantageous use to which the property is reasonably adaptable.
2. Access to the property remaining.
3. Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
4. Productivity, convenience, use of the property taken, or use of the property remaining.
5. View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.
6. Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.
7. Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

8. Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that their loss impairs the value of the land remaining.
9. Destruction of a legal nonconforming use.
10. Damages to property abutting on a right of way due to change in grade where accompanied by a taking of land.
11. Proximity of new improvements remaining on condemnee's land.
12. Loss of or damage to growing crops.
13. That the property could be or had been adapted to a use which was profitably carried on.
14. Cost of new drains and loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.
15. Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

Value of entire property of interest "before" taking \$ _____

Value of entire property of interest "after" taking \$ _____

Value of the right of way to be acquired:
 _____ \$ _____

Value of the permanent easement to be acquired:
 _____ \$ _____

Value of the temporary easement to be acquired:
 _____ \$ _____

Right of way and easement minimum compensation adjustment: \$ _____

Minimum compensation \$ _____ less land _____
 and easement total \$ _____ = \$ _____

Damages:
 _____ \$ _____

Cost to cure items:

\$ _____

TOTAL COMPENSATION

AND MEASURE OF DAMAGES:

\$ _____

Agency Name

BY: _____

Acquiring Agent

Form D - Revised Offer Letter to Purchase

PROJECT:

DATE:

COUNTY:

TRACT NO:

LOCATION: A tract of land in

Dear _____ :

The Agency Name has approved a program for the construction and improvements of the above mentioned project. To accomplish the anticipated improvements, it will be necessary to acquire certain real property as indicated on the engineering plan and more particularly described in the instruments which will be presented to you for signature(s), if you are receptive to the offer.

Based upon the fair market value of such real property, as determined by established procedures, the Agency Name offer you the sum of _____ Dollars (\$_____) for your real property, which has been determined to be just compensation for your property, or the portion thereof to be acquired.

The amount quoted includes the following items:

Real property to be acquired as right of way: _____ (Acres)

Buildings acquired with right of way: _____

Other easements, if any: Permanent _____ (Acres), Temporary _____ (Acres)

The following tenant owned improvements are not included in the above quoted amount(s):

If you desire to retain the buildings located on the proposed right of way, the amount of the offer is reduced to _____ Dollars (\$_____). Also, if the buildings are retained, you will be required to post a bond to insure the removal of improvements in the amount of \$_____.

The basis of the offer was established by an appraisal made by personnel trained in real estate appraisal techniques. The appraisal process is designed to establish the fair market value of the property. The original appraisal is further considered and reviewed by one of the State's reviewing appraisers who will also perform a visual inspection of the property. The appraiser disregards any decrease or increase in the before value caused by the project for which the property is being acquired.

The above offer will not be altered unless additional value information or evidence is presented or otherwise becomes known to the Agency Name. In such case, it will then be necessary to have an administrative review to determine if the offer should be changed. Should our offer not be acceptable to you, our only alternative under established procedure is to proceed under the laws of eminent domain (sometimes known as "condemnation" procedure).

In the event of either negotiation or condemnation, the landowner will be paid in the full amount of the negotiated settlement, or the amount of just compensation allowed by the court appraisers, prior to the time the Agency Name will require the landowner to vacate the property.

The fifteen items set forth in K.S.A. 26-513 (listed below), if applicable to your property, were considered in ascertaining the amount of compensation and damages. Other factors may also have been considered. They were not considered as separate items of damages, but were considered only as they affect the total compensation and damages established by our appraiser.

1. The most advantageous use to which the property is reasonably adaptable.
2. Access to the property remaining.
3. Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
4. Productivity, convenience, use of the property taken, or use of the property remaining.
5. View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.
6. Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.
7. Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.
8. Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that their loss impairs the value of the land remaining.

- 9. Destruction of a legal nonconforming use.
- 10. Damages to property abutting on a right of way due to change in grade where accompanied by a taking of land.
- 11. Proximity of new improvements remaining on condemnee’s land.
- 12. Loss of or damage to growing crops.
- 13. That the property could be or had been adapted to a use which was profitably carried on.
- 14. Cost of new drains and loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.
- 15. Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

Value of entire property of interest “before” taking \$ _____

Value of entire property of interest “after” taking \$ _____

Value of the right of way to be acquired:
_____ \$ _____

Value of the permanent easement to be acquired:
_____ \$ _____

Value of the temporary easement to be acquired:
_____ \$ _____

Right of way and easement minimum compensation adjustment: \$ _____

Minimum compensation \$ _____ less land _____

and easement total \$ _____ = \$ _____

Damages:
_____ \$ _____

Cost to cure items:
_____ \$ _____

TOTAL COMPENSATION AND MEASURE OF DAMAGES: \$ _____

Agency Name

BY: _____
Acquiring Agent

Form E - Tenant's Release of Damage

Date

City/County

Project Number

Tract Number

Know all men by these present that _____ agree on this _____ day of _____, _____, in exchange for and in consideration for the benefits derived from the project which include _____ do release, remise and forever cease to claim to themselves, their heirs executors and assigns any and all damages arising out of the building of Road, Intersection, Etc. Project No. _____, _____ County, and agree to hold the Agency harmless from any and all other damages of any nature whatsoever.

Tenant

Tenant

Tenant

Tenant

Recommended by:

Negotiator

Form F - Right Of Way Acquisition and Negotiation Notes

Project Number

Tract Number

Landowner

City/County

TITLE INFORMATION:

Owners of Record Information

NEGOTIATION NOTES:

Complete Narration of Contacts

FOLLOW-UP/PENDING:

If Any

DATE

By: Signed by Negotiator

Form G - Estimate of Just Compensation

It is determined that an appraisal is not required because the valuation problem is uncomplicated and the fair market value of the acquisition area is estimated at \$10,000 or less.

COUNTY: PROJECT NO: TR NO:
 OWNER: TENANT:
 ADDRESS: ADDRESS:
 CITY/ST: CITY/ST:
 PHONE: PHONE:

Insp Date: Insp'd With: Date Acq'n Booklet Furnished:

COMPARABLE SALES

Sale No.	Sale Date	Location (S-T-R)	Sale Price	Sale Area	Unit Value
----------	-----------	------------------	------------	-----------	------------

NOTES:

PROJECT REQUIREMENTS:

Item	Area	Unit Value	Value
------	------	------------	-------

OTHER ACQUISITION ITEMS:

COST TO CURE ITEMS:

ESTIMATED TOTAL COMPENSATION

Form H - Standard Appraisal Report

Partial Take: Federal Project No:
 Whole Take: State Project No:
 Other: County: Tract No:

Location and Address:
 Legal Description:

Owner's Name and Address:

Present Use: Highest & Best Use:
 Zoning:

Subject Property Sales Record (last 5 yrs. required). If none, check

Grantor/Grantee	Date	Book/Page	Price	Verified By
-----------------	------	-----------	-------	-------------

Purpose of the Appraisal: The purpose of the appraisal is to estimate the compensation due the owner for, or as a result of, the acquisition of a part or all of his/her real property, or interest therein, for a highway or related purpose.

VALUATION SUMMARY

Area of Whole Property:

Areas to be Acquired:

Acquisition Needs	Unit Price	Value
-------------------	------------	-------

Other Acquisition Items (List and show value):

Area of Remainder:

Cost to Cure (List and show value):

Other:

TOTAL COMPENSATION

Date of Appraisal:

Dated:

Appraised By:

Form I - Short Form Appraisal Report

Partial Take Federal Number:
 Whole Take State Project:
 Other County:

Tract No:

Location and Address:

Legal Description:

Owner's Name and Address:

Tenant's or Lessee's:

Present Use: Zoning:

Highest and Best Use: Before – / After –

Subject Property Sales Record (last 5 yrs. required). If none, check ().

Grantor/Grantee	Date	Book/Page	Price	Verified By
-----------------	------	-----------	-------	-------------

Purpose of the Appraisal: The purpose of the appraisal is to estimate the compensation due the owner for, or as a result of, the acquisition of a part or all of his/her real property, or interest therein, for a highway or related purpose.

VALUATION SUMMARY

Area of Whole Property: Acres

Areas to be Acquired:

Other Acquisition Items:

Cost to Cure (List and show value):

Estimated Just Compensation

DATED:

APPRAISED BY:

Form J - Appraisal Assumptions, Compliances and Facts

Project No. _____

Parcel No. _____

PURPOSE OF THIS APPRAISAL:

To estimate the market value of the ownership interest, and the leasehold interest if any, in this property before the proposed acquisition by the City/County of _____ and the market value of the same interest in the remainder property immediately after the proposed acquisition. In the case the proposed acquisition causes only limited damage, the purpose is to estimate total loss in value caused by the acquisition without reporting before and after values. This appraisal considers the loss in value, if any, of owner's rights in advertising signs being acquired and is made without consideration of any enhancement that might accrue from the proposed improvement.

DEFINITION OF MARKET VALUE:

The cash price which would be arrived at as between a voluntary seller willing but not compelled to sell and a voluntary purchaser willing but not compelled to buy, both whom are acting freely, intelligently and at arm's length, bargaining in the open market for the sale and purchase of the real estate in question.

DEFINITION OF HIGHEST AND BEST USE:

The allowable use, for which sufficient demand can be shown, at which at the date of the appraisal is most likely to produce the greatest net return to the property over a given period of time.

DATE OF VALUATION:

The values of this property, both before and after the proposed acquisition, are estimated as of _____, 20____.

FIVE YEAR DELINEATION OF TITLE: (If none, so state)

Type of Grantor	Date of Grantee	Sale Instr.	Instr.	Book	Page	Price
-----------------	-----------------	-------------	--------	------	------	-------

LEASES:

Name of Lessee:

Lessee's Mailing Address:

Discussion of lease and its terms:

DATE OF INSPECTION AND INVITATION:

I personally inspected the subject property on _____, 20____, and interviewed _____ who is the _____. I offered _____ an opportunity to accompany me on my inspection of this property and he _____ that invitation. This invitation was extended by _____ on _____, 20____.

(personal contact, telephone or letter)

Form K - Certificate of Appraiser

County: _____ Tract No: _____

Federal Aid Project Number: _____

Project No: _____

I HEREBY CERTIFY:

That I have personally inspected the property herein appraised and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the data book or report which supplements said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based as correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal is to be used in connection with the acquisition of right-of-way for a project to be constructed by the State of Kansas with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations and policies and procedures applicable to appraisal of right-of way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any way benefit from the acquisition of such property appraised.

That I have not revealed the findings of such appraisal to anyone other than the proper officials of the Kansas Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by State officials, or until I am required to do so by due process of law, and until I am released from this obligation by having publicly testified as to such findings.

Any increase or decrease in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within reasonable control of the owner, was disregarded in determining the compensation for the property.

The owner or his designated representative was on _____, 20_____, given the opportunity to accompany the appraiser during the inspection of the property. Property inspected with _____ on _____

That my opinion of just compensation for the acquisition as of the _____ day of _____, 20_____, is _____ based upon my independent appraisal and the exercise of my professional judgment.

By: _____

Form L - Donation Form, Appraisal Waived

Date: _____
County: _____
Project: _____
Fed. Proj.: _____
City: _____
Tract No.: _____

DONATION OF RIGHT OF WAY AND WAIVER OF APPRAISAL

The undersigned owner(s), having been fully informed of their right(s) to have the property appraised, and to receive just compensation based upon an appraisal, have decided to waive their right(s) to an appraisal and to donate their property interests to the City or County.

The undersigned owner(s) further state(s) that the decision to waive their right(s) to an appraisal was made without undue influences or coercive action of any nature.

Form M - Donation Form, Appraisal Not Waived

DATE _____

COUNTY _____

PROJECT _____

CITY _____

TRACT NO. _____

DONATION OF RIGHT OF WAY

This letter will serve to verify we were fully informed and advised of our rights to receive just compensation for the acquisition of a portion of our property for the construction of the above noted project.

We further wish to acknowledge that because of the benefits to be derived from this street/road improvement, we waive all right for compensation and will donate the necessary land to the City or County of the State of Kansas.

FORM N - City/County Certification Form

STATE OF KANSAS

CITY FEDERAL AID PROJECTS

RIGHT-OF-WAY CLEARANCE

CERTIFICATION BY THE CITY TO THE KANSAS DEPARTMENT OF TRANSPORTATION
OF REAL PROPERTY ACQUISITION PROCEDURES AND UTILITY ARRANGEMENTS

DATE

PROJECT NUMBER

COUNTY

WHEREAS: Said improvement is located Abbreviated Location Description, and

WHEREAS: Said improvement consists of Description of Improvements, hereinafter referred to as Project, and

WHEREAS: The Secretary of Transportation of the State of Kansas, hereinafter referred to as the Secretary, as agent for the City of _____, Kansas, hereinafter referred to as the City, have entered into an agreement dated Date, and

WHEREAS: The above referenced agreement requires the City to certify compliance with Kansas Department of Transportation and Federal Highway Administration Right-of-Way Acquisition procedures.

NOW THEREFORE, THE CITY HEREBY CERTIFIES:

1. That all of the right-of-way (R/W) and easements for borrow pits, channel changes, and/or other construction as indicated on the plans as necessary for the construction of the Project have been acquired, including legal and physical possession, evidenced by said documents being recorded in the Register of Deeds office. All acquisitions were completed by the City in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (42 U.S.C. 4601 et seq.), and amendments thereto, BLP MEMOS 99-2 and 02-11 and Attachments 1 through 9, and the Federal Highway Administration's booklet entitled, Real Estate Acquisition Guide for Local Public Agencies.

2. That the total number of tracts acquired equals: _____
- A: Number of tracts purchased: _____
- B: Number of tracts condemned: _____
- C: Number of tracts donated: _____
3. If buildings, structures, or other improvements owned by a tenant or landowner were acquired or relocated, the Bureau of Right of Way of the Kansas Department of Transportation was contacted for guidance as to the proper procedures.
- A: Number of tracts with relocation: _____
- B: Were buildings, structures, or other improvements involved in this project?
YES NO
4. If the new R/W or permanent easement acquired for the Project is adjacent to, along, or abutting KDOT highway R/W, copies of the deeds and plan sheets showing the applicable R/W tracts shall be submitted to KDOT Bureau of Local Projects.
- Was new R/W or permanent easement acquired adjacent to, along, or abutting KDOT highway R/W?
YES NO
5. Records will be maintained on file for at least three (3) years after the acquiring agency has been notified that the Project has been accepted by the Kansas Department of Transportation.
6. Any companies owning or operating utilities or other facilities within the limits of the Project, have been contacted and the facilities have been relocated, or arrangements made and/or plan notes indicating the moving, removing, or adjusting of such facilities, as may be necessary, upon due notification of such companies by the City. (D.O.T. Form No. 1304, attached hereto, lists such companies with headquarters' addresses and gives the status of relocations).
7. That City funds will be available for the matching of State and/or Federal funds to finance construction work on this Project.

BE IT RESOLVED: The City makes the above certifications and the Secretary can proceed in accordance with the provisions of the agreement above referenced for the Project.

Adopted this _____ day of _____, 20_____, at _____, Kansas.

APPROVED:

City Engineer/Road Supervisor

Chairperson City Commission

City Clerk

Form O - Administrative Settlement

PROJECT NUMBER: _____

COUNTY: _____

CITY: _____

TRACT NUMBER: _____

OWNER(S) NAME: _____

APPRAISED VALUE: _____

TOTAL SETTLEMENT AMOUNT APPROVED: _____

SETTLEMENT RECOMMENDED BY : _____

APPRAISER: _____

REVIEWING APPRAISER: _____

AQUISITION AGENT: _____

JUSTIFICATION FOR SETTLEMENT:

NEGOTIATOR

APPROVED BY

Form P - 90-Day Guarantee

DATE: _____

PROJECT NO.: _____

COUNTY: _____

TRACT NO.: _____ JOB NO.: _____

OWNER: _____

TENANT: _____

Dear _____:

The City or County has initiated negotiations for the acquisition of all or a portion of the property you occupy.

The purpose of this notice is to inform you that you will not be required to move ANY SOONER than 90 days from the date of this notice. In other words, this notice is your GUARANTEE of a minimum of 90 days.

Once the City or County has acquired the right to legal possession, either by purchase or condemnation, you will be given a written 30-day notice to vacate which will specify the exact date that you must vacate the property. In no event will the 30-day notice require you to move before 90 days from the date of this notice.

RELOCATION ASSISTANCE AGENT

Form Q - 30-DAY NOTICE TO VACATE

DATE: _____
PROJECT NO.: _____
COUNTY: _____
TRACT NO.: _____ JOB NO.: _____
OWNER: _____
TENANT: _____

Dear _____:

The City/County has acquired the property located at _____.

The purpose of this letter is to advise you that the State of Kansas must now obtain possession of the above stated property. It will be necessary for the above stated property to be vacated on or before.

If you cannot comply with the above-stated vacation date, please contact me at _____.

You are also advised that if you are eligible for a payment for moving your personal property, you will not receive such payment until all personal property has been removed. You are also responsible for the removal of trash.

The Relocating Agency will not be responsible for any personal property remaining on the above-stated property after the above-stated date.

We hope that this will result in a minimum of inconvenience to you, but it is a necessary step in order to allow the State to proceed with the required preliminary work.

Sincerely,

Relocation Assistance Agent

Appendix C - Appeal Procedure

The appeal procedure of an agency action as defined in The Act of Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq. is described as follows:

(a) A person, business, or other entity that believes that the LPA has failed to properly determine the amount of or eligibility for assistance or a payment or improperly selected or administered a contract subject to these procedures, may have the determination reviewed by the LPA.

(b) To be considered, the request for review shall be submitted in writing within 60 days after written notification of the determination is sent or delivered to the person. The request should be sent to a designated LPA authority.

A request will be deemed to have been submitted in a timely manner if it is postmarked or delivered within the time period required. Such a request for review will be considered by the LPA regardless of form.

Persons requesting a review will be asked to send or include a statement outlining the items or issues in dispute and the amounts being claimed. The LPA will encourage the person to attach appropriate documentation to substantiate the claim. The LPA will review the claim and try to resolve it prior to the undertaking of the formal review process.

(c) Upon receipt of the written statement, the LPA will appoint a hearing examiner. The hearing examiner reviewing the claim shall:

1. Not have been directly involved in the matters being appealed;
2. Become familiar with the statutes and regulations involved, and review the LPA's records that relate to the matters being appealed.

The hearing examiner will schedule a meeting with the appellant and LPA to consider the claim. Usually the hearing examiner sets up the meeting and notifies the appellant and the LPA. An attempt will be made to schedule the hearing (or meeting) on a date, at a time, and in a place that is convenient to the appellant. The hearing examiner will notify the appellant in writing when and where the hearing will be held.

Appendix C - Appeal Procedure (continued)

Prior to the meeting, LPA may attempt to resolve all or part of the claim. If a resolution is made, it will be approved by the appellant in writing. If the entire matter is resolved, the meeting and remaining provisions in this section are not necessary.

During the hearing, both appellant and LPA will be given full and equal opportunity to be heard. Both parties may present oral and written information on an informal basis without regard to rules of evidence, may object to information presented, and may question those presenting information.

The intent of this process is that the appellant need not be represented by legal counsel. However, the person has the right to be represented, but solely at the person's expense.

(d) The LPA will permit the appellant to inspect and copy all materials pertinent to the claim, except materials that are by law confidential and are not open to public inspection. The LPA may impose reasonable conditions on the appellant's right to inspect and copy, consistent with applicable laws.

(e) The hearing examiner will take reasonable notes of oral information presented at the meeting. Promptly after receipt of all information submitted by the appellant, the hearing examiner shall prepare a decision.

1. In deciding an appeal, all pertinent justification and other material submitted by the appellant and all other available information needed to ensure a fair and full review shall be considered. The hearing examiner will prepare a written summary of the information it considered, including a listing of the documents received, for inclusion in the appeal file. The summary will be considered to be an internal document.
2. The decision will award to the appellant all the benefits and payments for which the person is found to be eligible.
3. The decision will report the rationale underlying the decision, show appropriate calculations, and cite these action(s) of the law or regulations that support the determination.

(f) The decision will be reported to the LPA. The hearing examiner will promptly notify the appellant in writing. A copy of this form will be provided to the appellant. The hearing examiner will also notify the appellant of his or her right to seek judicial review.

Appendix C - Appeal Procedure (continued)

- (g) All communications related to the claim may be sent by ordinary mail.
- (h) Appeal payments, if any, will be reported and accepted by the LPA.
- (i) All records related to the claim will be retained by LPA for three years after the final payment is made for project right of way.
- (j) If any part of a claim is denied or if LPA refuses to consider a claim, the displacee will be promptly notified in writing of the denial and the reason for it. The notice will also inform the displacee of the procedure that can be used to appeal the determination.

Appendix D

Kansas Statutes

- 26-518

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-518. Acquisition of real property; duties of condemning authority. Whenever federal funding is not involved, and real property is acquired by any condemning authority through negotiation in advance of a condemnation action or through a condemnation action, and which acquisition will result in the displacement of any person, the condemning authority shall:

(a) Provide the displaced person, as defined in the federal uniform relocation assistance and real property acquisition policies act of 1970, fair and reasonable relocation payments and assistance to or for displaced persons.

(b) Fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203 and 204 of the federal uniform relocation assistance and real property acquisition policies act of 1970, and amendments thereto, shall be deemed fair and reasonable relocation payments and assistance pursuant to this section.

(c) Nothing in this section shall preclude the voluntary negotiation of fair and reasonable relocation payments and assistance between the displaced person and condemning authority. If such negotiations lead to agreement between the displaced person and the condemning authority, that agreement shall be deemed fair and reasonable.

History: L. 2003, ch. 106, § 4; July 1.

- 26-501

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-501. Eminent domain procedure; venue. (a) The procedure for exercising eminent domain as set forth in K.S.A. 26-501 to 26-516, inclusive, shall be followed in all proceedings. (b) The proceedings shall be brought by filing a verified petition in the district court of the county in which the real estate is situated, except if it be an entire tract situated in two (2) or more counties, the proceedings may be brought in any county in which any tract or parts thereof is situated.

History: L. 1963, ch. 234, § 1; Jan. 1, 1964.

- 26-502

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-502. Contents of petition. A petition shall include allegations of (1) the authority for and the purpose of the taking; (2) a description of each lot, parcel or tract of land and the nature of the interest to be taken; (3) insofar as their interests are to be taken (a) the name of any owner and all lienholders of record, and (b) the name of any party in possession. Such petition shall be verified by affidavit. Upon the filing of such petition the court by order shall fix the time when the same will be taken up. No defect in form which does not impair substantial rights of the parties shall invalidate any proceeding.

History: L. 1963, ch. 234, § 2; Jan. 1, 1964.

- 26-503

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-503. Eminent domain procedure; notice. The plaintiff shall cause to be published once in a newspaper of general circulation in the county where the lands are situated a notice of the proceeding at least nine (9) days in advance of the date fixed by the court for consideration of the petition and appointment of appraisers, and shall at least seven (7) days before such date mail to each interested party as named in K.S.A. 26-502 and whose address is known or can with reasonable diligence be ascertained a copy of such publication notice and petition insofar as it relates to his interest. No defect in any notice or in the service thereof shall invalidate any proceedings.

History: L. 1963, ch. 234, § 3; L. 1969, ch. 195, § 1; July 1.

- 26-504

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-504. Same; findings; order appointing appraisers; duties; appeals to supreme court, when. If the judge to whom the proceeding has been assigned finds from the petition: (1) The plaintiff has the power of eminent domain; and (2) the taking is necessary to the lawful corporate purposes of the plaintiff, the judge shall entertain suggestions from any party in interest relating to the appointment of appraisers and the judge shall enter an order appointing three disinterested residents of the county in which the petition is filed, at least two of the three of whom shall have experience in the valuation of real estate, to view and appraise the value of the lots and parcels of land found to be necessary, and to determine the damages and compensation to the interested parties resulting from the taking. Such order shall also fix the time for the filing of the appraisers' report at a time not later than 45 days after the entry of such order except for good cause shown,

the court may extend the time for filing by a subsequent order. The granting of an order determining that the plaintiff has the power of eminent domain and that the taking is necessary to the lawful corporate purposes of the plaintiff shall not be considered a final order for the purpose of appeal to the supreme court, but an order denying the petition shall be considered such a final order.

Appeals to the supreme court may be taken from any final order under the provisions of this act. Such appeals shall be prosecuted in like manner as other appeals and shall take precedence over other cases, except cases of a like character and other cases in which preference is granted by statute.

History: L. 1963, ch. 234, § 4; L. 1999, ch. 111, § 1; L. 2004, ch. 110, § 6; July

- 26-505

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-505. Same; appraisers' oath, instructions, reports and notification to condemner; notice to interested persons by condemner; fees and expenses. After such appointment, the appraisers shall take an oath to faithfully discharge their duties as appraisers. The judge shall instruct the appraisers on matters including, but not limited to, the following: (1) That they are officers of the court and not representatives of the plaintiff or any other party, (2) that they are to receive their instructions only from the judge, (3) the nature of their duties and authority, (4) the basis, manner and measure of ascertaining the value of the land taken and damages resulting from such taking, (5) that, except for incidental contact for the purpose of verifying factual information relating to the subject real estate or to discuss scheduling matters, appraisers shall refrain from any ex parte meetings or discussions with representatives of the plaintiff or property owner without first advising the adverse party and providing such party with the opportunity to be present, and (6) that all written material provided to an appraiser or appraisers by a party shall be provided forthwith to the adverse party. The instructions shall be in writing. Upon the completion of their work the appraisers shall file the report in the office of the clerk of the district court and shall notify the condemner of such filing. The condemner, within three days after receiving such notice, shall mail a written notice of the filing of such report to every person who owns any interest in any of the property being taken, if the address of such person is known, and shall file in the office of the clerk of the district court an affidavit showing proof of the mailing of such notice. The fees and expenses of the appraisers shall be determined and allowed by the court.

History: L. 1963, ch. 234, § 5; L. 1968, ch. 138, § 1; L. 1999, ch. 111, § 2; Apr. 22

- 26-506

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-506. Same; view of lands by appraisers. (a) Notice, time, place and manner of hearing. The appraisers shall, after they have been sworn, and instructed by the judge, make their appraisal and assessment of damages, by actual view of the lands to be taken and of the tracts of which they are a part, and by hearing of oral or written testimony from the plaintiff and each interested party as named in K.S.A. 26-502, and amendments thereto, appearing in person or by an attorney. Such testimony shall be given at a public hearing held in the county where the action is pending at a time and place fixed by the appraisers. Notice of the hearing shall be mailed at least 10 days in advance thereof to the plaintiff and to each party named in the petition if their address is known or can with reasonable diligence be ascertained, and by one publication in a newspaper of general circulation in each county where the lands are situated at least 10 days in advance of the hearing. In case of failure to meet on the day designated in the notice, the appraisers may meet on the following day without further notice. In case of failure to meet on either of such days, a new notice shall be required. A hearing begun pursuant to proper notice may be continued or adjourned from day to day and from place to place until the hearing with respect to all properties involved in the action has been concluded.

(b) Form of notice. The notice of hearing shall be in substantially the following form:
In the District Court of _____ County, Kansas.

_____ Plaintiff, vs. _____ Defendant,

Notice is hereby given that the undersigned appraisers appointed by the court, will, in accordance with the provisions of K.S.A. 26-501 et seq., and amendments thereto, hold a public hearing on all matters pertaining to their appraisal of compensation and the assessment of damages for the taking of the lands or interests therein sought to be taken by the plaintiff in the above entitled matter covering the following described lands (description of lands). Such hearing will commence at _____ o'clock __ M. on the _____ day of _____, (year)___ at _____, or on the following day without further notice, and may be continued thereafter from day to day or place to place until the same is concluded with respect to all properties involved in the action. Any party may appear in person or by an attorney and may present either oral or written testimony by the landowner or other witnesses at such hearing.

You are further notified that the court has set the _____ day of _____, (year)___, for the filing of the awards of these appraisers with the clerk of the court, and any party dissatisfied with the award may appeal therefrom as by law permitted within 30 days from the day of filing.

_____ Appraisers.

History: L. 1963, ch. 234, § 6; L. 2003, ch. 106, § 1; July 1.

- 26-507

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-507. Same; payment of award and vesting of rights; abandonment. (a) *Payment of award; vesting of rights. If the plaintiff desires to continue with the proceeding as to particular tracts it shall, within thirty (30) days from the time the appraisers' report is filed pay to the clerk of the district court the amount of the appraisers' award as to those particular tracts and court costs accrued to date, including appraisers' fees. Such payment shall be without prejudice to plaintiff's right to appeal from the appraisers' award. Upon such payment being made the title, easement or interest appropriated in the land condemned shall thereupon immediately vest in the plaintiff, and it shall be entitled to the immediate possession of the land to the extent necessary for the purpose for which taken and consistent with the title, easement or interest condemned. The plaintiff shall be entitled to all the remedies provided by law for the securing of such possession.*

(b) *Abandonment. If the plaintiff does not make the payment prescribed in subsection (a) hereof for any of the tracts described in the petition, within thirty (30) days, from the time the appraisers' report is filed, the condemnation is abandoned as to those tracts, and judgment for costs, including the appraisers' fees together with judgment in favor of the defendant for his reasonable expenses incurred in defense of the action, shall be entered against the plaintiff. After such payment is made by the plaintiff to the clerk of the court, as provided in subsection (a) hereof, the proceedings as to those tracts for which payment has been made can only be abandoned by the mutual consent of the plaintiff and the parties interested in the award.*

History: L. 1963, ch. 234, § 7; Jan. 1, 1964.

- 26-508

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-508. Appeal from award; notice to parties affected. *If the plaintiff, or any defendant, is dissatisfied with the award of the appraisers, such party, within 30 days after the filing of the appraisers' report, may appeal from the award by filing a written notice of appeal with the clerk of the district court and paying the docket fee of a new court action. In the event any parties shall perfect an appeal, copies of such notice of appeal shall be mailed to all parties affected by such appeal, within three days after the date of the perfection thereof. An appeal by the plaintiff or any defendant shall bring the issue of damages to all interests in the tract before the court for trial de novo. The appeal shall be docketed as a new civil action and tried as any other civil action. The only issue to be determined therein shall be the compensation required by K.S.A. 26-513, and amendments thereto.*

History: L. 1963, ch. 234, § 8; L. 1968, ch. 138, § 2; L. 2003, ch. 106, § 2; July 1.

- 26-509

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-509. Same; assignment for trial on appeal; attorney fees, when. *In an action on appeal the court shall assign the case for trial to a jury, or to a master in accordance with K.S.A. 60-253, or acts amendatory thereof or supplemental thereto. Whenever the plaintiff condemner shall appeal the award of court appointed appraisers, and the jury renders a verdict for the landowners in an amount greater than said appraisers' award, the court may allow as court costs an amount to be paid to the landowner's attorney as attorney fees.*

History: L. 1963, ch. 234, § 9; L. 1969, ch. 196, § 1; L. 1972, ch. 148, § 1; July 1.

- 26-510

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-510. Appeal from award; notice; withdrawal of payment. *(a) The clerk of the district court shall notify the defendants within 15 days that the plaintiff has paid the amount of the appraisers' award pursuant to K.S.A. 26-507, and amendments thereto.*

(b) The defendants may by order of the judge and without prejudice to their right of appeal withdraw the amount paid to the clerk of the court as their interests are determined by the appraisers' report.

History: L. 1963, ch. 234, § 10; L. 1989, ch. 112, § 1; July 1.

- 26-511

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-511. Interest on final judgment. *(a) If the compensation finally awarded on appeal exceeds the amount of money paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment against the plaintiff for the amount of the deficiency, with interest. If the compensation finally awarded on appeal is less than the amount paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment in favor of the plaintiff for the return of the difference, with interest.*

(b) If the money paid to the clerk of the court under K.S.A. 26-507 is paid before July 1, 1982, the judgment shall bear interest as follows:

(1) On and after the date of the payment to the clerk and before July 1, 1982, at the rate of 6% per annum; and

(2) on and after July 1, 1982, and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

(c) If the money paid to the clerk of the court under K.S.A. 26-507 is paid on or after July 1, 1982, the judgment shall bear interest, on and after the date of the payment to the clerk and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

History: L. 1963, ch. 234, § 11; L. 1982, ch. 88, § 2; July 1.

- 26-512

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-512. Same; making surveys and location. The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto.

History: L. 1963, ch. 234, § 12; Jan. 1, 1964.

- 26-513

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-513. Same; compensation required for taking and damage; determination. (a) Necessity. Private property shall not be taken or damaged for public use without just compensation.

(b) Taking entire tract. If the entire tract of land or interest in such land is taken, the measure of compensation is the fair market value of the property or interest at the time of the taking.

(c) Partial taking. If only a part of a tract of land or interest is taken, the compensation and measure of damages is the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) Factors to be considered. In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are:

- (1) The most advantageous use to which the property is reasonably adaptable.
- (2) Access to the property remaining.
- (3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
- (4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.
- (5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

(6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

(7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

(8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.

(9) Destruction of a legal nonconforming use.

(10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

(11) Proximity of new improvement to improvements remaining on condemnee's land.

(12) Loss of or damage to growing crops.

(13) That the property could be or had been adapted to a use which was profitably carried on.

(14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

(15) Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

(e) Fair market value. "Fair market value" means the amount in terms of money that a well-informed buyer is justified in paying and a well-informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. The fair market value shall be determined by use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods.

History: L. 1963, ch. 234, § 13; L. 1969, ch. 196, § 2; L. 1999, ch. 111, § 3; Apr. 22.

- 26-514

Chapter 26.--EMINENT DOMAIN

Article 5.--PROCEDURE ACT

26-514. Fixing of benefit districts and levying of special tax assessments no part of eminent domain procedure. In all cases where costs of the improvement are to be paid for, in whole or in part, by fixing benefit districts or by means of apportionment of benefits on all property benefited, the assessments shall be levied and collected as the statutes now authorize, or may hereafter authorize the assessment, levy and collection of the expense of public improvements, but such special assessments shall not be any part of the condemnation proceedings.

History: L. 1963, ch. 234, § 14; Jan. 1, 1964.

- 26-515

Chapter 26.--EMINENT DOMAIN**Article 5.--PROCEDURE ACT**

26-515. Same; proceedings pending prior to effective date of this act; invalidity of part. All proceedings or actions under any power of eminent domain pending at the time of the effective date of this act shall be completed in conformity with the laws in effect prior to such date.

If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional.

History: L. 1963, ch. 234, § 15; Jan. 1, 1964.

II. CFR TITLE 49 PART 24

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