

## **7.0 Right of Way**

### **7.1 Introduction**

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

- roles
- planning and lead time
- federal funding eligibility
- records and tract files
- contracting work and agreements
- qualifications of ROW personnel, and
- procedural guidelines.

#### **7.1.1 Roles and Responsibilities**

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

##### **7.1.1.1 FHWA**

Acquiring ROW 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 ROW on projects receiving federal funds for compliance with federal acquisition and relocation guidelines.

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

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

##### **7.1.1.2 KDOT**

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 ROW acquisition so that the federal funding is not jeopardized. KDOT ROW manuals are available upon request to assist the LPA in the acquisition of ROW. Additionally, the BLP PM is familiar with ROW acquisition and is available as a resource throughout the process.

### 7.1.1.3 FHWA and KDOT and LPA

Yearly FHWA will identify seven local projects in the state of Kansas that are federally funded in any phase and for which ROW was acquired for a review of the LPA's ROW 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 that state and federal guidelines were followed in the acquisition of ROW could jeopardize funding for the project.

### 7.1.1.4 LPA

The LPA is responsible for acquiring the necessary ROW 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 ROW 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 ROW. If the LPA is utilizing federal funds in *any* portion of the project (not just ROW), all requirements of the "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs", also known as the "**Uniform Act**", apply to the acquisition of ROW. The BLP 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.

In Kansas, LPAs self-certify compliance with the "Uniform Act". This is accomplished by submitting a completed ["Right of Way Clearance Form" \(Form 1306\)](#) for each project. Each year several ROW reviews are conducted throughout the State. These reviews have frequently identified issues with "Uniform Act" compliance. In most cases, these issues have been minor in nature. However, our goal is to achieve zero issues with ROW acquisition and total compliance with the "Uniform Act". To facilitate this goal, KDOT in association with FHWA and the Kansas Local Technical Assistance Program (LTAP) has developed the KDOT "ROW Certification Program" (ROWCP) that all LPAs must complete prior to ROW self-certification.

This program, a partnership with KDOT, FHWA, and Kansas LTAP consists of watching 6 short videos and taking a written test consisting of 24 questions based on the videos. At least one person from each LPA will be required to be certified (full-time LPA employee) prior to submitting the 1306 form. Also, any ROW-acquisition contractors the LPA may hire to perform any part of the ROW acquisition must be certified. Certification under this program must be renewed every 3 years.

The LPA will be required to take the test after watching the videos. Answers will be sent to KDOT for tabulation, and the LPA will be notified by KDOT via email regarding the results (pass/fail). The test may be re-taken if needed. Videos may be referenced while answering the questions.

After the required ROW for a project has been acquired and cleared for construction, the LPA **must** certify compliance with all applicable laws and regulations by submitting a [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 ROW was acquired for the project, the LPA must still submit a completed KDOT Form 1306. Any required field can be marked with a "0".

### 7.1.2 Planning / Lead Time

One of the most significant challenges in acquiring ROW 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 ROW.

The following is a sample schedule for ROW activities for an average project such as a widening job containing ten tracts 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 tracts can only be estimated on a case by case basis. Relocation Assistance will require significant time.

Layout and Legal - Preparation of the ROW plans, graphic exhibits, legal descriptions and title reports.	4 Months
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Appraisal and Appraisal Review - Time to prepare and review appraisals.	4 Months
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Negotiations – Notice of Proposed Public Improvement and Authorization to Acquire (per KSA 26-518) Negotiator making contact, offers, negotiations, securing signatures on contract and closing transaction.	7 Months
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Condemnation - Preparation of Condemnation notice, requesting selection of appraisers by commissioners, making service, and making payments. Filing necessary notices, required publications, and property owner mailings.	6 Months
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**TOTAL - 21 Months**

### 7.1.3 Federal Funding Eligibility

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 ROW must be available for inspection.**

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 ROW estimates, title work, preliminary survey and graphic exhibit and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity or as an incidental ROW expense only if the costs are incurred after the corresponding authorization.

#### **7.1.4 Records/Tract Files**

The LPA must maintain a separate tract file for each acquisition of real property and all the people displaced (see discussion of Tract--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 Graphic exhibit
- Appraisals and Review Appraisals
- Agency Approval to Make Offers
- Written Offer Letter
- Negotiator's Notes
- Administrative Settlement
- Copy of Signed Contracts
- Conveyance and Closing Documents
- Proof of Payment to Landowners/Tenants
- Relocation Forms
- Relocation Agent's Notes
- Condemnation Documents
- Right of Way Spot Check Form (see [Checklist D](#) in [Appendix A - Checklists](#))

#### **7.1.5 Contracting Work/Intergovernmental Agreements**

If the LPA does not have internal staff necessary to complete the necessary ROW 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 ROW acquisition.

**7.1.5.1 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.

**7.1.6 Qualification of Right of Way Personnel**

The LPA should have qualified personnel supplying the necessary ROW services. Provided below are minimum qualifications for persons performing ROW program functions. There are ROW functions for which no qualifications have been provided, including property management, land graphic exhibit and description preparation, and condemnation and project management. If you find you require any of these services, or others, consult with the BLP 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.

***Fee 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 ROW acquisition.
- Be a certified or licensed appraiser.

***Fee 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: When fee review appraiser services are utilized, the LPA still retains the responsibility to approve the amount considered 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 ROW 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 ROW knowledge.
- Knowledge of related project disciplines (work within a team).

### 7.1.7 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. To achieve that goal, certain procedures must be followed when acquiring ROW.

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 ROW will be needed.
- Prepare the tract files, secure title information, plot existing and proposed ROW lines on construction plans, calculate the acquisition areas, and review access control needs. Estimate the acquisition amount for each tract 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 7.7.4](#).
- 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 ROW 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 ROW is sought.
- Acquire the ROW 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 ROW is clear by submitting the 1306 form.

A guide detailing the ROW process may be found in [Appendix A, Checklist D](#). This checklist is called the [Right of Way Spot Check Form](#) and is a helpful tool in managing the ROW process.

The following information will describe in more detail suggestions on “how” the ROW 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 tract 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-year sales history of property. If there was a transfer of title within the last five years, this requires the researcher to go beyond this five-year window to the previous deed transferring ownership. These records are maintained as a part of the tract file. (Reference 49 CFR Part 24.103 (a) (2))

- *Legal Descriptions/Graphic exhibits*

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

- *Authorization for Right of Way Activities*

- For participating ROW acquisition activities, the offers cannot be made before the Design Summary is issued.
- For non-participating ROW acquisition activities, it is recommended that offers not be made before the Design Summary is issued.

## 7.2 The Valuation Process

This section is intended to serve as a brief description of the Valuation Process. The KDOT Bureau of Right of Way maintains a detailed “Right of Way Acquisition Guide for Local Public Agencies” providing additional information. A copy may be found here:

[https://www.ksdot.org/Assets/wwwksdotorg/bureaus/burRow/PDF\\_Files/LPA\\_Manual\\_2007.pdf](https://www.ksdot.org/Assets/wwwksdotorg/bureaus/burRow/PDF_Files/LPA_Manual_2007.pdf)

When the LPA has received authorization to acquire ROW 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

### **7.2.1 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 will discuss both types of valuations. 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.

The following information provides the basis to determine which valuation process is appropriate to use on specific tracts: 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 7.3.4](#)) or (2) if the simplicity of the acquisition indicates that an appraisal is not necessary. If one of the exceptions is met, the waiver process may be used.

### **7.2.2 The Appraisal Process**

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 KDOT 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 of the property. 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 Market Sales 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 the 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 consider when determining fair market value, including general requirements, number of appraisals, and appraisal updates.

- *General Requirements*

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.

- *Required Number of Appraisals*

In general, only one appraisal is required for each non-complex tract acquired. If 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.

#### **7.2.2.1 Tenant-Owned Improvements and Leasehold Interests**

Tenants are owners of an interest in real property; their interests cannot be overlooked and should be identified as early as possible. Leases can be either oral or written and they transfer the right to use land and/or buildings or other fixtures to the tenant for a specified rent and for a specified period. 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. 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 but 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.

### 7.2.3 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 ROW 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 Tract 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 ROW 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.

Form G 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.

#### **7.2.4 The Review Process**

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 but may be performed by another appraiser from the same firm/agency. 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.

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.

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 tract file a signed and dated statement setting forth the following:

- whether the appraisal is accepted and approved or 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 tract 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.

### **7.2.5 Agency Establishment of Approved Offer**

The LPA will need to designate a local official to approve the amount to be offered as just compensation following review of the appraisal. 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.

## **7.3 The Acquisition Process**

KDOT's Bureau of Right of Way Acquisition Section developed a brochure "[Real Property Acquisition for Kansas Highways, Roads, Streets, and Bridges](#)". The LPA must provide the pamphlet to every affected property owner and others with interest in the property and document the transmittal.

Example acquisition forms are provided in [Appendix B](#).

### **7.3.1 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.

By negotiating in good faith, all parties should be given 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.

Any knowledgeable and qualified member of LPA staff (not a member of the LPA's governing body) 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 Valuation Process you have selected, either 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. The Appraisal Waiver Process is used to reduce the time and expense for the owner and acquiring agency.

State and federal regulations require all LPA's acquiring ROW to reimburse expenses incidental to and necessary for the transfer of property. A partial list of these expenses includes 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, or penalty costs and other charges for prepayment of any preexisting recorded mortgage encumbering the real property entered into in good faith.

### **7.3.2 Minimum Value Purchase**

When the administration cost of securing the ROW for a tract approaches or exceeds the value of the acquisition itself, the procedure for acquiring ROW may become disproportionate and cumbersome. Minimum value purchase procedures have been developed to reduce cost and time necessary to acquire less complex tract 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 LPA's 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 7.2.3](#) 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.

### **7.3.3 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.

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, if 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.

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.

#### **7.3.4 Donations**

There are occasions when property owners have expressed a willingness to donate the ROW 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 ROW in exchange for services rendered that will benefit the owner. If federal funds are involved in ROW, 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 K\*](#) shall be completed. If the landowner requests an appraisal in association with donating the property, [\*Form L\*](#) must be completed. These forms must be kept in the tract file. (See [\*Form K\*](#) and [\*Form L\*](#) 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.

### **7.3.5 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 ROW 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.

### **7.3.6 Eminent Domain-Condemnation**

If reasonable efforts have been made and an acquisition 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.

The power of eminent domain has been reserved to the state, municipalities, political subdivisions and others by federal and state constitutions and law. In Kansas, the procedure by which a condemning authority exercises its power of eminent domain is established by the Kansas Eminent Domain Procedure Act (K.S.A. 26-501 et seq.).

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 appraiser's hearing is then 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 include 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 the Condemnation process. The Court Appointed Appraiser's 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 be responsible to pay the defendant's legal fees.

### **7.3.7 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 in [Appendix B](#). These samples are for reference only and the LPA should consult with local legal counsel as to specific contract and conveyance needs.

### **7.3.8 Notes/Documentation**

It is important that after each contact (phone call, email, personal contact, etc.) 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 tract 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,
- tract number,
- date of contact,
- method of contact (phone or in person),
- name, address and telephone number of the 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.

## 7.4 Relocation Assistance

K.S.A. 58-3502 requires all agencies acquiring ROW to provide relocation assistance benefits to all eligible persons on all projects. Eligible persons include owners and anyone else lawfully occupying the property. If the LPA anticipates displacements requiring Relocation Assistance, the BLP PM must be notified.

Rights and entitlements of individuals, families, businesses, farms and nonprofit organizations displaced by federal-aid projects are defined by and discussed in the Uniform Act. State Relocation requirements for all other properties 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 ROW. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments to offset increased costs of obtaining replacement housing.

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 ROW acquisition is a major concern for most projects, relocatees should be dealt with as early as possible.

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 BLP PM on Relocation Assistance matters, retain a consultant with the necessary experience, and/or obtain a copy of the [KDOT Relocation Assistance Manual](#).

### 7.4.1 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 Relocation Assistance Section ([Section 7.4](#)) apply to these types of moves.

### 7.4.2 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, 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](#) 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.

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.

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 displacee, 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.

- *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.

### **7.4.3 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.

- *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.

- *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.

- *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 because 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.

- *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 BLP PM for assistance in 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.

## 7.5 **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 ROW 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 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. Mortgage lien releases are not required for properties less than \$10,000 in value where there are no other liens on the property and the remainder of the tract still holds the majority value providing sufficient security to the mortgage holder with the ability to recoup funds to pay off the lien in the event of default or foreclosure. 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.

## 7.6 **Certification of Right of Way**

The [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.) The person signing must have completed the ROWCP.
- Returned to the BLP PM **four months** prior to letting.

## **7.7 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
- Advance acquisition
- Easements
- Hazardous waste/contaminated properties
- Parcel or Tract -What is it?
- Typical questions
- Potential problems
- Where do I find?
- Outdoor Advertising Procedures

### **7.7.1 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, counties, 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 if 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.

### **7.7.2 Advance Acquisitions**

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

If federal funds are to be used in the acquisition of the ROW, 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 ROW, KDOT must give prior approval for the advance 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 tract 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 advance acquisition. If the early acquisition of a tract is approved but the ROW is ultimately not needed for the project, the LPA will be responsible for the total cost of the acquisition.

### **7.7.3 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. 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.

### **7.7.4 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 ROW 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 (USTs), battery waste, building material containing asbestos, certain paints and their residues.

Contamination may appear as soil which is oozing, an area devoid 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.

If there are signs of contamination, or if there are USTs present on the property, good business practices require the property be further evaluated regarding recommended remedial measures and costs prior to proceeding with the acquisition of the property. In addition, state and federal laws administered 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 BLP PM for further advice and assistance on how to proceed.



### 7.7.5 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 ROW 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 farms are farmed together by the couple, but Mary is only on the title for Farm “B”. Therefore, these would be two separate tracts due to the fact they have two separate owners and the parcels are not contiguous with each other.

### 7.7.6 Typical Questions

Provided below are frequently asked questions and answers:

*How does an LPA find an appraiser, a relocation agent or some other ROW professional?*

**Answer:** The BLP PM can provide a list of ROW 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 tract 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 BLP 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 agency?*

**Answer:** Yes, but first contact the BLP 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 7.4](#) 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 7.7.3](#).)

*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.

### **7.7.7 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. If the LPA lacks sufficient expertise to size and scope the tract and/or project accurately, it is advisable to contact the BLP 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 tract early in the ROW process. This search must identify the owner and mortgage holders, lessees, judgment holders and major tenants.

- *Right of way plans* -- LPA project planning and construction design must include consideration of existing ROW and construction needs to ensure 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 ROW 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 using a Compensation Estimate.
- *Part-time and inexperienced professional staff* -- Many LPA's cannot justify or generate the necessary funding to retain full-time staff which may only be involved with ROW 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.

#### **7.7.8 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, KDOT's 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 ROW 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 ROW 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, 26 CFR Sec. 1.6045-4* -- The IRS regulations describing the reporting of real estate transactions are found in this section.

## ***Appendix A – Checklists***

## ***Appendix B – Forms***

Note: Fillable PDF versions of the **Checklists** and Microsoft Word versions of the **Forms** are available for your use.

Please contact your BLP PM or email [KDOT.LPePlans@ks.gov](mailto:KDOT.LPePlans@ks.gov) to obtain them. Ask for the “ROW Docs 2018.zip” file.

## *Appendix A - Checklists*

The following checklists are included in this appendix:

**Checklist A** - Checklist for Determining Complex Tract for Appraisal Purposes

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

**Checklist C** - Local Public Agency Project Checklist

**Checklist D** – Right of Way Spot Check Form

Note: Fillable PDF versions of the **Checklists** are available for your use.

Please contact your BLP PM or email [KDOT.LPePlans@ks.gov](mailto:KDOT.LPePlans@ks.gov) to obtain them. Ask for the “ROW Docs 2020.zip” file.

**Checklist A - Checklist for Determining Complex Tract 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 tract. 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 tract may have sufficient complexity to classify it as "complex". A "yes" answer should be an alert that more questions need to be asked.

1. 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 ROW 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 because 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 tract will proceed to condemnation?
12. Is more land than is needed being acquired?
13. Are there any other considerations that complicate the valuing of this tract?

**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****MANAGEMENT**

- ☐ Training in ROW functions and procedures
- ☐ Determining sufficient Lead Time necessary to acquire Right of Way properly
- ☐ Measuring Scope or difficulty of Right of Way Acquisition

**ENGINEERING AND DESIGN**

- ☐ Adequate title search
- ☐ Improvements located on plans
- ☐ Plans cross sections
- ☐ Property legal descriptions
- ☐ Land Surveyor's property graphic exhibits

**ENVIRONMENTAL ASSESSMENT**

- ☐ Underground storage tanks
- ☐ Hazardous waste
- ☐ Asbestos

**NEGOTIATIONS**

- ☐ Contract drafting for acquisitions
- ☐ Tenant interests
- ☐ Required procedures to follow
- ☐ Required record keeping

**CONDEMNATION**

- ☐ General procedures
- ☐ Notice preparation
- ☐ Establishing a hearing date
- ☐ Conduction hearing in-Agency

**RELOCATION ASSISTANCE**

- ☐ Moving personal property
- ☐ Residential relocations
- ☐ Business moves

**TITLE AND CLOSING**

- ☐ Determining all interests in land acquisition
- ☐ Title transfer procedures
- ☐ Payment of transfer costs
- ☐ Payment of acquisition costs

<p>APPRAISALS</p> <p>___ Minor tracts (\$10,000 or less)</p> <p>___ Regular partial acquisitions (\$2500 to \$15000)</p> <p>___ Major significant acquisitions (over \$15000)</p> <p>APPRAISAL REVIEW</p> <p>___ Minor tracts (\$2500 or less)</p> <p>___ Regular partial acquisitions (\$2500 to \$15000)</p> <p>___ Major significant acquisitions (over \$15000)</p>	<p>PROPERTY MANAGEMENT</p> <p>___ Asbestos removal and disposal</p> <p>___ Renting property</p> <p>___ Building demolition contracting</p> <p>___ Selling unneeded (excess) Right of Way</p> <p>LEGAL</p> <p>___ Administrative advice - Title and Closing, Condemnation hearing, appeals to District Court</p>
<p><b>OTHER PERTINENT INFORMATION</b></p> <ol style="list-style-type: none"><li>1. Number of tracts involved in this project</li><li>2. Is Relocation Assistance involved in this project?</li><li>3. Date of last public improvement acquisition<ol style="list-style-type: none"><li>a) What type of project was acquired?</li><li>b) Was the DOT Right of Way Office involved?</li></ol></li><li>4. Do you have copies of current DOT ROW Office Manuals?</li><li>5. Names of and functions performed by persons assigned to this project:</li></ol> <p><b>COMMENTS/QUESTIONS?</b></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	



**Checklist C - Local Public Agency Project Checklist**

LPA: \_\_\_\_\_

Project: \_\_\_\_\_

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

<b>REQUESTS AND APPROVALS:</b>			
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			

<b>COMPLETING THE ROW PROCESS:</b>			
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 tracts acquired or condemned			
Secure possession of all tracts			
Clear all properties			
Plan turn in			
Let project			

Other remarks:

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**Checklist D - Right of Way Spot Check Form**

## RIGHT OF WAY SPOT CHECK FORM

Project #:	City/County:
Owner:	Tenant:
Type of Property:	Type of Acquisition: Permanent or Temporary

Y	N	N/A		Date:	Amount:
			1. Was a Certificate of Title prepared to identify landowner and liens? <i>(Certificate of Title is a recommended practice, but a record of five-year ownership and any liens or a history of value is required.)</i>		
			2. Was a Brochure furnished to landowner or tenant? <i>(Required.)</i>		
			3A. Was ROW acquired by donation?		
			If yes, did owner/tenant sign the waiver? <i>(Skip to #14.)</i>		
			3B. Was a "Waiver of Appraisal" used? <i>(If less than \$10k, "Estimate of Just Compensation" [Form G] may be used; must be signed by LPA staff.)</i>		
			If yes, was it completed on proper format?		
			3C. Was appraisal completed on proper format?		
			4. Was appraisal/Waiver of Appraisal completed by the proper individual? <i>(Licensed or Certified/LPA staff)</i>		
			5. Was review appraisal required? <i>(If appraised, a review appraisal is required.)</i>		
			If yes, was it completed on proper format?		
			If yes, was it completed by the proper individual?		
			6. Did LPA approve and establish Just Compensation? <i>(Include documentation of delegation of authority for staff to approve or commission/council meeting minutes. Just Compensation must be established before a written offer.)</i>		
			7. Was revised/review appraisal completed? <i>(Used if there are errors in the original, the landowner does not agree with the original, etc.)</i>		
			8. Was written offer presented on proper format? <i>(Tract acres, \$/acre, tract \$.)</i>		
			9. Were persons displaced or personal property relocated?		
			If yes, was 90-day written notice to vacate presented? <i>(Required.)</i>		
			If yes, was 30-day written notice to vacate presented? <i>(Required.)</i>		
			10. Was an administrative settlement used?		
			11. Were condemnation proceedings properly instituted by Agency?		
			12. As part of the acquisition, was landowner/tenant reimbursed for misc. fees?		
			13. Was full payment made prior to possession? <i>(Copy of check, etc.)</i>		
			14. Were all acquisition documents properly filed of record?		
			15. Is the negotiator's log adequate?		
			16. Are there any signs of coercion?		
			17. Was the acquisition conducted without evidence of discrimination?		
			18. Were all the documents for this review easily accessible?		

RIGHT OF WAY SPOT CHECK FORM

Appraiser: \_\_\_\_\_

Review Appraiser: \_\_\_\_\_

Negotiated By: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Agency: KDOT \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Agency: FHWA \_\_\_\_\_

Location of review: \_\_\_\_\_

Date of review: \_\_\_\_\_

Additional Information:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Required Follow-up Documents:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Appendix B – Forms

<b>Form A -</b>	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.
<b>Form B -</b>	Appraisal Mailing Letter
<b>Form C -</b>	Offer Letter to Purchase
<b>Form D -</b>	Revised Offer Letter to Purchase
<b>Form E -</b>	Tenant's Release of Damage
<b>Form F -</b>	Right of Way Acquisition and Negotiation Notes
<b>Form G -</b>	Estimate of Just Compensation – used to document estimate
<b>Form H -</b>	Standard Appraisal Report
<b>Form I -</b>	Short Form Appraisal Report
<b>Form J -</b>	Appraisal Assumptions, Compliances and Facts
<b>Form K -</b>	Donation Form, Appraisal Waived – Property owner signs this donation form to waive rights to just compensation. This form also waives right to an appraisal.
<b>Form L -</b>	Donation Form, Appraisal Not Waived – Same as Form L except the right to an appraisal is not waived.
<b>Form M -</b>	Administrative Settlement
<b>Form N -</b>	90-Day Guarantee
<b>Form O -</b>	30-Day Notice to Vacate

Note: MS Word versions of the **Forms** are available for your use. Please contact your BLP PM or email [KDOT.LPePlans@ks.org](mailto:KDOT.LPePlans@ks.org) to obtain them. Ask for the "ROW Docs 2020.zip" file.

## ***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.

Enclosed is a copy of ["Real Property Acquisition for Kansas Highways, Roads, Streets, and Bridges"](#).

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 offers 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 Agency'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 offers 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

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**TITLE INFORMATION:**

Owners of Record Information

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**NEGOTIATION NOTES:**

Complete Narration of Contacts

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**FOLLOW-UP/PENDING:**

If Any

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DATE

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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
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**NOTES:****PROJECT REQUIREMENTS:**

Item	Area	Unit Value	Value
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**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
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**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
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**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. \_\_\_\_\_

Tract 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	Date of	Sale				
Grantor	Grantee	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 - Donation Form, Appraisal Waived**

Date: \_\_\_\_\_

County: \_\_\_\_\_

Project: \_\_\_\_\_

Fed. Project: \_\_\_\_\_

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 L - 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 M - Administrative Settlement**

PROJECT NUMBER: \_\_\_\_\_

COUNTY: \_\_\_\_\_

CITY: \_\_\_\_\_

TRACT NUMBER: \_\_\_\_\_

OWNER(S) NAME: \_\_\_\_\_

APPRAISED VALUE: \_\_\_\_\_

TOTAL SETTLEMENT AMOUNT APPROVED: \_\_\_\_\_

SETTLEMENT RECOMMENDED BY: \_\_\_\_\_

APPRAISER: \_\_\_\_\_

REVIEWING APPRAISER: \_\_\_\_\_

ACQUISITION AGENT: \_\_\_\_\_

JUSTIFICATION FOR SETTLEMENT:

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\_\_\_\_\_  
NEGOTIATOR\_\_\_\_\_  
APPROVED BY

**Form N - 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.

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RELOCATION ASSISTANCE AGENT

**Form O - 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 City/County 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 to allow the State to proceed with the required preliminary work.

Sincerely,

\_\_\_\_\_  
Relocation Assistance Agent