

SCDOT

ACQUISITION MANUAL



Department of Right of Way
Columbia, South Carolina



ACQUISITION MANUAL

Right of Way Department
Columbia, South Carolina
January 2016, Revised January 2019

SCDOT Rights of Way Acquisition Manual

The *"Rights of Way Acquisition Manual"* was developed to provide SCDOT and consultant personnel uniform practices when conducting acquisition services for road improvement projects. In addition to the guidelines listed within this manual, SCDOT and consultant personnel must adhere to federal rules and regulations on projects that are federally funded, in whole or in part.

SCDOT ACQUISITION MANUAL

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Approved by Federal Highway Administration (FHWA) on:

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RIGHT OF WAY ACQUISITION MANUAL

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CHAPTER 1 – INTRODUCTION

Foreword

This document is a right of way acquisition working manual intended to consolidate information and instruction as to the organization, operation and procedures for the Right of Way Department of the South Carolina Department of Transportation (SCDOT), hereinafter referred to as the Department. The purpose of this manual is to obtain uniformity of action and to maximize the efficiency of right of way personnel. It is one tool in a continually developing and expanding training program. There are four (4) other working manuals of the Right of Way Department: the Relocation Assistance Manual, Property Management Manual, Appraisal Manual and Utility Accommodations Policy Manual.

The Right of Way Acquisition Manual includes a description of all operational procedures and provides a detailed discussion of the process by which all major right of way acquisition functions are to be accomplished. The Manual provisions provide for full compliance with all of the applicable state and federal laws and regulations. Strict adherence to the instructions is expected. Deviations from the requirements of this manual will be allowed only by written directive from the Director of Rights of Way or the Right of Way Administrators.

From time to time it will be necessary to make changes to the manual. As revisions occur, new pages will be furnished to replace those that have become obsolete. When new sheets arrive, please study the new material and initiate the change in operation as directed. Insertions and deletions will be coded in accordance with the index system of the Manual. For this reason, the manual is indexed and assembled in loose-leaf form.

For the purposes of this manual, the pronouns he, his and him are intended to convey a neutral gender (e. g. the Right of Way Employee, the Acquisition Agent, the Appraiser, the Relocation Agent, etc.). In all places where these neutral gender pronouns appear, the reader may substitute the masculine and feminine pronouns of he/she, his/her, or him/her, if preferred. In addition, the term landowner may also mean property owner.

The Responsibility of the Right Of Way Employee to the Public

Of all of the employees of the Department, the Right of Way employees come in closest contact with the individual landowner in situations where property is acquired for right of way. The Right of Way employee should constantly bear in mind that the good will of the public to the Department and to the State Government depends upon his attitude, conduct and actions toward the people with whom he is dealing. He should, even in the most trying conditions, remain courteous and maintain an open mind in dealing with people. He must remember the importance of public perception of his actions.

The Right of Way employee should always remember that he has a dual responsibility to the public. He must ensure that the individual landowner is advised of and understands his rights in regard to right of way acquisition. At the same time he must remember that he represents all of

the people of the state of South Carolina in their capacity as taxpayers; he must see that public funds are spent wisely.

All Right of Way employees should also remember their responsibility to the Department. OUR GOAL IS TO ACQUIRE AND CLEAR THE RIGHT OF WAY FOR CONSTRUCTION IN SUCH A WAY TO ENSURE FAIR TREATMENT AND CONSISTENCY TO ALL LANDOWNERS AND DISPLACEES. ALSO, TO PROMOTE PUBLIC CONFIDENCE IN THE DEPARTMENT'S RIGHT OF WAY PROGRAM.

Cooperation is the key to our success. This manual will explain the duties of the various Right of Way staff. It will also demonstrate our interdependence on each other. No one position is more important than any other. We must all work together to see that all necessary rights of way are cleared in a timely manner so that construction projects can be let to contract as scheduled.

This manual is designed to set forth the most practical and cost effective procedures for meeting our goal. Our success depends upon the quality and use of this manual, along with the four (4) others previously mentioned. Therefore, suggestions, comments, recommendations and constructive criticism are always welcomed from all Right of Way personnel. Any feedback to the manual should be in writing and addressed to the Director of Rights of Way.

CHAPTER 2 – ORGANIZATION

I. Authority

The South Carolina Department of Transportation is charged with the responsibility of constructing and maintaining the South Carolina State Highway System. It was created by the State Legislature and empowered by statute to discharge its responsibility under the authority and supervision of the South Carolina Department of Transportation Commission. That commission is composed of eight (8) members. One member from each congressional district is elected by the legislative delegation of each district to serve a four-year term on the Commission. The Governor appoints one “At-Large Appointee” who serves as a commissioner.

The Department’s chief executive officer is the Secretary of Transportation and is appointed by the Governor. All other appointments in management and personnel are made by the Secretary of Transportation in accordance with state law and pursuant regulations.

II. Right of Way

The Rights of Way Department, under the leadership of the Director of Rights of Way, is a component of the Engineering Division and reports to Chief Engineer of Project Delivery.

Right of Way is responsible for the acquisition of needed rights of way for highway construction projects on the State Highway System. It must ensure that all rights of way are obtained in compliance with all federal and state laws and regulations.

III. Duties of the Right of Way Department

1. Acquire all necessary rights of way for highway projects as shown on plans for such projects as prepared by Regional Production Groups and Traffic Engineering and are approved by the Department.
2. Maintain adequate records of rights of way acquired and all related costs.
3. Acquire all other property or interest in property needed by the Department upon its authorization for such purposes as material sites, storage areas, temporary access roads, etc. and if requested, to arrange for the purchase of other properties needed for highway operational purposes such as shop sites, office sites, etc.
4. Disposition of surplus property such as buildings, land remnants, or residues acquired in connection with right of way that are determined to be surplus and no longer necessary for highway use.
5. Provide relocation assistance to include advisory services and financial assistance to persons or businesses displaced by right of way acquisition and to make payment for any benefits for which they are entitled.

6. Management of property between the time of acquisition and the time it is necessary to clear the right of way for construction.
7. Regulate the location, installation and adjustment of utility facilities on the State Highway System and also the issuance of permits for such work.
8. Seek approval from the various railroad companies by providing project scope, plans, coordination and assistance necessary for the timely completion of SCDOT road and bridge projects and rail-highway safety projects occurring on or near the property, crossings, tracks, or rights of way of the railroad companies operating in the state of South Carolina.
9. Oversee agreements for the relocation of utility poles, underground transmission cables, pipelines, water mains and other items in the construction of highways throughout the state.

Within the framework of the Right of Way Department, there are seven (7) functions:

1. Appraisal Function

The Appraisal Function is to determine an opinion of market value.

2. Acquisition Function

The Acquisition Function is responsible for the negotiation and procurement of right of way and other lands needed in the operation of the Department and is under the direction of the Field Right of Way Administrator. The acquisition unit includes four (4) Regions.

3. Relocation Function

The Relocation Function is to ensure displacees are relocated in accordance with state and federal regulations.

4. Property Management Function

The Property Management Function is to maintain an inventory and dispose of surplus property.

5. Utilities Function

The Utilities Function is to provide guidance in the day to day operations of accommodating utilities within the right of way for roads within the State Highway System.

6. Railroads Function

The Railroad Function is responsible for submittals and discussions with railroad companies during the pre-construction phase of SCDOT road and bridge projects that affect property, crossings, tracks, or right of way of railroad companies operating in the state of South Carolina and payment of associated invoices.

7. Administrative Support Function

The Administrative Function is responsible for the research, maintenance and accuracy of all records pertaining to right of way acquisition. It processes all right of way claims for payment and ensures that all necessary instruments are recorded in a timely manner.

IV. Personnel Functions and Duties – Working Titles and Human Resources Classification

NOTE: Working titles are used throughout this manual.

Director, Rights of Way (Program Manager III)

The Director of Rights of Way plans, directs and coordinates the Right of Way programs for the Department and administers all functions necessary to acquire Rights of Way. He is responsible for the coordination of work between the Right of Way Section and other departments and divisions of the Department.

Headquarters and Field Right of Way Administrators (Program Manager II)

The two (2) Right of Way Administrators assist the Director of Rights of Way in directing and coordinating the activities within the Right of Way Section. They participate in the formulation of policies, regulations, methods and procedures relating to right of way.

The Headquarters Right of Way Administrator oversees the Quality Control, Claims, Data Management and Property Management Sections. He is responsible for the acquisition records on file in the Right of Way Vault. He supervises all payments for rights of way and maintains records of all property and equipment assigned to the section. He is responsible for all condemnation cases and maintains liaison with the Legal Division of the Department on pending cases until they have been settled.

The Field Right of Way Administrator oversees the Appraisal, Relocation and field operations in the acquisition of rights of way for construction projects. He coordinates rights of way priorities with the Director of Rights of Way and other Preconstruction personnel. He determines the need for consultants based on the assigned projects and available manpower within the Right of Way Section. He evaluates complex right of way acquisitions to provide an equitable handling of the negotiations and to minimize the condemnation rate.

Assistant Right of Way Administrator (Field) (Program Manager I):

The Assistant Right of Way Administrator (Field) oversees the four (4) Right of Way regions. He ensures project schedules are maintained and assists the Right of Way Administrator (Field) in determining available manpower within Right of Way Section.

Chief Appraiser (Program Manager I)

The Chief Appraiser coordinates the statewide appraisal program to ensure all SCDOT, FHWA and USPAP policies and regulations are met. He is responsible for developing and administering appraisal training for staff, fee appraisers and consultants as well as the selection and screening of fee appraisers.

Relocation Manager (Program Manager I)

The Relocation Manager coordinates the prompt, orderly and equitable application of the relocation assistance program. He supervises the relocation assistance process and keeps the Field Right of Way Administrator advised of project status concerning relocation.

Relocation Coordinator (Program Coordinator II)

The Relocation Coordinator assists the Relocation Manager with the prompt, orderly and equitable application of the relocation assistance program.

Regional Right of Way Administrator (Program Manager I)

The Regional Right of Way Administrator is responsible for the appraisal, relocation and negotiation functions within a single region. He coordinates all activities to ensure project delivery is on time.

Team Leader (Right of Way Agent III or Appraiser II)

The Team Leader is responsible for the appraisal, relocation and negotiation functions for specifically assigned projects within a Region and provides supervision and guidance for his staff.

Right of Way Appraiser (Appraiser I and II)

The Right of Way Appraiser performs professional work in right of way appraisals pursuant to Eminent Domain laws. The Appraiser I prepares an opinion of market value for the property to be acquired by Easement and Title to Real Estate. The Appraiser II prepares an opinion of market value involved with complex and high cost acquisitions. He also serves as review appraiser for appraisals prepared by staff and contract appraisers. He may also function as a Relocation and/or Acquisition Agent.

Right of Way Agent (Right of Way Agent I and II)

The Department operates under the one-agent concept of providing services to landowners through combining the functions of relocation and acquisition to ensure a better understanding of the information being supplied and to reduce the possibility of confusion on how the system works.

The Right of Way Agent acquires right of way for the Department. He must have knowledge of title investigations, sales data compilation, preparation of legal deeds and writing legal descriptions. He must have the ability to communicate effectively with property owners and be skilled in reading, interpreting and explaining proposed construction plans to landowners. He also provides relocation assistance for those individuals, families and businesses displaced as a result of right of way activities. He determines the relocation needs and explains the benefits available and provides advisory services.

Quality Control Manager – Administrative Function (Right of Way Agent III)

The Quality Control Manager is responsible for managing the Quality Control Supervisor and all components of the Quality Control Section. (Including exhibit preparation, project

lettings, condemnation coordination, process reviews and maintenance of the acquisition documents/vault).

Quality Control Agent – Administrative Function (Right of Way Agent I and II)

The Quality Control Agent completes the check-in process of the field agent's turn-in packages to ensure that the Department's right and titles to real estate are clear, processes condemnation packages and legal invoices, verifies right of way requests, reviews tax/storm water notices, prepares exhibits, updates data sheets and updates file information to reflect road changes approved by the SCDOT Commission.

Property Manager – Administrative Function (Program Manager I)

The Property Manager supervises the maintenance of a complete inventory of surplus property owned by the Department. He coordinates the disposal of improvements acquired prior to construction and also disposal of surplus property in inventory.

Property Management Agent – Administrative Function (Right of Way Agent I and II)

The Property Agent assists the Property Manager in determining the proper disposition of surplus property throughout the state. He must ascertain the ownership and use of adjoining properties and research any zoning ordinances, easements, or other pertinent requirements that may affect disposal of surplus parcels.

Claims Supervisor – Administrative Function (Program Coordinator I)

The Claims Supervisor is responsible for the processing of all claims for land payments and associated costs, inclusive of settlement and verdict payments. He is responsible for the maintenance of correspondence/payment records, as well as other related expenditure functions.

Right of Way Data Manager – Administrative Function (Program Coordinator II)

Assist in establishing guides and procedures in the management of the right of way data: Assist in the management of data collection process, production, reporting and retention of right of Way data to include the Right of Way permanent document management application and temporary file storage.

CHAPTER 3 - RIGHT OF WAY ACQUISITION

I. Statutes Applicable To Right Of Way

There are numerous statutes that SCDOT must adhere to some of which are the Eminent Domain Law, amendments and other excerpts from the South Carolina Code of Laws.

II. Departmental Acquisition Policy

In general, the Department's policy for acquisition requires that prior to advertising for bids or filing of condemnation, appraisals are made on each property and the property owner is made an offer in the amount of the approved appraisal for his property, except for "C" projects. Offers can also be made from the approved SCDOT Cost Estimate on "non-complex" acquisitions under \$20,000.00 without having a waiver of right form secured (SCDOT R/W Form 846 "Waiver of Rights"), recognizing by state law the property owner's right to require an appraisal be made for any acquisition regardless of the cost estimate amount. The landowner should always be given ample time to consider the offer before a second contact is made. A minimum of two (2) business days is recommended before second contact is made.

It is mandatory that no person lawfully occupying real property be required to move from his home, farm, or business location without at least ninety (90) days' written notice and in residential cases, shall be afforded the opportunity to occupy decent, safe and sanitary housing. Also, no owner shall be required to surrender possession of his real property until the state pays the agreed purchase price or deposits the amount of the state's approved appraisal in court in accordance with state and federal laws.

The policy of the Department on secondary road improvement projects involving the stabilizing or paving of unimproved roads requires that the necessary right of way be donated by the property owner. These projects, referred to as "C" funded projects, are recommended by the County Transportation Committees and approved by the Transportation Commission. "C" Funded projects are not federally funded. The philosophy of this program is that the improvement of the road will enhance the value of the property in an amount equal to, or greater than, the value of the land acquired. Also, these projects primarily serve the people living on the road. For these reasons, a gratis easement for the right of way is acquired. However, it may be necessary to condemn right of way on "C" funded projects. On these projects the landowner retains the underlying fee simple title to the property and the Department acquires an easement interest only.

III. Right Of Way Interest to Be Acquired

The Department may acquire an easement or fee simple title to real property by gift, purchase, or condemnation for the construction, maintenance and improvement (or safe operation) of highways in this state. The acquisition of right of way, whether in easement or fee simple title, is dictated by both federal and state law.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended, allows the Department to acquire right of way for federally assisted projects. The state laws, which empower the Department to acquire right-of-way for federally assisted and totally state funded projects, are found in [Titles 57](#) and [28](#) of S.C. Code of Laws, as amended.

South Carolina state law provides that the Department comply with the federal law and its pursuant regulations to obtain the use of federal funds for the benefit of the public of the state of South Carolina. Both, state and federal, law provide that a landowner has the right to “just compensation.” Just compensation must include the value of the land and improvements acquired to which must be added value for damages, if any, and to which must be subtracted value for benefits accruing to the remainder, if any. A copy of the approved appraisal must be made available to the landowner. A landowner may waive the right to an appraisal and may donate the land for the Department’s use. Such waivers must be documented. (SCDOT R/W Form 846 “Waiver of Rights”.)

Basically, the interest to be acquired by the Department for its right of way is in fee simple on all but “C” Projects. Some exceptions to this would be as follows with prior approval of the Assistant Director of Rights of Way or Director of Rights of Way. (See Chapter 8, Paragraph III - Instruments of Conveyance)

- A. Easements or Licenses from Municipalities, State Agencies and some Federal Agencies.
- B. Quit-claim deeds
- C. Temporary Construction, Slope Permission and Drainage Easements.
- D. Voluntary Acquisitions: The Director or Assistant Director of Rights of Way may advise the Agent to acquire property as a voluntary acquisition. To qualify as a voluntary acquisition the following conditions may be met:
 - 1. The property to be acquired cannot be part of an intended, planned, or designated project area.
 - 2. If an amicable agreement is not reached, the Department will not acquire the property and the owner is so informed in writing.
 - 3. The owner is provided a written offer for the amount believed by the Department to be the market value of the property.

An owner-occupant who moves as a result of a voluntary acquisition does not qualify as a displaced person and is ineligible for relocation assistance benefits. However, a tenant does qualify as a displaced person and could be eligible for certain relocation assistance benefits.

IV. Federal Highway Administration Authorization

The Federal Highway Administration (FHWA) will not typically reimburse right of way costs for a project until the FHWA has provided SCDOT a written authorization to proceed with the right of way acquisition phase of the project. SCDOT Headquarters will advise the Regional Right of Way Administrator when such authorization has been received. No right of way shall be acquired prior to notification of authorization. In some cases, it may be necessary to proceed with preliminary title research, appraisals, and preliminary contacts concerning title before federal approval has been obtained.

There are four (4) classes of Federal authorization:

- A. Preliminary Engineering Authorization - This authorization, obtained primarily by Regional Production Group Managers or Traffic Engineering, permits right of way personnel to make preliminary estimates, attend preliminary plan field inspections, check existing rights of way, verify property lines, perform title work, prepare appraisals, make preliminary contact, prepare relocation studies, and submit suggested plan changes and corrections.
- B. Preliminary Right of Way Authorization - This authorization permits right of way personnel to proceed only with activities outlined in the preceding stage up to and including the appraisal of the property. This authorization is only utilized under extreme circumstances.
- C. Right of Way Authorization - This authorization permits all activities of the preceding stages. This authorization also allows right of way personnel to appraise the property, make offers to purchase, settle claims and carry on all necessary right of way activities.
- D. Early Acquisition - In addition to these authorizations, Early Acquisitions may be used for carrying out real property acquisitions in advance of a Federal environmental decision on a proposed transportation project. Early acquisitions will be a separate federal-aid project, eligible for reimbursement from Title 23 apportioned funds if applicable requirements, including required NEPA review, are satisfied. Early acquisition guidelines apply not only to SCDOT, but also to other state and local governmental agencies. Any approval by the FHWA for early acquisitions is conditioned upon the following:

1. Evaluating Early Acquisition Opportunities

The Department should evaluate real estate activity within priority corridors to identify potential early acquisition opportunities based on:

- a. The importance of the corridor as determined by the Department's collective family of plans. Priority will be given to projects currently programmed in the TIP/STIP;
 - i. The availability of funding for early acquisition;
 - ii. The existing schedule for right of way acquisition in the STIP
 - iii. The status of the environmental documentation;
 - iv. The status of design plans;
 - v. The estimated savings the Department would realize from early acquisition considering the impact of time on property values, potential development, potential zoning or land use changes, etc.;
 - vi. The possibility that early acquisition will advance construction of all or part of an affected project;
 - vii. Local government or developer contribution to the project; and,
 - viii. Whether the property being considered for early acquisition is listed for sale or is otherwise available for purchase from a willing seller.

2. Early Acquisition Options – Per 23 CFR §710.501(a)

The SCDOT may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The SCDOT may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, the SCDOT may fund Early Acquisition Project costs entirely with State funds with no Title 23 participation; use State funds initially but seek Title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to 23 CFR §710.501(e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects. 23 U.S.C. §108, 23 CFR §710.501, §710.503 and §771.113, together with the enactment of the FAST Act, provide the following five (5) options for early acquisitions:

a. **STATE-FUNDED Early Acquisition without Federal credit or Reimbursement** - According to 23 C.F.R. 710.501(b), the SCDOT may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the SCDOT receives Federal financial assistance or other Federal approval under Title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with all of the follow requirements:

- i. The property was lawfully obtained by the SCDOT;
- ii. The property was not land described in 23 USC §138 (i.e., not a Section 4(f) property¹);
- iii. The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR Part 24;
- iv. The SCDOT complied with Title VI of the Civil Rights Act of 1964;
- v. The SCDOT agency determined, and the FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
 - o The decision on the need to construct the proposed transportation project;
 - o The consideration of any alternatives for the proposed transportation project required by applicable law; and
 - o The selection of design or location for the proposed transportation project.

The amount of the credit may be current fair market value *or* historic acquisition cost to acquire; however, this credit must be applied consistently within the transportation project subject to the requirements at 23 U.S.C. 323(b).

Require NEPA Decision: NO

Subject to Condemnation: YES

b. STATE-FUNDED Early Acquisition eligible for future FEDERAL Credit
- Subject to §710.203(b) (direct eligible costs), §710.505(b), and §710.507 (State and local contributions), 23 CFR §710.501(c) provides that early Acquisition Project costs incurred by the SCDOT at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

- i. The property was lawfully obtained by the SCDOT;
- ii. The property was not land described in 23 USC §138 (i.e., not a Section 4(f) property);
- iii. The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR Part 24;
- iv. The SCDOT complied with Title VI of the Civil Rights Act of 1964;
- v. The SCDOT agency determined, and the FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:

¹ A Section 4(f) property is a publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance; or land of a historic site of national, state, or local significance (23 CFR §774.117).

- o The decision on the need to construct the proposed transportation project;
- o The consideration of any alternatives for the proposed transportation project required by applicable law; and,
- o The selection of design or location for the proposed transportation project; and,
- vi. The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

Reimbursement of acquisition costs is based on the usual costs to acquire—23 CFR 710.203(b)(1).

Require NEPA Decision: NO

Subject to Condemnation: YES

c. State-funded early acquisition eligible for future reimbursement. Per 23 CFR §710.510(d), Early Acquisition Project costs incurred by SCDOT prior to completion of the environmental review process for the transportation project are eligible for reimbursement from Title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the SCDOT demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of §710.501(c)(1) through (5), and the requirements of 23 CFR §710.203(b) (direct eligible costs) have been met. The SCDOT must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. 108(c)(3):

- i. Any land acquired, and relocation assistance provided, complied with the Uniform Act;
- ii. The requirements of title VI of the Civil Rights Act of 1964 have been complied with;
- iii. The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;
- iv. The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;
- v. The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;
- vi. Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and,

- vii. Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

d. FEDERALLY FUNDED EARLY ACQUISITION- The enactment of MAP-21 Section 1302(b) made amendments to 23 U.S.C. Section 108 which alters 23 CFR §710.501 and provides a new option for Federally funded early acquisition (23 CFR §710.501(e)). The FHWA may authorize the use of funds apportioned to a State under Title 23 for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

- i. The SCDOT has authority to acquire the real property interest under State law; and,
- ii. The acquisition of the real property interest—
 - Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3 (i.e., Section 4(f));
 - Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;
 - Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;
 - Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
 - Is consistent with the State transportation planning process under 23 U.S.C. 135;
 - Complies with other applicable Federal laws (including regulations);
 - Will be acquired through negotiation, without the threat of, or use of, condemnation; and,
 - Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).
- iii. The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.
- iv. The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C.

108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

- (a) ENVIRONMENTAL COMPLIANCE - Prior to authorizing federal funding for an acquisition of a real property interest, the Secretary shall complete the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA). The acquisition shall be treated as having independent utility for purposes of the NEPA process, and shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest.
- (d) PROGRAMMING - The early acquisition project must be included in the TIP/STIP under 23 U.S.C. Sections 134 and 135. The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.
- (e) DEVELOPMENT - Real property interests acquired under this subsection may not be developed, i.e. demolished, in anticipation of a project until such time as all required environmental reviews for the project have been completed.
- (f) REIMBURSEMENT - If federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within 20 years, the Secretary shall offset the amount reimbursed against funds apportioned to the State.

Require NEPA Decision: YES

Subject to Condemnation: NO

e. PROTECTIVE BUYING AND HARDSHIP ACQUISITION- 23 CFR §710.503, 23 CFR §771.113(d), and 23 CFR §771.117(d)(12) provides a pre-existing option for protective buying and hardship acquisition.

- i. Prior to final environmental approval of a transportation project, the SCDOT may request FHWA agreement to provide reimbursement for advance acquisition of a

particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

- The transportation project is included in the currently approved STIP;
 - The SCDOT has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
 - A determination has been completed for any property interest subject to the provisions of 23 U.S.C. 138; and
 - Procedures of the Advisory Council on Historic Preservation are completed for properties subject to (54 U.S.C. 306108), (historic properties).
- ii. *Protective buying.* The SCDOT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.
- iii. *Hardship acquisitions.* The SCDOT must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that—
- Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners;
 - Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
- iv. *Environmental decisions.* Acquisition of property under this section is subject to environmental review under 23 CFR Part 771. Acquisitions shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

Protective Buying Requirements

• During the NEPA process and per **23 Code of Federal Regulations, Section 710.503**, protective buying may be approved by FHWA for single parcels or a limited number of parcels, where the Department documents that the parcel(s) being proposed for protective buying are on the verge of future development or change in their physical character so as to limit future transportation choices or significantly increase future acquisition costs. The following are examples where protective buying may be appropriate:

- (A) Parcels on the verge of costly development, expansion, or change in physical character by construction, excavating, flooding, dumping, etc.;
- (B) Parcels with pending zoning or land use changes that will increase the value of the land; or
- (C) Parcels where existing improvements have been severely damaged and reconstruction of the improvements is pending.

Hardship Requirements

During the NEPA process and per **23 Code of Federal Regulations, Section 710.503**, hardship acquisitions may be approved by FHWA for single parcels or a limited number of parcels, provided the Department and FHWA concur in a written assertion from the property owner(s) that, due to health, safety or financial reasons, continued ownership of the property poses an undue hardship on the owner(s) as compared to other owners on the project. The owner(s) must also demonstrate that because of pending project the property cannot be sold at market value within a typical time period for properties not influenced by the project. The following are examples of where hardship acquisitions may be appropriate:

- Illness or advanced age within the property owner's family that causes undue economic hardship, prevents the owner from adequately maintaining their property, or requires the owner to relocate to an extended care facility or nursing home:
- Financial hardship causing the property owner to be unable to continue to meet the financial obligations of ownership:

Note: Protective Buying and Hardship Acquisitions usually occur during the transportation project's NEPA phase. However, prior to approving a protective or hardship acquisition, NEPA clearance is necessary for the protective or hardship acquisition parcels per 23 CFR Part 771. This requires the protective or hardship acquisition parcels to be carved out from the overall transportation project to do NEPA review on those parcels. The NEPA class of action is typically a Categorical Exclusion. The protective or hardship acquisition reviews and decisions are for advanced acquisition, and the protective or hardship acquisition parcels still will be included in the NEPA for the overall transportation project.

Require NEPA Decision: YES (Typically a CE)

Subject to Condemnation: YES

V. Acquisitions Completed as Part of an Encroachment Permit

It may be necessary for the Department to obtain right of way due to the construction of turn lanes, roadway modifications, installation of driveways, etc., that are completed through the encroachment permit process. When it is determined that new right of way is required as a part of the encroachment permit, the following will occur.

The Resident Maintenance Engineer (RME), or designee, will:

1. Advise the applicant that new right of way is required and it must be conveyed by fee simple title, or other interest acceptable to the Department (approved by the Director of Rights of Way), prior to final acceptance of project.
2. Provide the applicant's contact information to the Regional Right of Way Administrator.

The Regional Right of Way Administrator will:

1. Establish contact with the applicant and instruct the applicant of the right of way requirements and inform the applicant to provide a plat and, if available, a set of project plans depicting the new right of way.
2. Determine if the new right of way is an addition to existing plans or if new plans are to be provided.
 - a. If existing plans: the existing project information will be used on the instrument. (The tract number will be assigned by Quality Control when processed.)
 - b. If new plans are provided: Contact the Field Right of Way Administrator and request a project ID be established. Once established, this information will be used on the acquisition instrument and the tract information will be entered in Right of Way Data Management System (RWDMS).

NOTE: This is necessary to ensure the correct information is used on the instrument prior to being executed by the landowner and to ensure the documents are properly processed when they are turned in to Headquarters.

3. Once the project is accepted by the Department, he will request and review all executed right of way instruments for accuracy. The instrument is returned to the applicant for recording. The recorded instruments are then returned to Regional Right of Way Administrator.
4. Forward the instrument(s), plat(s), plan(s), etc. to Headquarters Quality Control Manager to process.
5. Advise the RME that the right of way acquisition is complete.

Headquarters will process the right of way documents as a correction to provisions, if existing plans were used; or as “Built by Others” if a PAR was established.

NOTE: Generally right of way should be conveyed to the Department at the completion and acceptance of project; however, in some cases the Department may choose to require conveyance of the right of way prior to issuing an encroachment permit. This determination will be made by the Resident Maintenance Engineer and the Regional Right of Way Administrator at time of the encroachment permit application.

VI. Local Government/Local Public Agencies Acquisitions

Under certain circumstances, the Department may enter into an Agreement with a Local Government/Local Public Agency (LPA) as a sub grantee for the development of a project to

include right of way acquisitions. These agreements are entered through the department's LPA office after the applicant has demonstrated knowledge of the right of way process. In those instances, the Department will treat the Local Government/LPA as a sub grantee similar to a Right of Way Consultant and assign an experienced Right of Way Agent to coordinate activities and provide process oversight. For Federal-aid projects, the Department is responsible for compliance with Title 23 requirements including projects where the Department delegates project activities to other public agencies or contractors.

On all construction projects located within a municipality, the Department will require the approval of the proposed project by the City or Town prior to the acquisition of any property, which should be secured by the Regional Production Group (RPG) Manager.

The LPA must follow all State and Federal laws, regulations and applicable policies. Eligibility to receive Federal funds depends upon compliance with the provisions of the Uniform Act. A Real Estate Acquisition Management Plan (RAMP), in lieu of the Right of Way Acquisition Manual can only be used with approval from FHWA and SCDOT. LPAs must make a request no later than one year prior to right of way obligation to the Director of Right of Way for requirements and procedures to be followed.

SCDOT has provided assurances to the FHWA that it can fully comply with the Uniform Act. LPAs acquiring ROW must certify they have followed SCDOT's assurances of the Uniform Act when acquiring real property as follows:

1. Written authorization (Notice to Proceed to Right of Way Authorization Request) must be obtained from SCDOT's LPA Office, prior to the start of the acquisition process.
2. All forms and documents must be in a format acceptable to SCDOT.
3. A set of plans approved by SCDOT Pre-Construction is to be provided to the appropriate SCDOT Regional Right of Way Office.
4. An appraiser from SCDOT's approved appraisers list must prepare a right of way Cost Estimate (SCDOT R/W Form 100A). Said cost estimate must be approved by SCDOT Right of Way Project Manager/LPA Coordinator, prior to initiation of any negotiations.
5. Tracts requiring Right of Way appraisals must be written and reviewed by appraisers on SCDOT's approved appraisers and review appraisers lists. SCDOT must approve just compensation prior to an offer being made.
6. Administrative settlements must be pre-approved by SCDOT Regional Right of Way Administrator.
7. All relocations must be in accordance with the Uniform Act and SCDOT shall review and approve all relocation offers prior to them being made.
8. Conveyances of real estate shall be acquired in the name of the county, city or Local Public Agency and recorded in the Register of Mesne Conveyance/Register of Deeds or Clerk of Court's office. Upon SCDOT acceptance of the completion of the project, the LPA must convey to SCDOT a title document(s) for all property within the right of way limits.

9. Condemnations must be pre-approved by SCDOT before filing.
10. The LPA is responsible for maintaining permanent Right of Way files and documentation for individual tracts. The LPA shall retain all records dealing with property acquisitions, relocation and all other supporting documentation pertaining to the project for three (3) years after completion and acceptance of the project into the State Highway System.
11. A right of way certification must be submitted in a form acceptable to SCDOT and must be approved by SCDOT Right of Way Office prior to the construction letting. Refer to Section X - Right of Way Certification.
12. All projects are subject to audit at any time by SCDOT or the Federal Highway Realty Office. Should an audit be conducted, full access to all files and records (to include paper and electronic) will be provided by the LPA at SCDOT or FHWA's request. A Fiscal Year LPA acquisition payment report will be provided to the SCDOT for submittal to FHWA.

NOTE: Failure to comply with the provisions of the Uniform Act may result in denial of Federal participation in project costs and/or SCDOT acceptance of the project into its system.

VII. Right Of Way Consultants

The Right of Way Department may choose to use On-call Consultants to supplement its staff because of peak workloads. In order to utilize these consultants in an expedient manner, it has been determined that firms will be selected periodically and pre-qualified to propose for potential right of way acquisition projects.

State procurement procedures as identified by the SCDOT Procurement Office will be followed when the Right of Way Department chooses to hire an on-call consultant to supplement its staff. (See Appendix B-1)

The consulting firm selected for a project will be expected to acquire the right of way in accordance with all state and federal codes, rules and regulations as well as in compliance with the Uniform Act. An experienced Right of Way representative will be selected to act as a liaison between the Department and the Consultant. Consultant contracts may include all or part of the activities included in the Right of Way process.

VIII. Funding and Charge Codes

Project Funding is established in the Project Programming System (P2S) and is displayed under the Phases tab for a specified project. Each phase of a project displays data, dates and information that is applicable to a specific phase. Pertinent data applicable to a project includes, but is not limited to, the Program Category, Obligation Amount, Obligation Status, Pending/Authorization Date(s), Funding Source, Federal and State dollars and Project Expenditures. The authorization of right of way funds is of utmost importance – this authorization allows the right of way acquisition process to begin. The Headquarters Rights of Way Office receives notification of the Project Authorization Agreement (PR2) and notifies the Regional Right of Way Administrator managing the project of the authorization.

Project charge codes can be found utilizing the WBS Element Lookup link located on various tabs within the RWDMS or by using P2S – “Search Charge Codes” tab. Users will enter the Project Identification Number and then select the “Project Phase” and “Project Activity” in either system. Depending upon one’s job function(s), will determine the project activity to be selected. The project activity selections are – “Right of Way”, “Surplus Property” or “Cost of Moving Displaced Persons”. The Functional Area changes for each activity, as indicated by the last 4 digits. Either “search” method will provide the Cost Center, WBS Element, Fund Code and Functional Area required for time sheets and mileage reports.

When the funding for right of way acquisition has not been authorized, agents can use the Project Phase “Preliminary Engineering” and the Project Activity of “Right of Way Title Investigations” for initial contacts, up to and including initial contact for title verification. However, once the funding for the right of way phase has been authorized, agents and/or other right of way staff must use the charge codes for the “Project Phase” Right of Way and one of the “Project Activity” selections above.

Occasionally, “special projects” are assigned to an agent that requires a maintenance charge code. The District Engineering Offices provides the maintenance codes required for time sheets and mileage reports.

IX. Adherence to Right Of Way Acquisition Schedules

At or immediately following the time when completed plans and notice of authorization to begin right of way acquisition have been sent to the Regional Right of Way Administrator, project milestone dates will be developed. The Team Leader and Agent establish a flexible schedule that will allow the acquisition to be completed by the scheduled completion date. The dates should be adjusted accordingly if problems are encountered. It is very important in the overall planning of the Department’s construction program that Right of Way strictly adheres to the schedules. However, if for sufficient cause (i.e. design changes to plans or change of ownership) the Team Leader is of the opinion that the schedule cannot be met, the Regional Right of Way Administrator must be promptly notified and upon his approval, the schedule may be revised pending discussions with the RPG.

X. Right of Way Certification

The Right of Way Office must provide a Right of Way Certificate to FHWA verifying that all necessary rights of way have been acquired and the project is ready for construction. Certification is done prior to a project being let for construction. FHWA will allow conditional ROW certifications in order to proceed with advertising for construction bidding as long as assurances are in place to protect property owners and tenants in unusual circumstances. Additionally, FHWA will not participate in claims due to delays in the property or properties not being available. Should a conditional right of way certification be submitted, a clear certificate shall be issued upon the completion of the acquisition and/or relocation as reflected within the conditional certificate and submitted to FHWA. This procedure is required for all right of way projects utilizing state and/or federal funds to include present right of way, Local Public Agency

(LPA) Projects, etc. In accordance with 23 CFR 635.309, one of the following type certifications should be submitted.

- All necessary ROW, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the ROW but all occupants have vacated the lands and improvements and the Department has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.
 - Although all necessary ROW have not been fully acquired, the right to occupy and to use all ROW required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the Department has physical possession and right to remove, salvage, or demolish these improvements.
 - The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, the State may request the FHWA to authorize actions based on a conditional certification
1. **Certifications for LPA projects** will be prepared by the LPA or the consultant firm hired by them for the project. The certificate will be executed according to the guidelines set forth below. (See Appendix G-1 for a copy of the memo establishing this procedure.)
 - If consultant has been hired, they will prepare and execute the certification for submittal to the LPA representative or its' "appropriate authoritative party".
 - The LPA representative or its' "appropriate authoritative party" will review and execute for submittal to the Regional Right of Way Administrator.
 - The Regional Right of Way Administrator will review and execute for submittal to the Director of Rights of Way or Field Right of Way Administrator.
 - Director or Assistant Director of Rights of Way will review and execute for submittal to FHWA.
 2. **All other certifications** shall be created by staff in the Right of Way Headquarters Office and are to be signed according to guidelines set forth below. (See Appendix G-1 for a copy of the memo establishing this procedure.)
 - Certificates for present right of way will be executed by the Director of Rights of Way or his designee.
 - Certificates for acquisition of right of way will be executed by the Director of Rights of Way or Assistant Director of Rights of Way on behalf of the Director of Rights of Way.

- Any Construction “Hold Offs” included within a certificate will be issued by the Director of Rights of Way or Assistant Director of Rights of Way on behalf of the Director of Rights of Way.
- Certificates for special projects such as Safe Routes to School, sidewalk projects, etc. will be executed by the Director of Rights of Way or Assistant Director of Rights of Way on behalf of the Director of Rights of Way.

Right of Way Certifications shall be classified into one of three (3) categories in accordance with Engineering Directive (ED-58) - Right of Way Certification and Programmatic Agreement between FHWA and SCDOT (Dated November 3, 2015). (See Appendix G1-G3) The appropriate Right of Way Certification category shall be entered into the Right of Way Data Management System.

CHAPTER 4 - PREPARATION FOR ACQUISITION

Preparation is the key to successful negotiation. With thorough preparation for acquisition, the Agent can establish a self-assistance system to carry out orderly and efficient negotiations on each parcel. The Agent should first familiarize himself on a project basis. He should study the project plans to gain knowledge of the overall effects of the project including relocation. He should also be aware of the future benefits of the project. If there are aspects of the plans that he does not understand, he should consult with the Team Leader or Regional Right of Way Administrator for explanations.

Attention to detail at this stage of acquisition will help the Agent keep the project on schedule and provide an understanding of the project requirements. The agent should establish the project milestone by taking into consideration the project's estimated completion date, which is set by the Regional Right of Way Administrator. A site visit to the project at this stage is recommended as it may provide valuable insight into the correlation of the project plans and physical attributes of the project.

As a part of the preparation for acquisition on a project, the Regional Right of Way Administrator or Team Leader should contact the Project Engineer responsible for the development of the project to review correspondence the Project Engineer has had with the Landowners, Municipal Officials and others interested in the project. Regional Right of Way Administrator or Team Leader will consult with the Project Engineer responsible for the project to discuss possible concerns or items that may impact the ability to meet the construction obligation. In many cases, review of the Project Engineer's records will reveal areas of concern of the Landowner or that plan revisions have been made based on a Landowner's request. It is also important that a review of the Initial Site Assessment (ISA) be made so the Agent is familiar with those sites which contain hazardous material or are potential hazardous sites. In the event the plans or field inspection indicate the possibility of an Underground Storage Tank (UST) or a potential hazardous site and no ISA has been initiated, the Agent is to contact the Regional Right of Way Administrator to commence an ISA inspection, summary, and recommendation for acquisition based upon subsequent findings and studies.

I. Review of Plans

Upon project assignment and receipt of plans, the Agent must review the plans to determine improved tracts, permanent right of way, temporary right of way, and construction permissions necessary for each parcel. (See Chapter 8 – Instruments of Conveyances)

The following items should be identified on the plans and discussed during negotiations with landowners; some must be made part of the conveyance instruments:

- A. Ensure the present right of way is properly annotated on plans.

- B. New right of way to be acquired, including all variable width right of way, triangular areas and special right of way for bridges, culverts, ditches, channel changes, or other structures. This will be part of the instrument of conveyance.
- C. Permission agreement items, including but not limited to ditches, slopes, pipe, and catch basin installations, NPDES, bridge construction access and drive entrances. These will be part of the permission agreement.
- D. Survey centerline data, including tie equalities that affect footage measurements, offset centerline, relocated centerline, etc. These items will part of the instrument of conveyance and described in the special provisions when narrative description is used or identified on the exhibit when an exhibit is used in place of the narrative description.
- E. Improvements in the right of way to be acquired and in the present right of way. Often the time from project survey to receipt of construction plans for the right of way acquisition is quite lengthy, and improvements shown on the plans may have been removed or altered. Also, more recent improvements that are not shown on the plans may have been constructed. In addition, the agent must be aware of possible wells, septic tanks, drain fields and other drain lines located within the new right of way. These items will be part of the instrument of conveyance.
- F. ACCESS - particularly when Control of Access is acquired or when driveway capabilities, guardrails, grades or locations are changed. Control of Access is a property right. Relocation of Control of Access points are managed by the Right of Way Property Management office. This will be part of the instrument of conveyance when control of access is acquired.

In addition to the foregoing items, the Agent should review the plan typical sections and cross sections thoroughly. These plan sheets will help provide an understanding of the roadway to be constructed as well as give an indication of the effects of the right of way and construction on the land in general and each tract in particular. The Agent should be familiar with the typical section of plans which includes the type of pavement, curb and gutter or storm drainage, sidewalks and/or bike paths are provided and the slope ratio for cuts and fills. He must be able to clearly explain the plans to landowners and other interested parties. The Agent must give guidance to landowners regarding the benefit to retain or request converting construction slope permissions while reviewing cross sections. This conversation must be documented in detail on the agent's worksheet.

The Agent should also review the plans in the field to verify the aforementioned items and conditions by observation. If, after reviewing the plans, it appears it will be necessary or desirable that the right of way be staked or slope stakes be placed in critical areas, the agent should immediately notify the Team Leader with a staking request and the project milestones must include time for staking to occur and arrangements can be made with the Surveys Group

Supervisor for that District. In instances where the local District survey crew cannot accommodate right of way schedules, the Team Leader or Regional Right of Way Administrator will contact the Headquarters Surveys Engineer for staking requests.

II. Potentially Hazardous Sites, Materials, and Underground Storage Tanks (UST's)

The Agent should make an on-site inspection of the project comparing plans and the Initial Site Assessment (ISA) – looking for all potentially hazardous sites, materials such as batteries, chemicals, and UST's. Early detection of the potential existence and extent of contamination is critical for safety, redesign possibilities, proper handling and disposal. Detection and remediation can be time consuming, costly and affect the type of interest that should be acquired.

The possible existence of UST's is often signaled by remnants of concrete islands and pads, vent pipes, filler caps, monitoring wells and prior existing uses as gas stations or convenience stores. All right of way personnel should be cognizant of potentially hazardous sites and materials that may need to be included in an ISA. Some other potentially hazardous sites and materials that should be questioned in the event they impact or lie within the proposed acquisition are: dry cleaning sites; businesses using paints, chemicals, oils; machine shops; landfills or dumps; older homes/businesses with asbestos and illegal drug manufacturing, such as crystal meth, etc. Prior uses of sites for these purposes might also warrant further investigation. Cut or fill slopes within these areas should be examined with the Preconstruction Program Manager and where possible, plans revised to avoid impacts.

Any potential hazardous site, material, or UST not addressed in the ISA should be presented to the Regional Right of Way Administrator who will determine if further ISA investigation is needed. Ultimately the person in the District responsible for investigating UST's and potentially hazardous sites and materials will coordinate the ISA; notify in writing the Regional Right of Way Administrator and copying the Preconstruction Program Manager; with a review environmental summary; and then forward a written recommendation to Right of Way Regional Administrator with a copy to the Field Right of Way Administrator as to whether an easement or fee simple interest should be acquired. The ultimate decision shall be that of the Field Right of Way Administrator or the Director of Rights of Way.

NOTE: See Appendix "R" for general operating procedures for the Right of Way Agent in the Region conducting an Initial Site Assessment (ISA).

III. Setting Negotiation Priorities

For any project, regardless of its size, setting the priority of work is a key element for completion of the project on schedule. The importance becomes more obvious on larger projects. However, at the beginning of any project, the priority of the work should be set as follows:

1. **Improved Tracts:** Often these parcels control the project completion date due to the necessity for relocation assistance. The improved tracts may contain

either occupants (families and businesses) or personal property (mobile homes, permitted billboards, active UST's, etc.) which must be relocated from the new right of way. In some cases, it will involve tracts where wells and septic tanks are being installed with relocation benefits to prevent displacement. Special attention shall be given to those cases, which involve heir property, bankruptcy, foreclosure actions.

2. **Tracts with potentially hazardous materials:** Determination of the existence and extent of contamination is time consuming, potentially cost prohibitive and requires coordination with multiple groups. Review or commence an Initial Site Assessment.
3. **Complex acquisitions:** Require more appraisal time and possible engineering modifications/studies.
4. **State/Federal/Local Public Agencies:** Right of way can be a lengthy negotiation and early contact is imperative to meet right of way schedules. The Field Right of Way Administrator or Director of Rights of Way should be notified early in the acquisition process to determine if the new right of way is acquired by the field office or headquarters.
5. **Right of Way Tracts that include Construction permission:** Two (2) documents are required if negotiations are successful: the permission agreement and the conveying document. If negotiations for the permission agreement are not successful, then the area to be occupied by permission items must be converted to right of way and acquired. Conversion to right of way affects the appraisal process. However, the agent should contact the Regional Right of Way Administrator or Team Leader to check with Project Engineer to see if the permission can be deleted or pulled within the new R/W.
6. **Tracts with Land Acquisition Only:** The complexity of "land only" acquisitions will be determined by the effects of the right of way acquisition on remaining property. If damages or benefits are involved, extended negotiations may be necessary.
7. **Permission Only Tracts:** These should be the least time consuming; however, if the necessary permission cannot be obtained they must be converted to right of way. Their priority typically becomes the same as #6 above.

(See Chapter 6 for a detailed suggested prioritization of preliminary contacts.)

CHAPTER 5 - TITLE INVESTIGATIONS

In order for the Department to secure necessary right of way for construction of a highway, the appropriate interest must be acquired. Title to real estate may be held or encumbered by one or more individuals or corporations. A title investigation for each parcel is necessary to determine the ownership as well as any other interest that is reflected in the public record.

The public records maintained by each county give notice concerning those claiming a share or value in the title. There may be other shares or interest in the title to a parcel which are not shown in the public record. Unrecorded interest should become evident by visiting the property, observing its condition and use and making inquiry of persons having knowledge of the parcel. To obtain sufficient ownership for the Department, the Regional Right of Way Administrator or Team Leader must recognize and deal with all interest in a parcel -- both those reflected in the public record and those reasonably evident by observation and inquiry.

The Agent must, unless otherwise instructed, search the title on each parcel of each project received as an assignment. If title research on a project cannot be completed within 20 business days, the Regional Right of Way Administrator may request a title attorney to provide title certificates. Accurate title work is of utmost importance. However, for tracts with complex titles, the Agent must notify the Team Leader of the necessity for a title certificates. The Team Leader will then request approval from the Regional Right of Way Administrator. If confirmed, the Regional Right of Way Administrator submits a request to the Field Right of Way Administrator for approval by the Director of Rights of Way for a title certificate on the affected tract. Headquarters request approval from the Attorney General's Office reflecting the name of the approved attorney, if approved; the Regional Right of Way Administrator provides the attorney notice to proceed to prepare title certificates. It is the responsibility of the Agent to follow up with the Team Leader if an Updated Title Certificate is needed. The file will not be forwarded to the Columbia Office without the Title Certificate being a part of the tract file. Title Certificates that are ninety (90) days old are required to be updated and notated on the agent's worksheet.

Interests in real property are reflected by: Deeds, Easements, Leases, Real Property Agreements (including Trusts and Restrictive Covenants), Wills, Probates, Judgments, Liens, Mortgages, Contracts and Options. Deeds, Easements, Leases and Real Property Agreements (including Trusts and Restrictive Covenants) constitute a real property interest. **Instruments need to be read carefully and checked for any rights of reversion.** Judgments, Liens and Mortgages constitute an equitable or monetary value in the real property. Contracts, options, probates and Wills are devices by which property may be bound for conveyance and when they exist must be dealt with in the acquisition.

The Agent's Worksheet provides a section which, when completed, will document the title record and existing encumbrances. In order to complete a title investigation, the Agent must have an accurate description of the property affected. The Agent must verify the information provided on the plans with the information that is a matter of public record. The Agent is

responsible for establishing the current ownership of each parcel. To complete a title search on all projects, each of the following public records must be checked:

NOTE: Title searches on projects involving on-call consultants will be performed “AS CONTRACTED” with title opinions generally being required. Current addresses for all landowners, lien holders or other cited interest holders must be reflected on the worksheet for acquisition documents or condemnation service. The individual landowner tract listing shall be established in the Right of Way Data Management System (RWDMS).

I. Tax Assessor’s Records

These records, located in the County Tax Assessor’s Office, indicates from whom taxes are being collected. This person or corporation may or may not be the owner, but will be a source of inquiry concerning the property. The tax record should also provide the parcel size and a deed, probate or plat reference by book and page which can be used to further the search. The Agent’s worksheet must be documented to show the tax map identification number for each parcel.

II. Deed Records

These records are found in the Register of Mesne Conveyances or Register of Deeds, which in some counties may be combined with the Clerk of Court. The Deeds are indexed by grantor and by grantee. In most cases, the Deed will provide a derivation showing the preceding grantor, thereby providing a chain of title. Also, the Deed should show the consideration or amount paid by the grantee. It may provide a plat book and page reference and any existing easements. The grantor, grantees, consideration, date of Deed and recording date must be documented on the Agent’s worksheet. Also, the Agent must document Easements and plat references. If the consideration is listed as “other consideration,” then a check of the affidavit files in the same office will reveal the consideration dollar amount.

The Deed may also reference any existing Easements and provide restrictions (or reference recorded Restrictive Covenants) on the use of the property. Easements should be noted on the worksheet and any restrictions should be noted, particularly since they may provide some common interest in the property that must be taken into account. Restrictive covenants may impact the appraisal of the acquisition or relocation housing comparables being considered. The Deed may also provide warranty information that may affect the degree of ownership.

The deed may also make reference to a life estate. A Life Estate is the right to occupy and use real property during the natural life of a named person. Life estates terminate at death. Information concerning life estates must be documented and addressed in the acquisition process. If the person who holds the life estate is deceased, then the appropriate information concerning the date of death must be obtained and documented on the worksheet: i.e., copy of death certificate or obituary or estate record from probate court records.

All plat references on deeds should be checked to see if there is any dedicated right of way. If all or many of the tracts were previously subdivided from one large parcel of land, there may be a subdivision plat on record that indicates a dedicated right of way for the road. If not, then the Agent should check the individual plats for each piece of property for a dedication. This dedicated right of way, which is for public use, may be used in lieu of an Easement to construct a

project. However, ingress and egress as shown on any plats may not be used as it was established for the exclusive use of certain landowners and not the general public.

If property is acquired by Will, a Deed may or may not be recorded by the heir. This portion of the title can be obtained from the Office of Probate Court. Prior to the July 1, 1987, SC Probate Code, a deed of distribution was not required.

Contracts to purchase or options to buy, if recorded, are also usually found in the office where the deeds are recorded and indexed by grantor and grantee. These documents are devices by which the property may be bound for conveyance and must be documented on the Agent's worksheet and dealt with in the acquisition.

The title work accomplished by the Agent and recorded on the worksheet is the basis for determining what interest must be acquired. The condition of the title reflected by the worksheet may have an impact on the value of the parcel. Accuracy and sufficiency of title research are of paramount importance. The Agent must search the title back through enough conveyance to satisfy himself that the title is sufficient. However, all titles for partial acquisitions must be researched a minimum of five (5) years and two (2) conveyances. For entire takes, title must be searched a minimum of forty (40) years. This responsibility is one of the core duties of an Agent and he is guaranteeing the work. However, a title abstract on the agent's worksheet may include only one conveyance if prepared from an attorney's title opinion/certification and the title opinion/certificate is current.

III. Wills and Probate Records

In 1986, the South Carolina Legislature passed a new body of law known as the South Carolina Probate Code. This code became effective on July 1, 1987, and is the current law that governs the settlement of estates in the State of South Carolina.

The Probate Court has jurisdiction over the settlement of all estates in South Carolina. Probate judges exist for each county and are elected officials who hire a staff to assist them with their duties.

It is the duty and the liability of the Personal Representative to settle the estate. It should be noted that these same duties and liabilities assumed by the Personal Representative are those granted through the Probate Court.

A. Wills

Law Governing the Validity – South Carolina Code of Laws, [Section 62-2-505](#) - A Will is valid in South Carolina if: (a) it is executed in compliance with [Section 62-2-502](#) either at the time of execution or at the date of the testator's death; or(b) if its execution complies with the law at the time of execution of either (1) the place where the will is executed, or (2) the place where the testator is domiciled at the time of execution or at the time of death.

- 1. Probate versus Non-probate Property** - Non-probate property is property that passes outside of the decedent's Will because of the manner in which title is held or because of some contractual arrangement. Examples of non-probate property include real estate held as joint tenants with rights of survivorship,

life insurance payable to a named beneficiary and jointly held bank or brokerage accounts (“and”, “or”, “and/or”). All other property that is held by a decedent at the time of his death is probate property that passes under the terms of the decedent’s Will.

2. **Settling an Estate** - The settlement of an estate can be generally summarized as follows:
 - a. Probate the Will or determine that the decedent died without a Will and appoint a Personal Representative to administer the estate.
 - b. Determine what assets were owned by the decedent at death and appraise them.
 - c. Determine the decedent’s debts and pay them; pay the income and estate taxes and other expenses of administration according to the proper priority of payment.
 - d. Upon satisfaction of the requirements of the Probate Court, a Deed of Distribution should be executed by the Personal Representative and recorded in the RMC/ROD or Clerk of Court’s Office to officially convey title. The agent’s worksheet must document the date the probate was closed.

Under South Carolina Law, the Probate Court personnel are not allowed to give legal advice. Therefore, a lawyer’s assistance can be very helpful in selecting and understanding the proper estate settlement process. In many instances, the Personal Representative is authorized to sell or convey real estate prior to the complete settlement of the estate.

B. Intestacy

The South Carolina Probate Code provides for the distribution of the assets of one who dies intestate (without a will) as follows:

1. If there is a surviving spouse but no surviving issue, everything passes to the surviving spouse.
2. If there is a surviving spouse and surviving issue, one-half of the property passes to the surviving spouse (prior to July 1987, the law provided for 1/3 to surviving spouse) and one-half of the property passes to the surviving issue.
3. If there is no surviving spouse, everything goes to the surviving issue. The portion which passes to the issue is divided equally at the level of the first living taker and the issue of a predeceased taker will share by representation.

4. If there is no surviving spouse and no surviving issue, the property is distributed as follows:
 - a. To the decedent's parents;
 - b. If the parents are predeceased, to the parents' issue (brothers, sisters, etc.);
 - c. If the deceased parents have no living issue, to the decedent's grandparents;
 - d. If the grandparents are predeceased, to the issue of the grandparents (aunts, uncles, first cousins, etc.);
 - e. If the deceased grandparents have no living issue, to the decedent's great grandparents;
 - f. If the great-grandparents are predeceased, to the issue of the great-grandparents (great aunts and great uncles, etc.);
 - g. If the deceased great-grandparents have no living issue, the property passes to the decedent's step- children, or;
 - h. If the decedent has no stepchildren, the property passes to the State of South Carolina.

IV. Mortgages

These records are usually in the office with Deed records and indexed by both mortgagor and mortgagee. They will show the terms and amount of Mortgage. The dates of execution and recordation, amount, name and address of the mortgagee of the Mortgage to which a parcel is subject must be documented on the worksheet.

V. Leases

These records are usually in the office where the Deeds are recorded and are indexed by lessor and lessee. All Leases and by whom they are held must be documented on the Agent's worksheet. A copy of the Lease should be obtained, particularly since it often contains condemnation provisions.

VI. Lis Pendens

A Lis Pendens is a means by which notice is given that some legal action is pending against some person or corporation. These records are found in the office of the Clerk of Court and are indexed by name of defendant. These must be checked to determine if an action is pending which will affect the real property or equitable interest in a parcel. The Agent must document the worksheet to show the existence of such record.

VII. Judgments and Liens

These records are usually found in the office of the Clerk of Court. They are indexed by name and person against whom the Judgment or Lien has been filed. They are used to determine if a landowner's real estate title is encumbered by someone claiming against him. Such records of actions do entail property owned by the landowner and they must be taken into account when closing the Title. The Agent should document the worksheet to show the date filed, by whom a Judgment or Lien is held and the amount by which real estate is entailed. Judgments are enforceable for a ten (10) year period from the date on which they were filed. Mechanic Liens are enforceable for six (6) months and must be reported as part of title investigation.

VIII. State and Federal Tax Liens

Delinquent State and Federal taxes also constitute liens on real property owned by the person against whom a lien has been timely filed at the appropriate courthouse. State and Federal tax liens are valid for a period of ten (10) years from the date of filing. These liens are usually found in the office of the Clerk of Court for each county. These must be annotated on the agent's worksheet and properly addressed as part of the closure of negotiations unless satisfied by landowner.

IX. Bankruptcy

These records are found in the office of the Federal Bankruptcy Court in Columbia. They are recorded by name of person or corporation and they will show if a parcel is subject to such an action. If a Bankruptcy Action has been filed by a landowner, the Agent must document the worksheet and notify the Headquarters Right of Way Administrator and the Department's Legal Division immediately. Bankruptcy may stay an acquisition until the court has disposed of the case. The Department's attorneys or associate counsel may be able to obtain authority from the court for right of way acquisition, but early notification is critical.

(See Chapter 8, Section II, Item K.)

X. Treasurer's Office

The County Treasurer's Office and the County Delinquent Tax Collector's Office must be checked to determine if the property taxes have been paid; assessed, but not delinquent; delinquent; or the property is being sold for taxes. Pursuant to South Carolina Code of Laws, Section [12-45-70](#) and SCDOT legal office concurrence, Right of Way will use January 16th as the delinquent date for payment of property taxes for our acquisition purposes. (See Chapter 8, Section II, Item L).

In completing the title search of a tract, one of the most complicating issues that may arise is the sale of the property by the County Treasurer's Office for unpaid county taxes. The County Treasurer and/or the County Delinquent Tax Collector's Office annually advertise numerous parcels of land for sale because the owner of record has not paid the County Taxes. After receiving bids for these properties, the owner of record has one year to redeem the property. If the property is not redeemed by the Landowner, a deed will be issued to the successful bidder. In establishing the interest to be acquired, it may be necessary to include the Owner of record, County Treasurer and the Bidder in order to clear the title.

XI. Unrecorded Interests

Persons in possession of the property may hold interests not publically recorded. They may be in the form of unrecorded leases; month-to-month rentals; Contracts to purchase; options; or persons merely occupying the property with the landowner's permission. The Agent should make inquiry of persons apparently occupying and using the property as well as the recorded fee title owner about unrecorded interests. All legal unrecorded interests should be taken into account and documented on the Agent's worksheet. Due diligence should be made to secure a copy of any and all unrecorded instruments. The terms and duration of these unrecorded interests should be carefully examined on a per case basis to determine potential impacts and whether a release or agreement instrument is required to clear title on the property. Often, the fee title owner is instrumental in assisting the Agent with obtaining a release/agreement, if one is necessary.

XII. Power of Attorney

If in the course of performing the title search it is discovered the fee title owner(s) has granted a Power of Attorney to an individual or entity or the Agent is advised a Power of Attorney exists, it is required that a copy of the properly executed Power of Attorney be included with the file. If the Power of Attorney is recorded, the Agent's worksheet should reflect the recording data. A Power of Attorney may be executed granting limited or full authority over real estate, bank accounts, etc. and the file copy is to assure the Power of Attorney has specific authority to convey the real property needed. In the case of multiple fee title owners, it should be noted that the Power of Attorney is viable only for the person(s) named on the Power of Attorney document. In preparing the conveyance documents the fee owner only should be listed as the Grantor with the Power of Attorney being listed on the signature line.

XIII. Real Property Owned by Minors and Incapacitated Persons

A. Effect of conveyance by minor or incapacitated person:

The conveyance of real property by a minor is a voidable transaction. The conveyance may be declared void upon application to a court for a period of ten (10) years after the minor reaches the age of eighteen (18) years, unless the minor has ratified the deed after obtaining the age of majority.

The conveyance of real property by a person who has been determined by a court to be an "incapacitated person" is void. The conveyance of real property by a person who is incompetent (but not determined by a court to be so) to the extent that the person cannot comprehend the nature of his or her act, is voidable.

B. Jurisdiction over conveyances by minors or incapacitated persons:

The probate court in the county where the minor or incapacitated person resides has original jurisdiction over all sales of real estate owned by the minor or incapacitated person, except that approval of settlement of claims in favor of minors or incapacitated persons may be handled by the circuit court in the county in which the minor or incompetent resides. Settlement of claims

(i.e., for payment of money to the minor or incapacitated person) can take place only after the condemnation is filed in the circuit court.

C. Proper procedures for obtaining title to a minor or incapacitated person's interest in real property:

Since the conveyance of an interest in real property by a minor or an incapacitated, or incompetent, person is void or voidable, the only way the Department can obtain good title is by either obtaining probate court approval of the conveyance or by instituting a condemnation action in circuit court.

1. Probate Court approval for a conveyance by deed:

When the parties agree to the amount of just compensation, no condemnation action needs to be instituted, but application must be made to the probate court in the county in which the minor or incapacitated person resides for approval of the conveyance (i.e., for the court to make a finding that the conveyance is in the best interest of the minor or incapacitated person). The procedures for filing the petition, service, appointment of an attorney to represent the minor or incapacitated person and hearings are set forth in S.C. Code Ann., Sections [62-5-401](#), et seq. (1987). If the minor or incapacitated person already has a conservator appointed, the Department or the conservator may file the petition with the probate court to have the sale approved. Otherwise, the Department or any "interested person" may file the petition for court approval of the conveyance. An "interested person" includes "any person who is interested in the minor or incapacitated person's estate, affairs, or welfare."

2. Condemnation action in circuit court:

When the parties cannot agree on the amount of just compensation, condemnation must be instituted in the circuit court. A guardian ad litem must be appointed by the court to represent the minor or incapacitated person in the action. The condemnation will then proceed to final judgment as any other condemnation action. A settlement of the action can be accomplished after the filing of the action by the attorney handling the matter for the Department.

XIV. Plats (Road Dedications)

In some cases where the Department can occupy the dedication that has been set and recorded in the courthouses, it is best to have an entire subdivision plat providing the dedicated width for an entire roadway. When a sub-division plat is unavailable, individual plats may be utilized to verify dedication through the individual properties. Where no sub-division plat is available and the survey party or the Agent is able to locate individual property plats and identify iron pins marking the property corners, these may be accepted as providing a dedication for the

road. The Agent shall utilize plats to determine accuracy of SCDOT plans in order to correctly address appraisal and acquisition issues. Discrepancies shall be addressed with the Team Leader for possible plan revisions or corrections.

CHAPTER 6 - PRELIMINARY CONTACT

Preliminary or first contact with the landowner can be the most important part of the negotiation process. The success or failure of subsequent negotiations may depend on how well the Agent sets the tone in this initial visit. Until the time of the preliminary contact, the average landowner knows only what he has heard through news media or in conversations with neighbors. He probably has no accurate or detailed knowledge of the project and how it will affect his property. He may have preconceived ideas that are entirely erroneous, and thus, he may be somewhat antagonistic in his views.

The Agent should carefully evaluate the landowner's attitude toward the project and attempt to gain his confidence before proceeding in the negotiation process. Careful and complete preparation is essential to successful negotiation. A well prepared Agent will be able to provide the landowner with important information concerning the purpose and need for the project, the project schedule, and an explanation of the effects of the project on the landowner's property. Preparation instills an attitude of confidence in the Agent and in turn promotes trust and acceptance on the part of the landowner. A confident, positive attitude will impress upon the owner the prospect of an amicable settlement.

I. First Contact with Landowner:

The Agent must contact the landowner and schedule a preliminary meeting as soon as possible, typically within ten business days from date of assignment. The appointment with the owner is to take place prior to any evaluation of the property.

The Agent shall use the following procedures when making the first contact:

- a.** In person: First contacts shall be made in person unless circumstances require the preliminary contact package to be mailed, such as an out of state landowner. The Agent is required to document on the worksheet why contact was not made in person.
- b.** Certified Mail: If attempts at in person contact are unsuccessful, the entire preliminary contact package (containing project plans and *Highways and You* brochure) shall be sent by certified mail, accompanied with an introduction transmittal letter to the landowner. Note: Be sure to confirm with the landowner the correct mailing address. See Section VII- Out of State and In-state Landowner contacted by mail.
- c.** Follow up is required to ensure the landowner has received the package. After several days, but no later than 7 days, the Agent will verify that the preliminary contact package was received.

II. Agent needs to prioritize preliminary contacts in order to:

1. Meet letting dates and provide clear Right of Way Certification;
2. Allow time for preparation of complex appraisals;
3. Minimize impacts to affected landowners by securing engineering modifications;
4. Reduce litigation.

A recommended prioritization of preliminary contacts would be:

1. **Tracts requiring relocation assistance** - A complete Right of Way package is presented to the landowner by one Agent. This package will be for all the Department's processes for acquiring his land and improvement(s), including relocation assistance. This one-agent concept, merging acquisition and relocation contacts and offers by the same person, promotes clearer understanding and expeditious closures for both landowner and Department and is to be utilized by the Department and its consultants.
2. **Complex Acquisitions** - Will require significant appraisal time; may need engineering modifications/studies; may become improved tracts due to right of way impacts, damages/benefits. Example: possible highest and best use changes; significant parking reductions and proximity; access closures/changes; gas stations. If permission is not granted within approximately two (2) weeks, convert to right of way if permission cannot be deleted and include in the appraisal.
3. **Non-Complex Acquisitions greater than \$20,000.00** - Permissions need to be secured or converted prior to first sheets being submitted. If permission is not granted within approximately two (2) weeks, convert to right of way if permission cannot be deleted and include in the appraisal.
4. **Non-Complex Acquisitions less than \$20,000.00** - Negotiating from cost estimate (waiver evaluation) already. On preliminary contact, present cost estimate (waiver evaluation) offer and take prepared permission. If permission is not granted within approximately two (2) weeks, convert to right of way if permission cannot be deleted and include in a revised cost estimate (waiver evaluation) offer.
5. **Permission only tracts** - First, review to determine if permission could be deleted / pulled in. If not, have permission ready at preliminary contact

and attempt to secure permission. Convert to right of way after approximately two (2) weeks if not able to secure permission.

- 6. Functional Replacement**-When publicly owned real property, including land and or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying fair market value for the real property, SCDOT may provide compensation by functionally replacing the public owned real property with another facility which will provide equivalent utility. SCDOT shall notify the owner in writing of their right to receive just compensation or functional replacement.

Note: Obtaining permissions and making cost estimate (waiver evaluation) offers (where there is federal authorization) generally should be made at the preliminary contact whenever possible. Unless an engineering change/study is being made, permissions not acquired in approximately a two (2) week time frame generally should be deleted/modified/converted so as to avoid the necessity and expense of getting appraisals more than once or requiring delays in completion of right of way acquisition.

Preliminary contacts include verification of: title; complete review of cross-sections within the subject property to determine possible issues associated with elevation changes, property encumbrances; property lines (inquire if unrecorded plat(s) exist); names; current mailing and physical addresses; water and septic locations; improvements (including unseen underground); UST's (Underground Storage Tanks); Department's proposed plans; Social Security number; possible need for an interpreter; and pertinent relocation information. The Agent should deliver and review *Highways and You* brochure with landowner and displacees. Recognizing both the potential sensitivity of a displacee's initial contact, yet the additional requirements for a successful relocation, the agent should carefully complete the relocation worksheet to include the information below as quickly as possible:

1. Date of Occupancy;
2. Number of people occupying residence (permanent), age and their relationship to owner;
3. Present distance to work and schools;
4. Area displacee(s) would like to move to;
5. Utilities and income information;
6. Do they own their own furniture (Tenants);
7. Verify Title information;

8. Any special needs;
9. Minimum of 90-day notice to vacate AFTER appraised, housing comparable study completed and written offer is made.

If right of way staking is required, it should be done prior to the appraiser's inspection of the property. (On-call consultant contracts must be reviewed to determine whether Department or consultant is responsible for staking. If not stipulated in the contract, Department will be responsible.)

At or near the completion of the preliminary contacts by the Agent of a large or complex project, a meeting and/or "drive through" of the project should be scheduled. The meeting should include the Right of Way Agent, Team Leader and/or Regional Right of Way Administrator, Relocation Manager, Appraiser, Regional Production Group or Traffic Engineering Program Manager and other attendees as appropriate. This will serve to keep open the lines of communication among those involved with the project and to discuss any potential problems and action plans to complete their respective phases of the acquisition process and minimize impacts and litigation.

III. An Explanation of the Necessity for the Project and Its Nature

The Agent should carefully explain to the landowner the necessity for the project and how it fits into the overall highway system. He should call attention to the continuing increase in traffic on the highway and, if applicable to the project, the high accident rate brought about in part by inadequate or outdated highways, as well as other relevant factors, such as increased safety and mobility. By his study of the community he may be able to point out specific advantages of the project on the property, such as making it more accessible to school, church, or shopping areas. If the right of way will involve control of access, it may be that this type of highway is unfamiliar to the landowner. The Agent should explain to the landowner why it is necessary to impose access control and what the advantages are in developing this type of highway. Control of Access is a property right. Relocation of Control of Access points are managed by the Right of Way Property Management office.

IV. An Explanation of How the Property Will Be Affected

The Agent will carefully point out to the landowner how the particular project is going to affect his property. He should show the landowner the plans, including the typical section and cross sections, to explain the construction (cut and/or fill) slopes. The Agent should also take the plans and review these items with the landowner on the ground, if possible. The Agent should point out any changes in grade and how it will affect the property or access to the property after the project is constructed and also discusses crossovers and drives, if applicable. The Agent will also, to the best of his ability, explain to the landowner the effects of the project on his drainage conditions, or any adverse effect the project might have on the use of his property. Any building, tree, shrubbery, fences, or any other improvement that might be included within the right of way should be called to the attention of the landowner.

The Agent should point out to the landowner all beneficial aspects of the project. The Agent should be entirely frank in explaining the effects of the project on the property and not attempt to conceal any undesirable features of the project. If he attempts to misrepresent the project and any adverse effects it may have, the landowner will most certainly bring this to his attention as negotiations progress. It is more desirable to discuss these features fully prior to the time the appraisal is made rather than after the offer of compensation. This allows the landowner time to formulate his opinion as to the effects of the project. Also, the Agent should make certain he thoroughly documents this and all discussions with the landowner on his worksheet. The importance of this type of documentation becomes evident if, when the road is being constructed, a dissatisfied landowner states the Agent misrepresented the plans.

V. Advising the Landowner of the Acquisition Procedure

The Agent will explain to the landowner the Department's process for acquiring his land and improvements, if any. He should stress the Department is required to see each landowner receives just compensation for the required acquisition. He should explain how the Department secures appraisals on every parcel except for the following:

1. Acquisitions based on an approved cost estimate (waiver evaluation), recognizing the landowner's right to require an appraisal for any acquisition regardless of the cost estimate (waiver evaluation) amount.
2. Acquisitions on "C" funded projects.
3. Donations – After the landowners are advised in writing of the right to received just compensation, the landowner may choose to donate all of or a part of the property. If the property is donated, the Department is responsible for assuring an appraisal of the real property is obtained. Unless the landowner releases the Department from this obligation by executing an appraisal waiver or when an appraisal is unnecessary because the offer was based on an approved cost estimate (waiver evaluation). (See SCDOT R/W Form 846 – "Waiver of Rights".)

On the initial contact, the Agent will deliver to the landowner the *Highways and You* brochure which explains the legal rights of the landowner in the acquisition procedure. He should point out those sections of the brochure, which will further explain the acquisition procedure. He should also point out all necessary costs of transfer of property to the Department, including any costs for prepayment of any mortgage entered into in good faith, will be paid by the Department. The brochure is a supplement to the Agent's explanation, not a replacement for it.

The Agent should also inquire whether or not the landowner is interested in retaining any improvements (if applicable) during this preliminary visit. If so, the Relocation Manager should be notified immediately. He will establish a retention value for the improvement and furnish this information to the Agent in writing. When the Agent is ready to make the offer for the property, he will make two alternate offers. The first alternate is to offer the landowner the full amount of the approved appraisal of the right of way including all improvements located thereon. The second alternate is to offer the landowner the full amount of the appraisal less the retention value

of the improvements with the stipulation he remove the improvements from the right of way at his expense. This procedure should be fully explained to the landowner during the preliminary contact. It is prudent to withhold adequate funds for clearing the improvement until the landowner has satisfactorily cleared that portion of the retained improvement within the new right of way to include a date prior to the letting that in the event said improvement is not satisfactorily removed, the withheld monies are forfeited and Department/Contractors remove the improvement and/or debris.

On occasion the landowner may ask about the Department's policy for acquisition if negotiations are not successful. The Agent should then point out to the landowner that in a few instances, it may be impossible to reach an agreement. This is usually due to an honest difference of opinion between the Department and the landowner. Therefore, it may be necessary for the Department to institute condemnation to acquire the property. This should be done in such a way that the landowner does not feel he is being coerced into signing an agreement. The Agent should never suggest to the landowner that he sign a deed in order to save money, time or trouble. If the landowner does not ask about condemnation, the agent should explain this during later negotiations if condemnation seems imminent.

VI. Solicitation of Landowner's Cooperation with Appraisers

In the initial contact the Agent has an excellent opportunity to encourage the landowner to cooperate with the Appraiser. He should suggest to the landowner that he call to the attention of the Appraiser any sales of property in his area that he thinks are comparable to his property. The Agent should also ask the landowner about improvements to the property that are not visible (e.g. well, septic tank, drain field, sprinkler lines, etc.) and ask him to point out these items to the Appraiser when he inspects the property. (The Agent should inquire into the presence of any underground storage tanks. He should not depend solely on the environmental assessment to determine the existence, if any, and location of tanks. This information should be well documented on the Agent's worksheet, so the appraiser can refer to this information during the appraisal process.) The Agent should also encourage the landowner to discuss with the Appraiser all areas of concern that he has about how the project will affect his property. The Appraiser will call on the landowner in the near future; and it will simplify further negotiations after the appraisal is completed if the landowner will cooperate with the Appraiser in this regard.

VII. Out-of-State and In-state Landowner contacted by mail

All landowners residing within the state shall be contacted personally, if feasible. If, at the time of this initial contact, it is found a landowner resides out of state, the Agent will send the landowner a letter, along with the Highways and You brochure, advising him of the Department's intent to acquire all or a portion of his property for highway purposes. This letter shall be as thorough as possible in explaining the nature of the project and how it will affect his property. In the interest of clarity, it is desirable to forward to the landowner a copy of that portion of the plan sheet showing his property, with such notes as may be necessary to explain the situation. Copies of any correspondence to or from a landowner shall be included in the tract file.

The letter should also explain the Department's acquisition procedure, including the appraisal of the property and all necessary and reasonable costs of transfer of property to the

Department, including any costs for prepayment of any mortgage entered into in good faith, will be paid by the Department. It should be suggested if he has a local agent who manages his property, it might be expedient to authorize this agent to allow the Appraiser to inspect the premises. The Appraiser assigned to the project will invite the landowner to be present when the appraisal inspection of the property is made. If a phone number can be found for the landowner, a call to discuss the forthcoming letter can establish a good rapport and confirm contact information.

VIII. Verification of Title Investigation

The Agent is required during this preliminary contact to verify the title information on this property obtained by him from courthouse records. This may be done through casual conversation with the landowner and the Agent should point out to the landowner that this information is necessary in order for the Department to obtain clear title to the property. The Agent should ask the landowner from whom and when he purchased the property as well as the consideration. He should also ask if there are any Mortgages, Leases, Liens, or Judgments and verify that property taxes are paid. The Agent should also verify the spelling of the landowner's name, mailing and physical address and obtain contact information. At this time, he should ask when and where is the best time to contact the landowner.

IX. Inspection of Property and Verification of Property Lines

While on the property with the plans and with the landowner, the Agent should have the owner point out to him the location of property lines and property corners as they may be affected by the proposed right of way. In most instances, the property lines will be shown correctly on the plans and the Agent should be familiar with their location after making his preliminary inspection. However, he should be very careful to ask the landowner if a given fence line, tree, stone, or iron pipe marks his boundary. He should not attempt to tell the landowner where his boundaries are located, but he should verify the facts with the landowner. The Agent should also verify the size of the property with the landowner at this time.

X. Plan Revisions

A. Plan revisions requested by Right of Way office and On-call Acquisition Consultants:

After the preliminary contact, the Agent may find it necessary to request certain revisions and corrections to the plans. Plan revision requests are to be forwarded to the Regional Production Group (RPG) or Traffic Engineering Program Manager, who will begin the revision process. The Agent is responsible for verifying the accuracy of the revisions made. Coordination with the RPG or Traffic Engineering Program Manager by the Agent may be necessary to ensure timely completion of the requested revisions.

On-call Consultants will submit written revision requests for approval to the Right of Way Project Manager for the project. Upon approval by the Right of Way Project Manager, the On-call Consultant will submit the requested revision in the above directed manner to the RPG or Traffic Engineering Program Manager and copy the Right of Way Project Manager. The On-call Consultant is responsible for verifying the accuracy of the revision made. Coordination with

the RPG or Traffic Engineering Program Manager by the Consultant may be necessary to ensure timely completion of the requested revisions.

The Agent and/or Team Leader will recommend combining tracts utilizing, but not limited to, the following criteria:

1. Ownership
2. Location (not necessarily contiguous)
3. Use
4. Larger Parcel

The Regional Right of Way Administrator, Assistant Director of Rights of Way for Acquisition and/or Chief Appraiser will make the determination of whether tracts can be combined. To accurately track the number of parcels and appraisals in the Right of Way Data Management System (RWDMS), the lowest numbered tract to be acquired should be used in the RWDMS except when relocation is involved. In those cases where an improved tract is involved, the improved tract number will be used to identify the combined tracts for RWDMS purposes. The plans, exhibit, single worksheet/first sheet, appraisal and one conveyance document should include each tract number involved in the now combined tracts.

B. Plan revision made by Engineering office:

These revisions must be reviewed by the Regional Administrator and Assistant Director of Rights of Way for Acquisitions to determine the impact of the changes to the project schedule.

XI. Preparation of Relocation Assistance Form – Improvements within Right of Way - SCDOT R/W Form 10

On projects involving improved tracts, the Agent is responsible for completing an accurate SCDOT R/W Form 10, which is a listing of improved tracts that will involve relocation assistance. This list should include the tract number and each displacee per tract; the type of improvement (e.g. frame residences, billboards, buildings, underground storage tanks, mobile homes, fuel dispensers, above ground pools, functional replacement of real property in public ownership etc.); the approximate survey station of the improvement; and the occupant's name, race and address, if applicable. The SCDOT R/W Form 10 should also specify whether the displacee/occupant is the owner or tenant of the improvement. After completion of preliminary contacts on improved tracts, the initial SCDOT R/W Form 10 must be forwarded to the Relocation Manager. On-call consultants must follow this same procedure, but submit to Right of Way Project Manager for approval prior to forwarding to the Relocation Manager. As the project progresses, this SCDOT R/W Form 10 should be updated monthly and resubmitted to reflect the dates of 90 and 30 day vacancy notices issued and actual vacate dates. A final SCDOT R/W Form 10 shall be submitted to Relocation Manager upon project completion.

XII. Social Security Number/Taxpayer ID Number – SCDOT R/W Form 812

Under Section 26 CRF, 1.6045 the Department of Revenue requires notification of real estate transactions. The Agent should attempt to obtain the landowner's Social Security Number

or Taxpayer Identification Number as required by law. The landowner(s) must sign a SCDOT R/W Form 812 before any payment can be made. Landowner's name and signature are to be identical or AKA (also known as) or N/K/A (now known as) should be added to assure processing of claim for payment. This form states the landowner is required by Law to provide his correct Social Security Number or Taxpayer Identification Number and if the landowner does not comply with this request, he may be subject to civil or criminal penalties imposed by law. The Comptroller General's office issues a Form 1099-S (Proceeds from Real Estate Transactions) to all landowners, utilizing the information obtained from the Social Security/Taxpayer Identification Form (SCDOT R/W Form 812), on all permanent acquisitions.

The following is a list of exemptions to this requirement for permanent right of way:

1. Government Entities
2. Corporations (Corp.)
3. Incorporations (Inc.)
4. Enterprises
5. Banks, Savings and Loans, Credit Unions
6. Insurance Companies
7. Assurance Companies
8. Churches
9. Cemeteries
10. Lodges
11. Mortgagees
12. Schools
13. Utility Companies

In cases of multiple landowners, a separate SCDOT R/W Form 812 will be obtained from each landowner, with the landowner showing the appropriate percentage of ownership, except in cases of husband and wife filing jointly. Both husband and wife's name will be shown on the Form 812 with their name circled matching their corresponding social security number shown for reporting purposes. When the landowners show the percentage of ownership, the agent should be sure the total percentage equals 100%. (The agent should also advise each landowner, they will receive a 1099-S for the full amount if the percentage of ownership is not shown on the Form 812). Note: If the percentage indicated is anything less than 100%, ensure the dollar amount is included on the form. The total of the dollar amounts indicated on all signed forms must equal the total consideration amount.

In acquisitions involving Businesses, Companies, Estates and Trusts, Taxpayer Identification Numbers are required. There are a few exceptions for estates, trusts and partnerships. When the decedent's personal and real estate value is low, an attorney, Certified Public Account (CPA) or tax advisor can provide a letter to that affect requesting monies be reported to the decedent's social security number. A grantor trust is an exception, but the SCDOT R/W Form 812 must include the words "Grantor Trust", in order for the Comptroller General's Office to issue the 1099-S using the social security number. Some partnerships that do not have taxpayer identification numbers are allowed to use one partner's social security number,

so long as the partner agrees to take the full 100% of the reported proceeds and as long as they understand the 1099-S will not be in the partnership's name and documented on the worksheet.

On temporary acquisitions, the SCDOT R/W Form 812 is required. A 1099 Miscellaneous is issued by the Comptroller General's Office for temporary acquisitions. (Temporary acquisitions are viewed as "rent" or "lease" type acquisitions on the list above and are not exempt.)

XIII. Non-Complex Acquisitions

On a project where the acquisition values for some tracts are expected to be \$20,000.00 or less, the preliminary contact for these tracts shall not proceed until Right of Way Authorization is received. This allows the preliminary contact and an initial offer based on the estimate prepared by the appraisal section to be made at the same time. If the landowner will not accept the estimate and settlement cannot be made based on an administrative adjustment, a first sheet must be submitted immediately for an appraisal. An administrative adjustment can be made on an estimate provided justification exists. Before making an administrative adjustment, the Agent should consider the potential problems this could cause. The Agent is not required to make an offer based on an estimate provided he has justification and the worksheet has been documented as to why the offer was not made. The following are three (3) examples of what would be considered justification:

1. The landowner has two (2) tracts and one (1) will require an appraisal.

The Agent could face at least two (2) problems: 1) the landowner will not make a decision until the offer is made on both tracts; 2) if the land values are different on the two (2) tracts, the landowner will want the higher value on both tracts. If the higher value cannot be justified, the Agent cannot complete the acquisition until an appraisal has been prepared. In this case, the Agent should go ahead and request an appraisal on both tracts.

2. Estates that must be condemned to clear the title to the property.

Making the offer based on an estimate does not save any time because even if the offer were accepted, condemnation would still be necessary and an appraisal would have to be prepared.

3. Project where the majority of the tracts will require written appraisals.

Offers based on an estimate may cause problems with consistency between the estimates and the written appraisals.

XIV. Transmission of Appraisal "First Sheets" to Appraisal Section

The completed title records and preliminary contact documentation of the worksheet are used as appraisal "first sheets". These are copies of the Agent's title record provided to the Appraiser so the appraisal process can begin. As soon as the Agent's worksheet has been

completed up to and including the preliminary contact, copies should be forwarded to the Regional Right of Way Administrator for proper distribution. The first sheets for improved tracts involving relocation assistance should always be submitted first and be pink in color. The pink first sheet identifies to all right of way personnel to give these tracts priority handling.

No first sheets should be submitted on any tract unless the Agent has signed permission or the permission has been converted to right of way. The Team Leader or Regional Right of Way Administrator should determine if any tract with permission only should be signed or converted to right of way before the first sheets are submitted for other tracts. Also, any differences between the plans and the Agent's information on property lines, size of tract or acquisition should be corrected before submitting for appraisal.

NOTE: Permission should be signed or converted prior to the first sheet being submitted for an appraisal.

At the time the first sheets are submitted to the Appraisal Section, the Region's administrative specialist can begin to prepare the necessary conveyances. While it is not possible to complete this paperwork because all of the necessary information has not been received, this administrative lead-time will help ensure negotiations may resume as soon as appraisals are received. If exhibits are to be used and have not been requested and received, they should be requested at this time.

CHAPTER 7 - NEGOTIATIONS

I. Importance of Negotiation

The primary objective of the Agent should be the development of mutual respect with the landowner. This will assist in completing the acquisition amicably. The development of this mutual respect with the landowner should commence with the initial contact and should be carried through the subsequent offer of compensation and other contacts with the owner. The success of negotiations can be accomplished much easier if the groundwork is laid in the initial contact with the landowner.

II. Conduct of the Agent

One of the most important obligations of the Agent is to maintain an honest, straightforward and helpful relationship with the property owner in negotiations and throughout the entire acquisition process. The Agent probably has a better opportunity than any other employee of the Right of Way Department to create and maintain good public relations for the Department. His personal conduct during negotiations may be considered by the public as indicative of the attitude of the Department. An Agent should render friendly, well informed, sincere and attentive consideration to the views of the persons with whom he deals, but should never offer advice in regard to the acquisition. Insincerity and sarcasm have no place in public contact. Rudeness cannot be considered as frankness. Agent should never allow their personal opinion or thoughts to be used to coerce a landowner to settle.

Every Agent will occasionally meet a landowner with whom his personality immediately clashes. In such circumstances, it is proper and desirable that the Agent informs the Team Leader and the Team Leader will discuss with the Regional Right of Way Administrator who will determine if reassignment is appropriate. However, this should not be used by the agent as an excuse or pretext to avoid an unpleasant or difficult assignment.

The Agent, in negotiating with a property owner, shall confine his discussions to the parcel in question and not discuss the claims of other landowners along the project. The Agent must be punctual in meeting appointments and following up promptly on any requests for additional information requested by the landowner.

III. Conflict Of Interest

In order to avoid any possible conflicts of interest, it shall be the policy of the Right of Way Department that all its personnel shall refrain from obtaining, either directly or indirectly, any improvements or land residues that are acquired by the Department in connection with transportation projects and offered for sale. In some cases, the owner retains the improvements or purchases them from the Department. In these instances, employees are prohibited from making arrangements to obtain for themselves any improvements that the owner retains. The Agent is required to sign a SCDOT R/W Form 832 (Statement of Right of Way Agent) indicating he has

no direct or indirect, present or contemplated personal interest in right of way claims in which he is involved. A potential conflict of interest exists if right of way personnel engage in the acquisition of improvements or land residues. (Refer to SCDOT Code of Conduct and SCDOT Workplace Ethics)

It is essential there be no possible conflict between the personal, business, or family interests of an Agent and the interests of persons from whom he must acquire right or way. The Agent to whom a parcel has been assigned for acquisition should disqualify himself and suggest a reassignment with an appropriate explanation to the Team Leader and Regional Right of Way Administrator in the following circumstances:

1. A personal or family relationship or involvement in present or past ownership or sale history of the land involved.
2. A participating business association with the owner or any other party of interest in the property to be acquired.

The Team Leader or Regional Right of Way Administrator should also disqualify himself from assisting the Agent in negotiations if the above circumstances apply to him.

IV. Appraisal Review

It shall be the responsibility of the Agent to familiarize himself not only with the appraisal on which a negotiation is to be based, but also with all factors that will contribute to an effective and efficient negotiating effort. The Agent should carefully study the appraisal. If there are any aspects of the appraisal that he does not understand, he should have them clarified through his Team Leader. The Agent should also examine the title certificate. He should reexamine the subject property on the ground to see if there have been any changes in condition since the time of the initial contact with the landowner. Careful study of all information at hand and a thorough familiarization with all aspects of the project and the subject property are essential to a successful negotiation.

V. Accomplishing Assignments and Meeting Deadlines

Once negotiations have commenced, the Agent should pursue the matter to a conclusion as promptly as possible. The landowner must be given a reasonable length of time to consider the offer of just compensation. It is good policy to give the owner at least one (1) week in which to consider the offer before making a second contact. The time between the initial offer and the second contact is dependent on circumstances and the desires of the owner. The Agent should schedule the time and date of the next negotiating appointment with the owner at the time he makes the offer. In no event shall the time of condemnation be advanced or negotiations deferred. No action that is considered to be coercive in nature will be taken to compel the owner to accept the Department's offer of just compensation for the property.

Quite often, the longer a negotiation is prolonged, the more difficult it is to reach a settlement. The Agent should always be attentive to the attitude of the landowner. He should also be aware of when he is ready to close so as not to prolong the negotiations beyond that time. It is very important that all acquisition schedules be met so that contracts can be let and awarded in a timely manner. Ninety (90) days from the date of the appraised offer is considered to be the maximum time required to secure documents.

VI. Initiation of Negotiations

The initiation of negotiations means the delivery of the initial written offer of just compensation by the Department to the owner or owner's representative to purchase the real property for the project. If someone other than the landowner(s) is to negotiate, the Agent must request affirmation in writing from the landowner(s) or their attorney.

If the Department chooses to establish eligibility for relocation assistance for a displacee before the initiation of negotiations, the Department may issue a "Notice of Intent to Acquire" (SCDOT R/W Form 17). This can be particularly beneficial where a displacee wants to relocate, but the Department is not in a position to acquire the property for various reasons (e.g. incomplete appraisals). The notice cannot be issued before the federal authorization of acquisition for the project and requires the approval of the Director of Rights of Way. Discretion must be exercised when considering whether to issue a notice. It should be used only when the initiation of negotiations on the parcel is imminent. When such a notice is issued, every effort should be made to commence negotiations to prevent subsequent occupants and/or minimize rental problems for the owner. The "Notice of Intent to Acquire" is furnished to the owner/occupant by the Relocation Manager with a copy to the Regional Right of Way Administrator.

NOTE: Refer to the Relocation Manual for additional guidance.

VII. Diary of Contacts on Worksheet

The Agent's worksheet (SCDOT R/W Form 809) contains a section for the Agent to record each contact with a landowner regarding the acquisition of his property. The preliminary contact documentation should be detailed to include the right of way required; discussions of Highways and You Booklet; relocated centerlines; slopes; entrances/access; drainage and NPDES; permissions; relocation, if applicable. The entry should include the date, the place of contact, type of contact (in person, telephone, etc.), persons present and should fully document the discussion held (excluding personal opinions). Thorough documentation regarding the amount of the offer with the amount of any counter offers presented by the landowner and the landowner's justification should be included. The worksheet shall also include the physical address of the property.

The Worksheet should be kept up to date and entries made immediately upon completion of contact with an owner, Department engineers, program managers and headquarters right of way staff. The diary will prove invaluable if, for some reason, it is necessary to change Agents prior to completion of an Acquisition. The agent's diary will also be of great value to associate

counsel should negotiations fail and it becomes necessary to enter into condemnation. In the event of condemnation, the original worksheet will be turned in with the tract file and condemnation notice. The Agent will make a supplemental worksheet for subsequent negotiations and forward the original to the Columbia office for inclusion in the tract file.

The landowners' and displacees' address (mailing and physical) and phone number(s) shall be entered in the Right of Way Data Management System (RWDMS). In addition, the Displacees replacement address and phone number shall be entered in RWDMS.

VIII. Making the Offer of Just Compensation

The basis of settlement of each tract will be negotiated from the approved cost estimate or appraisal. As required by the Code of Federal Regulations paragraph 49 CFR 24.102 (e) the Agent will provide the owner the following:

1. A written offer for the full amount the Department believes to be just compensation dated and signed by the Agent. In the case of a partial acquisition, the amount of compensation for the real property to be acquired and the compensation for damages must be stated separately.
2. A description and location identification of the real property and the interest in the real property to be acquired.
3. An identification of the buildings, structures and other improvements which are considered to be part of the real property.

The written offer eliminates any confusion on the part of the owner as to the amount of the offer. On improved tracts, the Agent presents both the offer for right of way and the offer for relocation assistance during the same visit (SCDOT R/W Form 883 - Acquisition and Relocation Offer Letter). This is particularly important on residential owner occupied tracts. The 90-day Notice is both incorporated into the relocation offer and explained to the owner/displacee as the minimum amount of time available before vacating the improvement would be required. This may also be an appropriate time to discuss the Federal requirement of a subsequent 30 day notice upon submittal of the acquisition check which will not expire prior to the original 90 days notice expiration just given.

In developing the written offer for just compensation, the Agent must give his utmost attention to the pertinent data in the cost estimate or appraisal that is to be included in the offer letter. Incorrect or misleading written information to the landowner may have serious consequences.

The Agent shall have the offer letters and sufficient copies prepared. The original letter is for the landowner and the Agent should retain a copy to submit with the tract file to the Headquarters Office when the tract is ready to be turned in for payment. The Agent is required to note the date that the offer was made, as well as the amount and breakdown of the offer, on the worksheet. Right of Way Data Management System (RWDMS) shall also reflect these dates,

particularly when 90-day notices to vacate are involved. This information is to be entered into RWDMS by the Regional Office.

IX. Retention of Improvements and Uneconomic Remnants

As discussed in Chapter 6, Paragraph III, the Agent should determine during the preliminary contact whether or not the landowner is interested in retaining any improvements. If so, the two alternate offers covered in that section will be made. If the owner does choose to retain the improvements, the special provisions of the Deed should specify that he must remove these improvements from the property within a specified number of days after receiving written notice from the Department. The Agent should specify a realistic performance deposit to be approved by the Team Leader to be withheld in the provisions to ensure the owner will remove the improvements from the right of way. The right of way instrument should also specify that in the event the owner does not remove the retained improvements within the specified time, the Department is relieved of making any further payment and has the right to dispose of the improvements at its discretion. The Agent will verify the improvements have in fact been satisfactorily removed within the specified time limit and notify Team Leader who will then notify the Claims Section by memo or e-mail to issue a check payable to the landowner for the balance due on the purchase price.

The Department will make alternate offers to the landowner when an uneconomic remnant is involved. The first alternative is to offer the landowner the full amount of the appraisal for the right of way to be acquired as well as damages to the uneconomic remainder, if applicable. The second alternative is to offer to purchase the right of way as well as the uneconomic remnant. These offers will be reflected as offer 1 and offer 2 on the offer letter. In the case of condemnation, the Department will condemn based on the South Carolina Code of Laws, [Title 28-2-100](#). The appraisal review sheet will specify the values for the necessary right of way and uneconomic remnant. An offer to purchase must be made for all uneconomic remnants. However, when an uneconomic remnant is contaminated, the offer will be made contingent on the site being cleaned by the owner.

X. Liquidation of Uneconomic Remnants

If uneconomic remainders are purchased by the Department, the Property Management section is tasked with the disposal of these parcels. In some situations, the Project Management section may seek the assistance of the Region in the Disposal process. In those situations, the Regional Right of Way Administrator will assign an agent (preferably the acquisition agent) to perform the title work to determine the adjoining owners and negotiate the potential sale of the uneconomic remainders to the adjoining owners based on value range established by the Property Management section. The Agent is to maintain a negotiation log similar to that kept for the acquisition process and provide those logs to the Property Management section for each property negotiated, whether successful or unsuccessful.

XI. Abandoned Right of Way/Surplus Right of Way

Often the proposed road improvements for which the Department must purchase right of way call for the relocation of a section of road. This right of way is sometimes an effective

negotiating tool. The Agent and/or Team Leader will notify the Regional Right of Way Administrator that the landowner is interested in a land swap and the Regional Administrator will contact the Property Management Office to begin the process. The Agent should make certain the landowner understands the quitclaim cannot be executed until the construction is complete and the project has been accepted by the Department.

XII. Disclosure of Appraisals

The Agent may provide the owner with a copy of the Department's approved appraisal of his property at the time he provides the written offer(s). He should document the date of delivery on his worksheet. However, he should not attempt to explain the individual factors considered in the appraiser's opinion of market value. To do so is to invite controversy over specific items when the question to be answered is the total value of the acquisition, all factors considered. While the Agent should be familiar with the appraisal, he should discuss with the landowner only that information set forth as to the approved appraisal on the appraisal review sheet.

NOTE: A copy of the appraisal review sheet is not to be given to the landowner.

XIII. Negotiation with In-State Landowner

All owners residing within the state shall be contacted in person; any exceptions to this must be approved by the Regional Right of Way Administrator. In the majority of cases where the landowner resides in South Carolina, a personal contact is expected to establish the groundwork for a positive acquisition experience for both the landowner and the Department.

XIV. Negotiation by Correspondence with Out-of-State Landowner

As discussed Chapter 6 Item VII, the Agent may negotiate with an out-of-state landowner by correspondence. After the appraisal has been completed and approved and the Agent is ready to make an offer, he shall send the offer letter to the out-of-state landowner by certified mail. The Agent should record the time of requested action, usually two weeks and follow up by correspondence or telephone if the owner does not respond to the offer letter. Once a settlement is reached the agent must send an accompanying letter, which should include all instructions as to how the instruments should be executed and acknowledged before a Notary Public. A time limit for action should be stated in this letter and the need for prompt action should be stressed.

Negotiation of any large or complex acquisition should not be made by correspondence unless absolutely necessary. If a landowner residing in an adjoining state requests an appointment, he should be contacted personally if the distance would not involve overnight travel. It should be noted that any out-of-state travel will require prior approval by the Director of Rights of Way.

XV. Negotiation with Owner (His Agent or Attorney)

In most cases, the negotiation will be carried out directly with the owner of the property. In some instances, particularly in the case of absentee landowners, the landowner will designate a representative to negotiate for him. Whenever an Agent is informed an owner is represented by an attorney, all further negotiation should be conducted through the attorney. In the event the

landowner subsequently informs the Agent he is no longer represented by counsel, such notification should be made in writing, if possible, before negotiations are discontinued with the attorney and made directly with the landowner.

NOTE: If someone other than the landowner(s) is to negotiate, the Agent must request affirmation in writing from the landowner(s) or their attorney.

XVI. Negotiation with Local Governments

In negotiating with local governments, the negotiation should be conducted with the official head or business manager of that local government. For example, with a City or Town, negotiations should be commenced with the Mayor or City Manager; with Counties, with the Chairman of the County Board of Commissioners, or County Manager; with school districts; with the Chairman of the Board or the Superintendent of Schools. These officials may negotiate directly with the Agent or they may designate someone else for that purpose.

NOTE: Negotiations with local governments should be addressed early in the acquisition process due to time needed for approvals and execution of documents.

XVII. Administrative Adjustment Memorandums

The Agent should make a concerted effort to settle claims on the basis of the approved appraisal. While it is the Department's desire to avoid the costs and stigma of condemnation whenever reasonable, the administrative adjustment should not be construed as being an easy way to settle difficult cases nor done on a wholesale basis. Careful consideration should be given before adjustments are made, particularly in the beginning stages of negotiations. Offers on similar tracts should be made when possible prior to considering an adjustment and a thorough examination made as to the potential impacts an adjustment may have on similar tracts, pending cases, or upcoming projects.

When reasonable efforts to negotiate an agreement based on the amount offered as just compensation have failed, an administrative adjustment may be approved provided adequate written justification supports the settlement. The adjustment memorandum must be prepared on letterhead in approved memorandum format and be included with the agent's turn-in package when the package is turned in to Headquarters for check-in/payment. The memorandum must contain supporting data to justify the settlement including agreements resulting from mediation and stipulated settlements approved by a court and reached by an authorized official of the acquiring agency or a responsible official of the acquiring agency allowed by state law. (ie: comparison of Department and landowner appraisals; cost to cures; comparable sales; recent court awards and settlements; litigation costs; valuation problems; negative trial exposure; etc.). The memorandum should not be a recap of the Agents worksheet's documentation but detailed justification for the tract's settlement adjustment.

NOTE: See Appendix H-1 for sample memorandum/format.

AUTHORITY APPROVAL FOR ADMINISTRATIVE ADJUSTMENTS:

1. **REGIONAL RIGHT OF WAY ADMINISTRATORS** has settlement authority of \$100,000.00 OR up to 20% beyond the Department's appraised acquisition value of a particular tract, whichever is greater.
2. **TEAM LEADERS** has settlement authority of \$50,000.00 OR up to 20% beyond the Department's appraised acquisition value of a particular tract, whichever is greater.
3. **ALL SETTLEMENTS IN EXCESS** of the limits designated above will be at the discretion of the Assistant Director of Rights of Way for Acquisitions and/or Director of Rights of Way.
4. **LPA ADMINISTRATIVE SETTLEMENTS** must be approved by the assigned SCDOT Right of Way Project Manager. Settlement authority granted to the SCDOT Right of Way Project Manager will be determined by Regional Right of Way Administrator on a project by project basis.

The Regional Right of Way Administrator and Team Leader have the discretion to evaluate the experience level of each person to determine their level of administrative authority. For quality control and assurance purposes, each adjustment memo will require two (2) signatures: the acquiring person making the recommendation and either the Team Leader or Regional Right of Way Administrator. The names of the agent and person approving will be typed beneath their signatures.

5. **PROJECT MANAGER/CONSULTANT COORDINATOR** will have settlement authority as established by the Regional Right of Way Administrator and Team Leader within the Region's authority. The Project Manager/Consultant Coordinator with the approval of the Regional Right of Way Administrator and Team Leader may provide settlement authority to the selected consultant based on the experience level and past performance of the consultant personnel. For Quality Control Purposes, each adjustment memo will require three (3) signatures, the Consultant Agent making the recommendation, the, Consultant Manager and the Right of Way Designee based on the above approval authority.
6. **RIGHT OF WAY DESIGNEE FOR MEDIATIONS AND TRIALS ON CONDEMNED TRACTS:** This person has full settlement authority as well as the responsibility for ensuring that written justifiable documentation for the settlement is provided. Adequate pre-trial examination by this person and discussion with knowledgeable right of way peers, associate counsel and engineers is expected. While this designee has full settlement authority, he also is expected to be a discerning steward of the public treasury and

conscientious of potential impacts the settlement may make on upcoming negotiations, trials and projects.

NOTE: Although these levels have been established, the Director of Rights of Way and the Right of Way Administrators have the ultimate discretion to evaluate the experience level of each Region and person to determine whether or not they are authorized to make administrative adjustments at these levels.

XVIII. Moving and Demolition Items and Fencing and UST Quantities

Moving and demolition lists, and fencing and UST quantities are completed by the agent and submitted to Right of Way Headquarters prior to final project turn-in by the Team Leader or Regional Right of Way Administrator. **The Rights of Way Regional Administrator shall refer to the “Dates for Assembling Information on Construction Obligations for Federal Fiscal Year” chart which will specify a date by which all moving items and revisions to plans are due in order for a project to be let as scheduled.** (See Appendix I-1 for sample – This chart is updated beginning each Federal fiscal year.) Approximately three (3) months prior to the construction letting. The Regional Administrator or Team Leader should keep this date in mind when he submits these lists and should allow ample time for processing them through the appropriate channels. The lists must be submitted to Headquarters. After review, Headquarters provides them appropriate personnel in Preconstruction Support and in the RPG for inclusion as bid items in the construction plans and proposal.

The Moving and Demolition Items and Fencing and UST Form (SCDOT R/W Form 995) to be used are as follows:

- Moving Items List – Items to be moved and reset, not purchased already by SCDOT. Decorative fencing (picket, wrought iron, brick, etc.) is to be listed on this form. Note that chain link or any type of wire fencing (chicken wire, hog wire, barb wire, etc.) will not be reflected on this list, but as a bid quantity in the fencing list as a lump sum.
- Removal and Disposal List - Items to be removed and disposed of including demolition items.
- Fencing and UST Quantities – Chain link and any type of WIRE fencing to be moved and reset that’s not already purchased by SCDOT. This fencing is required as a bid quantity and therefore is listed as a lump sum for the project and not on a tract by tract basis. Decorative fencing would be reflected in the Moving Items list, if not paid for in the appraisal.

Also included, are the quantities of liquids and contaminated soils necessary to remove UST’s or in construction cut areas. The individual in the Right of Way Region who conducted the ISA can supply this information with the assistance of the Resident Construction Engineer.

(See Appendix “S” which refers to the above mentioned forms)

If negotiations continue beyond the date due for submittal of these lists and it is agreed with a property owner that any work is to be done by the Department in part or full compensation for right of way, such as fence resetting, etc., the Headquarters Office should be promptly notified so that this work can be included in the plans and proposed as a contract item. Such work should be anticipated, insofar as possible, so that it can be made a contract item rather than resorting to Supplemental Agreements and Force Account work which, in many instances, will result in added cost.

NOTE: Improvements that are partially within the right of way limits, a permission or temporary right of way needs to be secured to demolish the remaining structure outside the right of way limits. (See Chapter 8, Section 3 – Part C Permission.)

XIX. Rights of Entry – SCDOT R/W Form 829

In some cases, the property owner may want to grant the Department the right to enter the property for construction and continue the negotiations without the Department proceeding with condemnation. If the Agent feels that the tract can be successfully negotiated in a reasonable amount of time, a right of entry should be secured and signed by all property owners. The negotiations should continue and the acquisition should be concluded within 180 days. The owner should have Item 4 on the Right of Entry form pointed out which states that the execution date of the Right of Entry Agreement establishes the date of taking for valuation purposes. Consideration should be given on improved tracts as a 30-day notice to vacate cannot be issued until payment is made to the owner or Clerk of Court, if condemned.

XX. Amicable Settlement Letters – SCDOT R/W Form 884

Prior to condemning the Department will make a final effort to reach a settlement with the property owner. An amicable settlement letter (SCDOT R/W Form 884) will be sent to the property owner from the next supervisory level (Team Leader, Regional Right of Way Administrator, etc.). A time limit must be placed on the response time. A copy of the letter must be included in the final turn in package.

CHAPTER 8 - CLOSURE OF NEGOTIATIONS / TURN IN PROCESS

I. General Requirements

The acquisition agent is responsible for closing the transfer of real property to the Department. All parties controlling or owning a real property interest, possessory interest, or equitable interest in the parcel being acquired must transfer this interest to the Department or release from obligation their interest in the real estate or in the portion of the land which constitutes the parcel being acquired.

II. Clearance of Subordinate Interests and Encumbrances

All interests and encumbrances which are adverse or detrimental to the interests of the Department and to the purposes for which land or an Easement in land is being acquired should be eliminated from property being acquired. Due consideration shall be given to both the actual and potential effects of each exception in the title report. If such exceptions are in any way adverse to the interest of the State, appropriate actions to eliminate or subordinate such exceptions should be taken. Unless instructions to the contrary are issued by the Assistant Director of Rights of Way for Acquisition and/or Director of Rights of Way, all interests that were conveyed, imposed, or suffered by the grantors and/or previous landowners shall be cleared prior to submission of the tract for review and payments and properly annotated on the agent's worksheet and in the Right of Way Data Management System (RWDMS).

- A. **Mortgages** - Mortgages should be cleared or eliminated by one of the following methods:

NOTE: The Lis Pendens must be checked by agent after the Instrument of Conveyance is signed and prior to turn in. Team Leader/Regional Right of Way Administrator must ask if the Lis Pendens was checked prior to waiving the mortgage.

1. **WAIVER** - The mortgage release can be waived on acquisitions \$10,000.00 or less, unless we are acquiring the entire property and/or relocation assistance is involved in the acquisition; there are damages or extenuating circumstances such that the value of the remainder property will not cover all liens. **This waiver is not a blanket authority to ignore mortgages, but allows the agent to review the Landowner's interest in the property and ascertain if the remaining value of the property is sufficient to provide security to the mortgage holder. If there is any question regarding the mortgage holder's security, the release should be secured.** Team Leader will approve, sign, date, and highlight each mortgage entry on the agent's worksheet and Title Opinion and ensure the waiver dates are entered in RWDMS.

- a. Acquisitions \$10,001.00 to \$25,000.00 OR up to 10% of mortgaged dollar amount may be waived by Regional Right of Way Administrator using the above criteria and initialed on the Right of Way Agent's worksheet and waiver dates entered in RWDMS.
- b. Excess of \$25,000.00 may be waived by Assistant Director of Rights of Way for Acquisition or Director of Rights of Way.

NOTE: IF UPON RECEIPT OF SIGNED INSTRUMENT OF CONVEYANCE, THE WAIVER OF A MORTGAGE RELEASE IS DETERMINED TO BE APPLICABLE, NOTIFICATION / CONTACT WITH MORTGAGEE IS NOT INITIATED.

2. **RELEASE/AGREEMENT** - Reasonable efforts will be made to secure releases/agreements for acquisitions above \$ 25,000.00 (or lesser amounts that cannot be waived) as follows:
 - a. The mortgagee is contacted in person or by certified mail with a copy of the executed Title document and plan sheet showing the acquisition.
 - b. Mortgagee notified that the Department will require executed release or agreement and notification from bank within 30 calendar days of receipt of this information. (The worksheet must be documented of date hand delivered or if mailed the certified mail date.)
 - c. A follow-up will be made within a two-week period after the mortgagee has been notified and the worksheet documented. Enlisting landowner's assistance in contacting mortgagee for release in lieu of eminent domain proceedings is often helpful at this stage.
3. **CONDEMNATION** – Required when mortgage release / agreement cannot be waived nor secured through reasonable efforts.
 - a. Regardless of dollar amount, in event of mortgaged acquisition whereby a Title to Real Estate or appropriate conveyance document is unobtainable, the mortgage cannot be waived and mortgagee cited in condemnation pleadings.

- b. When the instrument of conveyance document is executed but mortgage release/agreement cannot be secured through reasonable efforts OR within 30 calendar days of the mortgagee notification, process condemnation. Both landowner(s) and mortgagee cited in pleadings and served Notice of Condemnation. The executed Instrument of Conveyance is to be made part of Condemnation package. Landowner must be notified “**why**” condemnation was initiated.

B. **Leases** – A copy of the lease should be acquired whenever possible and carefully examined on a per case basis. Generally leasehold interests should be cleared by one of the following methods:

1. **Recorded Leases** - When the landowner signs a Title to Real Estate, it will be necessary for a Lease Release or Lease Agreement to be executed by the Lessee, releasing from the operation of the Lease that portion of the property to be acquired by the Department. The Lessee’s name will not be named as a party on the check when the Release is executed, but will be included on the check when the Agreement is executed.

In the Case of a condemnation, the Lessee’s name will be included in the pleadings as “other condemnee”, unless the language in the lease specifically states they are not to be included or that the proceeds from the condemnation goes to the landowner; however, they are to be included as “copy to” on the condemnation notice.

NOTE: Some Leases include a clause that excludes the lessee from any monetary proceeds as a result of the threat of condemnation.

2. **Unrecorded Leases** – When the landowner signs a Title to Real Estate and the Right of Way Agent has been furnished a copy of the unrecorded lease, follow the same procedures as above.

When the landowner signs a Title to Real Estate and there is an unrecorded month to month or verbal lease, a release or agreement is not required. The landowner should put the lessee on notice that property is being acquired by the Department though the Agent will contact the lessee if requested by the landowner to do so.

In cases of condemnation, the lessee’s name will be included as “copy to” on notice of the Department’s acquisition of the property.

- C. **Judgments** - Appropriate releases of Judgments are to be secured by the agent and cleared of record; however, in the case of partial taking where the value of the remainder is more than ample to satisfy such liens, this requirement may be waived with the written consent of the Assistant Director of Rights of Way for Acquisition and/or Director of Rights of Way. If the total amount of Judgments and/or other liens on record against the subject property exceeds the value of the property, the Agent should consult with the Team Leader or Regional Right of Way Administrator before closing the transaction.

NOTE: Judgments apply to any and all property owned by the landowner; therefore, title is not clear of encumbrances until the judgment is paid and satisfied of record, or released.

- D. **Contracts to Purchase** - When a property is encumbered by a Contract to Purchase, such interest should be cleared by both the landowner and the person contracting to purchase being made parties to the right of way instrument during the life of the Contract. The Contract, if available, must be scrutinized to determine the Contract term and rights of extension. The remaining term should be considered by the Agent in closing the parcel, as a completed or expired term will remove one party from consideration. However, the right of way schedule must be maintained and will dictate the course of action.
- E. **Pending Actions** - Any pending court action involving an interest in right of way to be acquired should either be dismissed or the parties to the action should join in the execution of the right of way instrument or the Department should secure a quitclaim deed or other appropriate release. The Assistant Director of Rights of Way for Acquisition and/or Director of Rights of Way must determine the appropriate course of action.
- F. **Easements, Public Utility** - Unless advised otherwise, public utility Easements over the property acquired for right of way need not be considered in clearing subordinate interests as they will be extinguished in connection with the removal of utilities from the right of way, as handled by the Department's Utilities Engineer, or will be permitted to remain in effect if occupancy of the highway right of way by the utility is not inconsistent with the operation of the highway.

NOTE: This information shall be included with the Property Management package for surplus property.

- G. **Easements, Private** - All Easements considered to be adverse to the use and occupancy of the highway right of way should be cleared by negotiation with the landowners of such Easement rights. Easements falling in this category may include driveways, private roads, private water lines, drainage easements, etc. Such Easements may be cleared by providing substitute Easements or by including the Easement holder as a party to the acquisition.

- H. **Covenants, Conditions, and Restrictions** - Title may be taken subject to the conventional type of tract restrictions, provided the nature and effect of such restrictions are known and considered. Unusual covenants or conditions whereby land is conveyed or restricted for a specific use, such as parks, schools, hospitals, railroads, etc. shall be carefully considered, particularly as to the possibility of forfeiture of title upon breach or violation. Such conveyances may have reversionary clauses; if so, quitclaim deeds or other suitable releases should be secured in order to clear such rights of revision. In cases of uncertainty regarding title to such property, the advice of the Assistant Director of Rights of Way for Acquisition and/or Director of Rights of Way should be secured before proceeding with closing the transaction.
- I. **Liens** - These are similar to Judgments in that they must be satisfied and removed from the record or the holder must be a party to any right of way condemnation action. The Assistant Director of Rights of Way for Acquisition and/or Director of Rights of Way must be contacted to determine if the lien may be waived, if they are not satisfied prior to conveying the title to the Department. Liens held by public entities are usually disposed of by including the lien holder as a payee on the check for payment. (See Paragraph “J” below.) However, payments for outstanding liens with the South Carolina Department of Revenue (SCDOR) will be issued separately via an Interdepartmental Transfer. Examples of liens are State and Federal tax liens (usually filed with Judgements and are valid for ten (10) years from date of filing), and mechanics liens (valid for six (6) months from date of filing).
- J. **Federal and State Income, Sales, and Estate Taxes** - Federal and State income, sales, inheritance, gift, and franchise taxes and the like do not constitute a lien upon property. These taxes may be ignored unless there is a Judgment or other Lien for such taxes on record, in which case such Liens should be cleared by the grantor before closure of negotiations.
- K. **Bankruptcy** - If an interest holder in a parcel is being acquired by the Department has declared and filed a Bankruptcy Petition with the U.S. Bankruptcy Court for the District of South Carolina, and then the Department’s Legal Division must be notified immediately. Bankruptcy may stay an acquisition until the Court has disposed of the case and such can take many months or years. The Department’s attorneys may be able to obtain through Bankruptcy Court authority for right of way acquisition to proceed. Early notification of such cases is of the utmost importance.
- L. **Property Taxes** – South Carolina Code of Law, [Section 12-45-70](#) notes the time for paying taxes, the manner of collection, receipts for payment and the delegation of collection of taxes. All taxes are due and payable between **September 30th and January 15th**, after assessment each year. When the Department acquires the

entire tract of land after taxes have been assessed, the agent acquiring the project must check the records to see if the taxes have been paid. If the taxes have not been paid, the worksheet must be noted that the Treasurer's/Tax Collector's Office is to be added to the check. In addition, the SCDOT R/W Form 994 (Special Instructions Flag) will be completed prior to Turn-in marked to "Include county tax collector or treasure (for unpaid taxes). In the case of condemnations, the Treasurer's or Tax Collector's Office is to be made a party as Other Condemnee.

NOTE: When the Treasurer's or Tax Collector Office is to be made a party of the check, the Agent shall inform the landowner(s).

In cases of a partial taking and taxes have not been paid, (assessed, but not delinquent) the Treasurer's/Tax Collector's Office will not be included on the check or made a party in the condemnation action. **However, in the event the taxes have not been paid by January 16th, in either an entire taking or partial taking, taxes are considered delinquent and the Treasurer's/Tax Collector's Office will be included on the check or named in the condemnation action.** In addition, the SCDOT R/W Form 994 (Special Instructions Flag) will be completed prior to Turn-in marked to "Include county tax collector or treasure (for unpaid taxes).

Note: In cases where the entire tract is condemned, a copy to the Tax Assessor is to be added to the Condemnation Notice.

- M. **FEES** - Stormwater fees, municipal fees and/or parcel fees are also levied against property and constitute a lien on property. These fees are often found with the property tax records for each county. Stormwater fees are assessed based on the amount of impervious surface of a parcel, regardless of whether or not a parcel is taxed. Some counties have municipal fees or parcel fees that are assessed for each parcel. (Need to address how these are to be paid and whether or not they can be added to the check.)

III. Right of Way Instruments

Typically right of way acquisitions are secured by Title to Real Estate, Easement, permission, permits and/or licenses.

Instruments are generally prepared by a Regional Administrative Specialist utilizing data provided by the Agent. This should, with the exception of the amount of consideration, be done during the time that appraisals are being made and prior to making the original offer of compensation to the landowner so that the documents will be on hand when the offer is made. The amount of the consideration can be inserted after the appraisal is completed, reviewed, and approved.

Ensure all applicable acquisition, appraisal and relocation information is entered in Right of Way Data Management System (RWDMS) correctly. It is very important that all names are entered correctly (as shown on the instrument) and in a consistent format as this information is used to generate the Alphabetical Listing that is provided to the district construction office and counties at project letting. In addition, at project letting, the landowner information as entered in RWDMS is transferred to the Grantor Index System.

Names and addresses shown on the acquisition instrument and the SCDOT R/W Form 812 (SSN Information Form) need to be identical. If there is a discrepancy between the way title is held and the way the signature is secured, you will need to include AKA (also known as) or NKA (now known as) on both the deed and the SCDOT R/W Form 812.

NOTE: ONLY the landowner(s) name that has title to the property shall be listed as the Landowner on the instrument of conveyance. Others, such as Power of Attorneys (POA), signing on behalf of the landowner(s) are listed on the signature line of the instrument of conveyance. Their name, Power of Attorney for (Landowner's name) and recording information of the Power of Attorney is included below the signature line. The copy of the POA or other document is included in the title abstract and included in the turn in package. Exception: When an individual/entity has a contract to purchase the property.

It is preferable, but not required, to prepare an original and one copy of the instrument of conveyance. Signatures will be in ink on the original and the copy in the event that the original is lost, misplaced, or destroyed. The Agent may make additional copies in transactions involving Leases or Liens where more than one party will desire a copy of the instrument of conveyance.

The Agent is cautioned to be neat and accurate in the preparation or completion of the instrument in the field. **Strikeovers, lining through errors and messy additions to the instrument constitute a reason to have an instrument legally declared invalid.** Any instrument of conveyance not typed in the office prior to execution must be completed in permanent ink in the field. Questionable instruments will not be accepted. The name of the signing party must be typed or printed legibly beneath his signature on all instruments. Include the individual's title below the signature line if signing on behalf of an entity, i.e. business, church, etc. The Agent shall review the instrument to ensure all information is correct prior to execution.

Note: All corrections (typos) must be initialed by the landowner.

All right of way instruments shall be prepared using size 12 font (When space is a factor, use no smaller than 10 font) and witnessed by two (2) people in accordance with policy listed below, and acknowledged by a Notary

Public. If the instrument is signed out of state, then the Notary Public must also affix his notarial stamp or seal. **A witness cannot be one of the individuals conveying the property to the Department.**

The Code of Laws of South Carolina, 1976 Title [27-7-10](#) does not require a witness to be a certain age, only that the witness is credible. The Department's policy is for a witness to be eighteen (18) years of age.

NOTE: See Appendix "C" for samples of documents of conveyance.

A. **Easement** - This right of way acquisition instrument is to be used in those cases where the Department does not wish to take fee simple title to necessary right of way. (See Chapter 3 - "Right of Way Interest to be Acquired") By signing this instrument, the landowner grants only a right of way for highway purposes across his property and retains the underlying fee to the property. All Easements must include a Tax Map Number.

1. Temporary right of way will be obtained by use of a Right of Way Easement. The word "TEMPORARY" is to be inserted at the top of the instrument and a reversionary clause will be included in the Special Provisions. The temporary right of way will be posted in RWDMS on the Documents tab using the document type of "Temporary Easement" with the permanent tract. (Example, Tract 1 "Title" and Tract 1 "Temporary Easement"). Tract 1 Title will be the permanent right of way and Tract 1 "Temporary Easement" will be the Temporary right of way; however, they both will be tracked together under Tract 1 in RWDMS. The Title will be selected as the "Primary Document in this example.

NOTE: The exception would be condemnations; the permanent and temporary right of way conveyed using one (1) document. The fee obtain and temporary easement obtain are described in separate paragraphs within the condemnation.

NOTE: Temporary right of way is viewed as rental or leased property and landowners receive a 1099 Miscellaneous.

2. Ditch Right of Way Easement - This right of way acquisition instrument is mainly used by personnel in the District Engineering Offices when it becomes necessary to acquire additional right of way for drainage purposes. By signing this instrument, the landowner grants a right of way for the construction and maintenance of an outfall ditch in connection with a portion of a state highway. Both the grantor and grantee have the right to enter said ditch for maintenance purposes whenever either may deem it necessary to protect their respective interests. The Department is

charged only with the maintenance of so much of said ditch as may be necessary to protect the roadbed. The Agent will normally use the standard Right of Way Easement to acquire ditch right of way and include a description of the ditch easement area in the Special Provisions.

NOTE: When plans require both permanent easement for drainage or other purposes and permanent right of way in fee simple for the same tract, include the easement area in the special provisions on the Title to Real Estate. DO NOT use a separate instrument. If an exhibit is used, depict the permanent and easement areas on separate exhibits using the Exhibit A and B format.

- B. **Title to Real Estate** – The right of way acquisition instrument is used to obtain fee simple title to highway right of way. By signing this instrument, the landowner sells his property in fee simple absolute to the Department and warrants the premises against all claims. No signed Title should be accepted by the Agent unless the general warranty is provided or authority for less than general warranty is provided by the Regional Right of Way Administrator or the Director of Rights of Way. An accepted signed Title may constitute a contract. Also, a derivation clause must be included in the Special Provisions of all Titles to Real Estate.
- C. **Permissions** – This instrument grants to the Department the right to do the work outlined in the Special Provisions with the understanding that this work is to be done on property of the grantor outside of the right of way. By signing this instrument, the landowner does not convey any right of way for the purposes of this construction. This permission is valid only for construction and does not grant the Department permission to reenter the property to maintain the work unless this is specifically stated in the Special Provisions. In instances with multiple interests, the Regional Right of Way Administrator will make the determination as to the signatures required. Only Permissions executed by the current landowner(s) is valid. If a permission is secured and the property is sold during negotiations or prior to completion of project construction, a new permission must be secured, since the permission rights do not transfer with the property ownership.

NOTE: In acquisitions where the Department acquires the entire improvement (building) and only part of that improvement is within the new right of way, it becomes necessary to obtain a Permission for the right to enter the landowner's property, giving the Department and its contractors the right to enter the property for the purpose, in most cases, for the demolition of the structure. If the landowner will not sign a permission, a temporary right of way will have to be established, and if condemned included in the condemnation.

- D. **Permits and Licenses** - These instruments grant to the Department the right to use or occupy the necessary right of way. Permits and licenses are usually granted by governmental agencies.

IV. **Special Provisions (Narrative and Exhibit)**

In the course of acquisition over the years, the Department has found it useful to develop a listing of acceptable Special Provisions to be included on right of way instruments. (See Appendix “D and E” for acceptable special provisions). This list is a compilation of standardized provisions that are commonly used by the Department for both Narrative and Exhibit provisions. The Agent should refer to this list to include such things as controlled access, a derivation, construction permissions, landowner retention of improvements, etc. The Agent should bear in mind this list is intended as a guide only and does not include every possibility. The Agent should use his own judgment when including special provisions that are not covered on this list.

NOTE: South Carolina Statutes prohibits the Department from entering into any agreement with another party wherein the Department is required to hold the other party harmless from any liability as a result of the execution of the agreement. Many corporations will attempt to include this **hold harmless** provision in their conveyances. In attempt to appease these corporations, the following language has been approved by the Department’s Counsel as a substitute for the **hold harmless** provision: **“The SCDOT will conduct all operations hereunder at its own risk and expense, and in granting this (title to real estate, easement, or permission), the Grantor assumes no responsibility or liability whatsoever to any person for any injury, including death or property damage caused by or attributable to or resulting from the Grantee’s operations on the Grantors property.”**

Exhibits shall be used to describe and depict the area of acquisition. The Regional Right of Way Administrator will determine when to use Narrative description.

NOTE: Condemnations are the exception...there are instances when narrative descriptions must be used when condemnation is necessary (i.e. condemnation must be advertised).

V. **Turn In Process**

Items of interest to ensure that they are addressed and correct before turning in tracts to Headquarters:

1. All instruments that are recorded require an Affidavit (SCDOT R/W Form 849). In cases where multiple instruments are used to secure all of the landowner’s signatures, an original affidavit will be included for each title or easement.

2. When there is a cost to cure, the appropriate Special Provision language is utilized in the instrument to reflect the damages. The words **“including all damages”** must be shown in the money paragraph of the condemnation.
3. Exhibits must be prepared in accordance with the Instructional Guide for Right of Way Exhibits. On exhibit projects where the right of way is based on the relocated or construction centerline, not only is the exhibit to show the relocated (or construction) centerline and have it labeled accordingly, the provisions must contain the language that the right of way is along a relocated centerline. Check to ensure the exhibits are to scale.
4. Ensure Administrative Adjustment letters are dated with correct signature authority and has information to support the settlement. (Appendix H-1)
5. When required, the word “Life Estate” must be shown on documents (Titles, Easements, Condemnations, and Permissions) after the individual’s name when prepared. Remainderman can be as well, to delineate their type of interest in the property.
6. Landowner’s name (and Title when appropriate) is typed at the signature line.
7. Landowners have properly signed all necessary documents.
8. All appropriate data is entered in RWDMS.

Generally the turn in package turned in to Headquarters will contain the following documents in this order:

1. Check Sheet (SCDOT R/W Form 996)
2. Special Instruction Flag (SCDOT R/W Form 994) Printed on salmon colored paper. (if applicable)
3. Claim SCDOT R/W Form 808 (if applicable)
4. Administrative Adjustment letter (if applicable)
5. Title to Real Estate, Easement or Condemnation
6. Agreements and/or Releases
7. Permissions (SCDOT R/W Form 803) (if applicable)
8. Description of improvements within the right of way (SCDOT Form 845) (if applicable)
9. Title Opinions (Final or Updated on top and stapled together with file/PIN/Road/Route/ Tract information included on opinion)
10. Social Security Form (SCDOT R/W Form 812)
11. Agent’s Worksheet (SCDOT R/W Form 809) (followed by all correspondence in ascending order, this includes offer letter(s), R/W Statement and Power of Attorney given to a person to act on behalf of another) (Stapled together).

Note: Worksheets for improved tracts will be printed on PINK paper signifying the priority of the tract.

12. Current County tax/GIS record to show current landowner and taxes paid.
13. Appraisal Review Sheet or page showing the appraised value or Cost Estimate Sheet.
14. Property Management package when acquisition includes parcels with surplus property, improvements, or Wetland/Mitigation. (if applicable)

NOTE: This list is not all inclusive and other documents and forms may need to be included.

The Agent may be required to turn in on a project basis or on a parcel basis with the turn in being completed in stages. The Agent will be advised by the Team Leader how the turn in is to be accomplished. Factors affecting the manner of turn in are the type and size of the project, the number and types of displacees that must be relocated, conditions of title, and project scheduling.

- A. **Review** - The tracts completed and tracts on which negotiations have failed are to be reviewed by the Regional Right of Way Administrator or the Team Leader supervising the work with the Agent. The review should include the consideration of counter offers that have been presented to the Department and the potential for re-opening negotiations to reach an amicable settlement of the acquisition. The review is to ensure all real property and equitable and possessory interests have been considered; all parties have signed the deeds and agreements on completed tracts; and all parties to be condemned and given notice of condemnation are known and are included as a party in the pleadings. Also, the review should ensure all supporting documents such as worksheets, correspondence, title opinions, offer letters, counteroffers, collateral agreements, administrative adjustment letters, SCDOT R/W Form 812's, etc. have been included and completed and that required and appropriate documentation of the files can be accomplished. Sometimes, it may be necessary to call attention to a particular situation, such as an improved tract, a tract needing to have the county treasurer added to the check, or the check hand delivered in exchange for the original title. A special instruction flag (SCDOT R/W Form 994), printed on the appropriate colored paper is to be attached to the file as a reminder to headquarters' staff for special processing. All improved tracts must also include a special instruction flag, marked "Improved Tract" and marked as an Improved tract in RWDMS.
- B. **Photos** - Photographs are a part of the appraisal and when condemnation becomes necessary for a tract, the negotiation agent will include his copy of the appraisal as part of the turn in to the Regional Office for preparation of the condemnation. The agent's copy of the appraisal is turned into Headquarters for submission to the Associate Counsel.
- C. **Status of Right of Way** (Partial/Final) - For each partial turn in, a SCDOT Transmittal Letter (SCDOT R/W Form 822) listing the tract number and type of documents submitted to Headquarters with the Turn In package(s). A Final Status

of Right of Way Form (SCDOT R/W Form 998) is necessary at completion of each right of way project. When all tracts are turned in, a Final Status of Right of Way Form must be provided. The Status of Right of Way Form is a tool necessary for the Agent and Right of Way Management to control and confirm the completion of the acquisition process.

- D. Authority to Condemn** - The Agent has a duty to know the status of each tract on assigned projects and to move the process to completion in a prompt manner.

Parcels that must be condemned for title are known very early and these should be condemned after offers are made to enhance the schedule. Tracts that have relocation assistance involved must be negotiated and payment made, or condemned early to allow the required vacate periods and to allow the Agent ample time to complete the activity with fairness to the displacee. The Agent will advise the supervisor that condemnation is necessary, and at the discretion of the Team Leader and/or Regional Right of Way Administrator, coordinate preparation of the condemnation documents in the Regional Office.

South Carolina Code of Law, Section [28-2-480](#) allows all landowners to apply to the Clerk of Court for up to 50% of the funds deposited any time after the Department has taken possession of the property. Before the condemnation is filed, the Agent will offer the landowner the opportunity to sign the Agreement for Payment of the entire amount of the Department's offer of just compensation (100% drawdown) on all projects. The Agent must send or provide in person the agreement for payment of the entire amount of the Department's offer of just compensation (SCDOT R/W Form 880) to the landowner. The Agent shall document this action in the Agent's worksheet that the landowner was presented in person or by letter the opportunity for the 100% drawdown. If the landowner agrees to the 100% drawdown, then SCDOT R/W Form 820 must be submitted in the condemnation turn in package.

Some counties have given the Department approval to proceed with condemnation on "C" projects. Approval to condemn is obtained through the Regional Production Group.

- E. Form and Content of Condemnation Notice** - The condemnation notice must contain the information and allegations required in this section and may contain any other information relevant to the action. It must be captioned CONDEMNATION NOTICE AND TENDER OF PAYMENT and include the following:
1. The condemnation notice must designate the condemnation on whose behalf the property is to be taken.

2. It must designate as “Landowner” all persons who are record landowners of fee simple title and as “Other Condemnees” all persons who, to condemnor’s knowledge, have or claim any record interest in the property to be taken; condemnees whose names are not known, including heirs, infants, persons under disability, and persons who may be in military service, must be made parties by the collective name of “Unknown Claimants.”
3. It must contain an appropriate legal description of the property to be condemned and the interests condemned.

Note: Condemnations requiring advertisement in the newspaper will contain a narrative description instead of the exhibit due to the cost required to advertise the exhibit as part of the Lis Pendens.

4. It must allege the basis of the condemnor’s right to take the property by Eminent Domain and maintain the action, including (I) a reference to the condemnor’s legal authority to take the property; (II) a statement of the purpose for which it is to be condemned; (III) a declaration that the DOT has elected to proceed under South Carolina Code of Law, Section [28-2-240](#) and (IV) a statement the condemnor has complied with South Carolina Code of Law, Section [28-2-70\(a\)](#).
5. It must contain at least the following: **“THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF** (insert the amount determined under South Carolina Code of Law, Section [28-2-70\(a\)](#) in words and numbers) **AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.”** Payment of this amount will be made to the Landowner if within thirty days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the condemnor the property interests and rights described herein above. The request and agreement must be herein above. The request and agreement must be sent by first class certified mail with return receipt requested or delivered in person to the Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, SC 29202. If no request and agreement is received by the condemnor within the thirty-day period, the tender is considered rejected. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the county where the property is situated and deposit the tender amount with the clerk. The condemnor shall give the Landowner and other Condemnees notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice. **“AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE**

PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE”.

6. If the action is brought under South Carolina Code of Law, Section [28-2-240](#), it must contain at least the following notice: “THE COMDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the landowner. That notice shall state whether the condemnor demands a trial by jury or by the court without a jury. The landowner has the right to demand a trial by jury. The case may not be called for trial before sixty days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial. ‘THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED”.

NOTE: When the department condemns the entire tract, the County Tax Assessor’s Office will be listed as a “Copy To” on the Condemnation Notice and Tender of Payment Form 815. This is the department’s attempt to notify the Assessor’s Office of our actions and therefore requesting that, they not sell, or list for sale, properties the department has acquired by condemnation. They are not being joined as a party in the condemnation, just informed.

The Department proceeds with service of the Condemnation Notice on all Condemnees. The means of service available under South Carolina Code of Law, Section [28-2-80](#) may be made by certified mail with returned receipt requested or by any other means permitted by law for service of a summons in civil cases. When service is made by certified mail, the date of service must be the date of delivery, refusal or last attempted delivery as shown on the return receipt. After service of the Condemnation Notice, the landowner has thirty days to give the Department written notice of either the amount determined as just compensation is accepted or the amount is rejected. No response is considered rejection. If within the thirty-day period the landowner rejects the amount, the Department may file the Condemnation Notice with the Clerk of Court and deposit the amount stated in the notice, if the amount has not been provided to the landowner. Once the notice is filed, the Department will serve the condemnees with written notice that this action has been taken. South Carolina Code of Law, Section 28-2-90 states the Department may take possession of the property once the amount stated in the Condemnation Notice as just compensation for the property has been deposited with the Clerk of Court in the county where the property is located.

After taking possession the Department cannot abandon the condemnation action without the landowner's consent.

- F. **Interest or Amount of Just Compensation** - The Department as provided by Section [28-2-420](#) must pay interest at the rate of 8% a year on the amount that was not available to the landowner. Since 100% of the amount determined as just compensation is available, interest would be due in the amount of the verdict in excess of the amount the Department offered as just compensation.
- G. **Procedures for Recovery of Reasonable Litigation Expenses by the Landowner** - As provided by South Carolina Code of Law, Section [28-2-510](#), if a landowner prevails the trial of a condemnation action, reasonable litigation expenses may be recovered by applying within 15 days after the entry of the judgment. Prevails as defined by South Carolina Code of Law, Section [28-2-510](#) (B) (2) means the compensation awarded (other than by settlement) for the property, without interest, is at least as close to the highest valuation of the property that is attested to at trial on behalf of the landowner as it is to the highest valuation of the property that is attested to at trial on behalf of the Department. Any party or the court on its own motion shall hear the parties with respect to the application for recovery of the litigation expenses to be awarded and set forth by the court and becomes part of the judgment. (Code of Federal Regulations Title 49, Section 24.107)(Appendix A).
- H. **SIGNIFICANT CONDEMNATIONS** -A significant Condemnation case is determined by one or more of the following criteria:
1. Department's potential liability could equal or exceed \$250,000, based upon Landowner's demand and/or appraisals.
 2. The case is politically sensitive or significant.
 3. The case presents legal issues that need to be clarified for purposes of establishing legal precedent.
- NOTE:** Significant Condemnation must be selected on the Special Instruction flag (SCDOT R/W Form 994) and the RWDMS must be updated to indicate the tract as a significant condemnation case and reason.
- I. **CONDEMNATION PACKAGES** -The condemnation package and all signed documents/forms will be turned in to Headquarters as Package A. All signed original documents and the appraisal will be included in Package A as a separate attachment. A complete copy of the condemnation Package A (without signatures) will be transmitted to Headquarters electronically identified as Package B.

The Affidavit will need to be signed by the Team Leader or Project Manager for On-Call Consultants. The Consent for Guardian ad Litem (SCDOT R/W Form 825) must be signed prior to turn-in to Headquarters by the attorney serving as the Guardian ad Litem.

NOTE: Condemnation Notices requiring advertisement in the newspaper will require a narrative description instead of an exhibit due to the cost associated with advertisement of the exhibit and Lis Pendens.

The condemnations must be turned into Headquarters as outlined below:

Package A – SCDOT Package (Hardcopy)

A. Pleadings Forms:

1. 100% Drawdown (SCDOT R/W Form 820) (If landowner request to take drawdown)
2. Request for Social Security Number or Taxpayer Identification Number and Certification Form (SCDOT R/W Form 812)
3. Condemnation Notice & Tender of Payment (SCDOT R/W Form 815)
4. Summons (SCDOT R/W Form 814)
5. Lis Pendens (SCDOT R/W Form 813)
6. Notice of Filing (SCDOT R/W Form 841)
7. Affidavit (signed by Team Member or Program Manager and Notarized) (SCDOT R/W Form 839)
8. Certificate of Mailing (SCDOT R/W Form 840/840A/840B)
9. Agreement & Request for Payment (SCDOT R/W Form 823)

Condemnations with unknown addresses and/or unknown claimants include the following:

10. Summons & Notice of Filing (SCDOT R/W Form 814A)
11. Affidavit & Petition for Order of Publication of Summons & Notice of Filing and Lis Pendens (SCDOT R/W Form 833) **OR** Affidavit & Petition for Order of Publication of Summons & Notice of Filing, Lis Pendens and Notice of Order appointing Guardian Ad Litem Nisi (Signed by Team Member or Program Manager and notarized) (SCDOT R/W Form 821)
12. Order of Publication
 - a. Unknown Claimants (SCDOT R/W Form 824)
 - b. Unknown Address (SCDOT R/W Form 824A)
13. Petition for Appointment of Guardian ad Litem Nisi
 - a. Consent of Guardian ad Litem Nisi (SCDOT R/W Form 825)
(MUST be signed by Attorney prior to turning into Headquarters Office)

14. Notice of Order appointing Guardian ad Litem Nisi (SCDOT R/W Form 826)
15. Order (appointing Guardian ad Litem Nisi) (SCDOT R/W Form 828)

B. Original Title Opinion

1. Final Opinion
2. Preliminary Opinion

C. Original Worksheet & Original Supporting Documentation

1. Agent's worksheet and contact information
2. Offer Letter
3. Any correspondence between Agent & Landowner

D. Agent's copy of appraisal with original photographs

E. Review Sheets

1. Contract Appraisal Review/Summary Review Sheet

F. Plan sheets with right of way obtain shaded (If narrative description is used in condemnation notice)

G. All additional forms with original signatures.

NOTE: The envelopes and green certified return receipt cards shall be completed and included in Package A.

J. SPECIAL INSTRUCTION FLAG (SCDOT R/W Form 994): (Printed on salmon colored paper)

The Special Instruction Flag must be used if any of the following situations apply:

1. Improved Tract
2. Partial Payment
3. Entire Tract
 - a. Includes uneconomic remainder
 - b. Includes County Tax Collector or Treasure (for unpaid taxes)
4. Special Payment Instructions
 - a. Hand deliver check
 - b. Hand deliver check and exchange for original deed
 - c. Mail check to someone other than landowner listed (Include appropriate information)
 - d. Mail check to different address (Include appropriate information)
 - e. Check to be picked up (Include appropriate information)

- f. Pay to Attorney's Escrow Account (Include appropriate information)
- g. Other
- 5. Wetlands Mitigation
- 6. Encumbrances
- 7. Significant Condemnation

Package B – Electronically Transmitted Copy of Package A

CHAPTER 9 - QUALITY CONTROL & QUALITY ASSURANCE MEASURES, PROCESS REVIEWS AND PROCESSING OF CLAIMS

The primary function of Quality Control Agents in the Region and Headquarters Quality Control Section is to verify the acquisition of every parcel of land secured. They must ensure that all property owners' interests have been acquired by Easement, Title to Real Estate, or Condemnation in the preparation for payment by the Claims Section or filing Notices of Condemnation with the Clerks of Court. They must also make certain all encumbrances to the property have been addressed with in an appropriate manner so the Department's rights and title in each parcel are secure. Headquarters Quality Control Agents also assemble special provisions for construction lettings.

The Quality Control Agents are also responsible for conducting Process Reviews on projects randomly selected by the Director of Rights of Way. The Quality Control Process Reviews are an important tool in the development of the Right of Way Training Program. Headquarters Quality Control Agents are also responsible for researching Departmental records to verify right of way upon request from property owners, surveyors, attorneys and department personnel.

The Claims Section works very closely with the Quality Control Section to ensure all necessary payments for land acquired are made in a timely manner. This section also processes all claims relevant to the condemnation of right of way and the recording of Titles to Real Estate and Easements. Personnel in this section are responsible for the filing and maintenance of all claims, correspondence and entering appropriate claims data into the Right of Way Data Management System (RWDMS).

I. **Quality Control Process**

Upon turn in of a project or tract by the Region, the Quality Control Agent assigned to check in the project or the tract will use the right of way copy of the road or bridge plans to ensure correct obtains and right of way widths, control access lines, improvements within the right of way and the need for permissions for slopes, pipe, present right of way, etc. are covered in the instrument(s). The Quality Control Agent will then proceed to check the project or tracts using the following steps:

- A. **Worksheets** are checked beginning with the title abstract section. The Quality Control Agent assures the chain of title flows from one property owner to another, ending with the landowner from whom the Department has an executed Easement, Deed, or Condemnation and that the correct name(s) has been transferred to the top of the worksheet. Title searches must go back a minimum of five (5) years and two (2) conveyances. If the current ownership of the property was derived by Will, then the Worksheet must show the probate package, date of death, date filed/opened and the date closed. If the probate is not closed, this must be noted. The Quality Control Agent also

ensures the Worksheet is completely filled out, including Mortgages, Judgments, Leases, Liens and Lis Pendens, taxes.

The Quality Control Agent must also check to see if appropriate documentation for contacts is noted and has been signed by the Agent working the project. This information is required for all projects. Any correspondence is attached to the back of the Worksheet ending with the most current date on top. On projects involving money (primary projects), he also checks to make certain the offer and any counter-offers have been documented. If the tract is being condemned, he must also verify the 100% drawdown has been offered to the property owner and that this has been documented on the Worksheet. The only tracts for which the 100% drawdown is not offered are those where the Department must condemn to clear title and must advertise for Unknown Claimants.

- B. **Instruments** are compared against the Worksheet to ensure property owners' names and mailing addresses are properly typed at the top of the Easement, Title or Permission. If the landowner is a business, the instrument must show the title of the person signing. The Quality Control Agent also ensures everyone with a fee ownership interest in the property has properly executed (witnessed and notarized accordingly) an appropriate instrument. If the property owners have signed differently from the way their names are shown in the Courthouse records, then an AKA (Also Known As) is used with their names. All property owners' names and addresses must appear on the instrument. The name on the instrument must be shown on the instrument as they took title to the property. If multiple instruments were used to get all of the landowner's signatures the phrase "See Companion Deeds From Other Landowners" or "See Companion Easement From Other Landowners" will be added to the top of the instrument. Each landowner must have a separate address unless they are husband and wife.

NOTE: When a trust is established for the benefit of another, the complete name of the Trustee and Trust must be included. (Example: James Monroe, Trustee under the Will of David Monroe for the John Monroe Revocable Trust).

Using the plans for the project and information from RWDMS, the Quality Control Agent verifies that the correct county, Project ID or (file and PIN number and project number), road, or route number, tract number and a general project description is on each instrument. (Also, if the project is a primary project, the date that the plans were signed by the Project Engineer should also appear on each instrument.)

The consideration amount on the instrument is compared to the appraisal review sheet or cost estimate sheet and the offer letter to assure the appropriate amount is being paid. If the amount on the instrument differs from the appraisal and offer letter, there must be an administrative adjustment letter to accompany that tract justifying the difference. An administrative adjustment may be approved provided justification exists. (See Chapter 7, Paragraph XVII, Section A for authority approval for administrative adjustments.)

On tracts where title issues are complex, a title certificate may be supplied by an attorney certifying title. The Quality Control Agent must compare the title certificate to the Agent's Worksheet to make sure the information is the same. He then compares the instrument to the plans to make sure the right of way shown is accurately described by using the list of acceptable special provisions or special provisions specifically for exhibit projects. He checks to make certain the survey stations are accurate, covering farthest points left and/or right of the survey centerline for each tract, or the nearest even survey station before and after the property lines on exhibit tracts.

On acquisitions with narrative descriptions the right of way is then checked closely for variable widths and transitions. If the plans show any side road right of way, triangular areas, improvements, relocated or construction centerlines, signs, or controlled-access lines, the appropriate special provisions should also be included in the instrument. If the consideration includes appraised damages or an uneconomic remnant, the corresponding special provision should be reflected in the instrument. The Deeds must also be checked for the correct derivation and tax map number. Derivations are not necessary on Easements, but the tax map number must be included on the instrument. Additional information to check in the "Special Provisions are (1) improvements – one story brick residence, two story frame dwelling, etc., (2) damages (from appraisal review sheet), (3) control of access.

When exhibits are utilized in right of way acquisitions, the exhibit should be prepared in accordance with the *Instructional Guide for Right of Way Exhibits*, the exhibit provisions are incorporated in the Easement, Title to Real Estate or Condemnation. The language in the provisions is necessary to ensure that there is no doubt as to what is being conveyed. The Regional and Headquarters Quality Control Agent should be familiar with this guide.

Permissions are secured for any work that must be performed outside the right of way (e.g. construction slopes, placing pipe, constructing catch basins or drop inlets, etc.) The permission must show all property owners' names and addresses and give the stations left and/or right of the centerline and a description of the work to be performed using the list of acceptable special provisions. The signatures of all persons claiming ownership of properties requiring permissions must be included; however, if all signatures are not secured, the Regional Right of Way Administrator will review the tract file, upon approval from Director of Rights of Way or his designee that signatures are adequate to grant permission and Regional Right of Way Administrator will prepare memo to file justifying signatures obtained are acceptable. Only Permissions executed by the current property owner is valid. A new permission must be secured if a permission was secured and the property is sold during negotiations since the permission rights do not transfer with the property ownership.

All “Negotiated” drive entrances, sodding, pipe placement, etc., agreed to as part of the settlement will be included in the Special Provisions in the Title to Real Estate or Easement.

- C. **Condemnations** are checked in the same manner to assure all parties with an interest in the property are named in the pleadings. Persons with a record fee interest are named as landowner of record. Mortgagees, Lessees, Judgment Holders, Tax Liens, or Personal Representatives of record are named as Other Condemnees. A Summons, Lis Pendens, Agreement and Request for Payment, Notice of Filing, Affidavit and Certificate of Mailing are also turned in for each tract with the Condemnation Notice to be filed with the Clerk of Court of the county where the property is situated. Where the property owner has requested 100% of the Department’s offer (100% Drawdown), the form Agreement for Payment of Entire Amount of Department’s offer of Just Compensation will be turned in with the Condemnation package.

When condemning heir property in order to clear title, additional forms must accompany the Condemnation Notice and Lis Pendens. These are a Summons and Notice of Filing, Affidavit and Petition for Order of Publication of Summons and Notice of Filing, Lis Pendens and Notice of Order Appointing Guardian ad Litem Nisi, Order of Publication, Petition for Appointment of Guardian ad Litem Nisi, Consent of Guardian and Litem Nisi, Order (appointing Guardian ad Litem Nisi), Notice of Order Appointing Guardian ad Litem Nisi, Affidavit and Certificate of Mailing.

The Regional Quality Control Agent checking the project must be certain that the letter to the County Transportation Committee requesting the authority to condemn on secondary projects has been signed by the Chairman of the County Transportation Committee approving condemnation. This letter must be sent to the Headquarters Quality Control office – Condemnation Coordinator. Upon determination of the first condemnation tract by the field right of way agent, the Regional Right of Way Administrator or Team Leader must notify the Headquarters Quality Control office – Condemnation Coordinator and Quality Control Manager to request associate counsel approval.

All condemnations by statute require a property closure. On primary projects, property closures are usually prepared by the Project Engineer handling the road and made a part of the plans. On secondary projects, property closures are not normally included in the plans, and the Agent is responsible for securing a copy of a plat of the property or a copy of the tax map showing the property. The closure must show the tract number, the property owner’s name, the amount of obtain, and the new right of way drawn and labeled.

The Quality Control Agent checking in the package checks the “Significant Condemnation” flag in RWDMS. This flag is set in RWDMS at the Regional level.

The condemnation package is submitted for turn in on all tracts condemned for in-house and on-call consultant projects. The package contains the pleadings, title certificates, worksheets and supporting documentation, appraisal, appraisal review sheets and plan sheets or exhibits. (See Chapter 8 Section V Item I for package assemblage.) The Associate Counsel's office will complete the pleadings for filing with the Clerk of Court's Office and serve the notices on the Landowners and Other Condemnees and advertise when necessary.

The Quality Control Agent will use Package A and make one (1) copy of the Condemnation Notice, worksheet, first page appraisal review sheets or last page of appraisal with dollar amount, one (1) copy of the 100% drawdown form and one (1) copy of the SCDOT R/W Form 812 and forward the copies to the Claims Section to request the check, upon approval to proceed. The agent will then mark the condemnation Package A as the "ROW File Copy". The agent will forward Package A to the Condemnation Coordinator to hold until the check(s) are received. This copy will remain in the file until the clocked copy is received from the associate counsel.

Note: If the benefits exceed the damages no payment will be made at this time. Package A will be marked and forwarded to the Condemnation Coordinator.

D. **Appropriate forms and/or paperwork** required for processing is reviewed by the Quality Control Agent as a part of the turn in process.

1. **Releases and Agreements** - When the Worksheet and/or Title Certificate shows a Mortgage, Lease, Judgment*, Lien* or Lis Pendens which has not been waived in accordance with the provisions contained in Chapter 8, Section II, the Agent secures a Release from the appropriate person, bank, or corporation. The Agreement or Release is secured in accordance with the appropriate encumbrance and turned in with the tract. When the Agreement is used, the name of the interest holder will appear on the check with the landowner's name. When the release is used, only the landowner's name(s) will appear on the check. If the acquisition is a total take, the Agreement shall be used.

***NOTE:** Judgments and Liens waived only at the discretion of the Director of Rights of Way.

2. **SCDOT R/W Form 812 (Request for Social Security Number or Taxpayer Identification Number and Certification)** - A SCDOT R/W Form 812 with Project, File. PIN or Project ID, County, Road/Route, Tract Number, amount being paid, tax number, acreage, landowner's address showing the property owner's Social Security Number or Taxpayer Identification Number and percentage of ownership must be turned in with each tract where money is being paid. It is also required with each condemnation, even condemnations on secondary projects, if the Agent can obtain one. In cases of multiple ownership, the percentage **MUST** add up to 100%. This form is necessary for the Comptroller

General's Office to issue a Form 1099S to the property owner and the Department of Revenue. If the landowner refused to sign a SCDOT R/W Form 812, the form should still be included with all known information and Agent's documentation on bottom of form that landowner refused to sign.

NOTE: In the event a payment is made to a landowner's attorney's escrow account, the SCDOT R/W Form 812 is not necessary. A W-9 will be required from the Attorney or his/her firm, unless the attorney is currently on the Comptroller General's Vendor System.

3. **Improvements** - When improvements are shown within the right of way, the Quality Control Agent should make certain that a "Description of Improvements" SCDOT R/W Form 845 is turned in with the tract. This form is provided to the Property Management Section.
4. **Uneconomic & Economic Remainders** - When the Department acquires a remainder, the Quality Control Agent will forward the surplus property package and SCDOT R/W Form 845 to the Property Management Section so that property can be indexed by the Property Management Section and disposed of at a later date. (See "Liquidation of Uneconomic Remainders" in Chapter 7, Item IX) The index number will be included in RWDMS when processed by claims and recorded on the Data Sheet when the Data Sheet (Remarks Section) is processed for letting/correction.
5. **Wetlands Mitigation Tracts** – A file will be established by Property Management for each mitigation tract acquired (whether it is a wetland bank or project specific tract) to maintain the pertinent documents. Headquarters Quality Control will ensure project specific tracts are recorded on the plans and forwarded to the Claims Section for payment. The Wetlands Mitigation tracts will be inventoried in Property Management to ensure their knowledge of the existence of the tract and forwarded to the Claims Section for payment. If the original instrument conveying the right of way for a particular project also included land for mitigation, the original instrument will remain in the project folder. The Property Management file will be established using a copy of the instrument and Restrictive Covenants.
6. **Agent's Statement** (SCDOT R/W Form 832) - This form is required for each tract secured by title and is to be signed by the Agent.
7. **Offer Letters** (SCDOT R/W Forms 881, 882 and 883) - Copies of all written offer letters must be turned in with the turn-in package and the offer letter must match the appraisal or the cost estimate. If the appraisal contains money for damages, the offer letter must separate the land and damages amount.

NOTE: Damages are not reportable.

8. **Property Taxes:** Instruments secured for Entire Tracts after taxes have been assessed (Generally, Sept 30 of each year) records must be checked to see if taxes have been paid. If not, the worksheet must be noted that the Treasurer/Tax Collector's office is to be added to the check. In cases of Condemnation, the Treasure/Tax Collector's office is to be made a party as other condemnee. In partial takings where the taxes have not been paid (assessed but not delinquent) the Treasure/Tax Collector will not be included on the check or named as a party in the condemnation. However, in the event the taxes have not been paid by January 16th, in either an entire taking or partial taking, taxes are considered delinquent and the Treasure/Tax Collector's office will be included on the check or named as a party.
 9. **Moving Items List (SCDOT Form 995)/Removal and Disposal List (SCDOT R/W Form 995B)/and Fencing and UST Quantities (SCDOT R/W Form 995C).** These lists are to be turned in to the Field Right of Way Administrator or designee when there are moving or demolition items, or necessary liquids and soils pertaining to the removal of UST's. The Chart "Dates for Assembling Information on Construction Obligations for Federal Fiscal Year" should be observed to electronically submit this information to Right of Way Headquarters Office. Headquarters will enter data into RWDMS and forward onto Preconstruction Support and the RPG. If there are no moving items for a particular road, the Status of Right of Way form has a slot that must be appropriately marked.
 10. **Final Status of Right of Way Form (SCDOT R/W Form 998)** – The Final Status of Right of Way Form is to be filled out by the Agent and signed by the Regional Right of Way Administrator prior to total turn in of that particular project. On projects that are turned in on a partial turn in basis, a partial turn in form will be submitted for each turn in. A final turn in form (SCDOT Form 998) is submitted at project acquisition completion.
- E. **Projects that are inside the Town or City Limits** require a Municipal Agreement (SCDOT R/W Form 807) signed by the Mayor, the Council, and the Clerk granting the Department the authority to improve a particular road. The Quality Control Agent/Letting Coordinator verifies that the Municipal Agreement is turned in for a project inside the Town or City Limits.
- F. **Recording Right of Way Data on Plans** - Right of Way personnel records/updates data on the Right of Way Data Sheet using RPG/Traffic Engineering server. Changes or revisions are made to the property owners' names, if necessary. The "date acquired" and "type of instrument" secured is recorded in the proper columns on the Right of Way Data Sheet. Information may be recorded in the "remarks" column such as "includes uneconomic remainder – Index No. 40-101". In cases of Present Right of Way, a note will be placed on all Right of Way Data Sheets, when new construction work is being

performed within the present right of way limits. In other cases, a Dedicated Note will likewise be placed on the Right of Way Data Sheets.

All changes are handled as revisions with revision notes being placed on the Right of Way Data Sheet, indicating the date, the tract number affected and specifically identifying the type revision and will include initials of person making the revisions.

Once the changes have been made to the Data Sheet, The Regional Production Group/Traffic Engineer is notified that the Right of Way Data Sheet is 100% complete or if there are pending tracts, the data sheet will be recorded with a “pending” status. A second recording on the Right of Way Data Sheet is necessary once all “pending” tracts have been secured. In the event of a Title to Real Estate or Easement superceding a Condemnation Notice, there may be a third recording by Right of Way Personnel on the Right of Way Data Sheet.

On County projects when the County has acquired the right of way in the County’s name and in turn deeded the right of way over to the Department, an annotation will be made on the data sheet with a note stating that the right of way was acquired by the County. Also, an additional line will be added to the data sheet with the instrument information of the instrument from the county to the department.

- G. **Right of Way Data Management System** - All right of way personnel are responsible for ensuring the appropriate data is entered in their respective areas of responsibility. The regional quality control agents should ensure all necessary tract data (Acquisition, Relocation, Appraisal, Condemnation, etc.) is entered prior to forwarding the turn in package to headquarters. Headquarters quality control, Appraisal and Relocation staff ensures the appropriate data has been entered.

II. Project Descriptions

At letting, a project description prepared by the Headquarters Quality Control Agent/Letting Coordinator. The information on this sheet consists of the County, Road or Route Number, File and/or Item Number, Project Number, Engineering District Number, PIN (Project ID) and a brief description of the main road or route.

NOTE: If the project is within three (3) miles of the town or city limits, it is considered to be “adjacent to” the town or city, which should be used as part of the description.

III. Special Provisions for Lettings

As a project is let to contract, Headquarters Quality Control Agent/Letting Coordinator compile all Special Provisions from the project for distribution to the appropriate County Tax Assessor, District, Construction, and Maintenance Offices briefly rechecking the instruments of conveyance against the original construction plans to make certain all necessary rights of way and construction permissions have been secured and each instrument has been recorded

appropriately on the plans. This final check ensures all necessary instruments have been secured prior to the distribution of the Special Provisions.

NOTE: Projects constructed inside the Town or City limits will also have a Municipal Agreement (SCDOT R/W Form 807) in the folder. The original is filed in the Vault with all the instruments for the project.

Letting Coordinator must then prepare an alphabetical listing using RWDMS Standard Reports for each project of all landowners from whom right of way or construction permission was acquired. This listing, along with a set of the construction plans, is provided to the Tax Assessor's Office of the County where the project is located.

NOTE: A correction to the provision is required when a document is received that caused the alphabetical list to change after the project is let and reported. The appropriate offices are notified of the change.

All conveyances are indexed in the Right of Way Grantor Index system of the RWDMS. Ensuring all applicable data is entered into the grantor index is the final step in the preparation of the Special Provisions.

IV. Municipal Agreements (SCDOT R/W Form 807)

When copies of plans are submitted to Right of Way for acquisition and the project or part of the project is inside the Town or City limits, a review is made to see if the Project Engineer secured and submitted the original Municipal Agreement to Right of Way. The Municipal Agreement must be signed by the appropriate authority SC Code of Laws, Section [57-5-820](#), generally the Mayor, the Council and the Clerk of the appropriate Municipality. If the Municipal Agreement is not in the right of way files, the Program Engineer is contacted to have the original Municipal Agreement forwarded to Right of Way. The Program Engineer is responsible to ensure the person signing the form is authorized to sign.

V. Process Reviews by Quality Control Staff

As stated in the Introduction to this manual, the Right of Way training program is continually developing and expanding. This training may be anything from a simple "refresher" course to a course intended to strengthen any areas the Right of Way Management feels needs improving. In order to determine any problem areas in the total acquisition procedure, the Director of Rights of Way has implemented a Quality Control Process Review. The Process Review is conducted on a random basis on projects selected by Right of Way Management. This review covers all aspects of right of way acquisition and is conducted by the Review Team.

The Process Review is also helpful in improving the overall efficiency of the Right of Way program. The acquisition of right of way, as described in this and the other three right of way manuals, (appraisal, relocation, and property management) is a detailed and sequential in process. This Process Review helps assure that proper procedure is followed and that there is no unnecessary time lag between any of the stages of acquisition. It may also show some steps in

the acquisition process, which may be combined with others or eliminated altogether. The Right of Way organization is always striving for improved efficiency and quality. The Process Review is a useful tool in achieving these goals. A summary of the Process Review procedures follows:

- A. **Preliminary Contacts** - The Quality Control Agent verifies the date of the preliminary contact is documented on the Agent's Worksheet (SCDOT R/W Form 809). He also makes certain the brochure was given to the landowners on the projects. Construction permissions should be secured during the preliminary contact. The worksheet must document that the Agent thoroughly explained the necessary permissions to the property owner and that either the property owner signed or that property owner refused to sign. If property owner did not sign, then the permissions should have been converted to right of way or eliminated. The request for permission conversions as well as any property line changes should be documented. This should include the date and to whom the request was submitted. Improved tracts are identified on the preliminary contact, and the Relocation Manager should have been promptly notified of these. The SCDOT R/W Form 10 (a list of tracts involving Relocation Assistance) should be compiled as the agent makes the preliminary contacts. The Quality Control Agent will verify the SCDOT R/W Form 10 was submitted promptly after all preliminary contacts were made. The Agent should also have made an attempt to secure a SCDOT R/W Form 812 (SSN or FEIN) from the property owner at this time.
- B. **Negotiations** - Thorough documentation of negotiations is of utmost importance. This information will aid the Department's Legal Staff/Associate Counsel if a tract should involve condemnation. It is also useful to the Agent as well as Right of Way Management should any problems or questions arise after the closure of negotiations. Presentation of the written and verbal offers must also be documented on the Worksheet. This should include such specific details as the date the offer was made, the amount of the offer, the amount of land being acquired, the improvements, if any, being acquired, and whether any damages were included. The Worksheet should also offer documentation to indicate the landowner's reaction to the initial offer and whether there was any counter offer.

All additional contacts should be documented on the Worksheet. These should always include any items discussed with the landowner as well as any counter offers made. The Quality Control Agent will verify that the date the title was signed, or the date that condemnation was recommended, is documented on the Worksheet. If any administrative adjustment was necessary to settle the acquisition, then all relevant information (by whom approved and justification) should be included on the Worksheet. If condemnation was necessary, then the date of the offer of the 100% drawdown must also be documented. The Quality Control Agent will determine if all pertinent details of the negotiation have been properly documented.

- C. **Review of Titles to Real Estate and/or Condemnations** - The Quality Control Agent will randomly select Titles to Real Estate and Condemnations to make certain all information contained therein is correct. This will include the project identification information (i.e. County, Road/Route Number, Project ID) found at the top of the Title to

Real Estate or in the body of the Condemnation. On Federal Projects, the Project ID must match the Project ID number on the approved PR2. The review will include verification of the survey stations, consideration, acreage acquired, improvements (if any), damages (if any), control of access (if any), relocated centerline (if any), remnant (if any), and description of acquisition or exhibit. If this review shows the consideration on the Title to Real Estate is different from the appraisal, then there must be an Administrative Adjustment in the file to explain the difference in the settlement amount.

On a random sampling of Title to Real Estate, the Quality Control Agent will also make certain the instrument is properly signed, witnessed and notarized. He will also review the title abstract on the Worksheet and the Title Certificate, if applicable, to determine if the derivation is correct. He will also review these for any encumbrances to the property. A waiver as provided in Chapter 8, Section II or a properly executed Release or Agreement is required for Titles or the encumbrances will be made a party to the condemnation action as “Other Condemnees”.

- D. **Appraisals** - The Quality Control Agent will review the Appraisal file on the selected project to verify the following information. The date the plans were submitted to the appraisal section should be noted in the file as well as the date the PR2, if applicable, was approved. The date of receipt of all “first sheets” should also be documented in the file.

If the project was handled by a fee appraiser, then the request for advertisement and letters of interest should also be in the file. The date that bid proposals were received and the minutes of any meeting to discuss the proposals must be documented also. A Pre-Appraisal Conference should also have been made prior to a contract being signed with a fee appraiser, and the date the contract was signed should also be documented. The appraisal file should also document the amount and date of any payments to the fee appraiser. It should also be documented when the Post Appraisal Conference was held.

The Quality Control Agent will also compare the date an appraisal was received to the date it was due. If an appraisal was late, it should be noted whether a penalty was assessed or an extension was granted. If any corrections were requested, it should be documented whether they were necessary, then it should be documented whether they were returned within the 15-calendar day time limit. See Appraisal Manual for approval signature thresholds. All information relevant to the appraisal procedure should be thoroughly documented in the appraisal file.

- E. **Relocation Assistance** - The Process Review will also include a review of the Relocation Assistance file on the selected project. The Quality Control Agent will verify the following information is properly documented in the file. The date the SCDOT R/W Form 10 was submitted to and received by the Relocation Manager, as well as a transmittal memo, should be included in the file. The Relocation Worksheet is reviewed to see if the date of the initial contact, date and amount of the relocation offer and the delivery of the brochure are documented. The Agent should also have thoroughly

explained the Relocation Program as well as the eligibility requirements to the displacee. The worksheet should also show whether the occupant was a tenant or the owner.

The file will also contain all information used to compute the amount of the offer. If the occupant was a tenant, the file should include a copy of the rent receipt for the new rental property as well as verification of the tenant's rental payments prior to displacement. If the tract was owner-occupied, the file must include all data used to compute the Replacement Housing Payment. For businesses, the file should contain documentation of the inventory of personal property to be relocated as well as computation of actual re-establishment expenses or in lieu of moving expense payments. The Agent should also have informed the displacee that he may be required to pay fair market rent on the property while in occupancy.

In some cases, the Agent must utilize Last Resort Housing. If the amount calculated for the relocation replacement housing payment exceeds \$31,000.00, or if the computed rental supplement is more than \$7,200.00, then the Department must use Last Resort Housing in order to satisfactorily relocate the displacee. If this option must be utilized, then the relocation file should contain a statement by the Relocation Manager or Regional Right of Way Administrator justifying the need for it. Any information relevant to the decision to use Last Resort Housing should also be documented in the file.

The Quality Control Agent will verify that the 90-day and 30-day vacate notices were issued at the proper time and entered in RWDMS. There should also be verification in the file that the move was completed and all of the appropriate forms should be signed and included. The relocation file should provide documentation of all events relevant to each tract (e.g. preliminary and follow-up contacts with displacees, inspection of property to be acquired, and search for and inspection of replacement housing). Verification should be made that items on the inventory list were not paid for in the appraisal or negotiations.

- F. **Surplus Property** - As part of the Process Review, the Quality Control Agent who reviews the instruments of conveyance, should note any improvements and uneconomic remnants acquired. He must verify the surplus property was added to the Department's inventory and a copy of the claim form reflecting payment was forwarded to Property Management. All of the improvements acquired, as well as their proposed disposition, should have been reported to the Relocation Manager. The Relocation Manager will advise the Property Management Manager when the improvements are vacant.

Based on the notification that the property is vacant, the Property Management Manager may then advertise and sell those improvements, which can be moved in a timely manner without interfering with the project construction schedule. The Quality Control Agent will verify all documentation relevant to the advertisement and sale of improvements is included in the surplus property file. He will verify proper advertisement of the sale as well as review the opening and award of bids received. He will review the Charge Memorandum and Departmental Transfer forms to ensure the proceeds from the

sale were properly credited to the appropriate charge code. He will also determine whether the improvement was sold and removed within the specified time, or demolished under the construction contract.

The Property Management Manager is also responsible for the sale of land deemed as surplus by the Department. He will obtain all necessary approvals from Departmental officials prior to the sale of any such parcels, including Commission approval to convey the parcel. After a review of the public records, he will determine whether the land may be sold as assemblage to an adjoining landowner or whether it is developable on its own. If there was federal participation in the acquisition of the land, he will obtain a Categorical Exclusion form from the Environmental section, and if the parcel was acquired as part of a Federal Aid project, additional authorization from the Federal Highway Administration is required prior to disposal of the property. The conveyance must be reported to the Commission after the transaction is completed. The Quality Control Agent will verify that all of the above information is included in the surplus property file. He will also make certain the advertisement and sale of the land were handled properly and the proceeds were credited to the appropriate charge code and funds distributed appropriately.

- G. **Payments** - The Process Review also may involve a review of the payment file for the project. He will make certain that payment was promptly made and there were no unnecessary lapses of time in the payment process. For land acquired by Title to Real Estate, the Quality Control Agent will verify all dates pertinent to the payment process are properly logged in RWDMS and a copy of all paperwork necessary to process the claim for payment are included in the file. He will review the date the deed was submitted to the Claims Section, the date the claim was typed, the date it was submitted to Accounting, the date the check was received from Accounting, the date of the check letter and the date the check and Landowner Opinion Survey were mailed. All of this information should be included in the payment file.

For land acquired by condemnation, the Quality Control Agent will also verify much of the same information. He will review the date that each condemnation was submitted to the Condemnation Section and the date a copy of the condemnation was submitted to Claims to request a filing fee and either the 100% Drawdown or money to be deposited with the Clerk of Court. He will also verify the date the claim was submitted to Accounting, the date the check was received from Accounting, the date the check(s) were given to the Condemnation Section and the date the condemnations were filed with the Clerk of Court.

- H. **Recording Documents** - The Quality Control Agents will compare the dates the instruments were delivered to the RMC Offices for recording and the dates the recorded instruments were returned to Headquarters.

VI. Right of Way Research

Quality Control Agents in the Headquarters Quality Control Section are also responsible for researching departmental records to provide present right of way verification for property owners, land surveyors, attorneys or departmental personnel. To facilitate this research, the Quality Control Agent should obtain as much information as possible from the individual inquiring about the right of way (e.g. county, road number, beginning and ending point of the section of road in question and title information for the land involved). For secondary roads the additions to the State Highway System must be reviewed to determine whether the road was taken into the system under the Beltline Act or the Construction Act. If the road was taken in under the Beltline Act and no improvements have been made to the road since it was taken into the system, then the agent must refer the person inquiring to the county maintenance office. In such cases, the Department claims as right of way by prescription of what it maintains (e.g. ditch to ditch, edge of pavement, back of sidewalk to back of sidewalk).

If the secondary road was taken into the State Highway System under the Construction Act, then the Quality Control Agent must verify all addition numbers applicable to the road in question. Right of way information could be filed in the Right of Way Vault under any of these numbers as well as the secondary number itself. If the right of way is uniform on the road being researched, or if the individual inquiring knows from whom the Department acquired the right of way, then a verbal verification may be given. Most rural secondary roads have a uniform width right of way, while those in cities may sometimes be variable in width.

If the right of way inquiry involves a primary route, then the Quality Control Agent must review all construction plans listed in Plan Library. By comparing the termini and mileage listed for each project against a map of the area involved, the Quality Control Agent will be able to determine which set of plans covers the section of road they need. After the plans have been located, the Quality Control Agent may be able to locate the property in question. As with secondary roads, if the right of way is constant or if the Quality Control Agent knows from whom the Department acquired the right of way, he may give a verbal verification. However, primary routes typically have a variable width right of way. It is very important to provide accurate information to those individuals requesting present right of way verification. Therefore, the Quality Control Agent should not attempt to provide a verbal verification if there is any question as to the section of road, landowner, or right of way width involved. The agent should review all available information and resources to include but not limited to Integrated Transportation Management System (ITMS), county GIS applications and Property Management records when researching a right of way request.

NOTE: There are sections of road that were acquired for projects on roads adjoining State roads, but are not in the State Highway System. For example, small portions or “tabs” of right of way may be acquired on a County road at an intersection to ensure safe alignment with the intersecting road. SCDOT may have an interest in these tabs but do not maintain the road as a whole.

VII. Processing of Claims

The Claims Section is responsible for the preparation of claims for payment for all costs associated with the acquisition of right of way. Upon receipt of Titles to Real Estate, Easements and Condemnations, etc. for payment, the procedures detailed below are followed:

- A. Preparation and Approval of Claim Form (SCDOT R/W Form 808)** - A Claim Form (SCDOT R/W Form 808) showing all relevant tract information (landowner's name and address, tract number, consideration, acreage, tax map number, date of instrument, vendor number, project information, i.e., PIN, Road/Route, County, File and Project Number / Project ID, the Amount, Charge Code, Activity Code and Objective Codes) is entered in the appropriate section of the claim. This form is prepared in triplicate for each unimproved tract requiring payment. Improved Tracts are prepared in quadruplicate on pink paper signifying their priority for processing. For claims generated in-house, two (2) copies of the instrument are made for each tract. One (1) copy is stamped "Certified True Copy" for the file and one (1) copy is for Accounting or State Infrastructure Bank (SIB) Office. In cases of an improved tract, an additional copy of the instrument is made and provided to Relocation Manager. Claim information is logged in the RWDMS Claims Activity. Once the appropriate signatures have been obtained on the claim, a copy of the SCDOT R/W Form 812 (Taxpayer Identification Number) is forwarded to Accounting or SIB Office for the issuance of a check. The original instrument is stamped "Payment Requested" and dated the same date as the claim. The second copy of the claim, the "certified copy of the instrument" and the supporting documentation is held in the file until Accounting or SIB Office notifies the Claim Section that the check is prepared.

NOTE: Taxpayer Identification must be verified prior to processing claim.

When the check is received, the name(s) on the check and the check amount are verified against the claim. The check number, document number and the date received from Accounting or SIB Office are logged on our copy of the claim. The check information is also entered in RWDMS. A transmittal letter to the landowner(s) is prepared when the check is payment for right of way by Title to Real Estate or Right of Way Easement, etc. with copies mailed to all payees on the check. A Landowner Opinion Survey (SCDOT R/W Form 501) is included with the transmittal letter. A copy of the transmittal letter is also forwarded to the Agent for his records. One (1) additional copy is forwarded to the Relocation Manager on an improved acquisition. The "Certified True Copy" of the instrument is provided to the Quality Control Section for inclusion in the project file. The green (file) copy of the transmittal letter is stapled to the Claim form (SCDOT R/W Form 808) for inclusion in the payment file.

Preparation and Approval of Claim Form (SCDOT R/W Form 608) - A miscellaneous claim is prepared in duplicate for instruments that require recording with the county office at the same time the acquisition payment is requested. A separate claim is prepared for individual tracts. Miscellaneous information is logged in the RWDMS – Claims Activity – Miscellaneous Payments. Once the appropriate signatures have been obtained on the claims, a copy is forwarded to Accounting or SIB Office. The original

instrument is held with the second copy of the claim until the check is received from Accounting or SIB Office. Once the check is received, the claim is pulled, the original instrument and check is mailed to the appropriate county for recording. The check information is entered in RWDMS. The date the instrument is mailed is entered in RWDMS Acquisition Activity – Documents Tab (Document to ROD).

- B. Claims for Condemnations** - If the Offer of Just Compensation is to be filed with the Clerk of Court, a Claim Form 808 is prepared in triplicate for the approved appraised amount. The payee for the claims is the Clerk of Court for the appropriate county or if the Landowner requests a 100% drawdown, the Claim Form is prepared in the landowner(s) name. The appropriate claim information is entered in RWDMS. Once the appropriate signatures have been obtained, a copy of the claim is submitted to Accounting or SIB Office for the preparation of the check(s). Upon receipt of the check(s) from Accounting or SIB Office, the check(s) is verified against the claim information: the check information is entered on our copy of the claim and in RWDMS and provided to the Condemnation Coordinator for transmittal to Associate Counsels for filing with the Clerk of Court.
- C. Claims for Settlement or Verdict of Condemnation Cases** - When settlement or verdict on a condemnation case is achieved by Legal Counsel/Associate Counsel, a settlement letter prepared by the attorney outlining the conditions and justification of the settlement along with who authorized the settlement is transmitted to the Director of Rights of Way for his concurrence. After his approval, the letter is forwarded to the Claims Section to process the claim in accordance with the letter. Settlement or verdict information is annotated on the left side of the clocked Condemnation Notice. This annotation includes the type of settlement or verdict information, attorney letter date, check number, amount, and the attorney's name. Settlement or verdict claims are processed in the same manner as outlined above under Item C, in accordance with payment instructions from the attorney.

All miscellaneous claims for legal services for condemnation cases must be submitted on Claim Form (SCDOT R/W Form 608), and must have the Regional Right of Way Administrator or Team Leader's written approval. All supporting data for the services must be attached to the claim in order for it to be processed. These claims are processed in the same way as other miscellaneous claims being processed and transmitted to Accounting with the check going to the Associate Counsel or Legal Division, when applicable.

VIII. Recording Instruments with the Register of Mesne Conveyances (RMC) / Register of Deeds (ROD)

Effective April 1, 1988, with the repeal of S.C. Code of Laws, Section [57-5-560](#) and Section [30-7-10](#), all Easements and Titles to Real Estate are recorded with the RMC/ROD Office in the appropriate counties. The Claims Section is responsible for preparing the transmittal letter and sending all documents required to be recorded to the county offices. The Claims Section enters the date in the RWDMS when the instrument(s) are mailed to the RMC/ROD Office for

recording. The date the instrument is mailed is entered in RWDMS Acquisition Activity – Documents Tab (Document to ROD). Once the instrument(s) are returned from the RMC/ROD, the Quality Control Section enters the recording Book and Page Number in the RWDMS and files the originals in the project folder. Prior to April 1, 1988, all documents were filed in the vault of the Department of Transportation’s Rights of Way Section in Columbia, S.C. and may or may not be recorded in the county’s RMC/ROD Office.

On “C” projects, the Quality Control Agent will make a “Certified True Copy” of each instrument for the file until the originals are recorded with the county office. The original instruments are provided to the Claims Section for a miscellaneous claim for the recording fee.

On all projects, except “C” projects, the Claims Section prepares the “Certified True Copy” of each instrument as part of the payment process. As each check for the recording fee is received, the Claims Section will attach the check to the appropriate instrument(s) and mail them to the county office for recording. After the original recorded instrument(s) are returned by the county offices, they are filed in the project file, replacing the certified true copies.

CHAPTER 10 - CONDEMNATION PROCEDURES

The Department is responsible for ensuring Condemnations Notices on a project are filed with the Clerks of Court for the appropriate county and effecting service on the landowners and other condemnees by certified mail or personal service. Quality Control Agents in the field check and perform the quality control process prior to the condemnation packages being turned into Headquarters. The original condemnation pleadings and appropriate copies are prepared by field personnel and On-Call Consultants and submitted to Headquarters for the final quality control review.

The Associate Counsels hired for condemnation cases or other legal work requires pre-approval of the Attorney General's office. The field should notify the headquarters Condemnation Coordinator as soon as they are aware of the first condemnation for a project. This will allow time to secure approval from the Attorney General's office and keep the project on schedule.

Note: Condemnations requiring advertisement in the newspaper will contain a narrative description instead of the exhibit due to the cost required to advertise the exhibit as part of the Lis Pendens.

I. Preparation for Filing

The South Carolina Eminent Domain Act, South Carolina Code of Law, Section [28-2-280](#), requires reference to the project plans showing the property to be taken. The Condemnation Notice states the plans may be inspected at the local maintenance office and also gives the address. These plans must be on file at the local maintenance office before the Condemnation Notice is served on the landowner and any other condemnees. The Headquarters Quality Control Condemnation Coordinator provides a copy of the complete set of plans and property closures (without cross sections) to the local maintenance office in the county where the property is situated for all projects involving condemnation when the first condemnation is processed for filing.

The condemnation package for every tract condemned must have a Condemnation Notice and Tender of Payment, a Lis Pendens, a Summons, an Agreement and Request for Payment, Notice of Filing, Affidavit and Certificate of Mailing, Envelopes and certified green cards. Quality Control Agents ensure accuracy of each tract (as discussed in Chapters 8 and 9). Copies of the Condemnation Notice, Worksheet, Title Certificate and the Appraisal Review Sheet or the last page of appraisal with dollar amount are made by Headquarters Quality Control Agents and provided to the Claims Section to request payment of the amount of just compensation to be deposited with the Clerk of Court's Office. If the landowners have requested a 100% drawdown of appraised amount of just compensation, the Agreement and Request for Payment of Entire Amount of Just Compensation Form and the SCDOT R/W Form 812 (Social Security Form) must accompany the package for turn in. A copy of the 100% drawdown form and the SCDOT

R/W Form 812 must also be provided to the Claims Section for payment to be requested for the landowners and other condemnees. The Quality Control Agent retains one (1) copy of the condemnation package as the Department's record marked as the "ROW File Copy". Significant Condemnation Cases will be appropriately marked in the Right of Way Data Management System (RWDMS) by regional office and included on the Special Instruction Flag, (SCDOT R/W Form 994).

- A. **Unknown Claimants** - When unknown claimants are involved in a condemnation, additional forms must be included in the condemnation package and filed with the Clerk of Court. These forms are the Summons and Notice of Filing (replacing the Summons); the Affidavit and Petition for Order of Publication of Summons and Notice of Filing; Lis Pendens and Notice of Order Appointing Guardian ad Litem Nisi; the Order of Publication; the Petition for Appointment of Guardian ad Litem Nisi; the Consent of Guardian ad Litem Nisi; the Order (appoint guardian ad Litem Nisi); and the Notice of Order of Appointing Guardian ad Litem Nisi. Tracts involving Unknown Claimants must be advertised in a local newspaper for three (3) consecutive weeks in the county where the property is situated. The Associate Counsels are responsible for having the appropriate forms advertised in the newspapers and filed with the Clerks of Court. The Summons and Notice of Filing, the Lis Pendens and the Notice of Order Appointing Guardian ad Litem Nisi are the only forms from the condemnation package that are advertised for Unknown Claimants.

Note: The field Right of Way Agent will already have obtained the signature on the Consent of Guardian ad Litem Nisi form from the pre-approved list of attorneys per county that have already agreed to serve as Guardian ad Litem.

- B. **Unknown Addresses** - When there are landowners or other condemnees with unknown address, three (3) additional forms must be included in the condemnation package and filed with the Clerk of Court. They are the Summons and Notice of Filing; the Affidavit and Petition for Order of Publication of Summons and Notice of Filing and Lis Pendens; and Order of Publication. The Lis Pendens and Summons and Notice of Filing are the only forms from the condemnation package that are advertised for Unknown Addresses.
- C. **Filing With Clerk of Court** - After the check for the offer of just compensation has been received, the original condemnation package and one copy of all forms in the package, are submitted to the Associate Counsel to be filed in the appropriate county. The condemnation is "clocked in" by the Clerk of Court and assigned a Civil Action number. Tracts with Unknown Claimants, the Clerk of Court's signature on the Order (appointing Guardian ad Litem Nisi) and the Order of Publication is obtained at this time. The Clerk of Court retains the original condemnation package and the Associate Counsel sends a copy of the clocked documents to the Headquarters Right of Way Administrator and to the Regional Right of Way Administrator/Designee.
- D. **Advertising For Unknown Claimants & Unknown Addresses** - If the tract must be advertised for Unknown Claimants or any Unknown Addresses, the Associate Counsel

ensures the case number is shown on the Summons and Notice of Filing, the Lis Pendens and the Notice of Order Appointing Guardian ad Litem Nisi (for Unknown Claimants only). These forms are delivered to a local newspaper in the county where the property is situated and they must appear in the Legal Advertisements section of the newspaper once a week for three consecutive weeks. The newspaper's Legal Advertising office will then forward a tear sheet (copy of the advertisement as it appeared in the newspaper) as well as an affidavit stating the dates the advertisement appeared to the Associate Counsel. The Associate Counsel forwards the original and a copy to the Clerk of Court requesting both the originals and the copies are clocked in and that the copies are returned to them. The Associate Counsel then forwards the clocked-in copies to the Department. The clocked-in copies are attached to the condemnation package previously given to the Quality Control Section for inclusion in the project file.

Note: Condemnation of a federal entity such as the Internal Revenue Service, (IRS), Farm Service Agency (F/K/A Farmers Home Administration) or Small Business Administration, the condemnation **must** include a copy to the following: 1) US Attorney for the District of South Carolina, 1441 Main Street, Suite 500, Columbia, SC 29201 and 2) Attorney General of the United States, U. S. Department of Justice, 950 Pennsylvania Ave, N.W. Washington, D.C. 20530-001.

II. Serving Condemnations

After the Associate Counsels have filed the condemnation pleadings with the Clerks of Court, they serve the landowners and other condemnees by certified mail, personal service or other means permitted by law for service of a summons in a civil case and provide notification to the Department of the date of filing. The Associate Counsels will send the clocked condemnation notice and other pleadings to the Department. The Quality Control Agents will enter data from the clocked condemnation notice and received date into RWDMS System. This information includes the assigned case number, the filing date and the date that the condemnation was mailed to the landowner and other condemnees. The clocked-in condemnation notice is included in the project folder replacing the one marked "ROW File Copy".

III. Offer Accepted After Notice Served

Upon being served with the condemnation notice, the landowner may decide to Accept the Department's Offer of Just Compensation. If so, the landowner will return the Agreement and Request for Payment Form included in the condemnation package. The Associate Counsel will notify the Right of Way Designee that the landowner is in agreement with signing for the offered amount. The appropriate firm or agent will prepare a Title to Real Estate or Easement, whichever is applicable and deliver same to the Associate Counsel who will then prepare a Stipulation of Dismissal and/or Consent Order of Dismissal. If the landowner did not previously sign a Request for Social Security Number or Taxpayer Identification Number and Certification (SCDOT R/W Form 812) and there is a monetary consideration, then a signed SCDOT R/W Form 812 is secured at this time. Also, if there were any other condemnees, the Associate Counsel secures the appropriate releases or addresses these interests as referenced in Chapter 8 – Section II - Clearance of Subordinate Interests.

The Associate Counsel files the original Stipulation of Dismissal and/or Consent Order of Dismissal and Title to Real Estate or Easement with the Clerk of Court to remove the pending case from the court roster and request the return of funds on deposit, if any. Copies of these clocked forms are then sent by Associate Counsel to the Headquarters Right of Way Administrator requesting issuance of a new check.

IV. Out of Court Settlement/Mediation

Due diligence for a justifiable settlement without litigation should be made. Mediation should be considered and is required in various counties of the state. The Associate Counsels handle the settlements of all condemnation cases working with Landowners attorneys, the Department's agents and engineers to conclude the cases without going to trial. Approval of monetary settlement amounts is approved by the appropriate Right of Way personnel. Once the settlement amount is finalized, Consent orders of Dismissal and Releases are prepared by the Associate Counsels. Settlement letters are prepared outlining the issues, providing justification for the settlement figures and are then provided to the Right of Way Designee for the case for approval. Upon approval, the Associate Counsel mails the settlement letter to the Director of Rights of Way for concurrence and requesting of the settlement checks. Checks are requested by the Claims Section as discussed in Chapter 9 – Claims and Payments. The signed Consent Orders of Dismissal and Releases are finalized, instructing the Clerk of Court to annotate the Condemnation Notice and file it in the RMC/ROD office. Copies of the Release, Order of Dismissal and Annotated Condemnation are forwarded to the Department for inclusion with the Condemnation.

The Right of Way Designee must be involved with every phase of the condemnation. He provides authority to hire appraisers (when necessary), approval of appraisal fees, gives settlement authority and works with the engineers and Associate Counsel for settlement of the case. It should be pointed out to the Associate Counsel that when he is given approval to obtain or update an appraisal that the Right of Way Designee is to review the appraisal for just compensation PRIOR to its use or distribution.

NOTE: The Right of Way Designee assigned the condemnation case must notify the RPG should the settlement results in a plan revision, i.e. change in the acquisition area (obtains on data sheet), change in right of way limits, control of access, etc. to ensure the correct right of way is shown on plans. This action will be accomplished as early as possible, or at the latest, at the time the associate counsel provides the settlement letter to the department.

V. Trial Preparation

When out of court settlements or mediations have been unsuccessful, the Right of Way Designee for the condemnation case should work closely with Associate Counsels, engineers, appraisers and other experts during the preparation for trial. The following are suggested areas (though not all-inclusive) that the Right of Way Designee can assist Associate Counsel:

- 1) Review all file documentation and correspondence;
- 2) Determine what the issues were; if a counter offer was made and owners' justifications;
- 3) Could an engineering change reduce impacts;
- 4) Advise Counsel to attempt to get the case into court prior to or after completion of construction;
- 5) Request an updated appraisal to the date the condemnation was filed. Request a standard report if the tract was condemned on a nominal appraisal and ensure that no revisions to plans were made since the original appraisal was done. Right of Way Designee is to review the appraisal for just compensation PRIOR to its use or disbursement;
- 6) Have Associate Counsel, Right of Way Designee, Resident Construction Engineer (RCE) or appropriate engineer and appraiser if necessary to meet on site to discuss issues;
- 7) Request that RCE notify you BEFORE making changes during construction on a condemned tract; (If changes made in the field the Associate Counsel should also be notified.)
- 8) Check tax assessor records to see if landowner has challenged the assessed value;
- 9) Obtain a trial roster (www.sccourts.org);
- 10) Request trial exhibits at least four (4) weeks prior to trial date;
- 11) Obtain a jury list from Clerk of Court and review with Resident Construction Engineer and other agents living in the County. The Right of Way Designee needs to monitor the Associate Counsel progress on a case and encourage expeditious case completions

VI. Jury Verdicts/Judge's Ruling

Jury verdicts or judge's ruling are rendered in cases that go to trial or before a circuit judge. The Associate Counsels represent the Department in all cases and upon the rendering of a jury verdict or judges ruling, a letter is prepared outlining the issues that arrived at the verdicts or rulings and requesting payment plus the appropriate 8% interest from the date of filing to the date of verdict. The Associate Counsels handle the closing documents including obtaining a signed Request for Social Security Number or Taxpayer Identification Number and Certification (SCDOT R/W Form 812) if not previously secured and provide the Department with the Order of Judgment, Clocked Copy of Satisfaction of Verdict and Annotated Condemnation Notice to close the case after payment has been made. The Order, Annotated Notice and Satisfaction of Verdict are included in the project file. The Associate Counsel should also copy the Right of Way Designee. (Note: [South Carolina Code of Law, Section 28-2-420](#) (A) whereby a judgment not

paid within 20 days commencing upon the date of verdict or order of judgment will accrue interest at the rate provided by law to be added to the judgment.)

VII. Significant Condemnation Cases

The significant condemnation cases are identified in the regional office and tracked in the RWDMS for information only.

VIII. Project Commitments - Communicating ALL Promises (CAP site)

Any and all commitments made as a result of legal settlements must be acknowledged by Right of Way and posted on the Project Commitments section of the Project Web Intranet Site. The purpose of this program is to track commitments made during different phases of projects and to ensure these commitments are completed by the responsible party. The Right of Way Claims Supervisor for the condemnation case is responsible for entering all legal settlement information on the CAP website. Any items agreed to and/or contained in the Associate Counsel's settlement letter that require an action to be completed during the construction phase of a project must be entered. Property exchanges or quitclaim deeds agreed to by the Department must be entered and the Property Management Manager must be selected as the "Responsible Party Notified". A few examples of other type commitments might involve curb cuts; pipe; drive entrances; sidewalks; and any other items not originally included in the plans. The Resident Construction Engineer or District Construction Engineer is generally listed as the "Responsible Party Notified" on these type commitments. All commitments require a "Completion Deadline" date to be entered. The construction completion date is generally used and can be found on the Director of Construction's website on the SCDOT Intranet. The CAP program allows for revisions and updates in the event the information originally entered needs to be modified.

GLOSSORY

GLOSSARY

ABANDONMENT

The relinquishment of the public interest in right of way or property with no intention to reclaim or use again for highway purposes.

ABSTRACT OF TITLE

Concise statements, in orderly form of the substance of documents or proceedings appearing in the public records, which affect the title to real estate. Before certifying title to a certain piece of real estate, a lawyer must examine each document, or other matter, in the records and form an opinion as to the effect such records have on the title.

ACCESS

Entrance to and/or exit from land fronting on the public highway system.

ACCESS POINT

A location on a property frontage at which access is allowed by the Department.

ACRE

A land measure equal to 43,560 square feet.

AFFIDAVIT

A sworn or affirmed statement or declaration in written form.

APPRAISAL

The act or process of estimating value. An opinion of the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. (Appraisal report is the communication, written or oral, of an appraisal, review or analysis the document that is transmitted to the client upon completion of an assignment.)

ASSIGNEE

Person, or corporation, to whom a right or the ownership of a right has been transferred.

ASSIGNMENT

Instrument whereby all or part of one's property, interest or rights are transferred to another (e.g. an assignment of a mortgage).

ASSIGNOR

Party transferring his right to another.

ASSIGNS

Successors to a right one person had in property.

ATTORNEY-IN-FACT

One who is authorized to perform certain acts for another under a power of attorney; power may be general or limited to certain acts.

BANKRUPTCY

Proceedings under law, initiated either by an "insolvent" person or business entity or by its creditors seeking to have the bankrupt's assets distributed among its creditors, discharging the debtor's debts.

BERM

A mound of earth, sometimes paved, that is used to divert or control the flow of surface drainage, mark property boundaries, or alter topography. Also, the earthen or paved extension of a roadway; the shoulder along a highway.

BOND FOR TITLE

An agreement to make title in the future on an executory or incomplete sale. (It is not a conveyance of legal title but only a contract to convey and may ripen into an equitable title upon payment of the consideration.)

BUFFER ZONE

A parcel of land, usually unimproved except for landscaping and screening, that separate parcels with different uses.

CADD

Computer Aided Drafting Design.

CLOUD ON TITLE

An encumbrance that may affect the fee holder's ownership and the marketability of the title.

CODICIL

A written supplement or modification of a Will. Codicils must be executed with the same formalities as a Will.

CONDEMNATION

The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain.

CONSIDERATION

That which motivates the exchange of promises or performance in a contractual agreement. The consideration, which must be present to make the contract legally binding, must be a detriment to the promisee (something of legal value, legally sufficient, and bargained for) or benefit to the promisor.

CONTRACT OF SALE

Agreement by one person to buy and of another person to sell real estate at a specified price within a certain length of time.

CONTROL OF ACCESS

The condition where the right of owners or occupants of abutting land to access in connection with a highway is fully or partially controlled by public authority. Full control of access occurs when the authority to control access is exercised and given preference to through traffic by providing access connections with selected public roads only and prohibits crossings at grade level and private driveway connections. Partial control occurs when the authority to control access is exercised and gives preference to through traffic to a degree that, in addition to connections with selected public roads, there may be some crossings at grade level and private driveway connections by special permission.

CONVEYANCE

A written instrument that passes an interest in real property from one person to another (e.g. a deed, a mortgage, a lease).

CORPORATION

An association of persons created by statute as a legal entity.

COST TO CURE

The dollar amount needed to correct a curable functional obsolescence. (Curable functional obsolescence caused by a deficiency requiring replacement, substitution, or repair.)

COUNTER OFFER

A response to an offer in which the offer is rejected and a new offer made.

COVENANT

A promise or agreement to do or not to do something.

CROSSOVER

A paved or graded area in the highway median designed specifically for vehicles to cross the median of a divided highway.

CROSS SECTION

A transverse section at a right angle to the longitudinal axis of a drawing of a road which shows the width of the new roadway and the slope of the shoulder in relation to the existing topography.

CTC

County Transportation Committee - group appointed to oversee County "C" Program.

CULVERT

A structure that provides drainage under a traveled way, parking lot, or other area.

CUT

Removal of earth to change the terrain. In highway construction, excavation to established the grade of the right-of-way through lands of higher elevation.

DAMAGES

The loss in value to the remainder of a parcel taking a property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking that is compensable.

DEDICATION OF RIGHT OF WAY

The setting apart by the owner and acceptance by the public of property for highway use in accordance with statute or common law.

DEED

Instrument whereby the grantor (seller) sells real estate to another. It must be written and executed in a certain way, delivered to the grantee (purchaser) and recorded in the office of the Clerk of Court (or Register of Mesne Conveyances).

DEFAULT

To fail to pay a debt when due or to violate terms of an agreement.

DEMOLITION ITEM

Item pulled down, razed, fabrication destroyed, hence to ruin or destroy.

DEVISE

To make a gift of real property by Will.

DEVISEE

Party to whom property is given by Will.

DRAINAGE EASEMENT

The right to drain surface water from one owner's land over the land of one or more adjacent owners.

EASEMENT

A right of way; a nonpossessory right to use part of another's land, such as the right to cross it to obtain access to other property, or to build a street, driveway, or an electric, telephone, sewer, water, or drainage line across it.

EASEMENT BY PRESCRIPTION

A right to use another's land, which is established by exercising this right over a period of time; although not specifically granted, it is understood. Also called prescriptive easement.

EGRESS

A means of exiting property.

EMINENT DOMAIN

The State's right or power to acquire private property for public use without the owner's consent for a fair compensation.

ENCROACHMENT

Use of the right-of-way by anyone other than the Department's personnel or authorized agents for any purpose other than that generally intended.

ENCUMBRANCE

An interest or right in real property that may decrease or increase the value of the fee but does not prevent its conveyance by the owner. Mortgages, taxes, and judgments are encumbrances called liens; restrictions, easements, and reservations are encumbrances, but not liens.

ESTATES

Property, including land and personal property, money, stocks, and bonds or anything of value.

FAIR MARKET VALUE

Price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property.

FEE SIMPLE TITLE

A title that signifies ownership of all the rights in a parcel of real property subject

only to limitations of the four powers of government.

FHWA

Federal Highway Administration

FILL

The use of added material to equalize topography or raise land to a desired grade; in highway construction, the use of stones and earth to fill low sections of the right of way; the material used for this purpose.

FIRST SHEET

Agents' Worksheet provided to the Appraisal Section.

FIXTURE

An article that was once personal property, but has been installed in or attached to the land or building in some more or less permanent manner, so that it is regarded in law as part of the real estate.

FORECLOSURE

A proceeding in equity whereby a mortgagee either takes title to or forces the sale of the mortgagor's property in satisfaction of a debt.

FREE AND CLEAR

Describes the title to a property that is unencumbered by mortgages or other liens.

FRONTAGE

The measured footage of a site that abuts a street.

GENERAL BENEFIT

Advantages accruing from a given highway improvement to a community as a whole, applying to all property similarly situated.

GRADE

The slope of a surface, e.g. a lot, a road, with the vertical rise or fall expressed as a percentage of horizontal distance; e.g. a 3% upgrade indicates a rise of three feet for each 100 feet of horizontal distance. Also, to provide a parcel of land with the desired contour and drainage. Sometimes used to mean on or at the same level, e.g. a crossing at street grade, a lot at street grade.

GRADE SEPARATION

A bridge used to separate two intersection roadways.

GRANTEE

One to whom a grant is made.

GRANTOR

One who transfers property or creates a trust.

HECTARE

A metric unit of land measurement equal to 2.471 acres.

HEIRS

Persons entitled to real estate upon the death of the owner.

HIGHEST AND BEST USE

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

IMPROVED TRACTS

Tracts which contain either occupants (families and businesses) or personal properties (trailers, permitted billboards, active UST's) which must be relocated from new right of way or if the entire tract is being purchased. In some cases, it will involve tracts where wells and septic tanks are being installed by the Relocation Section for the benefit of preventing displacement.

INCAPACITATED PERSON

Any person who has been determined by a court to be impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs or intoxication or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

INGRESS

A means of entering property.

INTERCHANGE

A system of underpasses and overpasses that routes traffic on and off highways without disrupting through traffic; may link two or more highways.

INTERSECTION

The crossing of two streets at grade.

INTESTACY LAWS

State laws determining the division and descent of an intestate's estate. (Laws of Intestate Succession)

INTESTATE

(Dying) without a valid Will.

INITIATION OF NEGOTIATIONS

Delivery of the initial written offer of just compensation by the Department to the Owner or owner's representative to purchase the real property for the project.

INVERSE CONDEMNATION

A legal process in which an owner claims damages from a loss in property value when a condemnation action has not been instituted by a condemning authority.

JUST COMPENSATION

That payment required by law for the loss sustained by the property owner as a result of taking or damaging private property for public use.

JUDGMENT DEBT

A monetary obligation which is either evidenced by a written record, or brought about by successful legal action against the debtor.

LANDLOCKED PARCEL

A parcel of land that has no access to a road or highway.

LEASE

Instrument letting possession and use of real estate by the owner to another for (usually) a certain length of time for a certain rental price.

LEGAL NOTICE

Notice to be given in a particular circumstance, as required by a statute, e.g. notice required prior to a public sale of foreclosed real estate. Also, notice that is legally considered to have been given as a result of specified circumstances, although there is no proof that the involved parties were actually notified; e.g. recording a deed in the proper records office constitutes public notice of the facts contained in the deed.

LESSEE

A person who pays for the use or possession of another's property.

LESSOR

A property owner who allows others to use his property in exchange for payment of rent.

LIEN

An encumbrance upon a property, to satisfy or protect a claim for payment of a debt.

LIFE ESTATE

An interest in land which exists only for the duration of the life of some person, usually the holder of the estate.

LIMITED WARRANTY

Warranty that is restricted in its application to a single transaction.

LIS PENDENS

Notice of a suit pending.

LITIGATION

A lawsuit. Legal action, including all proceedings therein.

MARKET VALUE

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and or self interest, and assuming that neither is under undue duress.

MEDIAN

The portion of a divided highway which separates opposing traffic flow.

METER

A metric unit of land measurement equal to 3.28084.

MINOR

A person who has not attained the age of eighteen (18) years.

MITIGATION

To make less severe. Alleviation, reduction, abatement or diminution of a penalty or punishment imposed by law.

MORTGAGE

A legal document pledging a described property for the repayment of a loan under certain terms and conditions.

MORTGAGE AGREEMENT

A document by which the mortgagee releases his interest in the property being acquired in exchange for being included as a payee on the check.

MORTGAGE RELEASE

A document by which the mortgagee releases his interest in the property being acquired but does not wish to be included as a payee on the check.

MORTGAGEE

The creditor who takes the security interest under the mortgage agreement.

MORTGAGOR

The debtor who pledges collateral in a mortgage agreement.

MOVING ITEM

An item, i.e. fence, flower beds, brick columns, etc., from the project plans within the right of way that must be moved clear of the new right of way by the contractor.

NEGOTIATIONS

The process by which property is sought to be acquired for highway purposes through discussion, conference and final agreement upon the terms of a voluntary transfer of such property.

OFFER

A proposal to do a thing or pay an amount, usually accompanied by an expected acceptance, counter-offer, return promise or act.

NOTE

A promise to pay a certain amount of money, at a certain time, or in a certain number of installments. It usually provides for payment of interest and often is secured by a mortgage of real estate.

NPDES

National Pollution Discharge Elimination System for Highway Construction - a requirement to reduce sediment run-off from project site by 80%.

OPTION

An instrument giving a person the right to purchase property from the owner at a certain price within a certain length of time. It differs from a contract of sale, in that the seller is bound to sell, if the purchaser decides to buy, but the purchaser does not have to exercise his option. The seller, however, can keep the money paid for the option regardless of whether the purchaser buys or not.

PARTIAL ACQUISITION

The taking of part of any real property interest for public use under the power of eminent domain.

PERMISSION

This instrument grants to the Department the right to do the work outlined in the Special Provisions with the understanding that this work is to be done on property of the grantor outside of the right of way.

PERSONAL REPRESENTATIVE

A person who manages affairs of another because of incapacity or death; includes executors, administrators, successor personal representatives and special administrators. A Personal Representative may be appointed by the terms of a Will or appointed by a Probate Court where no personal representative is named in the Will or where the person named cannot serve. The Probate Court must appoint a Personal Representative to manage the estate of a deceased person where there is no will.

PLAT

A map of real estate made by a surveyor, or civil engineer, showing boundary lines, buildings and other things on the land.

POWER OF ATTORNEY

A document or instrument authorizing another to act as one's agent or attorney.

PPMS

Preconstruction Project Management System.

PRELIMINARY CONTACT

Initial contact with the property owner.

PRESCRIPTION

The acquiring of an easement by continuous and open use of land owned by another for a prescribed statutory period.

PROBATE

Term used to designate an affidavit of a notary public appearing on deeds, mortgages, and other instruments, wherein it is stated that one witness appeared before him and said that he and another person witnessed the signature of the signer of the instrument.

PROPERTY

Anything subject to being used, possessed, and disposed of; need not be tangible ("rights" are property).

QUITCLAIM DEED

A deed conveying whatever title or interest the grantor has in the real property, but warrants nothing, not even the transferor's title, to the grantee.

REAL ESTATE

An identified parcel or tract of land, including improvements, if any.

REAL PROPERTY

The interests, benefits, and rights inherent in the ownership of real estate.

RECORDING

The filing of a copy of a legal instrument or document, e.g. a deed, in a government office provided for this purpose; creates a public record of the document for the protection of all concerned and gives constructive notice to the public at large.

RELEASE

The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been enforced or demanded.

RELOCATION

A process in which a federal, state, or local public agency provides relocation services, moving cost payments, and related expenses to individuals, families, and businesses displaced by urban renewal projects or other federal or federally assisted programs; required by statute.

REMAINDER

The portion of a parcel or tract of land retained by the owner after a part of such parcel or tract has been acquired.

RESTRICTIVE COVENANT

A private agreement that restricts the use and occupancy of real estate that is part of a conveyance and is binding on all subsequent purchasers may involve control of lot size, setback, placement of buildings, architecture, cost of improvements, or use.

RETENTION VALUE

Value established by Relocation Coordinator for landowner to retain an improvement.

RIGHT OF ACCESS

The right of an abutting landowner for entrance to or exit from a public road.

RIGHT OF ENTRY

Written permission from the property owner for the Department to proceed with construction while settlement for the property is being negotiated.

RIGHT OF WAY

A privilege to pass over the land of another in some particular path; usually an easement over the land of another; a strip of land used in this way for railroad or highway purposes, for pipelines or pole lines, and for private or public passage.

RIPRAP

A foundation or wall of stones or rocks that are loosely placed together without order; usually constructed adjacent to deep water to prevent scour on the sides of the bulkheads, or at river bends to prevent erosion from fast flowing water; may also be made of wood or concrete beams laid in regular patterns.

ROADWAY DITCH

An open watercourse for the control and removal of storm water from the paved surface of an adjacent highway; maybe paved.

SALVAGE VALUE

That value of an asset that remains after the useful life of the asset has expired. Occurs in condemnation, especially for highway purposes, where large tracts of land must be cleared.

SATISFACTION

Term used to designate a written declaration of the mortgagee, or holder of a mortgage, that the debt secured by the mortgage is paid in full and that the mortgage is satisfied, or in other words, canceled. It usually is written across the face of the mortgage, but may be by a separate instrument. In either case, the "Satisfaction" should be recorded.

SETBACK

Zoning regulations that designate the distance a building must be set back from the front property line. The setback line is a line outside a right of way, established by public authority or private restrictions.

SLOPE

The area which the ground line is graded during road construction by filling lower areas or cutting the area extending above the road grade.

SPECIAL BENEFIT

Advantages accruing from a given highway improvement to a specific property and not to others generally.

SPILLAGE RIGHTS

The perpetual right, power and privilege to overflow, flood, and submerge land owned by another, reserving for the landowner all rights and privileges that do not interfere with or abridge this right; may be either permanent or occasional.

SUBDIVISION

A tract of land that has been divided into blocks or plots with streets, roadways, open areas, and other facilities appropriate to its development as residential, commercial, or industrial sites.

SURVEY

The process in which the quantity and/or location of a piece of land is scientifically ascertained; may reflect the physical features affecting land, e.g. grades, contours, structures. Also, a map or plot that describes the courses, distances, and quantity of land and shows the lines of possession.

TAX SALE

Sale of property for nonpayment of taxes.

TESTATE

Leaving a valid will; when a person dies leaving a valid will he dies testate.

TESTATOR (TRIX)

One who makes and executes a Will.

TITLE

The formal right of ownership of property.

TRESPASS

Any wrongful transgression or offense against the property of another.

TRUSTER

One who holds legal title to property “in trust” for the benefit of another person (beneficiary), and who must carry out specific duties with regard to the property.

UCC

Uniform Commerical Code is a mortgage on personal property. It will only apply in cases where the condemnation affects the building and only where such lien is filed in the courthouse.

UNECONOMIC REMNANT

A remainder of land so small or irregular that it usually has little or no economic value to the owner.

UST

Underground Storage Tank

VEST

To become owned by to give an immediate fixed right of present or future use.
(a verb)

WARRANTY (SPECIAL OR LIMITED)

A clause in some deeds wherein the grantor (seller) guarantees to the grantee that he has title to the property conveyed in the deed and which protects against defects arising only during grantor’s ownership.

WARRANTY (GENERAL)

A clause in most deeds wherein the grantor (seller) guarantees to the grantee that he has title to the property conveyed in the deed and which protects against defects arising before as well as during grantor’s ownership.

WETLANDS

Areas that are frequently inundated or saturated by surface or ground water and

support vegetation typically adapted for life in saturated soil conditions; generally include swamps, marshes, bogs, and similar areas, but classification may differ in various jurisdictions.

WILL

A formally executed instrument whereby a person makes provision for division of his estate after his death. It must be written in a particular way and signed before a required number of witnesses. It is not filed for record until after death of the testator, does not become effective until his death, and may be changed by him at any time; but changes must be drawn and signed in the same formal way as a will. The change may be made by destroying the old Will and rewriting it, or by adding a codicil, which changes only part of the Will, leaving the remainder effective. To be sure that a Will, or codicil, is properly written and signed, and that it expresses the intentions of the testator, it should always be prepared by an attorney.

Resource Links

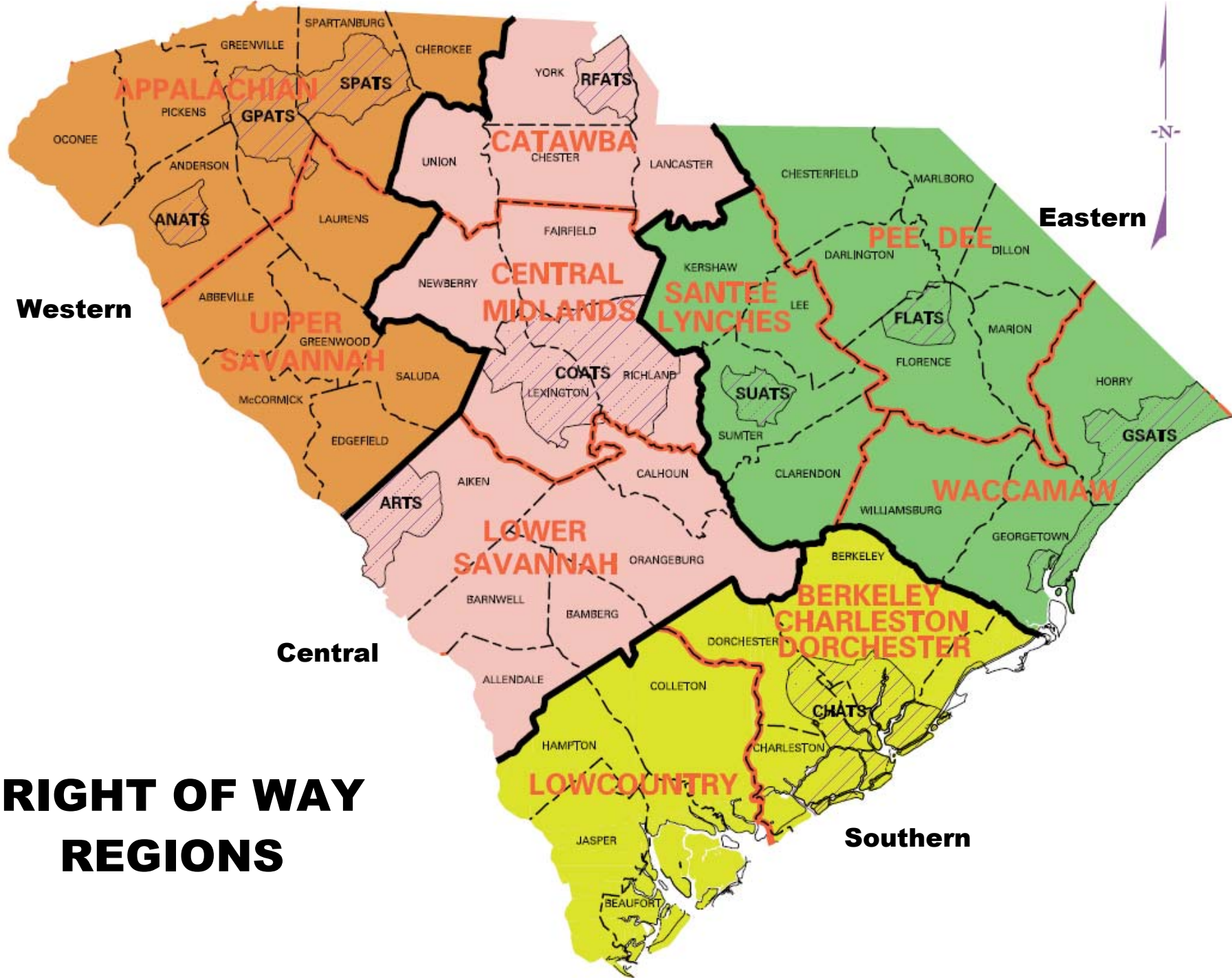
Note: Must be connected to the internet to open links.

1. Code of Federal Regulations, Title 49, Part 24:
<http://www.ecfr.gov/cgi-bin/text-idx?SID=d362ee773c217520e697f2e8ee737fc4&mc=true&node=pt49.1.24&rgn=div5>
2. Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended:
http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm
3. Code of Federal Regulations – Title 23 – Part 710 - Federal Highway Administration Right of Way Regulations:
http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=f5f9ee4aba840de90c1379cba9546059&mc=true&n=pt23.1.710&r=PART&ty=HTML#se23.1.710_1101
4. Notary Public Online Manual:
http://www.sos.sc.gov/Notaries_and_Apostilles/SC_Notary_Public_Reference_Manual
5. SC Code of Laws – Title 26- Notaries Public and Acknowledgments
<http://www.scstatehouse.gov/code/title26.php>
6. Code of Federal Regulations – Title 26 – Internal Revenue Chapter 1 – Subchapter A – Part 1 (1.6045.4) – Income Tax – Information reporting on real estate transactions with dates of closing on or after January 1, 1991:
http://www.ecfr.gov/cgi-bin/text-idx?SID=c6ba9dc42adf6004012c2ef56a8b1c05&mc=true&node=se26.15.1_16045_64&rgn=div8
7. Code of Laws of South Carolina 1976 - Eminent Domain
<http://www.scstatehouse.gov/code/title28.php>

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RIGHT OF WAY REGIONS



South Carolina
Department of Transportation

MEMORANDUM

To: John V. Walsh, P.E., Deputy Secretary for Engineering
From: Kenneth C. Feaster, Director of Right of Way
Date: May 5, 2010
RE: Request for Modification to Departmental Directive 41 (DD 41)
Negotiation Process for Right of Way Services Using "On Call" Consultants

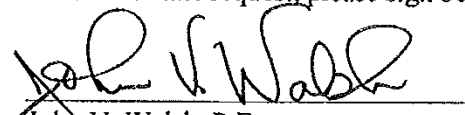
I am requesting a modification to Section VIII, NEGOTIATIONS as stated in DD 41 relating only to the negotiation for individual projects with firms stated on the current approved and negotiated listing of "on call" firms.

The Right of Way section currently uses a per parcel bidding process among the firms with considerations as stated under Section VI, SELECTION PROCEDURES, subpart B, number 5, letters a through e, of DD 41. This process does not require audits (see DD 41, Section X, REQUESTING AUDITS, subpart A, number 2).

I am further requesting that the Right of Way section be responsible for maintaining the detailed files relating to each project negotiation process. The files will be maintained individually in hard copy and scanned files and will be available for audit.

If you concur with this request, please sign below and return to me.

Approved:


John V. Walsh, P.E.
Deputy Secretary for Engineering

cc: Mitchell Metts, Director of Preconstruction
Doug MacFarlane, Director of Contracts and Special Projects
Carmen Wright, Director of Contract Services
Glynis Davis, Chief Negotiator, Office of Contract Services



3. Small Purchase Procedures

Small purchase procedures can be followed where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 USC 403(11), which is currently \$100,000.00. Contract requirements shall not be broken down in smaller components merely to permit the use of small purchase requirements.

The selection and negotiation process will be coordinated with the Director of Contract Services and Director of Procurement or designees. Contract Administration performance and record retention will be in accordance with Section XIV (A)(1) and (2) of this Directive.

Authorization to use this method of selection requires prior written approval by the appropriate Deputy Secretary and FHWA if Federal funds are involved. Commission approval through the Secretary of Transportation is required prior to execution of the Agreement.

4. Sole-Source

Sole-source procurement is not permissible unless there is only a single consultant available to perform the work. In cases of reasonable doubt, competition should be solicited. Any request by a section of the Department that procurement of services be restricted to one potential consultant shall be accompanied by an explanation as to why no other consultant would be suitable or acceptable to meet the need.

The selection and negotiation process will be coordinated with the Director of Contract Services and the Director of Procurement or designees. Contract Administration, performance and record retention will be in accordance with Section XIV (A) (1) and (2) of this Directive.

Authorization to use this method of selection requires prior written approval by the appropriate Deputy Secretary and FHWA if federal funds are involved. Commission approval through the Secretary of Transportation is required prior to execution of the Agreement.

5. On-Call Consultants

Consultants selected by the Selection Board pursuant to an on-call solicitation will execute a Basic On-Call Agreement and be put on an "On-Call Consultant List." Thereafter, as the need arises for services, a Contract Modification or Task or Work Order will be executed with a consultant on the On-Call Consultant List for a specific scope of services. The scope of service for any Contract

See next page

Modification or Task or Work Order is limited to the scope of services that the Department included in the on-call solicitation. The Department is not required to execute Contract Modifications or Task or Work Orders with every firm selected to be on the On-Call Consultant List.

The following criteria will be used in the order listed to evaluate and justify the selection of a firm from the On-Call List:

- a. Firm selected presents a value to the Department
- b. Special expertise and knowledge required to perform scope of services
- c. Firm's historical responsiveness to the Department
- d. Cost.²
- e. Value and volume of total work under contract between the consultant and Department for the most recent two (2) year period and as compared to the other firms on the specific On-Call Consultant List.

The appropriate Contract Manager is responsible for selecting a firm from the On-Call Consultant List. Prior to notifying the proposed consultant that negotiations will commence justification of firm selection will be submitted in writing by the appropriate Contract Manager to the appropriate Deputy Secretary for approval. Each of the above criteria will be addressed in this justification prior to negotiations.

This documentation will be archived in the negotiation file maintained by the Director of Contract Services.

VII. RELEASE OF PROJECT SPECIFIC INFORMATION

All project specific questions from interested consultants are to be directed to and answered by the contact person identified in the announcement. The above also applies to all Department employees. This procedure does not preclude the answering of general procedural and policy questions by any Department employees.

The contact person must be knowledgeable of the specific scope of services and be available by appointment to discuss the project with interested consultants. If the contact person cannot, at the time of asking, answer a question from a consultant, the contact person will obtain the answer to the specific question and advise the consultant in sufficient time to meet the requirements of the announcement. The contact person is not to refer consultants to other areas of the Department for project specific information. The contact person will maintain a log of inquiries and responses regarding each solicitation.

² Cost shall not be used as a selection criterion in the procurement of engineering and design related services which are defined as program management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services. However, cost may be used as a selection criterion when the scope of work does not include engineering and design related services.

4) FINAL NEGOTIATION ESTIMATE

The consultant will complete a revised CE based on the results of the negotiations and provide one (1) copy to the Chief Negotiator and two (2) copies to the Team Chairperson. The Team Chairperson and Chief Negotiator will verify that the revised CE is in accordance with results of the negotiations.

The hourly rates used in preparing the CE should fall within the range normally expected for the various job classifications. Hourly rates which exceed the normal must be justified by the consultant. The project agreement will be prepared based on this completed CE.

X. REQUESTING AUDITS

The Director of Contract Services, or designee, is responsible for requesting pre-award, progress and final audits as appropriate.

A. Pre-Award Audits

1. Basic Agreements (New Selections) Consultants - Pre-award audits will be requested by the Director of Contract Services, or designee, for all consultant Basic Agreements.
2. Contract Modifications Consultants - Pre-award Audits will be requested by the Director of Contract Services, or designee, on all contract modifications of \$250,000.00 or more. Pre-award audits may be requested by the Director of Contract Services, or designee, for lesser amounts if the Director of Contract Service's, or designee's, review of previous audits notes prior concerns; if new work items not found in previous audits are included in the Contract Modification; or if there are other concerns that the Director of Contract Services considers requiring an audit review.

Exceptions: Projects which are bid on a per parcel or low bid basis and projects with Public Institutes of Higher Education governed by OMB Circular A-21 will not require pre-award audits unless the Office of Contract Services considers it necessary.

Note: The appropriate Deputy Secretary, the Director of Contract Services, or the appropriate Director reserve the right to recommend Letter Contracts (Limited Notice to Proceed) prior to the issuance of a pre-award audit and prior to the execution of the Basic Agreement or Contract Modification. The appropriate person listed above shall document the reasons for moving ahead, and why the action is considered in the best interest of the Department. Such actions shall require the execution of a Letter Contract by the appropriate Deputy Secretary. The Letter Contract shall state the following:

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

DEPARTMENTAL DIRECTIVE

Directive Number: 41

Date: Revised
July 30, 2008

Subject: Professional Consultant Services - Acquisition and Administration

Referrals: 23 CFR Section 1.3
Title 23 United States Code, § 112
Title 40 United States Code, Chapter 11, § 1101-1104
23 Code of Federal Regulations, Part 172
49 Code of Federal Regulation, Part 18
Federal Acquisition Regulation
49 Code of Federal Regulations, Part 19
Title 57, Code of Laws of South Carolina, 1976, as amended
Section 11-35-710(1), Code of Laws of South Carolina, 1976, as amended

Purpose: This directive defines procedures used by the Department in the acquisition and administration of qualified professional consultant services.

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I. APPLICATION

This Directive applies to the acquisition and administration of professional consulting services that fall within the following categories:

1) Engineering and design related services on federally funded projects, including, but not limited to program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services. (See 23 CFR 172.3.)

- 2) Consulting services under a grant of federal funds. (See 49 CFR 18 and 49 CFR 19.)
- 3) Other consulting services that fall within the Department's exemption from the State Consolidated Procurement Code for "construction, maintenance and repair of highways, bridges and roads." [See S.C. Code Section 11-35-710(1).]

II. OBJECTIVES

The objectives of this Directive are to:

- 1) Ensure that due consideration has been given to the factors which permit an independent, objective evaluation of all firms and individuals responding to a Department request for professional services.
- 2) Ensure selection of a firm or individual qualified to perform the work specified in each contract at a reasonable and fair price.
- 3) Ensure that, through negotiation and contract administration, public funds are utilized in a manner consistent with appropriate state and federal rules and regulations.
- 4) Ensure that, competition between consultant firms is part of the process to reduce cost.

III. DEFINITIONS

A. CONTRACT DOCUMENTS

1) Basic Agreement – The standard agreement to be used to contract with a consultant for a stated scope of services on a specific project at a specified maximum cost. The agreement has been developed by the Department to include provisions to address applicable Federal, State and Department rules, regulations, policies and procedures. The Basic Agreement may include any method of payment: (1) lump-sum, (2) cost-plus-fixed-fee with contract maximum, or (3) approved unit cost.

2) Basic On-Call Agreement - The standard agreement to be used to contract with a consultant for a general scope of services who later may be called to perform specific services on specific projects at specified costs pursuant to a Contract Modification. The standard agreement will have a general scope of services. The costs will be stated as estimates and/or averages, unless there is a specific unit cost. The agreement has been developed by the Department to include provisions to address applicable Federal, State, and Department rules, regulations, policies and procedures.

3) Contract Modification – A Contract Modification may be used as a supplement to a Basic Agreement or a Basic On-Call Agreement.

a. As to Basic Agreements – A Contract Modification is a written agreement subsequent to a Basic Agreement that may be required due to alterations and/or unforeseen work incidental to proper completion of the scope of work in the Basic Agreement. Any alteration in the terms of the Basic Agreement that changes the cost, character, complexity, or schedule of work or significantly changes the conditions under which the work is required to be performed requires a Contract Modification.

b. As to Basic On-Call Agreements – A Contract Modification is a written agreement subsequent to a Basic On-Call Agreement that specifies a specific scope of work for a specific project at a specified cost. If a unit cost has already been established in the Basic On-Call Agreement, a Task Order or Work Order is used instead of a Contract Modification (see below).

c. Approvals for Contract Modifications – All Contract Modifications require written authorization from the appropriate Deputy Secretary and when Federal funds are used, FHWA approval in accordance with the terms of the SCDOT/FHWA Stewardship and Oversight Plan (2007) prior to implementation. (See Section XII below.)

4) Task Order or Work Order – A Task Order or Work Order is a written agreement subsequent to a Basic On-Call Agreement for a specific task at a unit cost established in the Basic On-Call Agreement. Task orders may be used only by those Department sections and for those specified services approved by the appropriate Deputy Secretary.

5) Letter Contract – A Letter Contract (Limited Notice to Proceed) may be issued prior to a pre-award audit and prior to the execution of the Basic Agreement or Contract Modification. The Letter Contract shall state the following: (1) the limited scope of services; (2) the maximum dollar value; (3) time limit to negotiate and secure a full contract; (4) reference to the terms and conditions of the SCDOT’s applicable Basic Agreement or Contract Modification; (5) other factors considered necessary to define the intent of the Letter Contract.

B. TYPES OF PROJECTS/ METHODS OF PAYMENT

1) Class I Project – “Lump-sum or fixed price payment” - A “Class I Project” is one whose scope of services, parameters and requirements are well-defined. A Class I Project generally will not require contract modifications. A lump-sum or fixed-price payment method should generally be considered for a Class I Project. A Basic Agreement with a lump sum or fixed price payment method will establish up-front a lump-sum or fixed price for the work of the contract. This payment method places upon the contractor the risk and full responsibility for all costs of the project and the resulting profit or loss. This method of payment provides the maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

2) Class II Project – “Cost-plus-fixed-fee with contract maximum” method of payment- A Class II Project is one for which the Department is unable to provide the well-defined scope of services, parameters or requirements of a Class I Project. A “cost-plus-fixed-fee with a contract maximum” method of payment should generally be considered for a Class II

Project. A “cost-plus-fixed-fee with contract maximum” is a method of payment that provides for payment to the contractor of a negotiated fee fixed at the inception of the contract, plus reimbursement of allowable costs. The straight cost-reimbursement method of payment permits contracting for work that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs. By adding a “contract maximum” the contractor has an incentive to control costs.

3) Class III Project – “Approved unit cost payment method” - A Class III Project is a project whose scope of services, parameters and requirements allow for costs to be accumulated into one unit. An approved “unit cost payment method” should generally be considered where there are specific tasks to be performed. Payment will be by task or by an hourly rate that combines labor, overhead and profit in one price. Typical services provided for under a Class III Project are geotechnical and aerial photography services.

C. REQUIRED FORMS

1) Engineering Package Letter A, “REQUEST FOR PROFESSIONAL SERVICES” - Checklist, documentation and project information recommended by Department staff and approved by the Deputy Secretary for Engineering, which begins the consultant selection process after Commission approval is received. The Engineering Package Letter A is located on SCDOT Intranet Site (Agency Application Electronic Forms) and Delrina FormFlow.

2) Engineering Package Letter B, “PROFESSIONAL SERVICES SELECTION PROCESS” – Checklist, documentation and project information required as documentation for the consultant selection process. The Engineering Package Letter B is completed and maintained by the Manager of Federal Procurement. The Engineering Package Letter B is located on SCDOT Intranet Site (Agency Application Electronic Forms) and Delrina FormFlow.

3) Package Letter C, “REQUEST FOR PROFESSIONAL SERVICES (Non-Engineering)” – Checklist, documentation and project information recommended by Department staff and approved by either the Deputy Secretary for Finance and Administration or Deputy Secretary for Mass Transit, as appropriate. The Non-Engineering Package Letter C, when approved and Commission approval is received, begins the consultant selection process for projects exempt from the South Carolina Consolidated Procurement Code pursuant to SCDOT’s specific exemption for “construction, maintenance and repair of highways, bridges and roads.” [See S.C. Code Section 11-35-710(1)]. The Package Letter C is located on SCDOT Intranet Site (Agency Application Electronic Forms) and Delrina FormFlow.

4) SCDOT Commission Agenda Transmittal Form – This form is used by the Department’s Secretary of Transportation to request Commission ratification, approval, certification, or provide information only to the Commission for Commission Action. The form is located on Delrina FormFlow.

5) Professional Services Selection Evaluation Summary – This form is used by the Selection Board to record the final ranking order of negotiation (See Exhibit 1 to this Directive).

D. PERSONS RESPONSIBLE FOR PROCESSES UNDER THIS DIRECTIVE

1) Chief Negotiator – The Department employee in the Office of Contract Services responsible for assisting Department staff in the estimating, negotiation and record retention process covered under this Directive.

2) Commission – The administrative and governing authority of the South Carolina Department of Transportation appointed or elected in accordance with the Code of Laws of South Carolina, 1976, as amended.

3) Contract Manager – The Department employee responsible for the day-to-day administration and management of a consultant contract under supervision of a Director.

4) Deputy Secretary for Engineering (Deputy Secretary) - The person appointed by the Secretary of Transportation in accordance with Section 57-1-450 of the Code of Laws of South Carolina, 1976, as amended, to be the administrative head of the Department's Construction, Engineering and Planning Division.

5) Deputy Secretary for Finance and Administration (Deputy Secretary) – The person appointed by the Secretary of Transportation pursuant to Section 57-1-450 of the Code of Laws of South Carolina, 1976, as amended, to be the administrative head of the Department's Finance and Administration Division.

6) Deputy Secretary for Mass Transit (Deputy Secretary) – The person appointed by the Secretary of Transportation in accordance with Section 57-1-450 of the Code of Laws of South Carolina, 1976, as amended, to be the administrative head of the Department's Mass Transit Division.

7) Director - For purposes of this Directive, the Department employee who has been authorized by his or her Deputy Secretary to initiate requests for consultant services and who is responsible for initiating such requests. The Director appoints and supervises the Contract Manager who has the day to day responsibilities for a consultant contract.

8) Director of Contract Services – The Department employee responsible for assuring compliance with the procedures and assisting Directors, or representatives, in negotiation and administration of consultant contracts. The Director of Contract Services may choose to designate a specific employee to handle the responsibilities assigned to him or her pursuant to this Directive.

9) Director of Procurement – The Department employee responsible for the procurement services (selections) covered under this Departmental Directive 41. The Director of Procurement may choose to designate a specific employee to handle the responsibilities assigned to him or her pursuant to this Directive.

10) Manager of Contracts and Special Projects – The Department employee in the Office of Legal Services responsible for the development of contractual documents covered under this Departmental Directive 41.

11) Manager of Federal Procurement – The Department employee in the Procurement Office responsible for providing administrative support for the Selection Board in the selection process.

12) Secretary of Transportation - The chief administrative officer of the South Carolina Department of Transportation.

13) Selection Board - A group of individuals appointed by the Secretary of Transportation to be responsible for the consultant selection process. The Selection Board is the ultimate authority for evaluating and scoring consultant proposals against the selection criteria and providing the ranking order for negotiation to the appropriate Deputy Secretary. The Selection Board has the authority to secure whatever resources necessary to assist in screening and evaluating firms including the establishment of Technical Advisory Groups.

14) Team Chairperson – The Director or his/her designated representative who serves in the capacity of chairperson for the negotiation team with all assumed duties and responsibilities.

15) Technical Advisory Group (TAG) - A group of knowledgeable individuals and technical experts that may be appointed by the Selection Board and whose responsibilities will be defined by the Selection Board for each separate selection.

E. OTHER MISCELLANEOUS DEFINITIONS

1) Consultant – An individual, firm, corporation, or other organization that gives professional advice or performs a professional service.

2) Federal Highway Administration (FHWA) – As used in this Directive FHWA’s South Carolina Division Administrator, or his or her designee.

3) On-Call Consultant – A consultant who will be available on an “as needed” basis to perform certain professional or specialized services.

4) On-Call Consultant List – A list of on-call consultants selected by the Selection Board pursuant to an on-call solicitation which will be utilized to further select specific consultants for individual jobs or work tasks. The Department may or may not execute Contract Modifications or Task or Work Orders with all firms selected to be on the On-call Consultant List.

5) Scope of Services - All services, actions, and physical work required by the Department to achieve the purpose and objectives defined in the contract

6) South Carolina Business Opportunities (S.C.B.O.) – An official South Carolina State publication. All Department requests for professional services shall appear in this publication. A subscription may be obtained by writing to:

Materials Management Office
“Business Opportunities”
1201 Main Street
Suite 600
Columbia, SC 29201

7) Subcontracting – An arrangement whereby the consultant intends for another firm or individual to perform portions of the requested services. The Department is to be advised in the initial response to the announcement which services will be subcontracted. The Contract Manager must approve all subcontractors before work begins.

IV. APPROVAL TO SOLICIT AND CONTRACT WITH CONSULTANTS

1) Contracts Involving Staff Augmentation - Prior to requesting any contract that involves staff augmentation (services that could be performed in-house by Department employees), the Director and Contract Manager shall meet with the Director of Human Resources and appropriate staff to discuss staff needs and to perform a cost/benefit analysis. The results of this process will determine the method of augmenting staff in a manner which serves the best interest of the State.

2) Commission approval to advertise, select and award consultant contracts – The Secretary of Transportation shall utilize the SCDOT Commission Agenda Transmittal Form to request prior Commission authorization to advertise for contracts with consultants and to allow selection of consultants by Department personnel. The Secretary of Transportation shall also utilize the SCDOT Commission Agenda Transmittal Form to request Commission approval prior to the final contract award by the Department. [See S.C. Code Section 57-1-370(E).]

3) Commission approval for contracts in excess of \$500,000 - The Secretary of Transportation shall utilize the SCDOT Commission Agenda Transmittal Form to request prior Commission authorization to enter into any contract with a value in excess of five hundred thousand dollars. [See S.C. Code Section 57-1-370(L).]

4) Commission approval for multiple contracts to the same consultant – The Secretary of Transportation shall utilize the SCDOT Commission Agenda Transmittal Form to request prior Commission approval to enter into any additional contracts including contract modifications with any individual entity during a fiscal year that in the aggregate value are at least five hundred thousand dollars. [See S.C. Code Section 57-1-370 (M).]

V. PREQUALIFICATION

The Department does not have a prequalification process for consultants nor does it maintain a list of prequalified consultants as it does for construction firms. Qualifications are evaluated in

connection with each solicitation; however, the Director of Procurement, or designee, will maintain a file of pertinent information submitted by each consulting firm.

Consultants so desiring may submit to the Director of Procurement the Federal Standard Form (SF) 330, and any other pertinent information for filing. The information in a consultant's file may be used for direct mailing and will be available for review by Department staff. The information received will be kept by the Director of Procurement for a period of one (1) year.

VI. SELECTION PROCEDURES

A. STANDARD SELECTION PROCEDURES

The Department will utilize the Standard Selection Procedures for consultant contracts unless special selection procedures in Subsection (B) below are determined to be appropriate or exceptions to the procedures are approved by the Secretary of Transportation and the Division Administrator of FHWA when Federal funds are involved, as indicated in Section XVI (F).

1) Announcement

The Director, or his or her representative, is responsible for developing the announcement that the Department will publish in the South Carolina Business Opportunities ("S.C.B.O.") requesting proposals for professional services. The announcement shall contain a description of the work, method of payment, and identify all significant selection criteria and their relative importance (weight). An announcement for an on-call consultant solicitation will establish a specified time-period for requesting services, generally not to exceed three (3) years.

The announcement will request firms to submit the following information to the Director of Procurement, or designee, by a specified date:

- 1) A proposal;
- 2) A resume of qualifications;
- 3) The dollar value of Department contracts executed in the past two years before the announcement;
- 4) The Federal Standard Form (SF) 330 (Architect-Engineer Qualifications);
- 5) Other pertinent information.

The announcement will state that failure to provide requested information may be grounds for withholding the firm's proposal from further evaluation and ranking.

If the contract is federally funded, the announcement may include a Disadvantaged Business Enterprise (DBE) contract goal. When a contract goal is included in the announcement, the proposer must include DBE participation to meet the contract goal or demonstrate good faith efforts to meet the contract goal.

Failure to meet the goal or submit good faith efforts documentation may be grounds for withholding the firm's proposal from further evaluation and ranking. If a contract goal is not specified, the announcement may require the consultant to submit a DBE utilization plan. Failure to provide the required DBE utilization plan may be grounds for withholding the firm's proposal from further evaluation and ranking. The Selection Board shall have sole authority to approve DBE goals if requested and to determine material violations of proposal content and withholding a firm's proposal from further evaluation and ranking.

Prior to advertisement, the Selection Board will approve the announcement, selection criteria and relative importance (weighting). When federal funds are to be used, and for all Basic On-Call Standard Consultant Agreements, FHWA concurrence will be obtained for the scope of services and announcement based on the SCDOT/FHWA Stewardship and Oversight Plan (2007). The Director of Procurement, or designee, will arrange for the announcement to be advertised in the S.C.B.O. or other means determined appropriate by the Selection Board. The announcement will identify the contact person for all questions.

2) Selection Criteria

Evaluation of each firm's proposal will be based on the selection criteria and relative importance (weight) published in the announcement. The selection criteria for each announcement may include but is not limited to the following:

- a. The ability and relevant expertise of the firm's personnel (specifically the Project Administrator and key staff) to be used on the project;
- b. Past performance on similar projects;
- c. The firm's project delivery approach and responsiveness to the Department;
- d. Present and projected workload; and
- e. Cost, where applicable.¹

The Department will consider results of the "Consultant Performance Evaluations" in the past performance criteria. [See Section XIV(C).] Special attention will be given to cost overruns, completing work on schedule, quality of work, errors and omissions, etc. The Department may include other factors that are pertinent to a specific project in the selection criteria and the announcement.

3) Selection of Firm or Firms for Basic Agreements

- a. Receipt of Proposals - The Director of Procurement, or designee, will record the name, date and time of all consultant proposals received. The Director of Procurement, or designee, will review all submittals for

¹ Cost shall not be used as a selection criterion in the procurement of engineering and design related services which are defined as program management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services. However, cost may be used as a selection criterion when the scope of work does not include engineering and design related services.

compliance with the announcement and will record any areas of non-compliance for discussion and action with the Selection Board.

- b. Notification of Non-responsiveness - The Director of Procurement, or designee, will notify consultant firms if their proposals are determined to be non-responsive by the Selection Board.
- c. Evaluation of Proposals - The Selection Board will evaluate and score firms responding to the announcement using the advertised selection criteria. When selecting on-call consultants the number of firms selected will be the number requested by the appropriate Deputy Secretary, subject to the Selection Board's discretion as to a logical break in the rankings. The Selection Board shall utilize the PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY (Exhibit 1 to this Directive) to provide the final ranking order of negotiation for the appropriate Deputy Secretary's concurrence.
- d. Technical Advisory Group – The Selection Board has the option to utilize a Technical Advisory Group (“TAG”) to assist with all or part of the evaluation process. The TAG is a group of knowledgeable individuals and technical experts that may be appointed by the Selection Board. If a TAG is used, the Selection Board shall provide written instructions detailing the extent of assistance the TAG is to provide. If the TAG is assigned the task of scoring all or some of the criteria, those criteria will not be rescored by the Selection Board.
- e. Ties - In the rare instance of a tie between the top-ranked firms in Total Score, the Selection Board or TAG, if requested by the Selection Board, will interview the tied firms. The firms will then be rescored using the advertised selection criteria. A PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY (Exhibit 1 to this Directive) labeled “Post Interview” will be utilized to provide the final ranking order of negotiation for the appropriate Deputy Secretary's concurrence.
- f. Interviews - The Selection Board may at its discretion, and in addition to interviews for firms in a tie as noted above, conduct interviews or require the TAG to conduct interviews with all firms prior to scoring or a short-list of the firms after initial scoring. (The TAG may also request the Selection Board's approval to conduct interviews.) The number of firms short-listed and selected for interviews will be determined by a logical break in the rankings. After the interviews the firms will be rescored using the advertised selection criteria. The PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY (Exhibit 1 to this Directive) labeled “Post Interview” will be utilized to provide the final ranking order of negotiation for the appropriate Deputy Secretary's concurrence.

g. Deputy Secretary's Review – The Deputy Secretary will review the Selection Board rankings and notify the Director of Procurement, or designee, of his or her concurrence/non-concurrence with the rankings. The Deputy Secretary has the limited authority to either concur with the recommendation of the Selection Board or to determine that the best interest of the state is served by either canceling the project entirely or re-advertising the project.

1) Concurrence with Rankings – If the Deputy Secretary concurs with the rankings of the Selection Board, he or she shall so indicate on the PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY and return it to the Director of Procurement, or designee. The Director of Procurement, or designee, will notify all firms as to the rankings. The selection of the top-ranked firm with whom to begin negotiations will be documented on Engineering Package Letter B.

2) Cancellation or Re-advertising – If the Deputy Secretary determines that it is in the best interest of the State to cancel entirely or re-advertise the project, the Selection Board and Director of Procurement, or designee, will be notified in writing. The Director of Procurement, or designee, will place appropriate documentation in the selection file and notify firms that submitted a proposal that the selection has been cancelled entirely or the project is cancelled but may be re-advertised at a later date. The selection folder for the project will be labeled “Cancelled” and archived in accordance with the record retention requirements of this Directive. [See Section XIV(A)(1)(a).] The Director of Procurement, or designee, will notify the appropriate Deputy Secretary that the selection has been cancelled and, if re-advertised, that a new selection process must follow the procedures enumerated herein.

h. Record Retention – The Selection Board will provide documentation including but not limited to the PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY and Forms 25, 26, and 27 from the Engineering Package Letter B “Professional Services Selection Process” supporting its ranking to the Director of Procurement, or designee, for record retention.

i. Modification of Professional Services Selection Evaluation Summary Form - The PROFESSIONAL SERVICES SELECTION EVALUATION SUMMARY form may be modified independently and without impact to this Directive provided such modifications are in accordance with Section XVI (F) below. The modified form will be identified as a revised Exhibit 1 to this Directive.

B. SPECIAL SELECTION PROCEDURES

1. Public Institutions of Higher Education

The Department may enter into contracts with Public Institutions of Higher Education through direct negotiations to establish or maintain essential engineering, research, development capability, or federally mandated programs. The selection and negotiation process will be coordinated with the Office of Contract Services. Responsibility for contract administration, performance, and record retention will be in accordance with Section XIV (A)(1) and (2) of this Directive.

The Department will follow U.S. Office of Management and Budget (OMB) Circular A-21 "Cost Principles Applicable to Educational Institutions", in determining allowable costs for these contracts. Pre-award audits and independent cost estimates for Public Institutes of Higher Education contracts are not required.

Authorization to use this method of selection requires prior written approval by the appropriate Deputy Secretary. Commission approval through the Secretary of Transportation is required prior to execution of the Agreement.

2. Emergency

An emergency condition is a situation that creates a threat to national security, public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or other reasons as may be determined by the Secretary of Transportation, or his designee and, if federal funding is anticipated, early coordination with the FHWA Division Administrator or his designee.

Emergency procurement shall be limited to those consultant services necessary to meet the emergency. The selection procedure used shall assure that the required consultant services are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. Any request by a section of the Department that procurement of consultant services be made on an emergency basis must be in writing, stating the basis for the emergency procurement and the selection of the particular consultant. Secretary of Transportation, and, if federal funds are involved, FHWA prior approval, is required.

All emergency procurements of consultant contracts shall be reported in detail and ratified by the Commission at its next succeeding meeting in accordance with Section 57-5-1620 of the Code of Laws of South Carolina, as amended.

3. Small Purchase Procedures

Small purchase procedures can be followed where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 USC 403(11), which is currently \$100,000.00. Contract requirements shall not be broken down in smaller components merely to permit the use of small purchase requirements.

The selection and negotiation process will be coordinated with the Director of Contract Services and Director of Procurement or designees. Contract Administration performance and record retention will be in accordance with Section XIV (A)(1) and (2) of this Directive.

Authorization to use this method of selection requires prior written approval by the appropriate Deputy Secretary and FHWA if Federal funds are involved. Commission approval through the Secretary of Transportation is required prior to execution of the Agreement.

4. Sole-Source

Sole-source procurement is not permissible unless there is only a single consultant available to perform the work. In cases of reasonable doubt, competition should be solicited. Any request by a section of the Department that procurement of services be restricted to one potential consultant shall be accompanied by an explanation as to why no other consultant would be suitable or acceptable to meet the need.

The selection and negotiation process will be coordinated with the Director of Contract Services and the Director of Procurement or designees. Contract Administration, performance and record retention will be in accordance with Section XIV (A) (1) and (2) of this Directive.

Authorization to use this method of selection requires prior written approval by the appropriate Deputy Secretary and FHWA if federal funds are involved. Commission approval through the Secretary of Transportation is required prior to execution of the Agreement.

5. On-Call Consultants

Consultants selected by the Selection Board pursuant to an on-call solicitation will execute a Basic On-Call Agreement and be put on an "On-Call Consultant List." Thereafter, as the need arises for services, a Contract Modification or Task or Work Order will be executed with a consultant on the On-Call Consultant List for a specific scope of services. The scope of service for any Contract

Modification or Task or Work Order is limited to the scope of services that the Department included in the on-call solicitation. The Department is not required to execute Contract Modifications or Task or Work Orders with every firm selected to be on the On-Call Consultant List.

The following criteria will be used in the order listed to evaluate and justify the selection of a firm from the On-Call List:

- a. Firm selected presents a value to the Department
- b. Special expertise and knowledge required to perform scope of services
- c. Firm's historical responsiveness to the Department
- d. Cost.²
- e. Value and volume of total work under contract between the consultant and Department for the most recent two (2) year period and as compared to the other firms on the specific On-Call Consultant List.

The appropriate Contract Manager is responsible for selecting a firm from the On-Call Consultant List. Prior to notifying the proposed consultant that negotiations will commence justification of firm selection will be submitted in writing by the appropriate Contract Manager to the appropriate Deputy Secretary for approval. Each of the above criteria will be addressed in this justification prior to negotiations.

This documentation will be archived in the negotiation file maintained by the Director of Contract Services.

VII. RELEASE OF PROJECT SPECIFIC INFORMATION

All project specific questions from interested consultants are to be directed to and answered by the contact person identified in the announcement. The above also applies to all Department employees. This procedure does not preclude the answering of general procedural and policy questions by any Department employees.

The contact person must be knowledgeable of the specific scope of services and be available by appointment to discuss the project with interested consultants. If the contact person cannot, at the time of asking, answer a question from a consultant, the contact person will obtain the answer to the specific question and advise the consultant in sufficient time to meet the requirements of the announcement. The contact person is not to refer consultants to other areas of the Department for project specific information. The contact person will maintain a log of inquiries and responses regarding each solicitation.

² Cost shall not be used as a selection criterion in the procurement of engineering and design related services which are defined as program management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services. However, cost may be used as a selection criterion when the scope of work does not include engineering and design related services.

VIII. NEGOTIATIONS

The negotiations are a critical phase of the process leading to execution of an agreement and authorization to proceed with the work. The Director of Procurement, or designee, will inform the Director of Contract Services and all responsive consultants of the firm selected for negotiation.

The Director shall assemble a negotiation team composed of the Director, or designated representative; the Chief Negotiator; and if considered necessary by the Director, any additional team members. The Director, or designated representative, will chair the team (hereinafter "Team Chairperson"). The negotiation team will be responsible for refining the scope of services (SOS), project schedule (PS), man-hours, job classifications, hourly rates, direct non-salary costs, and fixed fee (profit). Resources to be used in the negotiations may include, but are not limited to, the scope of services, cost estimates, and the audit opinion issued pursuant to a pre-award audit.

The location for negotiation meetings will be at the sole discretion of the Team Chairperson. The Team Chairperson will consider Department and consultant staff involvement, travel, and time costs as they relate to Department personnel costs and other cost factors considered relevant. Travel and subsistence will be in accordance with established Department policy and procedure directives.

When negotiating a services contract that involves staff augmentation (services that could be performed in-house by Department employees), the Director of Human Resources, or designated representative, will be added to the negotiation team and the negotiation team shall assess the cost of such services against the cost of obtaining the same services through the hiring of a temporary employee. The team will also consider the type of services and the length of time that the service will be required. The final determination shall consider all of these factors and will be documented in the negotiation file. If the negotiation team determines that a temporary employee is the most appropriate means of acquiring the services and the most cost effective, the established process for hiring a temporary employee will be followed.

Direct Negotiations may be used for sole source, emergencies, small purchases, and for contracts with Institute of Higher Learning when conditions warrant (competitive selection not practicable or feasible).

THE STEPS TO BE FOLLOWED IN THE NEGOTIATION PROCESS ARE AS FOLLOWS:

A. SCOPE OF SERVICES

1. PREPARATION FOR SCOPING MEETING

- a. The Team Chairperson may furnish the firm any preliminary data previously assembled for the project such as location and design reports, aerial photography, mapping, studies, traffic data and other items currently in the possession of Department.

- b. If the scope of services and schedule internally and independently prepared by the Department is of sufficient detail to begin price negotiations, the Team Chairperson will send the scope and schedule to the firm and direct them to prepare a cost estimate and send copies of the same to the Contract Manager and Chief Negotiator. The firm's cost estimate will be independent to the cost estimate prepared by the Department.
- c. The Team Chairperson may develop a general scope and schedule for the project by completing the SOS and PS, making any necessary revisions as may be required by the particular project. This scope and schedule will be prepared independent of the scope and schedule prepared by the consultant. The Team Chairperson may seek assistance from various sections within Department for specialized areas of work such as hydrology, environmental, rights-of-way, bridge design, and construction. The Team Chairperson may hold an internal scoping meeting of Department personnel for large or unusual projects.
- d. If the scope of services and schedule prepared by the Department is not of sufficient detail, the Team Chairperson may direct the consultant to prepare a general scope and a schedule and to bring or send copies of the same to the Contract Manager and Chief Negotiator. The consultant may prepare the scope and schedule independent of the Department based on the preliminary scope, any preliminary data, and the consultant's understanding of the project. The schedule will be in sufficient detail to determine any assumptions related to Department review and approval timeframes for project components, and other items requiring approval from the Department or other regulatory agencies.
- e. The Team Chairperson may arrange for a joint negotiation team/consultant meeting to negotiate the scope of services and schedule jointly prior to each party's development of an independent cost estimate.

2. SCOPING MEETING DEPARTMENT/FIRM (if required):

A review and comparison of the scopes and schedules prepared by Department and the consultant will ensue. Differences will be discussed for the purpose of refinement and mutual agreement. When general agreement of the scope and schedule is reached, the Team Chairperson will request the consultant to revise and resubmit the SOS and PS if necessary. Final scope details that are generally minor in nature may be finalized at a subsequent meeting to negotiate man-hours and cost.

B. MAN-HOURS AND COST

The Team Chairperson will direct the consultant to prepare their Man-Hour Requirements (MR) and Cost Estimate (CE) after approval of the SOS and PS and submit a copy of the consultant's MR and CE to the Chief Negotiator.

1. PREPARATION FOR MEETING (if required):
 - a. The negotiation team will refine and update the Department's independently-prepared preliminary cost from Engineering Package Letter A or as prepared by the Contract Manager for "on-call" projects and prepare independent estimates of man-hours and cost based on the agreed and approved scope and schedule. The Department-prepared MR and CE are confidential and the information thereon shall not be shared with the consultant before the negotiation meeting or through other correspondence with consultant.
 - b. After preparation of the Department's estimate and submittal to the Chief Negotiator, the negotiation team may meet to review the consultant's MR and CE. If the negotiation team finds the estimate and scope to be appropriate, the contract can be recommended for approval. If not, the Team Chairperson will arrange for a negotiation meeting with the consultant. The purpose of the meeting is to reach agreement on the total scope, man-hours, direct non-salary costs, and fixed fee by negotiation. In the event the project will use a lump-sum contract, the negotiation team will review the scope, schedule and fee structure for the project and follow the above process for recommendation or arrangement for a negotiation meeting with the consultant.
 - c. The Team Chairperson may distribute the consultant's completed MR and CE to the appropriate sections within the Department for review and comparison with the Department completed MR and CE before the negotiation meeting.
2. NEGOTIATION MEETING (if required):
 - a. The negotiation team will compare the man-hours, job classifications, and hourly rates proposed for each task of work for the purpose of ascertaining the appropriateness of the same and will discuss with the consultant at the meeting those items that are unacceptable or in question. Acceptance will be by mutual agreement of the negotiation team and the consultant. It is anticipated that the approved scope will be refined as a result of these discussions and minor revisions may be made. The Department may terminate negotiations if agreements cannot be reached.
 - b. The negotiation team will also compare direct non-salary costs on a task-by-task basis and make any revisions as agreed on by negotiation. Subconsultant fees will be negotiated based on Department experience on other projects,

with consideration given to those items listed in paragraph (c) below for negotiation of fixed fee (profit).

- c. After agreement on other costs, the negotiation team will negotiate the fixed fee (profit) with consideration of the financial and professional investment required, the extent, scope, complexity, character, and duration of services, the degree of responsibility to be assumed by the consultant, and other factors as may be considered at the time of negotiation.
- d. The Manager of Contracts and Special Projects, in coordination with the Office of Legal Services, will prepare an agreement for consultant services to include the mutually agreed decisions resulting from the negotiations.
- e. If the negotiation team determines that further negotiations will not result in an acceptable agreement, the Chief Negotiator will notify the Director of Contract Services in writing giving the reason(s) for terminating negotiations. The Director of Contract Services will notify the firm in writing that negotiations are terminated stating the reason(s) given by the Chief Negotiator. A copy of this letter will be provided to the appropriate Deputy Secretary, Director, Selection Board, Director of Procurement, Team Chairperson, and Chief Negotiator. The Director of Contract Services will notify the negotiation team to begin the negotiation process with the next firm in the ranking order of negotiation.
- f. The Team Chairperson and Chief Negotiator jointly will be responsible for documenting the negotiations including preparation of the RECORD OF NEGOTIATION Form (see Office of Contract Services). Retention of records will be in accordance with Section XIV CONTRACT ADMINISTRATION.

IX. ESTIMATING

The cost estimate for consultant services is one of the most important resources available to the Department in the negotiation process. The accuracy and completeness of the cost estimate is vital to the successful negotiation of the agreement for consultant services.

A. Overhead Rates

Overhead rates established in accordance with the Federal Acquisition Regulations and approved by a cognizant agency shall not be limited by any administrative or de facto ceilings nor shall they be negotiated (see 23 CFR 172). For the purpose of this section the Department will consider the following overhead categories:

1. Home Office Rate (Schedule of Indirect Costs)

Comprised of a logical total company indirect cost grouping allocated in accordance with generally accepted accounting principles and subject to limitations as stated in Part 31 of the Federal Acquisition Regulations and in other certain appropriate Federal Regulations.

2. Field Office Rate

A consultant's employees may work for a period of time in an on-site office. Because the consultant's employees are not working out of their own offices and are not receiving office support in their day-to-day activities, the hours billed for them do not qualify for the consultant's full overhead rate. The purpose of the field rate is to pay the consultant for the fringe benefits and home office support they do provide to their field employees.

For Department projects on which the consultant's employees are working for a period of time away from the consultant's home office such as a remote field office trailer or the Department is providing an office or other facility owned or maintained by the Department, the consultant shall use their field office rate as approved by a cognizant agency in accordance with appropriate Federal Regulations.

B. Cost Limitations

The Department's Secretary of Transportation may establish cost limitations, including but not limited to, salary cap, mileage rate limits, meal and lodging limits, etc., as considered appropriate except on overhead rates as detailed in paragraph (A) above. Any cost limitation will be in writing by the Secretary of Transportation (see 23 CFR 172).

C. Exceptions

Independent cost estimates are required for all contracts with the exception of Public Institutions of Higher Education (see Section VI(B)(1) above) and initial on-call contracts ("Basic On-Call Agreement"). For on-call contracts, independent estimates shall be prepared prior to individual contract modifications.

D. Preparation of Cost Estimates

THE STEPS TO BE FOLLOWED IN THE PREPARATION OF COST ESTIMATES ARE GIVEN BELOW:

1) PRELIMINARY ESTIMATE

The Director, or representative, will make a preliminary estimate of the cost of consultant services when consultant services are requested. This preliminary cost estimate will be included in Engineering Package Letter A or Package Letter C. An acceptable method for making the preliminary estimate is to use a percentage of the estimated construction cost based on historical data for work of similar scope, nature and complexity.

2) DEPARTMENT PREPARED ESTIMATE FOR NEGOTIATION

a. The Team Chairperson, with assistance from the Chief Negotiator, will prepare a schedule of MR. The MR will identify the various tasks required, along with the man-hours and job classifications required to accomplish the services described in the negotiated and accepted SOS. In preparing the MR, the Team Chairperson, with assistance from the Chief Negotiator, will be assisted by various sections within the Department for specialized areas of work such as hydrology, environmental, rights-of-way, bridge design, construction, etc.

b. The Team Chairperson will prepare a documented CE for use in the negotiations by completing the following information for each item of work:

1) The number of man-hours summarized on the MR.

2) The payroll cost based on the job classifications and the average hourly rate for the various classifications. The average hourly rates are based on Department's experience and are available from the Chief Negotiator.

3) The direct non-salary costs. Estimates should be based on past experience with projects of similar nature and complexity.

4) The cost of services subcontracted to others. Estimates should be based on past experience with projects of a similar nature and complexity.

Upon completion of the above information, the Team Chairperson and Chief Negotiator will discuss and refine if necessary.

3) CONSULTANT PREPARED ESTIMATE FOR NEGOTIATION

The consultant will prepare an MR and a completed CE in a similar manner as described in paragraph B above.

4) FINAL NEGOTIATION ESTIMATE

The consultant will complete a revised CE based on the results of the negotiations and provide one (1) copy to the Chief Negotiator and two (2) copies to the Team Chairperson. The Team Chairperson and Chief Negotiator will verify that the revised CE is in accordance with results of the negotiations.

The hourly rates used in preparing the CE should fall within the range normally expected for the various job classifications. Hourly rates which exceed the normal must be justified by the consultant. The project agreement will be prepared based on this completed CE.

X. REQUESTING AUDITS

The Director of Contract Services, or designee, is responsible for requesting pre-award, progress and final audits as appropriate.

A. Pre-Award Audits

1. Basic Agreements (New Selections) Consultants - Pre-award audits will be requested by the Director of Contract Services, or designee, for all consultant Basic Agreements.
2. Contract Modifications Consultants - Pre-award Audits will be requested by the Director of Contract Services, or designee, on all contract modifications of \$250,000.00 or more. Pre-award audits may be requested by the Director of Contract Services, or designee, for lesser amounts if the Director of Contract Service's, or designee's, review of previous audits notes prior concerns; if new work items not found in previous audits are included in the Contract Modification; or if there are other concerns that the Director of Contract Services considers requiring an audit review.

Exceptions: Projects which are bid on a per parcel or low bid basis and projects with Public Institutes of Higher Education governed by OMB Circular A-21 will not require pre-award audits unless the Office of Contract Services considers it necessary.

Note: The appropriate Deputy Secretary, the Director of Contract Services, or the appropriate Director reserve the right to recommend Letter Contracts (Limited Notice to Proceed) prior to the issuance of a pre-award audit and prior to the execution of the Basic Agreement or Contract Modification. The appropriate person listed above shall document the reasons for moving ahead, and why the action is considered in the best interest of the Department. Such actions shall require the execution of a Letter Contract by the appropriate Deputy Secretary. The Letter Contract shall state the following:

1. The limited scope of services
2. Maximum dollar value
3. Time limit to negotiate and secure a full contract
4. Reference to the terms and conditions of the Department's applicable Basic Agreement
5. Other factors considered necessary to define the intent of the Letter Contract.

B. Progress Audits

Progress audits will be requested by the Director of Contract Services, or designee, for uninterrupted projects of five (5) years or more. The Director of Contract Services, or designee, may request or Contract Audits may perform a progress audit for any project of any term if either considers it to be in the best interest of the Department.

C. Final Audits

The Director of Contract Services, or designee, will notify the Accounting Office, Preconstruction Management Office and Contract Audits Office at the completion of all Consultant and Public Institute of Higher Education projects. Final audits will be conducted by the Contract Audits Office in accordance with the Contract Audits Office Procedures Manual. The Director of Contract Services may specifically request that a final audit be performed.

D. Audit Findings Resolution

Audit findings will be resolved by the Director of Contract Services with assistance from the Contract Manager prior to the execution of an agreement, contract modification or closing a project. Explanation and assistance will be requested from Contract Audits Office as necessary. The results of the resolution will be in writing by the Director of Contract Services with a copy provided to the Contract Manager, consultant and Contract Audits Office.

XI. ORIGINAL AGREEMENTS (BASIC AGREEMENTS)

A. COMPLETE PROJECT CONTRACT

1. Logical termini - It is the intent of the Department to contract for projects of a well-defined scope and nature for which logical and easily identifiable beginning and ending points can be established in their entirety.

2. Methods of payment - The following types of contracts or methods of payment will be considered depending on the sufficiency of defined scope of services, parameters or requirements:
 - a. Class I Project – A project whose scope of services, parameters and requirements are well defined. A Class I Project generally should not require contract modifications. A lump-sum method of payment should generally be considered.
 - b. Class II Project – A project of which the Department is unable to provide sufficiently defined scope of services, parameters or requirements. A cost-plus-fixed-fee with contract maximum method of payment should generally be considered.
 - c. Class III Project – A project whose scope of services, parameters and requirements allow for costs to be accumulated into one unit. An approved unit cost payment method should generally be considered. Typical services provided for under a Class III Project are geotechnical and aerial photography services.
3. Negotiation of multi-phase contracts - For purposes of fiscal efficiency, the Department may elect to negotiate individually each phase of a multiple-phase contract.
 - a. Agreement- An agreement for a project with multiple phases may be executed upon agreement as to the cost of the initial phase. Agreements for projects with multiple phases will clearly state that the agreement is for the total project and the negotiations for the remaining phases will be conducted during the course of the agreement. The agreement shall also state that the Department reserves the right to discontinue the agreement at the end of any phase at the sole discretion of the Department.
 - b. Approval required for negotiation of each phase - Before beginning negotiations for each subsequent phase within a contract, a request to negotiate the next phase of work including a justification for continuing with the contract will be prepared. The justification should consider general scope of work for the phase, estimated cost, project schedule, coordination of work with other phases, benefits and/or detriments of continuing with the original agreement including the effects of a new consultant selection process. The justification shall be forwarded to the Director for approval prior to proceeding with negotiations for the next phase. Failure to obtain approval to negotiate a phase or approval of the negotiated phase will require that the work of that phase be accomplished by Department staff or a new consultant selection process be held in accordance with the procedures set forth in this document.

- c. Conduct of negotiations - Negotiations for individual phases of work will be conducted in accordance with Section VIII and will be conducted during the course of the agreement. Work shall not commence on a phase until negotiations for that phase are concluded and approved.
- d. Contracts including preparation of environmental document and final engineering and design - When the agreement includes both the preparation of an environmental document and subsequent final engineering and design, the Director will conduct a review that addresses the objectivity of the environmental document. The review will be submitted to the FHWA Division Administrator for concurrence before authorizing the consultant to perform final engineering and design.

B. PROJECT PHASE CONTRACT

Projects on new locations, on significant realignments, or which are unusually large or are of an unusual nature where there is insufficient information to define the overall scope should be contracted by individual phases. Under normal circumstances a new selection will be held and a new contract written for each phase for work. Any circumstances which require a change in this section will require written justification and the approval by the Deputy Secretary and, if Federal funds are involved, the FHWA Division Administrator.

XII. CONTRACT MODIFICATIONS

A Contract Modification is required in order to make alterations and include unforeseen work which is incidental to the proper completion of the work required in the original agreement. A Contract Modification should be made for any alteration in the terms of the original agreement that changes the cost, changes the character, scope, complexity, or schedule of the work or changes the conditions under which the work is required to be performed. All changes in the required schedule, scope of work or fee require written authorization from Deputy Secretary and when Federal funds are used, FHWA approval in accordance with the terms of the SCDOT/FHWA Stewardship and Oversight Plan (2007) prior to implementation. The responsibilities for the initiation of a proposed contract modification are as follows:

- A. Director, or representative – It is the Director’s, or representative’s, responsibility to see that any changes are negotiated, agreed to and authorized in accordance with Department procedures. When the firm is notified of changes found necessary by Department, the notice will clearly state that it is not an authorization to proceed with the work required by the changes and will advise the firm of the steps necessary to negotiate the change.
- B. Consultant – The consultant should provide a written explanation of any requested contract modification. This explanation should clearly identify the change and its effects on the project. This explanation should also include a clear, concise and detailed explanation of the necessity of the contract modification, including specific

reasons as to why this proposed change was not included in the original agreement or any previous contract modification.

- C. Should a Request for Contract Modification which includes additional work not be approved by the Secretary of Transportation or approved designee, the additional work may be accomplished by Department in-house staff, a new selection process may be required in order to accomplish the additional work through the use of a consultant, or consideration of use of an “on-call” consultant may be requested for approval.

XIII. DESIGN CONTRACTS AND SUBSEQUENT CONSTRUCTION MANAGEMENT AND ENGINEERING INSPECTION

Generally, consultant(s) providing design services will not be used to perform construction management and engineering inspection on the same project. The Deputy Secretary, and when federal funds are used, the FHWA Division Administrator must approve exceptions to this restriction. This restriction does not apply to design services performed during construction such as shop drawing reviews or responding to design issues that arise during construction.

XIV. CONTRACT ADMINISTRATION

The Director of Contract Services, the Director of Procurement, and the Contract Manager share responsibility for the administration of the contract.

A. RESPONSIBILITIES

1. DIRECTOR OF CONTRACT SERVICES, or designee

- a. Maintain a contract file that includes as a minimum:
 - Original contract and contract modifications
 - Documentation of the negotiation process
 - Documentation of the estimating process
 - Documentation of Commission approval (shared information with Director of Procurement)
 - Claims (shared information with Director of Procurement)
 - Insurance information
 - Audit reports (Pre-award, Progress, and Final)
- b. Advise the consultant regarding audit results, interpretation of contract terms and conditions, contract modifications, and other related items.

2. DIRECTOR OF PROCUREMENT, or designee

- a. Maintain a contract file that includes as a minimum:
 - Documentation of selection process

- Documentation of Commission approval (shared information with Director of Contract Services)
 - Claims (shared information with Director of Contract Services)
 - Performance evaluation
 - Proposals/ Letters of Interest*- When federal funds are used, FHWA approval of advertisement, scope of work and contract modifications in accordance with the terms of the SCDOT/FHWA Stewardship and Oversight Plan (2007)
 - List of firms who request debriefings
- b. Provide information on firms responding to individual advertisements to the Selection Board and Technical Advisory Group as needed including, but not limited to (1) value of contracts and contract modifications executed with each consultant; (2) consultant performance evaluations; (3) errors and omission claims and status of any such claims for each consultant.
- c. The Selection Board has appointed the Director of Procurement as the responsible person for handling all debriefings. The Director of Procurement may delegate each debriefing to an appropriate person on his or her staff and request assistance from other Department staff. Debriefings will be conducted in accordance with 48 CFR 31 of the Federal Acquisition Regulations.

*Note

Due to the large number and size of letters of interest, the Department will not retain these files after completion of the selection process and agreement execution. One copy or CD of the selected proposal including letter of interest will be maintained in the contract file.

3. CONTRACT MANAGER

The Contract Manager is responsible and accountable for all aspects of the consultant's performance of the contract. Duties include:

- a. Maintain a project file that will include:
- Copies of original agreement and contract modifications
 - Letter of Justification for original consultant selections, contract modifications, phase negotiations, limited notices to proceed and other justifications related to the execution of a contract document
 - Authorization of funding
 - Project correspondence
 - Documentation of all decisions affecting the work
 - Minutes of all progress meetings
 - Progress reports
 - Performance evaluations
 - Consultant invoices
- b. Provide and coordinate the technical review of work by functional areas of expertise such as roadway design, bridge design, hydrology, construction,

THE STATE OF SOUTH CAROLINA

COUNTY OF _____

RIGHT OF WAY EASEMENT

Approximate Survey Station

Road/Route _____
 File _____
 Item _____
 Project _____
 PIN _____
 Tract _____

_____ To _____
 _____ To _____
 _____ To _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ in consideration of the sum of One Dollar, to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, give, bargain, sell, release and quitclaim, unto the said South Carolina Department of Transportation, its successors and assigns, an easement or right of way for the construction, improvement, operation and maintenance of a public road as a State Highway _____ on _____, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation, upon and across the land which I (or we) may own, in whole or in part, between the survey stations referenced above and as depicted and described on the above reference plans together with, all and singular, the rights, members, hereditaments, and appurtenances thereunto belonging, or in any way incident or appertaining. Said right of way to have a width of _____ feet, that is _____ feet on _____ side of the centerline of the highway. The grantor expressly recognized the possibility that the property herein may be used in the future by public utility or others granted the statutory right to use the right of way.

SPECIAL PROVISIONS:

Special Provisions Cont. on Page 3

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____ By _____
 Recorded _____ By _____
 Project _____ File No. _____

Tract

THE STATE OF SOUTH CAROLINA

RIGHT OF WAY EASEMENT

Approximate Survey Station

COUNTY OF

Road/Route	_____	_____	To	_____
File	_____	_____	To	_____
Item	_____	_____	To	_____
Project	_____	_____	To	_____
PIN	_____	_____	To	_____
Tract	_____	_____	To	_____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ in consideration of the sum of One Dollar, to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, give, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, an easement or right of way for the construction, improvement, operation and maintenance of a public road known as a State Highway _____ on _____, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation, upon and across the land which I (or we) may own, in whole or in part, between the survey stations referenced above and as depicted and described on the above reference plans together with, all and singular, the rights, members, hereditaments, and appurtenances thereunto belonging, or in any way incident or appertaining. The grantor expressly recognizes the possibility that the property herein may be used in the future by public utility or others granted the statutory right to use the right of way.

SPECIAL PROVISIONS:

TO HAVE AND TO HOLD, all and singular, the said easement or right of way and the rights hereinabove granted, unto the said South Carolina Department of Transportation, its successors and assigns forever for a public road, highway, other public transportation purposes or other public uses as are permitted within and in conjunction with highway rights of way and the grantors hereby dedicated their respective interest in said strip of land to public use for such purposes.

It is agreed that buildings, fences, signs or other obstructions will not be erected by me (or us), my (or our) heirs, assigns or administrators within the limits of the right of way herein conveyed and that such buildings and fences are now within the right of way herein conveyed will be moved from the right of way and restored in as good condition as before moving at the expense of the South Carolina Department of Transportation.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this _____ day of _____, in the year of our Lord, Two Thousand and _____.
Signed, sealed and delivered in the presence of:

_____	_____
1 st Witness	(L.S.)
_____	_____
2 nd Witness	(L.S.)

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF _____
COUNTY OF _____

ACKNOWLEDGEMENT

Personally appeared before me the above named Grantor(s) and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this ____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC FOR THE STATE OF _____

My Commission Expires: _____
(Affix seal if outside SC)

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____	By _____	
Recorded _____	By _____	Tract
Project _____	File No. _____	

THE STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

Approximate Survey Station

COUNTY OF

Road/Route _____	_____	To _____
File _____	_____	To _____
Item _____	_____	To _____
Project _____	_____	To _____
PIN _____	_____	To _____
Tract _____	_____	To _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ in consideration of the sum of _____ and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property in fee simple absolute _____ on _____, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated _____, said property being herein conveyed to have a width of _____ feet, that is _____ feet on _____ side(s) of the survey centerline of the highway as shown on the reference plans.

SPECIAL PROVISION: **Special Provisions Cont. on Page**

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____ By _____
 Recorded _____ By _____ Tract _____
 Project _____ File _____

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining.

And I (or we) do hereby bind myself (or ourselves), my (or our) heirs, executor and administrators, to warrant and forever defend all and singular said premises unto said South Carolina Department of Transportation, its successors and assigns, against myself (or ourselves) and my (or our) heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinbefore granted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this ____ day of ____, in the year of our Lord, Two Thousand and ____.

Signed, sealed and delivered in the presence of:

1st Witness

(Grantor)

2nd Witness

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF _____)
_____)
COUNTY OF _____)

ACKNOWLEDGEMENT

Personally appeared before me the above named Grantor(s) and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this ____ day of ____, **20**_____.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC FOR THE STATE OF _____

My Commission Expires: _____
(Affix seal if outside SC)

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____ By _____
Recorded _____ By _____ Tract _____
Project _____ File _____

THE STATE OF SOUTH CAROLINA

COUNTY OF

TITLE TO REAL ESTATE

Approximate Survey Station

Road/Route _____
File _____
Item _____
Project _____
PIN _____
Tract _____

_____ To _____
_____ To _____
_____ To _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ in consideration of the sum of _____ and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute _____ on _____, State and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated _____.

SPECIAL PROVISIONS:

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining.

And I (or we) do hereby bind myself (or ourselves), my (or our) heirs, executor and administrators, to warrant and forever defend all and singular said premises unto said South Carolina Department of Transportation, its successors and assigns, against myself (or ourselves) and my (or our) heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinbefore granted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this _____ day of _____, in the year of our Lord, Two Thousand and _____.

Signed, sealed and delivered in the presence of:

1st Witness

(Grantor)

2nd Witness

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF _____)
_____)
COUNTY OF _____)

ACKNOWLEDGEMENT

Personally appeared before me the above named Grantor(s) and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this ____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC FOR THE STATE OF _____

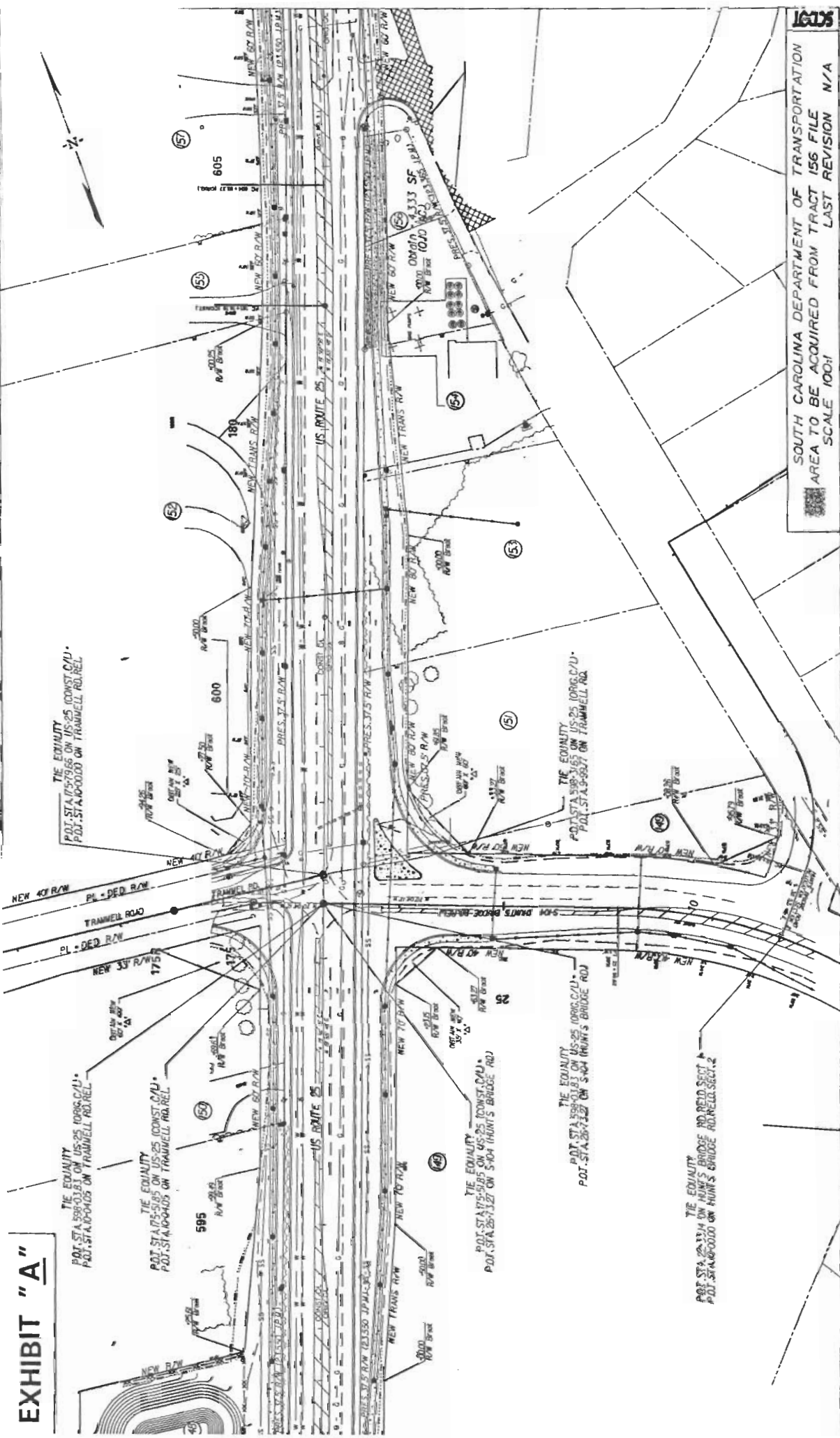
My Commission Expires: _____
(Affix seal if outside SC)

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____ By _____
Recorded _____ By _____
Project _____ File No. _____

Tract

EXHIBIT "A"



THE EQUITY
P.O.T. STA. 575166 ON US-25 (CONST. C.U.)
P.O.T. STA. 40000 ON TRAMMELL RD. REL.

THE EQUITY
P.O.T. STA. 590181 ON US-25 (ORIG. C.U.)
P.O.T. STA. 40000 ON TRAMMELL RD. REL.

THE EQUITY
P.O.T. STA. 591018 ON US-25 (CONST. C.U.)
P.O.T. STA. 40000 ON TRAMMELL RD. REL.

THE EQUITY
P.O.T. STA. 525105 ON US-25 (CONST. C.U.)
P.O.T. STA. 25127 ON S-24 (HUNT'S BRIDGE RD.)

THE EQUITY
P.O.T. STA. 5990183 ON US-25 (ORIG. C.U.)
P.O.T. STA. 257127 ON S-24 (HUNT'S BRIDGE RD.)

THE EQUITY
P.O.T. STA. 20114 ON THE HUNT'S BRIDGE RD. REL. (S-24)
P.O.T. STA. 40000 ON HUNT'S BRIDGE RD. REL. (S-24)

THE EQUITY
P.O.T. STA. 5981655 ON US-25 (ORIG. C.U.)
P.O.T. STA. 43557 ON TRAMMELL RD.

16125
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AREA TO BE ACQUIRED FROM TRACT 156 FILE
SCALE 100:1
LAST REVISION N/A

THE STATE OF SOUTH CAROLINA

PERMISSION FOR:

COUNTY OF

Road/Route _____
File _____
Item _____
Project _____
PIN _____
Tract _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) _____ in consideration of the sum of One Dollar (\$1.00), to me (or us) in hand paid, and other valuable consideration at and before the sealing and delivering hereof, do hereby grant to the South Carolina Department of Transportation permission to do the work as outlined below, with the understanding that this work is to be done on property of the grantor outside of the right of way, it being fully understood and agreed that no right of way is being granted to the Department for the purpose of this construction. Further, permission is granted to perform construction beyond the right of way such as grading and other work necessary to adjust the grade of driveways to conform to the proposed roadway improvements as shown on the plans for the construction of this project.

SPECIAL PROVISIONS:

GRANTEE'S ADDRESS: SCDOT, Director, Rights of Way, P.O. Box 191, Columbia, SC 29202-0191

Checked _____ By _____
Recorded _____ By _____
Project _____ File No. _____

Tract

Permission (continued)

TO HAVE AND TO HOLD, all and singular, the said Permission hereinbefore granted, unto the said South Carolina Department of Transportation.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this _____ **day of** _____, in the year of our Lord, Two Thousand and _____.

Signed, sealed and delivered in the presence of:

1st Witness

(L.S.)

2nd Witness

(L.S.)

NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF _____)

COUNTY OF _____)

ACKNOWLEDGEMENT

Personally appeared before me the above named Grantor(s) and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, **20**_____.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC FOR THE STATE OF _____

My Commission Expires: _____
(Affix seal if outside SC)

Checked _____ By _____
Recorded _____ By _____
Project _____ File No. _____

Tract

SPECIAL PROVISIONS

CHANGE HISTORY	
June 3, 2004	Added Special Provision # 53
January 15, 2009	Added Special Provision #54 & #55

SPECIAL PROVISIONS

INSTRUCTIONS

1. Special Provisions are included with the following forms:
 - 801 Easement
 - 801EXHI Easement
 - 802 Title to Real Estate
 - 802EXHI Title to Real Estate
 - 803 Permission
 - 805 Easement for Counties
 - 806 Permission for Counties
 - 809 ROW Worksheet
2. Pressing the key sequence or key sequences shown in the left column of these pages causes the Special Provisions program to automatically type out the entire text shown in the corresponding right column.
3. A key sequence separated by a plus sign (+) means press both keys together (*Do not press the plus sign key*).
Example:
 Alt+F2 (*press the Ctrl and F2 keys at the same time and release them*)
4. A key sequence separated by a comma (,) means press the first key (or key combination), release, then press the second key. (*Do not press the comma key*).
Example:
 Alt+c, F3 (*press the Alt and "c" keys at the same time, release, then press the F3 key*)
5. Type characters in lower case.

Legend

- Items in braces { } – Chose a word or group of words and delete the others and the braces.
Items in brackets [] – Word within the brackets is optional, use as needed, remove the brackets.
Underlined spaces – Double-click anywhere on the underlining and then type the required text.

Special Provisions

1. For Fee Simple Title to a Portion of the Property:

F2	The above consideration is for _____ {square feet/acres} of land and all improvements thereon if any.
----	---

2. For a Portion of the Property to Include Improvements:

F3	The above consideration is for _____ {square feet/acres} of land and all improvements including the _____.
----	--

3. For a Portion of the Property and the Department to Move Certain Improvements:

F4	The above consideration is for _____ {square feet/acres} of land and all improvements including the _____. It is understood and agreed that the Department, during this construction, will move the _____, {left/right} of approximate survey station _____ onto property of the grantor adjacent to the property being conveyed herein and the condition of this structure shall be in as good a condition after being moved as it was before being moved, or better.
----	--

4. For a Portion of the Property and Owner Retain Some of the Improvements:

F5	The above consideration is for _____ square feet/acres} of land and all improvements except the _____. The grantor shall retain the _____ and remove these improvements from the property within _____ days after receiving written notice from the grantee. Of the above consideration, \$_____ is to be paid upon acceptance of this title and the remaining \$_____ is to be paid when the _____ has been removed from the property. In the event the grantor does not have those improvements which he has agreed to move from the property removed within the specified time, the grantee is relieved of making any further payment and has the right to dispose of the improvement(s) at its discretion.
----	--

5. Fee Simple Title to the Entire Property with No Improvements:

F6	The above consideration is for the entire property, being _____ {square feet/acres} of land and all improvements thereon, if any.
----	---

Special Provisions

6. For Entire Property and Improvements:

F7	The above consideration is for the entire property, being _____ {square feet/acres} of land and all improvements including the _____.
----	---

7. For Entire Property and Owner to Retain Improvements:

F8	The above consideration is for the entire property, being _____ {square feet/acres} of land and all improvements except the _____. The grantor shall retain the _____ and remove the _____ from the property within _____ days after written notice from the grantee. \$_____ of which \$_____ is to be paid upon acceptance of this title and the remaining \$_____ is to be paid when the _____ has been removed from the property. In the event the grantor does not move the _____ within the specified time, the grantee is relieved of making any further payment and has the right to dispose of the improvement(s) at its discretion.
----	---

8. For a Portion of the Property with Improvements and Damages:

F9	The above consideration is for _____ {square feet/acres} of land, damages and all improvements thereon, including the _____. It is understood and agreed that the Department, during this construction, will move the _____ {left/right} of approximate survey station _____ onto property of the grantor adjacent to the property being conveyed herein and the condition of this structure shall be in as good a condition after being moved as it was before being moved, or better.
----	---

9. For a Portion of Property and Damages with no Improvements:

Special Provisions

F10	The above consideration is for _____ {square feet/acres} of land, damages and all improvements thereon, if any.
-----	---

10. For a Portion of Property with Control of Access:

a. No Improvements:

F11, a	The above consideration is for _____ {square feet/acres} of land and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities.
--------	--

b. With Improvements:

F11, b	The above consideration is for _____ {square feet/acres} of land and all improvements thereon, including the _____, including rights of access as may be needed for controlled access facilities.
--------	---

11. Describing Right of Way for an Outfall Ditch:

a. For Easements:

F12, a	[Also] Herein granted is right of way for an outfall ditch {left/right} of approximate survey station _____, said ditch to have a width of _____ feet, being within _____ on the left and _____ feet on the right side of the ditch centerline between approximate ditch survey stations _____ and _____.
--------	---

b. For Property in Fee:

F12, b	[Also] Herein conveyed is property for an outfall ditch {left/right} of approximate survey station _____, said ditch to have a width of _____ feet, being within _____ feet on the left and _____ feet on the right side of the ditch centerline between approximate ditch survey stations _____ and _____.
--------	---

12. Triangular Areas:

a. For Easements (one triangular area):

Ctrl+F2, a	[Also] Herein granted is right of way for a _____x_____ foot triangular {left/right} of approximate survey station _____ at the intersection of _____ and _____.
------------	--

Special Provisions

b. For Easements (two or more triangular areas):

Ctrl+F2, b	[Also] Herein granted is right of way for two (2) triangular areas as follows: one (1) _____x_____ foot triangular area {left/right} of approximate survey station _____ at the intersection of _____ and _____ and one (1) _____x_____ foot triangular area {left/right} of approximate survey station _____ at the intersection of _____ and _____.
------------	---

c. For Property in Fee (one triangular area):

Ctrl+F2, c	[Also] Herein conveyed is property for a _____x_____ foot triangular area {left/right} of approximate survey station _____ at the intersection of _____ and _____.
------------	--

d. For Property in Fee (two or more triangular areas):

Ctrl+F2, d	[Also] Herein conveyed is property for two (2) triangular areas as follows: one (1) _____x_____ foot triangular area {left/right} of approximate survey station _____ at the intersection of _____ and _____, and one (1) _____x_____ foot triangular area {left/right} of approximate survey station _____ at the intersection _____ and _____.
------------	--

13. Cul-De-Sac:

a. For Easements:

Ctrl+F3, a	[Also] Herein granted is right of way for a _____ foot radius for a cul-de-sac at approximate survey station _____ as shown on the plans for this project.
------------	--

b. For Property in Fee:

Ctrl+F3, b	[Also] Herein conveyed is property for a _____ foot radius for a cul-de-sac at approximate survey station _____ as shown on the plans for this project.
------------	---

14. Variable Width Right of Way:

a. For Easements (one transition):

Ctrl+F4, a	[Also] Herein granted is variable width right of way as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} at approximate survey station _____, thence along a transition to _____ feet at approximate survey station _____.
------------	---

Special Provisions

b. For Easements (two or more transitions):

Ctrl+F4, b	[Also] Herein granted is variable width right of way as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} between approximate survey stations _____ and _____, thence within _____ feet between approximate survey stations _____ and _____, thence within _____ feet between approximate survey stations _____ and _____.
------------	--

c. For Property in Fee (one transition):

Ctrl+F4, c	[Also] Herein conveyed is property being variable in width and described as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} at approximate survey station _____, thence along a transition to _____ feet at approximate survey station _____.
------------	---

d. For Property in Fee (two or more transitions):

Ctrl+F4, d	[Also] Herein conveyed is property being variable in width and described as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} between approximate survey stations _____ and _____, thence within _____ feet between approximate survey stations _____ and _____, thence within _____ feet between approximate survey stations _____ and _____.
------------	--

15. Variable Width Right of Way transitioning through the Property Line:

a. For Easements:

Ctrl+F5, a	[Also] Herein granted is variable width right of way as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} at approximate survey station _____, thence along a transition through the property line to _____ feet at approximate survey station _____ (P.L. being approximate survey station _____).
------------	---

b. For Property in Fee:

Ctrl+F5, b	[Also] Herein conveyed is property being variable in width and described as follows: Within _____ feet of the survey centerline of {Road/Route} _____ on the {left/right} at approximate survey station _____, thence along a transition through the property line to _____ feet at approximate survey station _____ (P.L. being approximate survey station _____).
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NOTE: Use survey stations at the farthest points.

Special Provisions

16. Describing Right of Way on a Radius:

a. For Easements:

Ctrl+F6, a	[Also] Right of way herein granted between approximate survey stations _____ and _____ on the {left/right} is along a _____ foot radius as shown on the plans for this project.
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b. For Property in Fee:

Ctrl+F6, b	[Also] Property herein conveyed between approximate survey stations _____ on the {left/right} is along a _____ foot radius as shown on the plans for this project.
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17. Describing Right of Way on an Inverse Radius:

a. For Easements:

Ctrl+F7, a	[Also] Herein granted is right of way around a _____ foot inverse radius at approximate survey station _____ for a cul-de-sac as shown on plans for this project.
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b. For Property in Fee:

Ctrl+F7, b	[Also] Herein conveyed is property around a _____ foot inverse radius at approximate survey station _____ for a cul-de-sac as shown on plans for this project.
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18. Describing Right of Way as Measured Behind the New Sidewalk:

a. For Easements:

Ctrl+F8, a	The right of way herein granted between approximate survey stations _____ and _____ on the {left/right} is _____ feet behind the sidewalk as shown on the plans for this project.
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b. For Property in Fee:

Ctrl+F8, b	The property herein conveyed between approximate survey stations _____ and _____ on the {left/right} is _____ feet behind the sidewalk as shown on the plans for this project.
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Special Provisions

19. Describing Right of Way Where the Property Line Crosses the Centerline:

a. For Easements:

Ctrl+F9, a	[Also] Herein granted is all property on the {left/right} of the {survey/relocated/ construction} centerline of {Road/Route} _____ within the designated right of way.
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b. For Property in Fee:

Ctrl+F9, b	[Also] Herein conveyed is all property on the {left/right} of the {survey/relocated/ construction} centerline of {Road/Route} _____ within the designated right of way extending to the present right of way of _____ and/or the joint property line(s), now or formerly, of _____.
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NOTE: If grantor's property is on one side of the road, but the property line crosses the survey centerline, use one set of survey stations (farthest points) and one of the above statements.

NOTE: If grantor's property is on both sides of the road, use two sets of survey stations --- one for the left and one for the right, each describing farthest points.

20. For Temporary Right of Way:

Ctrl+F10	The above consideration is for _____ {square feet/acres} of land for a temporary right of way described as follows: _____. Temporary right of way herein granted shall revert to the grantor upon completion and acceptance of the project.
----------	---

NOTE : To be secured on a Right of Way Easement.

21. For Condemnations:

a. For Secondary Projects:

Ctrl+F11, a	All that parcel or strip of land, to establish a right of way, containing approximately _____ {square feet/acres} of land and being described as follows: _____. Tax Map No. _____
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b. For Primary Projects: No Improvements

Ctrl+F11, b	All that parcel or strip of land, in fee simple, with improvements thereon, if any, containing _____ {square feet/acres} of land and being described as follows: _____ Tax Map No. _____.
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Special Provisions

c. For Primary Projects: With Control of Access, No Improvements

Ctrl+F11, c	All that parcel or strip of land, in fee simple, with improvements thereon, if any, including rights of access as may be needed for controlled access facilities, containing _____ {square feet/acres} of land and being described as follows: _____ Tax Map No. _____.
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d. For Primary Projects: With Improvements

Ctrl+F11, d	All that parcel or strip of land, in fee simple, with improvements thereon, including a _____, containing _____ {square feet/acres} of land and being described as follows: _____ Tax Map No. _____.
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e. For Primary Projects: Entire Tract, No Improvements

Ctrl+F11, e	All that parcel or strip of land, in fee simple, with improvements thereon, if any, containing _____ {square feet/acres} of land and being the entire tract and described as follows: _____ Tax Map No. _____.
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f. For Primary Projects: Entire Tract, With Improvements

Ctrl+F11, f	All that parcel or strip of land, in fee simple, with improvements thereon, including a _____, containing _____ {square feet/acres} of land and being the entire tract and being described as follows: _____, Tax Map No. _____.
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g. Temporary Right of Way:

Ctrl+F11, g	Also, all that parcel or strip of land to establish a temporary right of way, containing _____ {square feet/acres} of land and being described as follows: _____ Temporary right of way herein condemned shall revert to the condemnee upon completion and acceptance of the project. The remainder of this condemnation shall remain in full force.
-------------	--

NOTE: When condemning temporary right of way, it should be described in a separate paragraph from the permanent right of way.

NOTE: When property being condemned includes payment for damages, the money paragraph must include the words "including all damages" after the word 'hereunder'.

Special Provisions

22. Derivation Clauses:

a. By Deed:

Shift+F2, a	This being {a portion of the/the entire} property acquired from _____ by deed dated _____ and recorded _____ in Deed Book _____, Page _____ in the records for _____ County and shown as Tax Map No. _____.
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b. By Probated Intestate Estate:

Shift+F2, b	This being {a portion of the/the entire} property acquired from _____ who died intestate on _____ as reflected Probate Roll No. _____ in the Probate County for _____ County and shown as Tax Map No. _____.
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c. Unprobated Estate:

Shift+F2, c	This being {a portion of the/the entire} property acquired from _____ who died intestate on _____ without probate and shown as Tax Map No. _____.
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d. Probated Testate Estate: (By Will/Deed of Distribution)

Shift+F2, d	This being {a portion of the/the entire} property acquired by Will of _____, filed _____, as reflected in Probate Roll No. _____ in the Probate Court; also by Deed of Distribution recorded in Deed Book _____, Page _____ in the records for _____ County and shown as Tax Map No. _____.
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23. Relocated/Construction Centerline:

a. For Easements:

Shift+F3, a	Right of Way herein granted is along a {relocated/construction} centerline as shown on plans between approximate survey stations _____ and _____.
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b. For Property in Fee:

Shift+F3, b	Property herein conveyed is along a {relocated/construction} centerline as shown on plans between approximate survey stations _____ and _____.
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PERMISSIONS:

24. Permission to Construct Outfall Ditch:

Shift+F4	[Also] Herein granted is permission to use heavy equipment to construct and maintain an outfall ditch {left/right} of approximate survey station _____ and extending in a _____ direction for approximately _____ feet. Also it is understood and agreed that the Department will maintain the outfall ditch as the Department determines necessary.
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25. Permission to Clean Outfall Ditch:

a. Ditch without survey:

Shift+F5, a	[Also] Herein granted is permission to use heavy equipment to clean and maintain an existing outfall ditch {left/right} of approximate survey station _____ and extending in a _____ direction for approximately _____ feet provided the run of the existing ditch is followed: Also it is understood and agreed that the Department will maintain the outfall ditch as the Department determines necessary.
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b. Ditch with survey:

Shift+F5, b	Herein granted is permission to use heavy equipment to clean and maintain an existing outfall ditch {left/right} of approximate survey station _____ and extending in a _____ direction for approximately _____ feet between approximate ditch survey stations _____ and _____. Also it is understood and agreed that the Department will maintain the outfall ditch as the Department determines necessary.
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26. Permission to Stub Out RC Pipe:

Shift+F6	[Also] Herein granted is permission for the Department to stub out and maintain, as the Department determines necessary, approximately _____ feet of _____ inch RC Pipe {left/right} of approximate survey station _____.
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Special Provisions

27. Permission to Install RC Pipe:

a. Pipe:

Shift+F7, a	[Also] Herein granted is permission to use heavy equipment to install and maintain, as the Department determines necessary, approximately _____ feet of _____ inch RC Pipe {left/right} of approximate survey station _____ as shown on the plans for this project.
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b. Pipe and Rip Rap:

Shift+F7, b	[Also] Herein granted is permission to use heavy equipment to install and maintain, as the Department determines necessary, approximately _____ feet of _____ inch RC Pipe {left/right} of approximate survey station _____ and place _____ tons of hand placed riprap as shown on the plans for this project.
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28. Construction Slopes:

Shift+F8	[Also] Herein granted is permission for construction slopes to extend beyond the right of way on the {left/right} between approximate survey stations _____ and _____ with the understanding that no additional property is granted for construction slopes, during this construction.
----------	--

29. Permission to Install Drop Inlets/Catch Basins:

Shift+F9	[Also] Herein granted is permission for the Department to install a {drop inlet/catch basin} on the property of the grantor and adjacent to the right of way {left/right} of approximate survey stations _____ as shown on the plans for this project, during this construction.
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30. Permission to Construct Channel Change:

Shift+F10	[Also] Herein granted is permission for the Department to construct a channel change on the {left/right} between approximate survey stations _____ as shown on the plans for this project, during this construction.
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Special Provisions

31. Drive Entrance:

a. Constructing drive:

Shift+F11, a	[Also] It is understood and agreed that a drive entrance will be constructed {left/right} of approximate survey station _____ during this construction.
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b. Constructing new drive and eliminating old drive:

Shift+F11, b	[Also] It is understood and agreed that a drive entrance will be constructed {left/right} of approximate survey station _____ and that the portion of the existing roadway outside the right of way on the {left/right} between approximate survey stations _____ is eliminating the existing drive, during this construction.
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c. Constructing New/Additional Entrance – Undetermined Location

Shift+F11, c	[Also] It is understood and agreed that (a/an additional) (commercial/drive) entrance will be constructed by the SCDOT, its contractors or assigns, at a location to be determined by the Grantor herein and approved by the Resident Construction Engineer in accordance with the Access and Roadside Management Standards Manual, during construction of the project.
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NOTE: *Be sure Traffic/Safety Engineer or Project Manager has approved Entrance. (Documentation for turn-in required.)*

32. Scarify Abandoned Road:

Ctrl+Shift+F2	[Also] It is understood and agreed that the portion of the existing roadway outside the right of way on the {left/right} between approximate survey stations _____ and _____ will be scarified during this construction where it can be abandoned.
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33. Earth Connector:

Ctrl+Shift+F3	[Also] Herein granted is permission for the Department to construct a earth connector {left/right/ahead} of approximate survey station _____ as shown on plans for this project, during this construction.
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Special Provisions

34. Capping Well:

Ctrl+Shift+F4	[Also] It is understood and agreed that the abandoned well located {left/right} of approximate survey station _____ will be capped in accordance with the regulations of the Department of Health and Environmental Control, at no expense to the grantor, during this construction.
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35. Right to Enter: (For Demolishing Structures)

Ctrl+Shift+F5	[Also] Herein granted is permission for the Department to use heavy equipment beyond the right of way to demolish the _____ {left/right} of approximate survey station _____ and to remove all materials and debris, during this construction.
---------------	--

36. Permission for Slopes and Radii to extend beyond R/W of an Entrance:

Ctrl+Shift+F6	[Also] Herein granted is permission for construction slopes and radii to extend beyond the right of way, on the {left/right} of Road/Route _____ between approximate survey stations _____, being a _____ foot radius with the understanding that no additional property is being granted for the construction slopes and radii during this construction.
---------------	---

OTHER:

These are to be made a part of the special provisions in the easement or deed, if applicable.

37. Cutting Timber:

Ctrl+Shift+F7	[Also] It is understood and agreed that all merchantable timber will be cut into commercial lengths and placed on property adjacent to the right of way of the grantor.
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38. Removal of Timber by Grantor:

Ctrl+Shift+F8	[Also] It is understood and agreed that the grantor herein may remove the timber from the property herein conveyed provided said timber is removed prior to construction of project, at which time the timber will be disposed of by the South Carolina Department of Transportation, its' contractors, or assigns.
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Special Provisions

39. Redrilling a Well:

Ctrl+Shift+F9	[Also] It is understood and agreed that a new well will be drilled to replace grantor's existing well during this construction and all appurtenances will be re-connected to the water system.
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40. Septic Tanks:

Ctrl+Shift+F10	[Also] It is understood and agreed that the existing septic tank {left/right} of approximate survey station _____ will be pumped out and back filled, and the grantor will be provided with a new septic tank during this construction. This septic tank will be connected to the existing drainage system.
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41. Drain Fields:

Ctrl+Shift+F11	[Also] It is understood and agreed that the portion of the drain field on the {left/right} between approximate survey stations _____ and _____ disturbed during this construction will be relocated at no cost to the grantor.
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42. Sprinkler System:

Alt+Shift+F2	[Also] It is understood and agreed that the portion of the sprinkler system on the {left/right} between approximate survey stations _____ and _____ disturbed during this construction will be relocated at no cost to the grantor. It is further understood and agreed that any sprinkler heads and/or any appurtenances thereto which cannot be re-set will be removed and given to the grantor.
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43. Cut-Off Items:

Alt+Shift+F3	[Also] It is understood and agreed that the _____ {left/right} of approximate survey station _____ will be cut off at the right of way line during this construction.
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Special Provisions

44. Re-Set Items:

Alt+Shift+F4	[Also] It is understood and agreed that the _____ {left/right} of approximate survey station _____ will be re-set clear of the right of way line during this construction.
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45. Sodding:

Alt+Shift+F5	[Also] It is understood and agreed that the construction slope area will be re-sodded with _____ sod during this construction.
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46. Spillage Rights:

Alt+Shift+F6	<p>[Also] It is understood and agreed that the South Carolina Department of Transportation during the construction and maintenance of the above captioned road may build up low areas to provide a sufficient road grade, and in doing so may place storm water pipes under and adjacent to the road and may construct drainage ditches within the road right of way, and all of which may drain onto adjacent property.</p> <p>By this agreement, the South Carolina Department of Transportation and other Public Agencies will be held HARMLESS from any damage resulting from storm water drainage or flooding of adjacent lands.</p>
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NOTE: To be secured on an easement.

47. Crossing Dam (Caughman Clause):

Alt+Shift+F7	A section of the Highway to be constructed under this {Easement/Title to Real Estate} will occupy the land area where a dam for the impoundment of water has been constructed. The highway will be on the top surface of the dam. The execution of this {Easement/Title to Real Estate} by the Landowner (grantor) and the acceptance of this {Easement/Title to Real Estate} by the South Carolina Department of Transportation (grantee) does not relieve the grantor of his/her responsibility to perform any and all work and maintenance to the dam, and appurtenances that may be required to maintain and restore the dam, spillway, drainage structure, and appurtenances in a safe condition for the impoundment of water. The grantee assumes only that maintenance responsibility necessary for highway purposes (vehicular use). The grantee does not assume any responsibility for the embankment, spillway, drainage structure, and appurtenances in connection with the impoundment of water.
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Special Provisions

48. Uneconomic Remainder:

Alt+Shift+F8	[Also] It is understood and agreed that at such time as construction is completed and accepted on { <u>Road/Route & File/Item</u> }, any portions of the present right of way of Road/Route _____ extending to the centerline any lying adjacent to the property of the grantor herein which are not required for right of way of Road/Route _____, containing approximately _____ acre(s), will be quitclaimed at no expense to the grantor herein or to his heirs, successors, or assigns.
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49. Retaining Wall:

Alt+Shift+F9	[Also] It is understood and agreed that a retaining wall and footing will be constructed on the {left/right} of approximate survey station _____ adjacent to the right of way at no expense to the grantor. Also it is understood and agreed that the wall and footing shall become the property of the landowners after construction and acceptance from the Department's contractor. Future maintenance of the wall and footing will be the responsibility of the landowner.
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50. Grantor – Non-Liability (Indemnification Clause approved by Legal Department)

Alt+Shift+F10	The SCDOT will conduct all operations hereunder at its own risk and expense and in granting this (easement/title/permission), the Grantor assumes no responsibility or liability whatsoever to any person for any injury, including death or property damage caused by or attributable to or resulting from the Grantee's operations on the Grantor's property.
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51. NPDES (National Pollutant Discharge Elimination System)

Alt+Shift+F11	[Also] Herein granted is permission to use heavy equipment for clearing, placement, maintenance, and access for the purpose of construction of a silt fence for NPDES (National Pollutant Discharge Elimination System) to extend beyond the right of way (left/right) of _____, between approximate survey stations _____+_____ and _____+_____ as shown on the plans for this project with the understanding no additional property is granted for the permission, in accordance with Department standards.
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52. Contamination/Indemnification Clause (Placed in body of Title to Real Estate Only)

Special Provisions

Alt+Shift+F12	And the Grantor does hereby bind itself, its successors and assigns to forever indemnify and hold harmless the South Carolina Department of Transportation from any and all claims of whatsoever nature arisen, arising or to arise based on any actual or alleged environmental contamination caused by the Grantor's operations on the property being conveyed, while under its control, operation and ownership, including but not limited to petroleum hydrocarbons, or any byproducts thereof.
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NOTE: *Easements should be acquired when contamination is an issue or Condemnations (with phrase "to establish a right of way") become necessary.*

53. BCA - Permission for Bridge Construction Access

Ctrl+Alt+F2	[Also] Herein granted is permission to use heavy equipment for clearing, placement, and construction of an access road to provide ingress and egress for the purpose of facilitating bridge construction activities extending beyond the right of way (left/right) of _____, between approximate survey stations _____+_____ and _____+_____ as shown on the plans for this project with the understanding no additional property is granted for the permission.
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54. Purchasing Mobile Home (and Fee Simple Title to the Entire Property) – Owner elects to retain and move the mobile home. Only Applicable for Owner Occupant.

Ctrl+Alt+F3	[Also] The above consideration is for the entire property, being _____ (square feet/ acres) of land and all improvements thereon, including the purchase of the (size) Mobile Home located on the property, which is personal property. The Grantor has elected to reduce the acquisition value to retain and move, at their own expense, the (size) Mobile Home. The (size) Mobile Home must be removed within ____ days after written notification from the Grantee. Of the above consideration of \$_____, \$_____ is to be paid upon execution of this document with the remaining sum of \$_____ to be paid upon the removal of the (size) Mobile Home from the property. In the event that the Grantor fails to remove the (size) Mobile Home within the specified time allowed, the Grantee is relieved of the responsibility of making the payment for the funds withheld and the Grantee further has the right to sell or dispose of the (size) Mobile Home at its discretion.
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55. Purchasing Mobile Home (and Fee Simple Title to the Entire Property) – DOT obtains title to the mobile home and disposes/sells of it at a later date. Only Applicable for Owner Occupant.

Ctrl+Alt+F4	[Also] The above consideration is for the entire property, being _____ (square feet/ acres) of land and all improvements thereon, including the purchase of the (size) Mobile Home located on the property, which is personal property.
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SPECIAL PROVISIONS FOR EXHIBITS

CHANGE HISTORY	
Sept 18, 2003	Survey stations sentence added to condemnations
January 26, 2009	Added Title Exhibit Provisions #12 & #13
August 12, 2009	Added Title Exhibit Provisions #14 & #15

SPECIAL PROVISIONS FOR EXHIBITS

INSTRUCTIONS

1. Special Provisions for Exhibits are included with the following forms:
 - 801 Easement
 - 801EXHI Easement
 - 802 Title to Real Estate
 - 802EXHI Title to Real Estate
 - 803 Permission
 - 805 Easement for Counties
 - 806 Permission for Counties
 - 809 ROW Worksheet
2. Pressing the key sequence or key sequences shown in the left column of these pages causes the Special Provisions program to automatically type out the entire text shown in the corresponding right column.
3. A key sequence separated by a plus sign (+) means press both keys together (*Do not press the plus sign key*).
Example:
 Alt+F2 (*press the Ctrl and F2 keys at the same time and release them*)
4. A key sequence separated by a comma (,) means press the first key (or key combination), release, then press the second key. (*Do not press the comma key*).
Example:
 Alt+c, F3 (*press the Alt and "c" keys at the same time, release, then press the F3 key*)
5. Type characters in lower case.

Legend

- Items in braces { } – Chose a word or group of words and delete the others and the braces.
Items in brackets [] – Word within the brackets is optional, use as needed, remove the brackets.
Underlined spaces – Double-click anywhere on the underlining and then type the required text.

TITLES

1. For Fee Simple Title to a Portion of the Property:

Alt+F2	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvements thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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2. For a Portion of the Property to Include Improvements:

Alt+F3	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvements including _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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3. For a Portion of the Property and the Department to Move Certain Improvements:

Alt+F4	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvement including _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof. It is understood and agreed that the Department, during the construction, will move _____, _____ of approximate survey station _____ onto property of the grantor adjacent to the property being conveyed herein and the condition of this structure shall be in as good a condition after being moved as it was before being moved, or better.
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4. For a Portion of the Property and Owner Retain Some of the Improvements (Partial Payments):

Alt+F5	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvements except _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, Attached hereto and made a part hereof. The grantor shall retain the _____ and remove these improvements from the property within _____ days after receiving written notice from the grantee. Of the above consideration _____ is to be paid upon acceptance of this title and the remaining _____ is to be paid when the _____ has been removed from the property. In the event the grantor does not have those improvements which he has agreed to move from the property removed within the specified time, the grantee is relieved of making any further payment and has the right to dispose of the improvement(s) at its' discretion.
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5. Fee Simple Title to the Entire Property with No Improvements:

Alt+F6	The above consideration is for all that certain parcel of land containing _____, more or less, being the entire property, and all improvements thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
--------	--

6. For Entire Property and Improvements:

Alt+F7	The above consideration is for all that certain parcel of land containing _____, more or less, being the entire property and all improvements including _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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7. For Simple Title to the Entire Property with Improvements:

Alt+F8	<p>The above consideration is for all that certain parcel of land containing _____, more or less, being the entire property, and all improvements except _____, owned by the _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.</p> <p>The grantor shall retain the _____ and remove these improvements from the property within _____ days after receiving written notice from the grantee. Of the above consideration _____ is to be paid upon acceptance of this title and the remaining _____ is to be paid when the _____ has been removed from the property. In the event the grantor does not have those improvements which he has agreed to move from the property removed within the specified time, the grantee is relieved of making any further payment and has the right to dispose of the improvement(s) at its' discretion.</p>
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8. For a Portion of the Property with Improvements and Damages:

Alt+F9	<p>The above consideration is for all that certain parcel of land containing _____, more or less, damages and all improvements thereon, including the _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.</p> <p>It is understood and agreed that the Department, during the construction, will move _____, _____ of approximate survey station _____ onto property of the grantor adjacent to the property being conveyed herein and the condition of this structure shall be in as good a condition after being moved as it was before being moved, or better.</p>
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Special Provisions For Exhibits

9. For a Portion of Property and Damages with no Improvements:

Alt+F10	The above consideration is for all that certain parcel of land containing _____, more or less, damages and all improvements thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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10. For a Portion of Property with Control of Access – No Improvements:

Alt+F11	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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11. For a Portion of Property with Control of Access – With Improvements:

Alt+F12	The above consideration is for all that certain parcel of land containing _____, more or less, and all improvements thereon, including the _____, including rights of access as may be needed for controlled access facilities, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.
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12. Purchasing Mobile Home (and Fee Simple Title to the Entire Property) – Owner elects to retain and move the mobile home. **Only Applicable for Owner Occupant.**

Ctrl+Alt+F5	The above consideration is for all that certain parcel of land containing _____, more or less, being the entire property, and all improvements thereon, including the purchase of the (size) Mobile Home located on the property, which is personal property. Said property is owned by _____, and is shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof. The Grantor has elected to reduce the acquisition value to retain and move, at their own expense, the (size) Mobile Home. The (size) Mobile Home must be removed within ____ days after written notification from the Grantee. Of the above consideration of \$_____, \$_____ is to be paid upon execution of this document with the remaining sum of \$_____ to be paid upon the removal of the (size) Mobile Home from the property. In the event that the Grantor fails to remove the (size) Mobile Home within the specified time allowed, the Grantee is relieved of the responsibility of making the payment for the funds withheld and the Grantee further has the right to sell or dispose of the (size) Mobile Home at its discretion.
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Special Provisions For Exhibits

13. Purchasing Mobile Home (and Fee Simple Title to the Entire Property) – DOT gets title to the mobile home and disposes/sells of it at a later date. **Only Applicable for Owner Occupant.**

Ctrl+Alt+F6	The above consideration is for all that certain parcel of land containing _____, more or less, being the entire property, and all improvements thereon, including the purchase of the (size) Mobile Home located on the property, which is personal property. Said property is owned by _____, and is shown as the “Area of Acquisition” on Exhibit A, attached hereto and made a part hereof.
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14. For Fee Simple Title to a Portion of the Property (\$1.00 and Exchange of Property) **Requires Commission Approval prior to execution of title.**

Ctrl+Alt+F7	The above consideration is for all that certain parcel or strip of land containing _____ of land, more or less, and all improvements thereon, if any, owned by _____, shown as the “Area of Acquisition” on Exhibit A, attached hereto and made a part hereof. It is understood and agreed that the area to be quitclaimed upon completion and acceptance of the project is shown as “Area of Exchange” on Exhibit B, also attached hereto and made a part hereof, and is being quitclaimed in exchange for the property conveyed herein, to the Grantor, his heirs, successors, or assigns.
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15. For Fee Simple Title to a Portion of the Property (\$XXX Amount and Exchange of Property) **Requires Commission Approval prior to execution of title.**

Ctrl+Alt+F8	The above consideration is for all that certain parcel or strip of land containing _____ of land, more or less, and all improvements thereon, if any, owned by _____, shown as the “Area of Acquisition” on Exhibit A, attached hereto and made a part hereof. It is understood and agreed that the area to be quitclaimed upon completion and acceptance of the project is shown as “Area of Exchange” on Exhibit B, also attached hereto and made a part hereof, and is being quitclaimed as a portion of the consideration above, to the Grantor, his heirs, successors, or assigns.
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CONDEMNATIONS

1. Secondary Projects or Properties for Easement Interest Only:

Alt+c, F2	All that parcel or strip of land, to establish a right of way, containing _____, more or less, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____. Tax Map No. _____.
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2. For Fee Simple Title to a Portion of the Property with No Improvements:

Special Provisions For Exhibits

Alt+c, F3	All that parcel or strip of land, in fee simple, containing _____, more or less, and all improvements thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
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3. For Fee Simple Title to a Portion of the Property with Improvements:

Alt+c, F4	All that parcel or strip of land, in fee simple, containing _____, more or less, and all improvements including _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
-----------	--

4. For Fee Simple Title to Entire Property with No Improvements:

Alt+c, F5	All that parcel or strip of land in fee simple, containing _____, more or less, being the entire property, and all improvements thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
-----------	--

5. For Fee Simple Title to Entire Property with Improvements:

Alt+c, F6	All that parcel or strip of land, in fee simple, containing _____, more or less, being the entire property, and all improvements including _____, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
-----------	---

6. For Fee Simple Title to a Portion of the Property with No Improvements, with Control of Access::

Alt+c, F7	All that parcel or strip of land, in fee simple, containing _____, more or less, and all improvements thereon, if any, including rights of access as may be needed for controlled access facilities, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
-----------	--

Special Provisions For Exhibits

7. For Fee Simple Title to a Portion of the Property with Improvements, with Control of Access:

Alt+c, F8	All that parcel or strip of land, in fee simple, containing _____, more or less, and all improvements thereon, including the _____, and including rights of access as may be needed for controlled access facilities, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Tax Map No. _____.
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8. Temporary Right of Way:

Alt+c, F9	All that parcel or strip of land, to establish a temporary right of way, containing _____, more or less, and all improvements, thereon, if any, owned by _____, shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof, between approximate survey stations _____ and _____, (left/right) of (Road/Route) _____). Temporary right of way herein condemned shall revert to the condemnee upon completion and acceptance of the project. The remainder of this condemnation shall remain in full force. Tax Map No. _____.
-----------	---

**Rights of Way Activities with Potentially Hazardous Sites, Materials, and
Underground Storage Tanks (UST)**
(Revised 12-23-2010)

1. The Project Engineer will request an Initial Site Assessment (ISA) accompanied by a Project Planning Report (PPR) and the latest plans of the project corridor (R/W does not initiate the study). These requests are usually routed through the Right of Way Administrator (Field) and forwarded to the Regional Right of Way Office after date of request is established in Preconstruction Project Management System (PPMS).
2. The Agent within the appropriate Region designated to investigate potentially hazardous sites, materials, and UST's inspects the corridor and identifies UST and/or potentially hazardous material sites (ie: dry cleaning, paint, chemical, oil, or machine shops; landfills; dump sites; older homes and businesses with asbestos).

THE DESIGNATED AGENT performs the following:

3. Agent contacts the county Fire Marshall who may have documentation or licensure information.
4. Agent visits the county maintenance office and/or online plan library to review "old" plans for possible old stores etc. and secures copies of plan sheets indicating such sites. Resident Maintenance Engineers (RME) and Resident Construction Engineers (RCE) often recollect prior uses and potential areas of concern.
5. Agent researches the county records to determine chain of ownership and secures copies of deeds, easements, etc. Information and personnel in Tax Assessor Office are often valuable for reviewing prior uses and businesses on sites.
6. Agent contacts SC Department of Health and Environmental Control (DHEC) help desk at (803) 896-6241, giving the physical address of the site, IMS numbers, GWP number, and name of last business that sold fuel at the location. Agent needs to inquire about reported releases for the site as well as inquire into whether an assessment has ever been done on the site. If an assessment has been done in the past, the agent requests a copy of the report. Agent may access DHEC website shown below for assistance in locating information for UST. (<http://www.scdhec.gov/environment/lwm/ustmap/>) (See Attachment "A" and "B")
7. Agent completes SCDOT Right of Way Form 843 (Initial Site Assessment Form) up to the "Recommendation from Program Manager" section and submits to the appropriate Project Engineer. (See Attachment "C" and "D") The Project Engineer will notify Right of Way if a Phase II assessment is authorized.

8. Agent enters and updates PPMS, screen 60 comments area throughout these processes at least on a monthly basis.
9. If Right of Way is notified to secure a Phase II assessment, the Agent forwards a memo with the ISA Form 843 and plan sheet to the Project Engineer.
10. After receiving notification from the Project Engineer of a Phase II assessment being approved, the Agent will coordinate with the consultant assigned and meet with them on site and include the RCE in the meetings.
11. If tank removal is eminent, the Agent forwards a copy of the report with a cover letter to the Director of Regulatory Compliance Division with the SCDHEC UST Program Bureau of Land and Waste Management.
12. Agent will then prepare a memo for the Regional Right of Way Administrator recommending how acquisition on each site should be acquired. Generally, if contamination is present the Regional Right of Way Administrator will make a determination with the Right of Way Administrator (Field) as to how the site should be acquired. If Phase II report is non-conclusive, a Title to Real Estate with a “Contamination/Indemnification Clause” must be used to secure needed right of way. If results indicate no contamination, a fee simple interest should be secured. If site is contaminated and we must condemn, an easement interest is to be acquired.
13. In the event soil contamination is present, the Agent will contact the local RCE for assistance in determining quantities for contaminated soil disposal.
14. Agent will provide a memo to the Project Engineer requesting the established quantities for contaminated soil to be made part of the plans for the project and will follow up to see if these inclusions are in the plans.



South Carolina
Department of Transportation

Sample
Attachment

MEMORANDUM

TO: Jody Hamm
FOI Coordinator
DHEC

FROM: Buford H. Wilburn
Rights-of-Way Agent/UST Investigator
208 Old Aiken Road
Leesville, SC 29070
(803)-260-4234

DATE: February 7, 2008

SUBJECT: File 02.174B; PIN 34300; Proposed widening of U.S. RTE. 125, Aiken County

I am conducting and Initial Site Assessment (ISA) for the above referenced roadway improvements. I would like to request from you, under the Freedom of Information Act, any documents on file relevant to GWPD Site No. 09967 in Aiken County (formerly d/b/a RB's Quick Way or Bryant's Convenience Stores). The address of the site is 628 E. Buena Vista Avenue, N. Augusta, SC 29841. If possible, I would like to make an appointment to review the file and make copies of what I need for my assessment.

Thank you very much for your assistance.

Buford H. Wilburn
2-7-08

Enclosure

Cc: Environmental Management
Cc: Mark A. Walker, Team Leader Central District

BOARD:
Paul C. Aughtry, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kisner
Secretary

10-20
2-22-08



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

Sample
Attachment
"B"

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman F. Buckhouse, MD

MR. BUFORD H. WILBURN
SCDOT
208 OLD AIKEN ROAD
LEESVILLE, SC 29070-

02/08/2008

Request Number : 0802071

RE: GWPB (SITE #09967)
628 E. BUENA VISTA AVENUE
AIKEN CO.

DEAR MR. WILBURN

After researching requested information, we have found that the Agency maintains files in the following program areas:

- Bureau of Water
- Bureau of Air Quality
- Bureau of Underground Storage Tank Mangement
- Bureau of Land and Waste Management

(The Underground Storage Tanks and Land and Waste Management files are located at our FOI Satellite Office. The office is located at the Stern Business Center, 8911 Farrow Road, Columbia, SC)

Please contact the FOI Center at (803)898-3882 to schedule an appointment to review the requested department files. If you wish, a copy of the files may be made and mailed to you. If there is a maximum amount which you do not wish to exceed in copying charges, please let us know. (Copying charges are \$.25 per page.)

If we do not hear from you within 10 days from the date of this letter, we will assume that the information is no longer required and your request will be considered complete.

NOTE: If you are not able to make the appointment, please inform our office within 24 hours of the appointment time. There will be a \$15.00 reshelving fee for missed appointments.

Sample Attachment

INITIAL SITE ASSESSMENT

File No. 02.174B Project No. NOT AVAILABLE PIN 34300
County AIKEN Date 2-28-08 Page 1 of 1

Site No: 1 Plan Sheet No. 8 Person Contacted Keyur Patel
Site Name: Friendly Mini Mart Site Phone No. 803-278-2842
Site Address 628 E. Buena Vista Avenue, N. Augusta, SC 29841 Site Location same

Owner Name: Keyur Patel Owner Phone No. same as above
Owner Address: same as above

Environmental Concern(s): Formerly used as a gas station. Current owner advised that there was a documented release at this site.

Current Land Use(s): Convenience store, no fuel Previous Land Use(s): Convenience store w/fuel

If Petroleum UST's or AST's are/were present, are tanks registered? UST [X]Yes [] No AST []Yes []No
[]Other (Explanation)

GWPD (UST) Site ID No.(s): 09967 AST Registration No.(s)

Are UST's or AST's still present? UST []Yes [X]No AST []Yes []No
Is a UST or AST closure assessment report available? UST [X]Yes []No AST []Yes []No
[]Other (Explanation) see attachment

Can existing UST basin(s) be located? []Yes []No
Distance from Centerline to Existing: [] UST's []AST's n/a
Distance from Centerline to Existing Dispensers: n/a

Can former UST basin(s) or former AST location(s) be identified? UST [X]Yes []No AST []Yes []No
Distance from Centerline to former: [X] UST []AST 60' (see sketch in attachments)
Distance from Centerline to former dispensers: [X] UST []AST 60' " "

Do you recommend that tanks be located? []Yes []No n/a
Do you recommend additional site assessment? []Yes [X]No

Additional Comments Regarding Site Specifics, Site History or Environmental Concerns: FOI information from DHEC documents that USTs were removed 9-27-98. This site continues to be monitored, and is a low priority candidate for SUPERB fund cleanup.

Recommendation from Project Manager:

Do you want site(s) tested? []Yes []No
Date Site Assessment Requested by Project Manager:
Date forwarded to Laboratory:



South Carolina
Department of Transportation

Sample
Attachment

MEMORANDUM

TO: Machael Peterson
Program Manager

FROM: Buford H. Wilburn
Rights-of-Way Agent/UST Investigator

DATE: February 28, 2008

SUBJECT: File 02.174B; Proposed widening of U.S. 125 in Aiken County

An Initial Site Assessment (ISA) was conducted for the above described project. The ISA determined that one (1) site was involved in the use of USTs and/or other hazardous materials adjacent to the proposed right-of-way. This site is currently a low priority for Superb Fund cleanup by DHEC and is awaiting as such. (See attached)

It would appear that, based on the proposed new right-of-way and construction limits, this site would not warrant investigation at this time, as the probability for contamination is minimal based on the information furnished to me by DHEC. I would, however, recommend securing the right-of-way via easement or include the hydrocarbons indemnification clause on a deed for this tract. Please advise as to how you wish me to proceed.

Enclosure

Cc: Environmental Management
Cc: Mark A. Walker, Team Leader Central District





South Carolina
Department of Transportation

August 7, 2000

MEMORANDUM

To: All Right of Way Field Personnel and On-Call Consultants

From: Right of Way Administrator, Oscar K. Rucker

SUBJ: New Standards For Moving Items and New Form for Fencing and UST
Quantities

Effective immediately, Moving Items and Demolition Lists are to be submitted by Email to Liz Capps utilizing the attached revised forms. We have tested the new forms, which allow Road Design to now convert our Word format to Micro-station, thus eliminating the duplication of preparing these lists.

Chain link fencing and any type of wire fencing (this includes chicken wire, hog wire, **barb** wire, etc) will not be shown as a moving item. It is, however, required as a bid **quantity** and this is to be **submitted** to Headquarters on your new Fencing and UST Quantities Form (Form 995C). As noted on the form, this will be listed on as a **lump sum** for the project. You will no longer list fencing on a tract by tract basis.

However, you are required to list any type of decorative fencing (picket, wrought iron, brick, etc.) as a moving item on your Moving Items List.

Also required on this new Form 995C is the necessary liquids and soils pertaining to the removal of UST's; you can get these quantities from Mark Walker. These items are also required on as a lump sum for the project.


Please note the new forms are as follows:

- ◆ Form 995 = Moving Items List
- ◆ Form 995B = Removal and Disposal List
- ◆ Form 995C = Fencing and UST Quantities



MEMORANDUM

TO: On-Call Consultant Firms
Regional Right of Way Administrators
Regional Production Engineers
Local Public Agency Administrator



FROM: Kenneth C. Feaster, Director, Rights of Way

DATE: February 15, 2013

RE: Right of Way Certification Process and Issuance of Hold Off
Certifications

Effective immediately the following policy is set forth for execution and authorization of rights of way certificates:

- I. **Certifications for LPA projects** utilizing federal funds will be created by the LPA or the consultant firm hired by them for the project. The certificate will be executed according to the guidelines set forth below.
 - If consultant has been hired, they will create and execute the certification for submittal to the LPA representative or its' "appropriate authoritative party".
 - The LPA representative or its' "appropriate authoritative party" will review and execute for submittal to the Regional Right of Way Administrator.
 - The Regional Right of Way Administrator will review and execute for submittal to the Director, Rights of Way or Right of Way Administrator (Field).
 - Director, Rights of Way or Right of Way Administrator (Field) will review and execute for submittal to FHWA.

- II. **All other certifications** shall be created by staff in the Right of Way Headquarters Office and are to be signed according to guidelines set forth below.
 - Certificates for present right of way will be executed by the Director, Rights of Way or his designee.
 - Certificates for acquisition of right of way will be executed by the Director, Rights of Way or Right of Way Administrator (Field) on behalf of the Director, Rights of Way.
 - Any Construction "Hold Offs" included within a certificate will be issued by the Right of Way Administrator (Field) or Director, Rights of Way.



- Certificates for special projects like Safe Routes to School, sidewalk projects, etc. will be executed by the Director, Rights of Way or Right of Way Administrator (Field) on behalf of the Director, Rights of Way.

Should you have any questions, please feel free to contact me accordingly.

KCF:jth

cc: Mitchell Metts, Director of Preconstruction

PROGRAMMATIC AGREEMENT
Between the Federal Highway Administration,
and the South Carolina State Department of Transportation,
Regarding The Issuance of Right-of-Way Certifications on Federal-Aid Highway
Projects

Background

The right-of-way (ROW) certification procedure for federally-assisted highway projects identifies the acquisition status of necessary ROW for the purpose of advancing any federal-aid project to construction. It addresses the status of any required relocation activities necessary on the project. The specific requirements for this action are found in 23 CFR 635.309 (b) and (c).

Per 23 CFR 635.309, prior to authorization to advertise bids for physical construction, the acquiring agency shall prepare a certification statement, such that certifies the following:

- *All ROW clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed for proper coordination with the physical construction schedules. (23 CFR 635.309(b))*
- *All individuals and families have been relocated to DSS housing or the agency has made available to displaced persons adequate replacement housing in accordance with the provisions of the current FHWA directives covering the administration of the relocation assistance program in 49 CFR Part 24, and that one of the following has application (23 CFR 635.309(c)):*
 - *All necessary ROW, including legal and physical possession and control of access rights, have been acquired. Trial or appeal of cases may be pending in court, but legal possession has been obtained. There may be some improvements remaining on the ROW, but all occupants have vacated the lands and improvements. (23 CFR 635.309(c)(1))*
 - *Although all necessary ROW have not been fully acquired, the right to occupy and use all ROW required for the project have been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained, but right of entry has been obtained; the occupants of all the lands and improvements have vacated. (23 CFR 635.309(c)(2))*
 - *The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with title 49, Code of Federal Regulations (CFR) 24.204. The agency may request authorization on this basis only in very unusual circumstances, and this exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if the FHWA determined that it will be in the public interest. The physical construction may proceed, but the acquiring agency shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against inconvenience, injury or any action coercive in nature. When the acquiring agency requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore, including identification of each such parcel, will be set forth in the acquiring agency's request to proceed to construction. The request should include a realistic date when physical occupancy and use is anticipated. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained. (23 CFR 635.309(c)(3))*
- *ROW has been acquired or will be acquired in accordance with the current FHWA directive(s) covering the acquisition of real property or that acquisition of ROW is not required. (23 CFR 635.309(g))*
- *Steps relative to relocation advisory assistance and payments as required by the current FHWA directive(s) covering the relocation assistance program have been taken or that they are not required. (23 CFR 635.309(h))*

Purpose / Application

The purpose of this programmatic agreement is to set forth and describe the ROW certification process to be used in delivering the federal-aid highway program in South Carolina. The application of this agreement shall be in accordance with the requirements outlined in SCDOT's Right of Way Manual; as approved by FHWA.

Definition of Project Categories

- Category I:

This category of projects includes those in which the scope of work is inherently contained within SCDOT's existing roadway foot print extending to the appropriate shoulder treatment. As such it is considered that work associated with Federal Aid projects for the activities specifically identified below, would occur within the prescribed roadway right of way. Category I projects would be identified in the Project Planning Report, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligation management would then designate "ROW-CAT I" in the designated FMIS field. For this category to apply the project must be SCDOT administered and the scope of work must be solely limited to those types as follows:

- Replacement of existing guardrail/end treatments
- Replacement of existing sign panels
- Replacement of pavement markings/markers
- Placement of rumble strips and/or stripes
- Signal head replacement and/or retiming of signals
- Pavement Preservation activities within footprint of the present pavement and shoulder treatment
- Bridge Painting
- Emergency repairs for work within existing ROW
- Widening where ALL construction work occurs within the median

SCDOT understands that this statement in FMIS will be viewed by FHWA as SCDOT's statement certifying the following:

"SCDOT hereby certifies that all work is to be accomplished within the existing right-of-way and that no additional right-of-way is necessary for this project; therefore, no residential or commercial relocations or clearances were required. SCDOT further certifies there are no known utility conflicts on this project. This project is clear."

- Category II:

This category includes all SCDOT administered projects that provide for a scope of work outside of that covered in Category I. These projects will require the preparation of an individual written ROW certification prior to FHWA's authorization to advertise construction.

Certifications shall be initiated by the project Program Manager. It shall be the responsibility of the SCDOT's Right of Way Headquarters Office to execute the Certification according to the following guidelines:

- Certificates for present right of way will be executed by the Director, Rights of Way or his designee.
- Certificates for acquisitions of right of way will be executed by the Director, Rights of Way or Right of Way Administrator (Field) on behalf of the Director, Rights of Way
- Any Construction "hold offs" included within a certificate shall be issued by the Right of Way Administrator (Field) with concurrence from the Director of Rights of Way

Category II projects would be identified in the Project Planning Report, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligation management would then designate "ROW-CAT II" in the designated FMIS field. All certifications are to be submitted electronically to FHWA.

Should a conditional certification be issued for any Category II project, it shall be incumbent upon the SCDOT to issue a clear certification at the completion of all ROW acquisition and/or relocations activities.

- Category III:

This category includes all Federal-Aid projects administered by an approved Local Public Agency regardless of scope.

Certifications for LPA projects will be initiated by the LPA or the representative consultant firm in responsible charge of the project on behalf of the LPA. The certificate shall be executed according to the guideline set forth below:

- The LPA representative or its appropriate authoritative party is responsible for the initiation of the certification for submittal to the Regional Right of Way Administrator
- The Regional Right of Way Administrator will review and recommend for submittal to the Director, Rights of Way or Right of Way Administrator (Field) for execution.

Category III projects would be identified in the Project Planning Report for Local Public Agencies, specifically marked and categorized in the Right of Way Data Management System and P2S. As identified, Obligations Management would then designate "ROW-CAT III" in the designated FMIS field. All certifications are to be submitted electronically to FHWA through SCDOT.

Should a conditional certification be issued for any Category III project, it shall be incumbent upon the SCDOT to issue a clear certification at the completion of all ROW acquisition and/or relocations activities by the LPA.

Review and Monitoring

FHWA will maintain a comprehensive database of all ROW certifications. Certifications submitted under Category II and Category III will be reviewed and accepted by FHWA prior to authorizing construction advertisement. Category I projects will be sampled on an annual basis to ensure criteria are being appropriately applied.

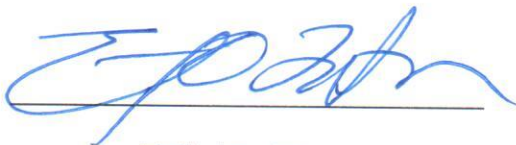
Terminate, Modify, Amend

This Programmatic Agreement (PA) shall remain in effect indefinitely. Either party to this PA may terminate it for cause by providing a 30-day written notice to the other party. Either party to this PA may request that it be amended, whereupon the parties will consult to consider such an amendment. Should this agreement be terminated or suspended individual certifications will be required on ALL federal-aid projects.

Implementation of this Programmatic Agreement will begin on day of execution. The applicable section(s) of the SCDOT ROW manual will be updated to reflect this process as part of the Acquisition Manual update, which is due January 1, 2015.

We agree to the above process for ROW certifications in delivering the South Carolina federal-aid highway program.

Approved by:



Emily Lawton
FHWA SC Division Administrator



Leland Colvin
Chief Engineer for Project Delivery

Nov 3, 2015

Date

South Carolina Department of Transportation

Engineering Directive

Directive Number: ED-58 **Effective:** December 10, 2015

Subject: Right of Way Certification

References: Code of Federal Regulations 23 CFR 635.309(b)(c)
SCDOT Highway Design Manual, Chapter 30
SCDOT Road Design Plan Preparation Guide, Chapters 5 & 12

Purpose: Establish Procedure to Ensure Compliance with FHWA
Guidance for all Federal Aid Projects

This Directive Applies to: All Divisions Utilizing Federal Aid Funds in the Project
Development Process

REQUIREMENTS

In accordance with the Code of Federal Regulations 23 CFR 635.309(b), authorization to advertise the physical construction for bids shall be issued as soon as, but not before, all the conditions have been met:

(b) A statement is received from the State, either separately or combined with the information required by § 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

As such, the purpose of this engineering directive is to set forth and describe the Right of Way Certification process to be used in delivering the federal-aid transportation program in South Carolina. Right of Way Certification is guided by the Programmatic Agreement as of November 3, 2015, between the Federal Highway Administration (FHWA) and the South Carolina Department of Transportation (SCDOT). A copy of the Programmatic Agreement is provided in Appendix A of this directive. All projects funded with federal transportation funds require a Right of Way Certification. At the time of project authorization for construction, FHWA is responsible for ensuring this certification is included as part of the construction authorization process.

PROCESS

Early in a project's development, completion of a Project Screening Tool (PST) by a Program Manager or an Environmental NEPA and Permitting Checklist for maintenance projects will be utilized to identify one of three categories of Right of Way Certification:

Category I – This classification includes Federal-aid projects for which specifically designated activities in the scope of work are inherently contained within SCDOT's existing roadway foot print. As such, these pre-defined categories of projects would be identified and no further evaluation is required.

Replacement of existing guardrail/end treatments
Replacement of existing sign panels
Replacement of pavement markings/markers
Placement of rumble strips and/or stripes
Signal head replacement and/or retiming of signals
Pavement preservation activities with the footprint of the present pavement and shoulder treatment
Bridge painting
Emergency repairs for work within existing ROW
Widening where ALL construction work occurs within the median

Category II – This classification includes all SCDOT Federal-aid projects outside of Category I. These projects will require the preparation of an individual written Right of Way Certification prior to FHWA's authorization for construction. Identification and documentation of SCDOT's present Right of Way is essential for all projects in this category. For any project for which the Right of Way Office is charged with acquisition, certificates will be prepared and executed by the Director of Right of Way. For any Federal-aid project in which Right of Way is not required, it is the responsibility of the appropriate project manager to request a Certificate of the Director of Right of Way. A copy of the plans with present right of way appropriately annotated according to SCDOT Highway Design Manual and SCDOT Road Design Plan Preparation Guide shall accompany the request.

Category III – This classification pertains to Local Program Administration (LPA) projects. For any Federal-aid LPA project, a request for Certificate is submitted to the Regional Right of Way Administrator for review and recommendation to the Director of Right of Way. A copy of the plans with the present Right of Way appropriately annotated according to SCDOT Highway Design Manual and SCDOT Road Design Plan Preparation Guide shall accompany the request.

Submitted by: William C. Johnston
Acting Director of Right of Way

Recommended by: Randall L. Young
Acting Chief Engineer for Project Delivery

Approved: Leland Colvin
Acting Deputy Secretary for Engineering

Lead: Director of Right of Way

History: Issued on January 1, 2015
First Revision on December 10, 2015



MEMORANDUM

(Project Information – Tract Number)
Date (Date Memo Prepared)

OFFERS AND COUNTER OFFERS: List **ALL** Offers and Counter offers

RECOMMEND SETTLEMENT: Settlement Amount

(Begin memorandum with the following statement :)

I hereby recommend an administrative settlement in the amount above based on the information provided below:

Provide a written justification that supports the settlement. The adjustment memo must stand on its own and contain supporting data to justify the settlement (ie: comparison of Department and landowner appraisals; cost to cures; comparable sales; recent court awards and settlements; litigation costs; valuation problems; negative trial exposure; etc.). The data in the letter should match the information on the agent’s worksheet, appraisal, and instrument.

The difference in the amount and the original offer is not a significant amount when consideration is given to the exposure coupled with the administrative costs of condemnation and subsequent litigation. I believe this administrative adjustment is in the best interest of the Department and public treasury.

(Note: The memo must contain the appropriate signatures and authority in accordance with the Right of Way Acquisition Manual in the format below:)

Recommended by:

Signature Date:
Printed Name
Title

Approved by;

Signature Date:
Printed Name
Title



DATES FOR ASSEMBLING PLANS, SPECS, AND ESTIMATES FOR FEDERAL FISCAL YEAR 2016 BEGINNING WITH OCTOBER 2015

5/19/2015

OBLIGATION MONTH	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
Submit preliminary roadway plans to Traffic Engineering	8-Jun	13-Jul	10-Aug	7-Sep	13-Oct	9-Nov	7-Dec	11-Jan	8-Feb	7-Mar	11-Apr	10-May
Traffic Engineering plans (overhead signing, signal, pavement marking, lighting, and traffic control) due to design manager	20-Jul	24-Aug	21-Sep	19-Oct	24-Nov	22-Dec	19-Jan	23-Feb	21-Mar	18-Apr	23-May	20-Jun
If the project requires PS&E review/approval by FHWA due to its designation as a PoDI ¹ , submit Complete Plans ² to Preconstruction Support for QA review	13-Jul	17-Aug	14-Sep	12-Oct	17-Nov	14-Dec	11-Jan	15-Feb	14-Mar	11-Apr	18-May	13-Jun
If the project requires PS&E review/approval by FHWA due to its designation as a PoDI, submit Letting Plans ³ to the Preconstruction Support Operations Center to prepare PS&E	10-Aug	14-Sep	12-Oct	9-Nov	15-Dec	11-Jan	8-Feb	14-Mar	11-Apr	10-May	14-Jun	11-Jul
For all other projects, submit Complete Plans ² to Preconstruction Support for QA review.	17-Aug	21-Sep	19-Oct	16-Nov	22-Dec	19-Jan	16-Feb	21-Mar	18-Apr	16-May	20-Jun	18-Jul
Letting Prep Engineer submits PS&E to FHWA for projects that require PS&E review/approval due to its designation as a PoDI	1-Sep	5-Oct	3-Nov	30-Nov	4-Jan	1-Feb	29-Feb	4-Apr	1-May	30-May	5-Jul	1-Aug
For all other projects, submit Letting Plans ² to the Preconstruction Support Operations Center to prepare PS&E ³	14-Sep	19-Oct	16-Nov	14-Dec	19-Jan	15-Feb	14-Mar	18-Apr	16-May	13-Jun	18-Jul	15-Aug
Project Scheduling and Tracking Meeting	21-Oct	18-Nov	16-Dec	20-Jan	17-Feb	16-Mar	20-Apr	18-May	15-Jun	20-Jul	17-Aug	21-Sep
Engineer's Estimate complete. Staff to submit Right of Way & Utility Certificates, etc to Obligation Management Office for FHWA authorization process	16-Oct	20-Nov	18-Dec	14-Jan	18-Feb	19-Mar	22-Apr	20-May	17-Jun	22-Jul	19-Aug	8-Sep
Letting Review Meeting.	19-Oct	23-Nov	21-Dec	17-Jan	21-Feb	22-Mar	25-Apr	23-May	20-Jun	25-Jul	22-Aug	19-Sep
FHWA to authorize projects	23-Oct	25-Nov	23-Dec	21-Jan	25-Feb	26-Mar	29-Apr	27-May	24-Jun	29-Jul	26-Aug	16-Sep
Deadline for submitting information for Addenda	30-Nov	4-Jan	1-Feb	28-Feb	4-Apr	3-May	6-Jun	4-Jul	1-Aug	5-Sep	3-Oct	31-Oct
Date of Letting. —————→	8-Dec	12-Jan	9-Feb	8-Mar	12-Apr	11-May	14-Jun	12-Jul	9-Aug	13-Sep	11-Oct	8-Nov

¹ Refer to PoDI listing on SCDOT website to determine which projects require PS&E submittal to FHWA

² Complete Plans contain all applicable initials from Department production staff (design leads, Design Manager, and Program Manager). Complete Plans are not required to be signed and sealed by the Engineer of Record unless deemed necessary as part of a contractual agreement governing the development of the plans.

³ Letting Plans have completed all required quality assurance reviews and contain all applicable initials from Department production and support staff. Letting Plans are required to be signed and sealed by the Engineer of Record. Submit signed and sealed unique special provisions and a project transmittal form with the Letting Plans.

⁴ The PS&E is comprised of Letting Plans, a bid proposal, and the engineer's estimate.

\$ Applicable to federally funded projects of division interest only