

## **ACQUISITION UNIT POLICIES**

### ***ACQUISITION UNIT FUNCTION***

The primary function of the Acquisition Unit is to acquire real property by negotiated settlement. Acquisition of real property is authorized by Section 6A.5 of the Code of Iowa. This section authorizes the Iowa Department of Transportation (Iowa DOT) to acquire real property at its fair market value from parties having legal authority to convey such rights as would be acquired by condemnation. Real property shall be acquired on a uniform, equitable, and nondiscriminatory basis, without regard to an owner or tenant's race, creed, color, religion, sex, age, or national origin.

It is the purpose of the Acquisition Unit to assure the owner or tenant receives the monetary compensation to which they are entitled and assure the people of the State of Iowa compensation is fair and just.

### ***STATEMENT OF PROPERTY OWNER RIGHTS***

Just as the law grants certain entities the right to acquire private property, the owner of the property has certain rights including but not limited to the following:

- a. Receive just compensation for the taking of property. (Iowa Constitution, Article I, section 18)
- b. An offer to purchase, which may not be less than the lowest appraisal of the fair market value of the property. (Code of Iowa section 6B.45; Code of Iowa section 6B.54)
- c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than 10 days before being contacted by the acquiring agency's acquisition agent. (Code of Iowa section 6B.45)
- d. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Code of Iowa section 6B.54)
- e. Participate in good faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Code of Iowa section 6B.2B)
- f. A determination of just compensation by an impartial compensation commission and the right to appeal its award to the district court if you cannot agree on a purchase price with the acquiring agency. (Code of Iowa section 6B.4; Code of Iowa section 6B.7; Code of Iowa section 6B.18)
- g. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (Code of Iowa section 6B.4A)

- h. Payment of the agreed upon purchase price or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Code of Iowa Section 6B.25; Code of Iowa section 6B.26; Code of Iowa section 6B.54(11))
- i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Code of Iowa section 6B.33; Code of Iowa section 6B.54(10))
- j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioners' award. (Code of Iowa section 6B.33)
- k. At least 90 days written notice to vacate occupied property. (Code of Iowa section 6B.54(4))
- l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of the payments. (Code of Iowa section 316.9; Code of Iowa section 6B.42)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. (Derived from Code of Iowa chapters 6A, 6B and 316)

### **Just Compensation**

The Iowa Constitution requires the payment of just compensation when private property is acquired for public use. As interpreted by the courts, the normal measure of just compensation is fair market value. [Fair market value means the cash price which would be arrived at between a voluntary seller that is willing, but not compelled, to sell and a voluntary purchaser that is willing, but not compelled, to buy, both of whom are acting freely, intelligently, and at arm's length, bargaining in the open market.] The amount the acquisition agent offers as just compensation for the property will not be less than the amount of the approved appraisal. When an acquisition agent calls on a property owner, the agent can answer questions concerning the highway project and issues affecting the property.

### **Negotiated Agreement**

In most cases, an agreement on the purchase price is reached through negotiation. Although the state is not allowed to offer an amount less than fair market value for a property, there may be particular circumstances or conditions that warrant the state presenting a revised offer. After an agreement is reached, the property owner signs a Purchase Agreement. The Office of Right of Way will accept the Purchase Agreement for the Iowa DOT after the terms have been approved by the Right of Way Director. Agreements with the Iowa DOT shall be in writing. There shall be no agreement to perform or to not perform any act, except as specifically provided for in the written agreement.

### **Notice to Move**

If it is necessary for people to move from property the state acquires, they are given reasonable time to move. They are not required to move sooner than 90 days after either the state makes the

first offer to acquire the property or 90 days from the date comparable replacement housing is available, whichever is later. The Iowa DOT must give written notice specifying the date the property must be vacated at least 30 days before the required date the move must be completed. The 30-day written notice is not issued until the property owner has received payment from the state or in the case of condemnation the state has deposited the money with the county sheriff, as prescribed by law.

### **Timely Payment**

After the Purchase Agreement has been approved, a title and closing agent arranges to pay the property owner as soon as possible in accord with the terms of the approved Purchase Agreement. The owner may request early payment by contacting the Title and Closing Unit, Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010-6993.

This statement of landowner's rights may be found in the booklet "[\*Highways and Your Land.\*](#)"

### ***PRICING POLICY***

Article I, Section 18 of the Iowa Constitution requires in part that "private property shall not be taken for public use without just compensation first being made or secured to be made, to the owner thereof". Article I, Section 18 also defines, "Just Compensation is expressed in terms of market value and states that the measure of damage is the difference between fair and reasonable market value of the remaining portion immediately after the acquisition, with out consideration of any benefits to the property which may be resulted or may result in the future from the proposed improvement. Likewise in the case of total acquisition of property, fair and reasonable market value is considered as the basis for *just compensation*". All real property to be acquired, which is determined to have a complex valuation process, shall be appraised before the initiation of negotiations. The offer to the owner is to include the entire appraised value plus any right of way fence or other cost the owner is entitled to. In no case is the owner offered an amount, which is less than the approved appraisal of the fair market value of the property.

If necessary, revised offers may be made because of design changes, new market information or valuation evidence obtained from the owner or acquiring agency. The parcel does not need to be appraised when a temporary easement or a small uncomplicated acquisition and no damages will occur that will not be cured by the construction. Unavoidable temporary inconvenience during the time of construction is not a damage in this context. The purpose of the temporary easement is to obtain the owner's permission to enter upon the property and avoid the commission of a trespass. The Acquisition Agent will verify the determination that no damages will be caused by construction in the field.

Code of Iowa Section 6B.14 requires the owner to be paid for all damages sustained by reason of the acquisition of the land and improvements. This Code Section also requires the owner or tenant to be paid for any loss sustained to personal property, which is damaged or destroyed or reduced in value. For highway projects, the expenses, in reference to personal property, are paid as relocation assistance benefits under the Code of Iowa, Section 316.

The appraisal of properties acquired under the Iowa Eminent Domain Laws is prepared as outlined in the [Office of Right of Way Appraisal Manual](#).

### ***UNECONOMIC REMNANT***

The Iowa DOT is required to *offer* to acquire remnant pieces of land under Section 6B.54 of the Code of Iowa.

The [Office of Right of Way Appraisal Manual](#) defines an uneconomic remnant as “a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the acquiring agency has determined has little or no value to the owner.”

A tract is considered to be an uneconomic remnant, when it is not economically feasible to continue the use of this tract by itself, or as part of a larger separated remainder, because of its size, shape, access, change of use, or other detrimental characteristics resulting from the acquisition.

This determination may be made during the design, appraisal or acquisition activities of the right of way process, but will generally occur during the appraisal/appraisal review or acquisition activities.

The Acquisition Agent notifies the Acquisition Supervisor when a potential uneconomic remnant is found. The Right of Way Director will be informed and the decision whether to offer to acquire the remnant will be made, except when the decision would conflict with or compromise the provisions of other Federal or State Agencies. Approval to buy excess land is subject to clearance from the Office of Environmental Services, which will clear such things as archeological or other mitigation required items.

If a remainder or part of a remainder is determined to be an uneconomic remnant, revised property plats will be furnished and placed in the parcel file. The file may be returned to the Appraisal Unit for reevaluation and/or reappraised. In some cases the additional value may be handled by an Administration Settlement.

### ***RIGHT TO RENEGOTIATE CONSTRUCTION OR MAINTENANCE DAMAGE***

There are instances when a property owner expresses concern about unknown damages. In these cases the following clause maybe added to the agreement.

Buyer hereby gives notice of Seller's five-year right to renegotiate construction or maintenance damages not apparent at the time of the signing of this agreement as required by the Code of Iowa, Section 6B.52.

The Code of Iowa Section 6B.52 provides:

*Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.*

Just as importantly when owners are paid damage in the acquisition process or as a separate matter, reference to The Code of Iowa 6B.52 must be made in writing. This is included on the Damage Claim Form.

### ***PRIVACY OF APPRAISAL INFORMATION***

Details of an acquisition appraisal and the appraisal review are to be discussed in the negotiation process. A copy of the appraisal and appraisal review must be mailed to the owner 10-days prior to beginning of negotiations.

When the State is involved in a law suit, whether it is an appeal from the award of a Compensation Commission or a dispute over the specific performance of a Right of Way Agreement, all appraisal and parcel file information shall be disclosed only by or at the written direction of the Assistant Attorney General's Office.

The Acquisition Agent shall not disclose any appraisal information to anyone who is not an owner or interest holder, or their agent, of the property about which the information is sought until negotiations are complete and the parcel is closed. A parcel is not closed for this purpose until all acquisition and relocation claims have been paid. Once closed, the property owner may examine and copy their parcel file in its entirety. The general public may also examine any or all closed parcel

files, except that no examination shall be made of any copy of another person's income tax form(s) or statement(s) of income made by the owner or claimant, or by their attorney, accountant, or agent, or by an employee of the Office of Right of Way, without the written consent of the owner or claimant or the written approval of the General Counsel's Office.

### ***ALTERING OF STANDARD FORMS***

The Acquisition Agent must not alter the acquisition forms or other forms without prior approval from the Acquisition Supervisor.

## ***APPRAISAL WAIVER PROCESS***

The appraisal waiver process estimates fair and just compensation through the use of a compensation estimate form. The compensation estimate is not an appraisal.

The compensation estimate is a one-page document, used to determine the value for simple, uncomplicated acquisitions when the need for an appraisal is waived because compensation to the property owner is estimated to not exceed \$10,000. This amount is exclusive of payments for cost of tillage, fertilizer, growing crops, agricultural right of way fence, and the legislated \$20 per lineal foot of lengthened residential driveway. Although this is not an appraisal, and it is therefore not a requirement that the estimator offer the property owner, or the owner's representative an opportunity to be present during the property inspection, it is strongly recommended.

Upon receipt of the parcel file from the Right of Way Design Section, the Chief Appraiser or designee will make a determination whether the acquisition should be appraised or if the value should be determined through the use of the appraisal waiver process. This determination is documented by use of the compensation estimate form. The Acquisition Supervisor will review the appraisal waiver determination form for concurrence prior to file assignment.

In order to determine whether an acquisition is *uncomplicated*, the following questions should be answered:

- Is the acquisition over \$10,000?
- Is the acquisition anything more than a strip acquisition?
- Are buildings, wells, signs, etc. affected?
- Is the acquisition severing any buildings from the remainder?
- Are trees, shrubs, or any other landscaping involved?
- Is the proposed right of way line close to any building after the acquisition in a manner that would require analysis of possible proximity damages?
- Is access to the property changed or limited?
- Is the current highest and best use of property going to be changed as a result of the acquisition?
- Does a significant amount of the total compensation involve items other than land value?
- Are there any borrow areas?
- Is more land than actually needed being acquired (landlocked or uneconomic remnant)?
- Are there any other considerations that complicate the valuing of this parcel?

If one of these questions is answered “yes”, the acquisition could still be considered as an *uncomplicated* acquisition.

A single “yes” answer would need further analysis to decide whether the indicated situation causes the acquisition to become complicated and thus require the acquisition to be appraised.

Multiple “yes” answers would indicate that the acquisition may or may not be considered to be uncomplicated and must be appraised.

This list of questions is not intended to be all-inclusive. The key to the use of this method of

determining compensation, is that impacts of the acquisition are minimal or can be easily measured by their cost to cure, **and that the value of the land acquired plus any damages to the remaining property does not exceed \$10,000.**

If during negotiations the Acquisition Agent finds there are factors that were unknown at the time of the determination to use the appraisal waiver process which might cause a complicated valuation situation, the agent will discuss the acquisition with the Project Agent (lead acquisition agent). If the Project Agent determines the valuation is complicated, the file will be returned to the Production Coordinator.

### ***Basis of Value***

All items of acquisition are to be listed on the compensation estimate form, even those items which have zero compensation value. Access control, when being acquired, should be listed as access rights under damage to remaining property on the appraisal waiver form.

The basis for land value estimates shall be any one of the following.

- Identify at least one specific sale of a similar property in the general community. This sale must be identified so that the reader can locate the property. Sales price per comparable unit must also be stated.
- An agent may interview local real estate brokers, bankers, etc. to ascertain listing adjustments. Names of the persons interviewed and the city in which they are located must be reported. Appraisals of similar property on the same project are a good guide to value. Interviews with local realtors or auctioneers can also be a source of information.
- When no compensable items are present, an agent may make a minimum payment of \$100.00 to the land owner. This item should not be used in conjunction with any compensable items.

### ***Administrative Approval***

There must be an administrative approval of the appraisal waiver package by someone other than the person determining the value. The administrative approval may be granted by the Acquisition Supervisor or the Acquisition Production Coordinator. This or their review and approval prevent gross inconsistency on a project and insures there has been an adequate investigation of the local market to support the value. The Acquisition Agent shall have the Project Agent review the basis of payment before presenting the appraisal waiver package to the landowner. The Project Agent reviews and approves the compensation estimate form to confirm the Acquisition Agent had proceeded with the concurrence of the Project Agent.

An appraisal waiver “package” will consist of the following:

- Compensation Estimate form
- Plat and Summary Sheet
- One or more pictures of the acquisition
- Offer to Donate form
- Documentation of evidence of value

### ***DETERMINING TITLE & PROVIDING ADDRESSES***

The Acquisition Agent will review the accuracy of the existing title information. It is the Agents responsibility to secure any paperwork required to clarify any discrepancies in the title work.

The Acquisition Agent is responsible for obtaining the notarized signatures of all parties with interest in the property being acquired. The Acquisition Agent must also secure all mailing addresses of affected parties. While negotiations are to be initiated promptly after expiration of the 10-day notice period, no contact shall be made until the agent completely understands the acquisition and its effect upon the property, the appraisal, the offer, and the title requirements.

### ***REPORT OF RECORD OWNERSHIP AND LIENS***

Each parcel file should contain a Report of Record Ownership and Liens, prepared by a local abstractor or DOT employee. If there is no Report of Record Ownership and Liens, the Acquisition Agent must determine ownership by courthouse research. Acquisition Agents must identify the fee owner, the contract purchaser, (if there is one), the mortgage holders and any lien holders or easement rights possessed by others.

If the Report of Record Ownership and Liens is more than six months old, the Acquisition Agent must request a re-certification from the Acquisition Production Coordinator or if directed, complete a new Report of Record Ownership and Liens. Ownership data, obtained or confirmed by the Acquisition Agent through a personal title search, is to be reported in writing by referring to recording data and, if possible, a copy of the instrument(s) is to be included in the file.

#### ***Items to be checked***

- Transfer of title to the property
- Partial sale
- Land contract sale (also contract assignments)
- Mortgage or Lien
- Foreclosure
- Bankruptcy
- Death - Estate of one or more of the owners
- Probate
- Life estates
- Taxes - current
- Easements - utility, ingress egress

The Acquisition Agent will recertify the report of liens using the following guidelines:

***No Changes***

When there is no change in the information reported on the original report, write “no change”, date and sign the report.

***Minor Changes***

When there has been a change in the original information reported, list all changes and attach copies of the instruments documenting those changes. Sign and date the report.

***Partial Conveyance of Original Parcel***

Recertify that portion of land remaining in the name of the person(s) originally reported as the title holder(s). The certification should provide the book, page, and/or instrument number of the subsequent conveyance on the recertified report.

Make a new report on the land conveyed from the original parcel. Check for a subdivision plat and get a copy if applicable. Sign and date the report.

***New Owners***

Void the original report, but retain for the file. Make a new report on the land conveyed. Sign and date the report.

The Acquisition Agent may request assistance from the Title and Closing Unit, when the property is owned by an estate or trust, there are contingent or future ownership interests, several owners reside in different states or different countries, bankruptcy, foreclosure or partition proceedings are pending, or when neither the Agreement payment nor the value of land remaining after the acquisition appears to be sufficient to pay outstanding liens or encumbrances. Assistance must also be sought when the State’s ability to obtain merchantable title by Agreement is, or may become, in doubt; when there is doubt concerning who the owners and interest holders are and whether the State can obtain merchantable title by Agreement. In those instances, the Acquisition Agent needs to inform the landowner(s) or tenant(s) that it may be necessary for the State to acquire title through condemnation proceedings. Under these circumstances, the Acquisition Agent identifies all owners and interest holders and verifies their names and addresses.

***FRONT ENDING***

Front ending is the process in which the owner at the time of negotiations is presented the deed or easement and Purchase Agreement. This practice allows for quicker possession of property and a more timely payment to the property owner.

Open communication with the Title and Closing Project Agent responsible for the project is imperative. Front ending of parcels is expected, when feasible. Title and letting dates should be carefully examined and evaluated for possible Front ending.

*The following procedure for Front ending serves as a guideline, not a rule. As different situations arise, exceptions may be made.*

Files received from the Appraisal or Relocation sections and are directed to the Production Coordinator.

***The Production Coordinator:***

- a. Reviews the file for missed personal property/relocation items.
- b. Checks the report of liens for age. If the report is older than 6 months, the Coordinator requests that the Acquisition Agent update the report in the field.
- c. Creates the transmittal letter assigning the file to an Acquisition Agent.
- d. Updates Parcel Tracking and Acquisition Database information and delivers the file to appropriate Acquisition Agent.
- e. Copies by email the transmittal file assignment letter to the appropriate District Engineer and the Acquisition Project Agent

*(After notification the Project Agent orders plans, cross sections, and strip maps from Right of Way Design, thus becoming acquainted with the project.)*

***The Acquisition Agent:***

- a. Reviews title, design and appraisal and reports to the Project Agent.
- b. Locates contract information and creates appropriate documents, which includes two copies of the Purchase Agreement and two breakdowns.

*Payment dates are generally assigned on a case by case basis, however, if the acquisition is under \$25,000.00 and has a reasonably clean title (one mortgage) payment may follow 30 days after buyer approval. If the acquisition is over \$25,000.00, 45 days after buyer approval is recommended.*

- c. Agents may elect to mail appraisal and review to the seller at this time.
- d. Acquisition Agent forwards all completed documents to the Project Agent, who checks for accuracy. Project Agent then forwards file to Production Coordinator.
- e. Production Coordinator updates the Acquisition database to reflect date project was delivered to Title and Closing.

***Title & Closing Front Ending Procedure***

After the Title & Closing procedure is complete, the file is returned to the Production Coordinator, who updates the Acquisition database and forwards the file to the appropriate Acquisition Agent.

The Acquisition Agent reviews the file, makes corrections or changes as noted, and may then move forward to meet with the owners to complete the negotiation.

### ***INITIATION OF NEGOTIATION FOR PARCELS THAT HAVE BEEN APPRAISED***

The Production Coordinator should notify the District Engineer prior to the beginning of negotiations for each new project. This is a time to make the District Engineer aware that negotiations are beginning.

Acquisition on a project begins when the Acquisition Supervisor mails the appraisal to each affected property owner and each major leaseholder of property to be acquired. This appraisal and appraisal review is sent by ordinary mail at least 10-days prior to the date of the first personal contact, as required in the Code of Iowa, Section 6B.45.

The appraisal includes an itemization of the appraised fair market value of the real property or interests therein, any buildings thereon, all other improvements, severance damages, and loss of access. It may also include any change in the market value of leasehold interest, if applicable.

#### ***Offers***

All written offers to purchase must be dated and signed by the Acquisition Agent; the original is given to the seller and a copy to the field file. The offer to purchase compensation estimate form will be used, when the appraiser waiver process is used.

#### ***Revised Offers***

Whenever the acquisition is revised due to design changes or valuation changes, there will be a personal contact to present a revised written offer. Such revised offers must be made on the revised offer to purchase form except when the acquisition has been changed from a partial to a total acquisition. In that case, a new offer will be provided. The use of this revised offer may affect the original 90-day notice if the acquisition is changed to include an owner occupied home.

When the fair market value is revised solely on the basis of new appraisal data, and the acquisition is not changed, the owner shall be informed and a revised offer shall be presented in writing.

All revised offers must be dated and signed by the Acquisition Agent, with the original, given to the seller and a copy to the field file.

If any of the above revisions is based on a new appraisal, the new appraisal may be hand carried to the property owner. The mailing of the new appraisal and 10-day waiting period is not necessary.

#### ***Proof of Notice***

The Agent will make sure there is proof that the 10-day notice has been sent by coping the letter to the field file. The Agent shall assure negotiations do not commence on a parcel until the

statutory 10-day time period has elapsed or the owner has waived the 10-day requirement.

If it becomes necessary to make contact during the 10-day period, the property owners must be told of their rights to defer negotiations. The 10-day waiver form must be signed by the owner. The agent must also write the reason for the request to waive the 10-day period in the contact report.

The Acquisition Agent must promptly contact each owner and tenant on all parcels and make an offer to purchase the property to be acquired. Contacts shall be made in person whenever possible. At the first personal contact the Acquisition Agent will offer the property owner or their designated representative, in writing, the established just compensation, which will not be less than the amount of the approved appraisal.

***The Acquisition Agent shall provide each owner and tenant the following materials during the first negotiation contact, regardless of whether the contact is in person or by mail:***

- A signed and dated Offer to Purchase and Notice of Earliest Move Date. A copy shall be retained in the parcel file.
- The Right of Way brochure, [\*Highways and Your Land\*](#), which includes the Landowner Statement of Rights.
- Offer of Relocation Assistance, if applicable. (See Relocation)
- Copy of the compensation estimate, if applicable.
- Ground Water Hazard Explanation Sheet.
- W-9, Request for Taxpayer Identification Number and Certification if the value is \$600 or more. It is not mandatory to report Tax Identification Numbers (TIN) for tenants, lessees, access control only, temporary easements, and corporations.
- Purchase Agreement
- Offer to Donate

### ***OFFER TO DONATE***

Code of Iowa, Section 6B.54 provides for the owner of a property to donate part or all of the owner's interest to the State.

*A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property, or any compensation paid for it as the person may determine.*

The Donation form is used in every acquisition to fully inform the property owner of the right to donate according to the Code of Iowa.

When an owner determines that the property or part of the property is to be donated the following is added to the Acquisition agreement.

The Seller acknowledges entitlement to just compensation based upon the Buyer's approved appraisal of the property described on page 1 of this agreement. Nevertheless, the Seller desires to donate the property as allowed in Code of Iowa Section 6B.54. The seller agrees and is responsible for all taxes due up to and including the date of possession.

If additional or different language is needed, discuss the issue with the Acquisition Supervisor.

- The Payment amount on page one (1) of the agreement will be shown as -0-.
- The Title and Closing Agent will prepare the transfer document accordingly.

In no case should a property owner be pressured, intimidated or otherwise instructed to donate or not donate the property to the State.

### ***NINETY-DAY NOTICE AND RIGHT TO PAYMENT***

Standard forms of Right of Way Agreements all specify that the State acquires the right of immediate possession of the premises per the terms of the Agreements. It is essential that the date for surrender of physical possession, or vacation of the premises, be established precisely and made a part of the terms of the Right of Way Agreement. The written offer must state: "You will not have to move any sooner than (insert specific date) which is at least 90 days after information on a currently available property is provided to you."

### ***PLAN REVISION REQUESTS***

The Project Agent is responsible for coordinating all requests for design revisions that arise out of the acquisition process. The Project Agent shall prepare and deliver design revision requests to the Right of Way Design Unit. There will be a design revision request whenever the Agreement obligates the Iowa DOT to acquire additional land, make changes in the design, or when the ownership of the parcel has changed. The Acquisition Agent may perform these tasks under the direction of the Project Agent.

## **TENANTS**

Tenants shall be contacted promptly after the first contact with the landowner. If contact is not made with the tenant within 15 days, the Acquisition Agent must note in the record of contacts the efforts that have been made to contact the tenants, and the dates of those efforts.

The Tenant Agreement Form is used with the lessee when the property is held under a bona fide lease from the fee owner. It consists of a release or relinquishment of any rights that the tenant may have in the right of way being acquired. The State is released from any liability because of the acquisition insofar as the seller's leasehold rights are concerned. When signed by the lessee, this Agreement gives possession of the right of way per the terms of the Agreement. The seller shall not be required by Agreement to surrender possession of the premises for 90 days from the date of the offer.

The Tenant Agreement follows the same general pattern as the Partial Acquisition Agreement Form and the Total Acquisition Agreement Form relative to the identification of the Agreement and the identification of the parties thereto. The lessee will always be the seller. The description of the right of way taken and the access control clause will ordinarily be the same as written in the fee owner's Agreement.

### ***Listing Damage Items***

On agricultural tracts the payment to the tenant may consist of reimbursement items, such as planting, tillage or fertilization costs lost due to the acquisition. The general policy is to list in the Agreement the items included in the total lump sum.

Examples:

The premise includes: *Field preparation, such as plowing, disking, fertilizing, and seeding.*

The premise includes: *Seller's right, title, and interest in and to all buildings, improvements, and their appurtenances, including fencing.*

The premise includes: *Business fixtures, counters, and freezers.*

The premise includes: *Carpet, cabinets, air conditioner, stove.*

In the Office Information on Contract form these items are tabulated with the portion of the lump sum allocated to each.

### ***Contingent Crop Damage***

When the acquisition of a growing crop is involved, its destruction may not be necessary before it reaches maturity. The usual procedure is to write an agreement reserving the crop to its owner. This will provide that any crop destroyed by construction will be paid for in addition to the lump sum payment specified in the Agreement.

When writing a Tenant Agreement involving a payment contingent upon the loss of crops, the

Acquisition Agent must be informed of the terms of the lease agreement between the fee owner and the tenant. If it is a crop share lease, the owner's share cannot be paid to the tenant, but must be taken care of by a contingent crop damage clause included in the owner's Right of Way Purchase Agreement. Salvage, if any, is usually given to the tenant for labor and other costs of removal.

### ***Tenant Owned Building, Structures or Other Improvements***

Tenant owned buildings, structures, or other improvements include only that property which would be considered as real property, if owned by the fee owner. This includes trade fixtures, which are appraised as real estate by the appraiser.

The Appraiser will obtain a copy of the lease and identify and obtain an Agreement on the ownership of tenant occupied buildings, structures, or other improvements. If the appraiser cannot secure such an Agreement, the property will be appraised as any other tenant occupied parcel.

The Acquisition Supervisor shall send separate appraisals to the landowner and the tenant. The cover letter shall contain a statement that the offer is for the property identified in the disclaimer agreements between the landlord and tenant.

The Acquisition Agent negotiates separately with the fee owner and the tenant for the separately held interests. If during negotiations either party asserts a claim in any interest owned by the other, separate negotiations will cease and the property will be acquired as a single parcel and the following leasehold agreement clause should be added:

It is understood and agreed that should the lessor or the lessee elect not to enter into this Agreement, then the Agreement shall be considered null and void and all interests shall become the subject of eminent domain proceedings.

This Agreement shall also apply to and bind the legal successors in interest of the lessee and the lessee warrants possession of a good and valid lease and the right to occupy and use the premises as tenant as well as good and sufficient title to any property sold to the buyer. Lessee hereby agrees to surrender possession of the premises per the terms of this Agreement, relinquishes all rights to possession and use of the premises, and acknowledges full satisfaction and settlement from the buyer for all claims of every kind and nature by reason of being deprived of the possession and use of said premises and the construction of this highway. Lessee further agrees to pay all liens, assessments, taxes, and encumbrances for which Lessee may be liable as tenant against any property sold to the buyer.

Buyer will make all payments payable to lessor and lessee, and the lessor and the lessee agree to make any necessary divisions of the proceeds.

## ***MAJOR LEASEHOLD INTERESTS***

Major leaseholds may exist when the lessee's interest can not be easily separated from the owner's interest at the time of valuation. There may also be a major interest where the lessee's claims in the property are such that when valued, the total sum is greater than the market would pay for the property and improvements if sold as one unit.

Stated another way, a major leasehold may exist any time there is not a clear division of interests between the lessor and the lessee.

The Appraiser may or may not have the division determined and a value for each determined. The owner/tenant agreement or relationship may have changed after the time of meeting with the owner for appraisal purposes.

It is important for the acquisition agent to meet with the lessee as quickly as possible after meeting with the Owner. If there is disagreement between the owner and tenant, lessor and lessee, the sooner the differences can be determined the more chance there is of coming to a mutual agreement for all parties.

It is the policy of the Office of Right of Way for all parcels involving major leasehold that no Agreement will be accepted from a lessor unless an Agreement is obtained from the lessee as well. Neither lessee nor lessor will be condemned separately; both will be joined in a single condemnation.

This policy does not normally apply to minor tenant interests such as 30-day cancelable leases. It normally will not apply to a year-to-year agricultural tenant. This policy shall be applied to minor leaseholds in all cases where the Acquisition Agent has notice that one party or the other is seeking what appears to be an excessive award. An illustration of this would be the case where the son is the agricultural tenant for his father with no written lease and the son claims a long-term tenancy with a rental advantage. Another illustration of similar circumstances would be when one business company has the same or similar officers in the landlord corporation as those in the tenant corporation or company. The Acquisition Agent's record of contact notes should carefully mention these circumstances so double payments may be avoided. The following clause must be added to major leaseholder purchase agreements:

It is understood and agreed that should the Lessor or the Lessee elect not to enter into this agreement, then this agreement shall be considered null and void and all interests shall become the subject of eminent domain proceedings.

This agreement shall also apply to and bind the legal successors in interest of the Lessee, and the Lessee warrants possession of a good and valid lease and the right to occupy and use the premises as tenant as well as good and sufficient title to any property sold to the Buyer. Lessee hereby agrees to surrender possession of the premises per the terms of this agreement, relinquishes all rights to possession and use of the premises, and acknowledges full satisfaction and settlement from the Buyer for all claims of every kind and nature by reason of being deprived of the possession and use of said premises and the construction of this highway. Lessee further

agrees to pay all liens, assessments, taxes, and encumbrances for which Lessee may be liable as tenant against any property sold to the Buyer.

Buyer will make all payments payable to Lessor and Lessee, and the Lessor and the Lessee agree to make any necessary divisions of the proceeds.

The following procedures shall be applied to all major leasehold situations and to tenant owned improvements when there is no agreement regarding the ownership of the improvements.

- A. A single total offer will be made to both the lessee and the lessor. The appraisal will suggest an allocation of this offer between the lessee and lessor, but the suggested allocation will not be binding for negotiation purposes. The Acquisition Agent may attempt to have both the lessee and lessor agree on the correct allocation of the proceeds, based on the terms and conditions of the lease arrangement. These terms may change during the course of negotiations.
- B. Both the lessee and lessor will be expected to sign the same Acquisition Agreement that will acquire or extinguish both their interests in the property acquired. The funds may be divided as mutually agreed by the terms of the Agreement.
- C. No Agreement will be accepted unless it extinguishes all interests on a parcel. Each Agreement will contain a clause stating: "If either the lessor or the lessee elects not to enter into this Agreement, then this Agreement shall be considered null and void and all interests shall become the subject of eminent domain proceedings."
- D. There shall be no exceptions to this procedure unless the Project Agent recommends negotiations on a different basis and these written recommendations are approved by the Acquisition Supervisor or the Right of Way Director. All such recommendations shall be made part of the file.
- E. Tenant improvements shall be considered as a separate ownership and entitled to a separate offer. See Tenants, subsection *Tenant-Owned Buildings, Structures, or other improvements*.

### ***THE FUNCTION OF THE ACQUISITION AGREEMENT***

The Office of Right of Way strictly adheres to the policy that all Acquisition Agreements are in writing thus avoiding oral agreements and verbal obligations or commitments.

One of the Acquisition Agent's basic objectives is to obtain an Agreement that will pay *just compensation* for the property or property rights acquired. Another and equally important objective is to assure the Iowa DOT that each property owner understands the acquisition and has accepted the amount agreed upon as full payment for all items upon which the offer is based. When necessary, in order to avoid misunderstandings on what is being acquired, the Acquisition Agent shall identify items or property being acquired or damaged and shall use or draft special

clauses to clarify the terms of the Agreement and the effect of the acquisition. There should be no blank or open spaces left in the agreement.

For this same reason, once an Acquisition Agreement has been signed by the seller, it shall not be altered without the approval of the seller. All alterations to signed Acquisition Agreements shall be initialed and dated by the seller and acquisition agent. When negotiations are conducted by mail or telephone, the seller may be authorized to alter the terms of the original offer, subject to approval of the Acquisition Agent. The Acquisition Agent shall approve, initial, and date all Agreement alterations made by the seller prior to submitting the Agreement for acceptance and payment by the Iowa DOT.

### ***VERBAL AGREEMENTS ELIMINATED***

All Acquisition Agreement forms contain the following clause which eliminates the possibility of verbal agreements:

*This written contract constitutes the entire Agreement between Buyer and Seller and there is no Agreement to do or not to do any act or deed except as specifically provided for herein.*

This clause is never to be deleted from any Right of Way Agreement. Verbal agreements not made a part of the Agreement, as written, are not enforceable by either party.

### ***COURT APPROVAL IN GUARDIANSHIPS/CONSERVATORSHIP***

Standard forms of Purchase Agreements contain the clause: "If title to the property is or becomes an asset of any estate, trust, conservatorship, or guardianship, Seller agrees to obtain Court approval of this Agreement, if deemed necessary by Buyer's attorney."

When the Report of Record Ownership and Liens shows title to be, in fact, an asset of an established guardianship or conservatorship, etc., the Purchase Agreement should contain the following clause:

Seller agrees that (i.e. John Doe as Guardian for the Guardianship of minor son) shall proceed promptly and diligently to bring the matter of the approval of this Agreement to the court for hearing.

Buyer agrees to pay Court costs and legal expenses incurred in obtaining such approval as a cost incident to the transfer of the premises, but not to exceed the amount of \$ \_\_\_\_\_ for this purpose.

When a compensable interest in land is owned by one under legal disability and no legal guardian has previously been appointed, additional legal procedure will be necessary in order to obtain a conveyance of the property. It may be that the State will have to secure this appointment, in which case, the Attorney General's Office will handle this matter. However, if a parent or relative or other party involved in the transaction is willing to agree to handle this matter, the Agreement may be drawn as follows:

Seller agrees to secure the appointment of a legal guardian or conservator for . Seller agrees to proceed promptly and diligently to bring the matter of such appointment and such approvals for hearing for Court approval. Buyer agrees to pay Court costs and legal expenses incurred in obtaining such appointment and such approvals as a cost incident to the transfer of the premises, but not to exceed the amount of \$ \_\_\_\_\_ for these purposes.

**Note:** In these cases, when a minor's share of the proceeds of an acquisition is less than \$1,000, we can accept the signature of a parent on the Agreement. However, title will have to be passed by a guardianship and the Agreement shall include the costs incurred.

### ***ADMINISTRATIVE SETTLEMENT***

After an offer is made on the original appraisal obtained by the State, there may be market factors that have taken place which affect the value of the subject property. Some of the factors that could increase land values are; recent sales, a change in the highest and best use, or damages not considered by the appraiser. In addition the property owner may present an acceptable appraisal based on a different approach than the one used by the State's appraiser. If any of these or other factors lead to a conclusion that a higher value is warranted, an Administrative Settlement may be used.

When making an administrative settlement recommendation, the Acquisition Agent shall give due consideration to the overall effect of the recommendation on the project or projects in the area. All such recommendations submitted by the Acquisition Agent obtaining the signature of the owner on an Agreement for the revised offer shall be concurred with by the Project Agent. The recommendations shall give consideration to all information, facts, and circumstances of the parcel, which support the Acquisition Agent's recommendation. They shall be in writing and shall be signed by the Acquisition Agent.

The Acquisition Agent's settlement recommendation shall note the appraiser's opinion of value and the determination of the State's reviewing appraiser. In the preparation of the recommendations the Acquisition Agent shall state those facts that differ from' or which were omitted in the appraisal, or file, and the amount or amounts in issue and, where applicable, the nature of the interest represented and the persons involved.

Settlement recommendations shall contain an analysis of the vulnerability of the State in litigation. The Acquisition Agent may note: recent physical improvements, developments, or market sales in the area; recent awards by compensation commissions of similar properties in the same area, the range of the State's probable testimony and, where applicable, the opinion of the State's legal counsel. Settlement recommendations will not be approved simply to avoid condemnation, administrative costs, or in response to threats by a landowner or their attorney or representative.

All settlement recommendations shall contain a closing statement to the effect that "this settlement is made in the best interest of the public". The original of the approved settlement recommendation shall be sent to the Title and Closing Unit, along with the Acquisition Agreement for payment.

## ***PAYMENT VARIANCES***

In most cases when payments in excess of the appraised value plus right of way fence are made, an Administrative Settlement will be used. However, there are matters that may be settled without using that form. An example of exceptions are: items such when there is a minor design change that adds or decreases fractional acreage without increasing or causing damage to the property, or when buildings are salvaged back to the property owner. The value can be added or subtracted from the total payment as long as the reason and basis of value determination is well documented in the file notes. This may be done either by writing a separate note or detailing the situation in the property owner contact report.

As a general rule, if additional damages are required due to a design change, the damage value should be determined by an appraiser or review appraiser. In those cases the appraiser or review appraiser must provide a written basis for the valuation change.

## ***RECORD OF CONTACTS***

The Acquisition Agent is responsible for providing on the acquisition record of contacts form, a detailed written report of each contact made with the owner or tenant, whether the contact is in person or by phone. Each report must contain a minimum the following information:

- Project number
- Parcel number
- Date of contact
- Place of contact
- Type of contact (in person or by phone).
- Name, address, email address and telephone number of the person contacted
- Special instructions, if necessary, for locating that person
- Names of all other persons present
- Names, addresses, and phone numbers of attorney or other representatives
- The initial contact report should state; “I presented the yellow folder that contained the booklet [\*Highways and Your Land\*](#), the groundwater hazard statement, the offer, and the Purchase Agreement. The owner accepted/declined to donate the proceeds to the State of Iowa.”
- Main points discussed and commitments made by Acquisition Agent
- Principle objections to offer or acquisition
- Whether offer was accepted or rejected
- Description of any special features of the offer, acquisition, or interest holder which might have bearing on the outcome of a condemnation or trial
- Requests made by interest holders, and the Acquisition Agent's reaction to those requests
- Names, addresses, and phone numbers of persons other than those shown of record who claim or assert an interest in the property to be acquired
- Necessary special instructions for closing, relocation, or property management functions
- All emails and written communication in the parcel file

- Acquisition Agent's signature and date (typed signatures not accepted)
- Contact records must be typed or handwritten in a legible fashion
- Acquisition Agent's conclusions as a result of the contact. These notes should be factual, to the point, and not contain editorial comments

***ARCHAEOLOGICAL, HISTORICAL, OR GRAVE SITES WITHIN PROPOSED RIGHT OF WAY***

Any indication of the existence of an archaeological historical site, or gravesite within a proposed right of way acquisition shall be reported immediately to the Acquisition Supervisor. The Acquisition Supervisor will notify the Director of the Office of Location and Environment of the location of the site. The Director of Location and Environment will make arrangements to have the site investigated.

***ABANDONED WELLS, UNDERGROUND TANKS, BURIAL SITES AND CONTAMINATED SITES***

Any indication of the existence of underground tanks or sites contaminated by toxic or hazardous materials within or adjacent to the proposed acquisition shall be reported immediately to the Acquisition Supervisor, who will request an on-site investigation and proper testing of the area. No acquisition of that parcel will occur until final clearance is obtained.

Any abandoned well in the proposed acquisition area shall be identified as to location. A design revision will then be prepared to insure placement of the well on the construction plans. The acquisition of the abandoned well must be made part of the Acquisition Agreement.

Where debris is stored or disposed of on the land to be acquired, such as, old tires, scrap metal, chemical and paint cans, burn piles, above ground fuel storage tanks or other possible contaminants or debris, the following clause shall be inserted in the Agreement:

It is understood and agreed by Seller, the debris described as, but not limited to:

(Insert description of debris)

Located on the premises described and sought herein, will be removed by the Seller prior to the possession and conveyance date shown on page 1 of this Agreement.

It may be appropriate to withhold a sum of money (10% for example) on the Agreement to assure compliance.

## ***TAXES***

Often during the acquisition process, the Acquisition Agent is asked questions concerning capital gains/income tax. These questions should be answered for the owner by their attorney or whoever assists them in preparing their tax forms.

Property taxes are the responsibility of the Seller until surrender of possession.

## ***OWNER REPRESENTED BY COUNSEL***

When property owners do not desire to enter into negotiations but designate an attorney or some other person to act for them, the Acquisition Agent will attempt to purchase the property through this representative. No further negotiations shall be undertaken except through the attorney or the authorized person. However, copies of any written correspondence to the attorney should be sent to the owner.

If property owners subsequently inform the Acquisition Agent that they are no longer represented by counsel, it is necessary to get such notification in writing before continuing the negotiations with the owner. The Acquisition Agent shall keep detailed records of the attorney-client relationship during negotiations.

## ***CONFLICT OF INTEREST***

Any Acquisition Agents with a past, present, or contemplated personal, family, ownership, or business relationship with any owner or tenant on property being sought by the Iowa DOT shall immediately disqualify themselves as the negotiator for that property. Those who appraised or negotiated for the land or any interest in the land are prohibited from delivering payments.

## ***STANDARD FORMS OF PURCHASE AGREEMENTS***

The Office of Right of Way is currently using the following standard types of acquisition forms:

### ***Partial Acquisition Agreement***

This form is adaptable to most real property purchases. This form, along with an attached plot plan, or a copy of the land surveyor's plat, is used for all partial acquisitions, including acquisition of access. When the partial acquisition requires an abstract, the Partial Acquisition Agreement should include the direct payment to lien holder's clause.

### ***Total Purchase Agreement***

This form is designed for the purchase of both urban and rural properties. This form, along with an attached full legal description, shall be used when the entire property is being acquired.

### ***Tenant Agreement***

This form shall be used for purchase of the leasehold interests of a tenant on property that is being acquired on a separate Right of Way Agreement from the fee owner. This form, along with an attached plot plan, or a copy of the land surveyor's plat, will normally be used when a nominal payment is made for a tenant release on farm property. It is adaptable to either a total or partial acquisition.

### ***Tenant Agreement Short Form***

This form shall be used for purchase of the leasehold interests of a tenant on property that is being acquired on a separate Right of Way Agreement from the fee owner. This form is to be used only when acquiring a tenant occupied house.

### ***Access Control Only Agreement***

This form may be used when the only right being acquired is access control. This form shall not include temporary easements or other kinds of property rights.

### ***Temporary Easement Agreement***

This form shall only be used for the purchase of a temporary easement upon private property to do work during construction. It shall not be used in conjunction with the acquisition of land or any property right. Temporary easements are released by the Resident Construction Engineer when the work specified in the Agreement has been completed.

### ***Borrow Agreement***

Temporary easements for borrow are written into the Agreement using special clauses for that purpose. Borrow easements are released by the Resident Construction Engineer when the work specified in the Agreement has been completed. Standard Agreement forms are to be used to acquire borrows by temporary easement or by fee.

### ***Mobile Home Acquisition Agreement***

After the Relocation Agent has met with the owner regarding the purchase of the mobile home and discussed any relocation benefits that may apply, the Acquisition Agent shall prepare a Purchase Agreement that clearly identifies all ownership interests and all real or personal property to be acquired. The Title and Closing Agent will obtain the mobile home tax lien clearance from the County Treasurer. A determination if liens were filed on the title will be made prior to closing any land transaction that may have been acquired with the mobile home.

The Property Management Agent will take possession after delivering payment and obtaining the title to the mobile home.

### ***Items of Importance:***

- The Agreement should contain a complete list of all items that are to be acquired as a part of or in addition to the mobile home.
- A clause identifying the VIN (Vehicle Identification Number) should be included in the Agreement.
- An insurance clause protecting the State's interest should be included in the Agreement.

- If the Acquisition Agent obtains the title certificate, it should not be signed by the owner.
- The payment for the mobile home should be separate from the real estate payment.

### ***DESCRIPTION OF PREMISES***

An accurate description of the property to be conveyed must be written, if a survey plat is unavailable, or the plot plan is not suitable. Regardless of the method to be used in the description, all standard forms of Right of Way Agreements must give the general location of the property by writing in the 1/4 1/4 and Section and parts of Section, Township, Range, and County; or by writing in the Lots, Block, and Subdivision, in accordance with the U.S. government land survey. This may be written in different ways, depending upon the particular circumstances, examples are as follows:

If the entire property is to be conveyed, the best method is to describe it exactly as it is shown in the owner's recorded deed. In rural property, this will usually be given as a subdivision of a section, such as:

The East 1/2 of the Northeast 1/4 of the Northeast 1/4 of Section \_\_\_\_\_, Township \_\_\_\_ North, Range \_\_\_\_ West of the 5th P.M., in \_\_\_\_\_ County, Iowa; although it may occasionally be a metes and bounds description, in which case it is necessary to be very careful to use the exact description verbatim.

Urban properties are usually described by giving the Lot and Block numbers in the Addition or Subdivision, with reference to the recorded plats of the City, such as: Lot \_\_\_\_\_, Block \_\_\_\_\_, in \_\_\_\_\_ Addition to the City of \_\_\_\_\_, Iowa.

Long and complex descriptions may be photo copied from the deed and recopied to the Agreement if it is neat, clean and legible. A second way to deal with long and complex deed descriptions may be in the following manner; however, this method should be used only with the recommendation of a Title and Closing Agent:

The premises located in (1/4 1/4 Sec. TWP Range) or (Lot Blk. Subdivision), as described in a certain \_\_\_\_\_ Deed, dated \_\_\_\_\_ and recorded in the County Recorder's Office on (date) \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, as instrument No. \_\_\_\_\_.

On Partial Acquisition Agreements the preferred description is a survey plat. In Lieu of a survey plat, the plot plan may be attached to the Agreement and the following clause included in the Agreement.

The Right of Way Design Plot Plan attached as Page \_\_\_\_\_ of this agreement graphically illustrates the proposed acquisition area. It is understood and agreed that the Registered Land Surveyor's Plat, which will be attached to the future conveyance document, will supersede and

replace this Plot Plan as the accurate and correct plat of the land being conveyed. Should the Land Surveyor's Plat indicate a slightly greater acreage/square footage to be conveyed than that shown on Page 1 of this agreement, the payment due the Seller will be increased accordingly and shown on the future conveyance document. Seller hereby waives any increased payment of less than \$50.00.

### ***BUILDINGS PURCHASED WITH RIGHT OF WAY***

When there are buildings and/or improvements located upon the real property purchased and have been acquired with the land, a clause identifying these items shall be written in the Agreement following the description of the land:

The premises to be acquired include all buildings and permanent improvements located thereon, including but not limited to: (list all improvements and their locations).

### ***Building on Right of Way Reserved to Owner***

Code of Iowa, Section 6B.44 enables an owner to elect to retain and remove the buildings or improvements located on the real property. The following clause will be used:

The \_\_\_\_\_, located \_\_\_\_\_ is/are reserved to Seller. Seller agrees to remove said item(s) from the premises on or before \_\_\_\_\_. Should Seller fail to remove said item(s) by said date, they shall become the property of Buyer, who shall remove said item(s) as they see fit.

It is understood and agreed the sum of \$\_\_\_\_\_ has been deducted from the Total Lump Sum shown on Page 1 of this Agreement for Seller's salvage rights for said item(s). Seller agrees to acquire all necessary permits and to comply with all local ordinances and/or requirements, including, but not limited to, the removal of building(s) to the foundation level and to isolate, cap, shut off, and disconnect all utilities to building(s) and/or improvement(s). Seller indemnifies and saves the Buyer harmless for all salvage activities and agrees to leave the salvage area in a safe, workmanlike manner.

In this case, the listing in the clause must cover all reserved buildings or improvements in detail as to number, type, and present location. Where there are buildings not included in this reservation, the State will proceed to sell or otherwise dispose of them.

### ***INSURANCE***

When purchasing buildings owners may have insurance on their improvements. If they do carry insurance it is required that they continue to keep their insurance current until the surrender of possession. Therefore it is recommended to add the following three clauses to the Purchase Agreement.

In such cases where owners elect to not have insurance the following clause should still be added to the Purchase Agreement, but should be struck-out within the agreement, showing that the owner has elected to continue to not carry insurance.

***Hazard Insurance***

The following clause shall be used where possession of buildings and improvements is to be reserved to the Seller.

The Seller agrees to keep fire, tornado, extended coverage, and added perils insurance in the minimum amount of \$ \_\_\_\_\_ payable to all parties as their interests may appear from this date, until delivery of the deed and possession. The Buyer shall notify all insurance companies of this agreement. In case of loss or destruction of part or all of the premises from causes covered by the insurance, the Seller agrees to accept the lump-sum payment and endorse the proceeds of any such insurance recovery. The Seller assigns to the Buyer any and all of the Seller's rights under such insurance agreements.

Use present policy limits of Seller's present fire insurance policy.

***Protection of the premises and public***

The following clause shall be used in all acquisition of buildings:

Seller shall protect the premises from damage and shall prevent injury to people. Seller shall make all repairs to the heating system, roof, electrical system, doors, windows, and equipment necessary to maintain the premises in a safe operating condition to prevent damage to the premises and to avoid injury to all occupants, guests, and the general public. Seller shall indemnify and save the Buyer harmless from all loss, claims, and causes of action for all damage to property and injury to persons arising out of Seller's continued possession and use of the property.

***Insurance Carrier Information***

The following clause shall be used in all acquisition of buildings:

Seller agrees to maintain existing liability insurance for loss or damage to the property or for personal injury arising out of Seller's continued possession or use of the property.

Seller's Insurance Agent and Carrier: \_\_\_\_\_.  
Policy No.: \_\_\_\_\_ Address: \_\_\_\_\_.

***RELOCATION***

The Acquisition Agent and Relocation Agent will meet together with the owner at the initial meeting. If relocation questions arise during continued negotiations, the Acquisition Agent shall notify the Relocation Supervisor.

The Acquisition Agent must verify that the comparable replacement property is still available prior to presenting the written offer and relocation offer. This may be done by calling the listing broker on the same day, yet prior to delivery of the offer to purchase. If no comparable listed is available the Relocation Supervisor must be notified and the offer must not be presented.

The offer of relocation assistance shall be signed and dated by a right of way agent. A signed and dated copy shall be retained in the parcel file and another signed and dated copy shall be sent to the Relocation Supervisor. When possible this exchange of information should transpire within one week.

In certain instances the Relocation Agent may meet with the tenant and present the Tenant Purchase Agreement Short Form for their approval. In such instances it is the Relocation Agents responsibility to provide the approved short form and contact notes to the acquisition agent. When possible this exchange of information should transpire within one week.

### ***Relocation Assistance Assurance***

The following assurance clause has been made a part of all Purchase Agreement forms when relocation is involved:

By signing this Agreement, Seller does not jeopardize their right to relocation assistance benefits for which they may be eligible under law.

### ***PURCHASE OF ACCESS RIGHTS***

At the time of acquisition agreement preparation, the acquisition agent should become familiar with the access control page (letter) that is part of the final right of way design plans. This will help prevent errors.

In the cases of partial acquisitions, all Right of Way Purchase Agreements and Tenant Agreements provide for the purchase of all access rights to the proposed highway from that portion of the property remaining which will abut on the proposed highway. The Partial Acquisition Agreement and the Tenant Agreement forms contain an access phrase following the reference to the general location of the property.

One or more of the following access statements are to be used when appropriate:

- Buyer agrees to construct a Type “\_\_\_\_\_” entrance at Sta. \_\_\_\_, \_\_\_\_ side. It is understood and agreed all other entrances not listed or allowed in this Agreement will be eliminated.
- It is understood and agreed that the right of access granted in a certain Warranty Deed/Condemnation recorded in the \_\_\_\_\_ County Recorder’s Office on \_\_\_\_, in

Book \_\_\_\_, Page\_\_\_\_, is amended as follows:

Access at Sta.\_\_\_\_, on the \_\_\_\_side, is eliminated. Access at Sta.\_\_\_\_, on the \_\_\_\_side, is allowed.

This amendment is in accord with Buyer's right to regulate, restrict, or prohibit such access as set forth in the Code of Iowa (Chapter 306A), and shall be binding on Sellers' heirs, successors and assigns.

- It is understood and agreed that the right of access granted in a certain Warranty Deed recorded in the \_\_\_\_\_ County Recorder's Office on \_\_\_\_\_, in book \_\_\_\_\_, Page\_\_\_\_, is amended as follows:

Access at Sta. \_\_\_\_\_, on the \_\_\_\_\_side, is allowed.

This amendment is in accord with Buyer's right to regulate, restrict, or prohibit such access as set forth in the Code of Iowa (Chapter 306A), and shall be binding on Sellers' heirs, successors and assigns.

- It is understood and agreed that the right of access granted in a certain Warranty Deed recorded in the \_\_\_\_\_County Recorder's Office on \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, is amended as follows:

Access at Sta. \_\_\_\_\_, on the \_\_\_\_\_side, is eliminated.

- It is the intent of this Agreement not to convey any real estate, but to restrict the right of ingress and egress from the herein described land.
- When there is an established access location at a local road connection with an access-controlled highway, that access point will be listed on the Agreement. Please use the following statement when appropriate under item (1b) of the Purchase Agreement:

Access from Seller's property to U.S. 00 will be via local road at Station 00+00, \_\_\_\_\_Side.

The term local road in this manual does not mean or include access ways or frontage roads. Access points will not appear on contracts when access is by way of an access way or frontage road.

The Agreement in these cases will include the following clause:

Access from Seller's property to U.S. 00 will be via access way and/or frontage road.

**Note:** There is to be no mention of access location.

The access acquisition phrase in the Agreement states:

*Seller also agrees to convey all rights of direct access to Highway as follows: From Sta. 000+00 +-PL to Sta. 000+00 +-PL, \_\_\_\_\_ Side.*

**Note:** Do not deviate from this standard access phrase.

The station to be written in, unless otherwise directed, shall be those of the property lines and shall include all that portion of the remainder property that will abut on the proposed highway right of way. If access is to be completely denied, the designation of these stations will be all the writing required. If, however, some entrance is to be granted to the proposed highway, then the access phrase must be applied to provide for this.

The location of entrances being permitted will be shown on the highway plans, and this must be included in the Agreement's access phrase by filling in an extension supplying the additional information, such as:

*... excepting and reserving to Seller the right of access at the following locations:  
At Sta. 23+00, North side.*

Since the purchase of access requires the transfer of one of the "bundle of rights" which comprises real property, the acquisition must be made a matter of record. For this reason, errors in specifying the location of entrances being reserved must be eliminated. When the transfer of access rights has been recorded, it is usually difficult to correct, and it may also be very expensive if the correction should involve a renegotiation for access rights at some future date.

When the total property is purchased, there is no need for the access phrase; therefore, it does not appear in the body of the Total Acquisition Agreement form. When the total property is being purchased, the access phrase provided in the body of the Tenant Agreement form is unnecessary.

Occasionally, it becomes necessary to acquire access rights from property abutting on the highway right of way when no land or other property right is required. Under these conditions, the access purchase agreement form shall be used to acquire the access rights.

The following clause shall be part of the Agreement:

It is the intent of this Agreement not to convey title to land, but to restrict the right of ingress and egress from the herein-described land, to and from Highway No. \_\_\_\_.

This Agreement will provide for the conveyance of access rights only, and the extent of the acquisition shall be set out from survey station to station, as in the Acquisition Agreement. Similarly, survey station numbers shall identify any entrances reserved to the seller within these limits.

## ***POSSESSION***

Sellers have certain possessor rights and the right to receive prompt payments. The Acquisition Agent is responsible for informing the seller that vacation of the premises or surrender of physical possession is not required until the seller has been paid the full amount of the appraised value or, in the case of condemnation proceedings, that amount has been deposited with the County Sheriff and made available to the seller. The seller is also not required to surrender

physical possession or to move personal property from the right of way prior to 90 days after the date personal negotiations have commenced or prior to the date specified in a 30-day notice to vacate the premises, in accord with the Agreement terms. The Relocation Assistance Supervisor is responsible for sending the 30-day notice to property owners and tenants by certified mail, at least 30 days in advance of the date they are required to surrender possession of the premises. No 30-day notice to vacate or surrender physical possession of the premises shall be sent until the owner has received payment as agreed, or until the award of a compensation commission has been deposited as prescribed by law. The owner may forgo these rights and grant immediate possession

It is the general policy of the Office of Right of Way to take physical possession of the premises from the seller either on the date specified for the surrender of physical possession in the Right of Way Agreement, or not later than 30 days thereafter. Any possession by the seller after that date normally requires a lease agreement between the State, through the Property Management Unit, and the seller when establishing the possession date, the Iowa DOT letting and construction schedules must be considered. Possession of the property required for construction purposes must be certified by the Office of Right of Way at least 12 weeks prior to the scheduled construction letting date on projects.

***Possession Dates*** must always be set in accord with the seller's rights to the 90-day notice and payment. Through the terms of the Right of Way Agreement, the seller may waive the right to full payment, to 90-day possession, or to the 30-day notice. When the seller agrees to give the State the right of physical possession before receiving final payment, the seller will be required to vacate the premises on the date agreed per the Agreement terms. No such Agreement shall be accepted until the Acquisition Agent is confident the seller is fully aware of the rights being waived and the Acquisition Agent has documented the record of contact notes accordingly. (Property taxes are the responsibility of the seller until the actual date of possession by buyer.)

***Tenant Agreements*** shall not require the tenant to surrender physical possession of the premises by a specific date, unless the owner has either signed a Right of Way Agreement or the State has acquired the interest of the owner through condemnation. Tenant Agreements shall state that the tenant shall surrender possession of the premises no later than 30 days after buyer's mailing of the notice that the buyer has acquired the interest of the owner, whether by Agreement or Condemnation.

***Reserved or Salvaged Items*** should not be reserved beyond the date of possession, except in the case of growing crops. Reservation of crops should not be beyond a reasonable time for harvest and should not interfere with a letting date. The crop reservation clause should be used rather than having an extended possession date. An extended possession date could prevent a letting. In these cases, reserved crops that are damaged or destroyed after being reserved by the Iowa DOT prior to harvest would be dealt with by the Resident Construction Engineer as a damage item.

***Date of Possession*** on standard forms of Acquisition Agreements all specify that the buyer acquires the right of possession of the premises per the terms of the Agreement. Surrender of possession requirements are set forth as a separate phrase of the standard forms of Right of Way Agreements.

Even though the sellers have the right to continue to occupy the premises for at least 90 days from the date of the initial written offer, they are not required to do so. **The property owner shall be fully informed that possession does not have to be granted until payment has been made in full.**

### ***DATE OF CONVEYANCE AND PAYMENT***

It is the intent of the Iowa DOT to expedite payment to the owner.

All standard Agreement forms state that the seller agrees to furnish a signed conveyance of title on form(s) furnished by the buyer on or before a specified date. This date is the date the State agrees to pay the consideration upon its receipt of a signed and satisfactory conveyance. The seller's basic responsibility is to clear up any liens or encumbrances on the property and, and when requested to do so, furnish an abstract of title.

A partial payment may be made when it has been determined the Seller owns merchantable title free of all liens and encumbrances, or the seller's remaining equity exceeds the value of the partial payment. A partial payment will normally not exceed 50% of the amount allocated in the appraisal for land, land damages, and improvements. A partial payment in excess of 50% may be made only when the seller possesses the required title or equity and the payment has been approved by the Acquisition Supervisor.

**Note:** Seller cannot be required to surrender possession earlier than 90 days from the date of the written offer.

**Note:** Seller cannot be required to surrender possession of the premises earlier than 30 days from the date of the closing.

### ***TABULATION OF PAYMENTS -- LUMP SUM AGREEMENT***

The lump sum Agreement means simply that the entire payment required by the right of way agreement is lumped into one total amount, which includes the purchase of land taken, the access rights to the remainder portion, the cost of fences, and for any and all other payment items. When turning in a lump sum Agreement, it is required that a breakdown be shown of the total amount. On the Acquisition Breakdown Form, the items being paid for shall be listed separately. The sum of these figures must equal the total amount of the lump sum payment specified on the Agreement. The breakdown of the amount allocated for the "general" item shall also be shown on the breakdown sheet in the same manner. The Seller will receive a closing statement at the time of payment.

### ***STANDARDIZED SPECIAL CLAUSES FOR USE IN ACQUISITION AGREEMENTS***

It may be necessary to add special clauses relating to agreements made regarding the individual property, which are not included in the agreement form. Many of these clauses are of such a recurring nature that it is desirable to use a standardized clause to provide uniformity in both the writing and interpretation of the agreement.

These special clauses are designed for use when writing the agreements in most of the situations commonly encountered.

### ***BORROW AGREEMENTS***

It is prudent to obtain a borrow area by fee acquisition. However, if the borrow is acquired by temporary easement, the following applies:

The temporary easement will be recorded by the Iowa Department of Transportation, and released by the Resident Construction Engineer on the Property Management Unit's release of temporary easement form.

Note specific clauses required for this in Appendix A.

***All borrows are restored as directed by the Code of Iowa Section 314.12, which is as follows:***

In award of contracts for the construction, reconstruction, improvement, repair or maintenance of any highway, the agency having charge of awarding such contracts shall require—that when fill dirt, soil or other materials are to be removed from borrow pits acquired by title or easement, whether by Agreement or condemnation, for use in the project, adequate provision shall be made for restoration of the borrow pit area, either by removal and replacement of a minimum of eight inches of topsoil, or by fertilizing, mulching, reseeding or other appropriate measures to provide vegetative cover or prevent erosion, except where a lake or sub-water table conditions are designed, or where the area is zoned for commercial, industrial, or residential use, or where the borrow is in locations of white oak, sand, loess or un-drainable clays. When the borrow pit is acquired by easement, the restoration method shall be determined by Agreement with the landowner.

Add the following clause to the Purchase Agreement when no topsoil is to be replaced:

In consideration of this contract, the provisions of this borrow agreement and the total lump-sum payment shown on page one of this agreement, the Seller hereby grants to the Buyer a temporary easement for the purpose of removing borrow material.

The Right-of-way Plot Plan, attached as page \_\_\_\_\_ of this agreement, graphically illustrates the proposed temporary easement for the borrow area being granted.

The resident construction engineer will release the said temporary easement by recording a Release of Temporary Easement no later than one year after the grading, paving, shouldering, and erosion control have been completed on this project. The Buyer will provide the Seller with a copy of the release after it has been recorded.

It is further specifically understood and agreed that the Buyer will leave the surface of the borrow area sloped to drain and will not repair or replace any drain tile within the borrow area. The topsoil will not be replaced upon the borrow area. The Buyer makes no warrants or promises as to the final condition or design of the borrow area.

The Buyer agrees the borrow area will be fertilized and seeded with an appropriate temporary seed mixture based on soil types, conditions and time of the year.

Add the following clause to the Purchase Agreement when topsoil is to be replaced:

In consideration of this contract, the provisions of this borrow agreement and the total lump-sum payment shown on page one of this agreement, Seller hereby grants to the Buyer a temporary easement for the purpose of removing borrow material.

The Right-of-Way Plot Plan, attached as page \_\_\_\_\_ of this agreement, graphically illustrates the proposed temporary easement for the borrow area being granted.

The resident construction engineer will release the said temporary easement by recording a Release of Temporary Easement no later than one year after the grading, paving, shouldering, and erosion control have been completed on this project. The Buyer will provide the Seller with a copy of the release after it has been recorded.

It is further specifically understood and agreed that the Buyer will leave the surface of the borrow area sloped to drain and will not repair or replace any drain tile within the borrow area. The Buyer makes no warrants or promises as to the final condition or design of the borrow area.

The Buyer agrees to remove, stockpile and replace a minimum of 8 inches of topsoil over the borrow area.

The Buyer agrees the borrow area will be fertilized and seeded with an appropriate temporary seed mixture based on soil types, conditions and time of the year.

Add the following clause to the Purchase Agreement for a Pond Borrow:

In consideration of this contract, the provisions of this borrow agreement and the total lump-sum payment shown on page one of this agreement, the Seller hereby grants to the Buyer a temporary easement for the purpose of removing borrow material.

The right-of-way plot plan, attached as page \_\_\_\_\_ of this agreement, graphically illustrates the proposed temporary easement for the borrow area being granted.

The resident construction engineer will release the temporary easement by recording a Release of Temporary Easement no later than one year after the grading, paving, shouldering, and erosion control have been completed on this project. The Buyer will provide the Seller with a copy of the release after it has been recorded.

The Buyer does not warrant or guarantee the pond borrow will hold water. The drain tile within the borrow area will not be replaced. The Buyer makes no warrants or promises as to the final condition or design of the borrow area.

The Buyer agrees to remove, stockpile and replace a minimum of 8 inches of topsoil over the borrow area to the approximate waterline of the pond area.

The Buyer agrees the borrow, except the pond area, will be fertilized and seeded with an appropriate temporary seed mixture based on the soil types, conditions and time of year.

Add the following clause to the Purchase Agreement when dealing with an owner wants the borrow to be acquired by temporary easement rather than by fee title:

It is understood and agreed that at the Seller's have requested that the borrow area described in Item No. \_\_\_ of the Agreement be acquired by temporary easement rather than by fee title as offered by the Buyer. The Seller understands and agrees there are no warrants or promises as to the condition of the temporary borrow area after completion of the highway project other than what is written in this Agreement. The Seller will accept the temporary easement area "as is" when the temporary easement is released at the completion of this highway construction project.

Add the following clause when the Iowa DOT has offered to acquire a borrow area by fee title and the area does not have access to the owners remaining land or the public road system but the owner wants to retain the borrow area and requests that it be acquired by temporary easement:

It is understood and agreed that at the Seller has requested that the borrow area described in Item No. \_\_\_ of this Agreement be acquired by temporary easement rather than by fee title as offered by the Buyer. The Seller understands and agrees there are no warrants or promises as to the condition of the temporary borrow area after completion of the highway project other than what is written in this Agreement. The Seller will accept the temporary easement area "as is" when the temporary easement is released at the completion of this highway construction project.

It is further understood and agreed the described borrow area will not have access to the Sellers remaining property or to the public road system. As such the State has offered to acquire the property by fee title as an **uneconomic remnant**. The Seller acknowledges that payment in full as an uneconomic remnant is included in the Total Lump Sum on page 1 of this Agreement.

Field tile disturbed or destroyed during removal of borrow material will not be repaired or replaced within the borrow area. Borrow Agreements may provide for surface drainage and temporary fencing.

### ***TOPSOIL POLICY***

The standard procedure for replacement on cultivated/cropland is to strip, stockpile and replace the topsoil. Topsoil replacement on commercial land is never recommended. In the case of a pond borrow topsoil may be replaced to the approximate waterline of the pond.

Items to consider when discussing topsoil replacement:

The definition of topsoil can vary by individual person and/or office, and there appears to be some over-lapping of term topsoil. Topsoil is defined as:

The top few inches (6-12) of what soil is present before construction, with the understanding that color or quality varies greatly across the state.

For topsoil replacement on borrows the soil from the surface of the land is removed to a depth of twelve inches (prior to construction) to provide for a replacement depth of eight inches of soil. An exception can be in sand borrows with existing sand at the surface where it is sometimes recommended to restore to the previous condition. Another exception is when rock is extremely shallow and there is not 12 inches of soil of any kind at a site before construction begins.—In the western Iowa loess hills, there may be less distinction between the surface and the soils at a greater depth.

The methods to be used to restore borrow sites as shown on the plans may be specified in the borrow clause written into the Agreement.

***CHANNEL CHANGES***

Channel changes are usually indicated by a note on the highway plans. Changes are shown on the plans with a definite alignment and cross-sections. The following clause shall be used:

The Buyer is granted a temporary easement, as described below, on the Seller's property for the purpose of channel change; and as measured from the centerline of the proposed highway, as shown on the project plans. The temporary easement shall terminate upon completion of this highway project.

From station \_\_\_\_\_ to Sta. \_\_\_\_\_, a strip \_\_\_\_\_ feet wide, on the \_\_\_\_\_ side;  
and

From station \_\_\_\_\_ to Sta. \_\_\_\_\_, a strip \_\_\_\_\_ feet wide, on the \_\_\_\_\_ side

The right to construct the channel change shall be included as items in the general lump sum damage payment.

***FLOWAGE EASEMENTS***

The flowage easement grants the State the right to back water onto private property to a prescribed elevation. Flowage easements are not considered permanent easements. Flowage easements are occasional (1/100 years, etc.) events, and should not directly impact the owners use and enjoyment of the land. The following is to be added to the Purchase Agreement:

It is understood and agreed the flowage easement gives the Buyer the perpetual right, power, privilege and easement, to overflow, flood and submerge, to an elevation of \_\_\_\_\_ feet above mean sea level.

***TEMPORARY CONSTRUCTION DETOURS***

When the highway plans call for the construction of a temporary detour on private land, such as around a bridge site, the following clause shall be used:

The Seller grants the Buyer the right to construct, maintain, operate, and remove a temporary detour road on the Seller's property, described as follows; and as measured from the centerline of the proposed highway and shown on the project plans.

From Sta. \_\_\_\_\_ to Sta. \_\_\_\_\_, a strip \_\_\_\_\_ feet wide, on the \_\_\_\_\_ side;  
From Sta. \_\_\_\_\_ to Sta. \_\_\_\_\_, a strip \_\_\_\_\_ feet wide, on the \_\_\_\_\_ side;

The temporary detour road will remain in place until the completion of this highway project.

When released back to the Seller, the Buyer agrees to scarify the area by machine method to a depth of 16 to 20 inches.

## ***STOCK PASSES***

No agreement shall be made in negotiations for the construction of a stock pass until the Right of Way Director and District Engineer have reviewed the particular case and given prior approval. Stock passes under state highways are only built as a result of negotiated agreements with owners whose farms are severed by either a present or a proposed highway. A determination must first be reached which will indicate that the expenditure of the State funds for this purpose will be justified by a corresponding reduction in the amount of severance damage paid or by a payment by the owner of an equivalent amount, in cash, to the State.

Any negotiations for a stock pass shall be within the frame work of Iowa DOT *Policies and Procedures Manual, Policy No. 610.06*.

In the event a stock pass is to be constructed, the Agreement shall require the property owner to be responsible for fencing to the headwalls of the structure and otherwise to restrain the livestock.

The determination that a stock pass will be constructed will normally be done at the District level prior to the acquisition process.

After the stock pass request has been approved, the Right of Way Design Section will request the Office of Bridge Design to furnish all necessary information.

### ***New Stock Pass on Relocation***

The following clause shall be used only when a new stock pass is to be constructed by the State on a relocated highway, for the use of the owner of a severed farm, in order to mitigate severance damages.

The Buyer agrees to construct a \_\_\_\_\_ stockpass at Sta. \_\_\_\_\_ for the use by the Seller. The Seller agrees to pay \$ \_\_\_\_\_ for the stockpass. The dollar amount is deducted from the total lump-sum amount shown on page one of this agreement.

Maintenance of the stockpass by the Buyer is limited to the structure itself and does not include maintenance of the approaches or cleaning out the structure.

Buyer is granted a Temporary Easement "as necessary" on Seller's property in order to construct said stockpass. Said Temporary Easement shall terminate upon completion of this highway project.

### ***Use of a Drainage Structure as a Stock Pass***

There are times when a granting of the right to use a proposed drainage structure on a relocated highway for a stock pass is considered advisable in mitigation of damages, when the construction of a separate structure for this purpose is not practicable. This will require the following special agreement in the Purchase Agreement:

The Seller is reserved the right to use the \_\_\_\_\_ located at Sta. \_\_\_\_\_ as a stock pass, with the understanding that the Buyer will maintain the structure for drainage purposes only and assumes no liability for its use as a stock pass.

### ***WELLS PURCHASED BY THE STATE***

Occasionally, it becomes necessary to destroy a well that is the main source of water supply for a property. If the appraiser has placed a value on the well and the owner agrees with this amount, the following clause maybe added:

The total lump sum of this Agreement includes \_\_\_\_\_ as compensation for the well located at \_\_\_\_\_.

If the owner does not agree with this amount and wants to be paid the actual cost, the following procedure will be followed. An itemized original bid will be obtained from a licensed well driller, for a replacement well. The bid will be based on the same kind, depth, and size, where possible, of the well being acquired. The Agreement will then provide to pay the actual dollar amount of the replacement of the well. The estimate should also include a provision for the payment of dry holes, where applicable. The payment will be made upon receipt of bills paid by the owner and submitted to the Iowa DOT after the work has been completed. When an agreement is reached on this basis, and before it is added to the Agreement, the Acquisition Agent will subtract from the Agreement that amount which the appraiser had included for the loss of the well. This amount will be added to the following item in the Agreement:

The Buyer agrees to pay the actual and reasonable cost, based on a detailed written estimate of \$\_\_\_\_\_, for replacing the well, located at\_\_\_\_\_, and measured from the centerline of the highway. Payment will be made when the Seller provides the Buyer with original itemized invoices and/or receipts for the replacement of the well and a certificate of compliance from the local sanitarian that the new well is certified for drinking water (potable water) and complies with state law. The Seller agrees to accept the stated sum as payment in full for any and all damages arising from the loss and replacement of the well.

It may be permissible to arrange for and pay for the cost of hooking up to a rural water service, in lieu of paying for a new well.

### ***SEPTIC SYSTEMS WITHIN REQUIRED RIGHT OF WAY***

In the case of illegal or nonconforming septic systems, no payment will be made. Where a tile outlet dumps effluent into the road right of way, and a portion of the tile is affected by construction, the septic outlet shall be deemed illegal and no payment will be made.

If part of a legal septic leech bed will be affected but to an unknown extent, the following may be added to the Agreement:

It is understood and agreed by Buyer and Seller that if a portion of the septic leech

bed, or system, is damaged or destroyed by the construction of this highway improvement project, that portion shall be repaired or replaced at no expense to the Seller.

When a legal septic tank and system will be destroyed the Owner may be compensated as follows:

The Buyer agrees to pay the Seller the actual and reasonable costs necessary to replace the septic system serving the dwelling.

The septic system is to be constructed and installed in accordance with local and county codes, and under the supervision of the local sanitarian. Payment will be made when the Seller provides the Buyer with original itemized invoices and/or receipts for the replacement of the septic system, and a certification of compliance from the local sanitarian. Payment is based upon a current estimate of \$\_\_\_\_\_.

### ***SPECIAL TEMPORARY EASEMENT CLAUSES***

Often, neither real estate nor any real property rights, such as access, are being acquired, and no conveyance is required. Under these conditions, use the temporary easement agreement form.

This form provides for a description of the area for which a temporary easement is required and states the reason why it is needed. List the specific reasons for the temporary easement.

The use of the terms right to encroach or right of entry are to be avoided as being legally unacceptable. Use the words temporary easement.

Item (1c) of the Purchase Agreement identifies the temporary easement needs.

**Note:** State specific purpose, such as: grading, shaping back slopes, constructing entrances, etc.

### **Temporary Easement Release (major)**

Temporary easements for borrows are an example of a major temporary easement. The following should be added:

The resident construction engineer will release said temporary easement by recording a Release of Temporary Easement no later than one year after the grading, paving, shouldering, and erosion control have been completed on this project. The Buyer will provide the Seller with a copy of the release after it has been recorded.

## ***CROP POLICY***

The purpose of this policy is to provide consistent treatment of property owners and tenants on projects involving growing crops, while protecting the public's right to have access to properties acquired. The acquisition of agricultural land occurs all year. The property owner's and tenant's ability to plant and/or harvest crops need to be balanced with the public need regardless of what time of year the acquisition occurs.

### **When the proposed project letting is scheduled after October 1<sup>st</sup> of the calendar year the land is acquired.**

Crops may be reserved to the owner and/or tenant for that calendar year with the following clause:

All 20\_\_ growing crops are reserved to Seller if removed by November 1, 20\_\_ . Any crops not removed by November 1, 20\_\_ , may be removed by the Buyer. Should Buyer require possession of the premises prior to November 1, 20\_\_ , the Buyer may enter and damage or destroy the crop. Buyer will compensate seller for damaged or destroyed crop based upon a rate of \$\_\_\_\_\_ per acre of crop damaged or destroyed.

If crops have not yet been planted the owner or tenant may elect to be compensated for providing weed and erosion cover for the area to be acquired. The following clause may be used.

Seller agrees to provide weed and erosion control on the premises sought and described herein for the 20\_\_ crop year. The control shall include the planting of oats, wheat or barley and mowing. Payment is based on a rate of \$\_\_\_\_\_per acre. The planting of row crops is prohibited. Part of the lump sum payment on page one of this Agreement is settlement in full for providing the weed and erosion control. The Buyer retains ownership of the cover crop and full possession of the premises.

### **When the proposed project letting is scheduled for before October 1<sup>st</sup> of the calendar year the land is acquired.**

Crops will not be reserved to the owner and/or tenant.

If crops have not yet been planted the owner or tenant may elect to be compensated for providing weed and erosion control for the area acquired. The following clauses may be used for that purpose.

Seller agrees to provide weed and erosion control on the premises sought and described herein for the 20\_\_ crop year. The control shall include the planting of oats, wheat or barley and mowing. Payment is based on a rate of \$\_\_\_\_\_ per acre. The planting of row crops is prohibited. Part of the lump sum payment on Page 1 of this Agreement is settlement in full for providing the weed and erosion control. The Buyer retains ownership of the cover crop and full possession of the premises.

If crops have been planted the owner and/or tenant will be compensated as follows:

**Prior to July 1**, compensation will be based upon the costs of planting the crop. The following clause will be used.

Part of the lump sum payment is settlement in full for all field preparation and/or planting costs incurred for the 20\_\_\_\_ crop season. Payment is based on the rate of \$\_\_\_\_\_ per acre.

**After July 1**, compensation will be based upon the value of the crop, minus harvest and hauling expenses. The following clause will be used.

Part of the lump sum payment is settlement in full for all loss or damage for the 20\_\_\_\_ growing crop season. Payment is based on a rate of \$\_\_\_\_\_ per acre.

The Agreement will clearly reflect that compensation has been received for the crop and belongs to the State of Iowa.

**Crop reservations, payments, and Agreements to provide weed control shall only be considered within the same calendar year the Agreement for the land is signed.**

### ***IMPOUNDING OF WATER***

At times, due to a change or an elimination of highway drainage structures, water may be impounded on a property owner's land for an indefinite period of time. In these cases, the following clause shall be added to the Agreement.

Buyer shall have the right to impound water from surface and/or tile drainage on the land of the Seller to an elevation of \_\_\_\_\_ ±, between Sta. \_\_\_\_ and Sta. \_\_\_\_ on the side \* and extending \_\_\_\_\_ ± feet \_\_\_\_\_ from the centerline of the proposed highway.

\* If an exact description of the area to be ponded is possible, substitute: "... and extending over the following described area: \_\_\_\_\_."

### ***FARM TILE AND FENCE REPAIR OR REPLACEMENT***

Whenever farm field tile lines or outlets and fence are located on the proposed right of way, it is standard practice for the State to assume the responsibility for them in case they are damaged or destroyed by highway construction. The following clause is written in all Agreements as a standard clause:

Buyer agrees that any agricultural drain tiles that are located within the premises and are

damaged or require relocation by highway construction shall be repaired or relocated at no expense to Seller. Where Buyer specifically agrees to construct and maintain fence, the fence shall be constructed and maintained for vehicle access control purposes only at no expense to Seller. Buyer shall have the right of entry upon Seller's remaining property along the right of way line, if necessary, for the purpose of connecting said drain tile and constructing and maintaining said fence. Seller may pasture against said fence at his own risk. Buyer will not be liable for fencing private property or maintaining the same to restrain livestock.

## ***FENCING***

Right of way fences may be lawfully erected by the adjacent landowner on public highway right of way with the consent of the Iowa DOT District Office. Right of way fence located on highway right of way not relocated or moved by the owner may be removed after notice without liability by the Iowa DOT. Private fence constructed or maintained on the right of way by authority of the terms of a Purchase Agreement or condemnation, or with the consent of the Resident Construction Engineer, shall be compensated for in any new acquisition. Examples of the latter include fencing to bridges, drainage structures, or cattle passes necessary to support continued agricultural use of land adjacent to highway right of way.

Fence payments are computed on the basis of an approved fence payment schedule prepared by the Appraisal Section. The schedule is based on unit prices per rod on a straight-line fence over average terrain for the cost of constructing a new fence or constructing a temporary fence. The schedule is updated annually to reflect current costs. The Acquisition Agent shall determine the amount of scheduled compensation for the right of way fence. The fence payment schedule includes all labor and materials.

On all partial acquisitions, appraisers will consider that the new right of way line will be fenced at State expense where the property is currently in a fenced condition. Therefore, any fence on existing right of way, or in the case of relocations, any property line fence that may be involved and whose utility will be replaced by the new right of way line fence, will not be considered by the appraiser.

The following items will not be considered in the appraisal as items of severance damage.

- Re-establishment of corners to anchor cross sections
- Relocation of interior fence
- Water gaps unfenced by the State

Payment for those items may be included by the Acquisition Agent as additional fence costs or additional severance damages.

All other fences located within the acquisition whose utility is not replaced by the new right of way fence may be considered in the appraisal of the remainder property. This may include interior field, lot, or lane fencing. Fencing located within temporary easements shall be considered. In the case of borrows or detours, any value attributable to fence located therein or removed as a result of borrow or detour itself, should be shown in the allocation of the difference figure. In the Agreement, the allocation of the difference figure under "Improvements to be acquired, including fence" should make reference to the inclusion of such fence under the

appropriate item.

Ornamental or special-purpose fences whose utility will not be replaced by a conventional field fence should be considered by the appraiser.

### ***Interstate Fencing Statement***

Right of way fencing along the Interstate System is constructed as a part of the project. The standard forms of the partial acquisition agreement, the right of entry agreement, and the tenant agreement contain a fence and tile clause. This clause defines the Buyer's rights where Buyer agrees to construct and maintain fence. The clause is not operable unless the Agreement contains a specific agreement to construct fence. Where the Buyer intends to construct fence, as in the case of an interstate, the following statement must be added to the Agreement:

Buyer agrees to construct and maintain right of way fence from Sta. \_\_\_\_\_ to Sta. \_\_\_\_\_, \_\_\_\_\_ side; and from Sta. \_\_\_\_\_ to Sta. \_\_\_\_\_, \_\_\_\_\_ side.

In those cases where a fence is constructed by the Iowa DOT; such fence will be maintained for access control purposes only. The adjacent owner must assume full responsibility for the restraint of livestock. If the property owner requires special fencing, it must be installed and maintained on the landowner's side of the agency maintained fence. The negotiator may arrange payment for the special fence in the Acquisition Agreement. Payment will be made for the actual cost based on paid receipts and evidence of installation or construction of the fence. The fence billing clause may be used for this purpose. Such arrangement shall be approved by the Acquisition Supervisor prior to agreement with the property owner.

### ***Lump Sum Fence Payment***

In the case of a partial acquisition, Purchase Agreements shall contain a statement whereby the Buyer agrees to pay for the cost of moving or replacing fence. This applies to all types of fencing on the primary system. The Agreement shall specify the kind and amount of fence that must be moved or replaced. For example:

The total lump sum shown on Page 1 of this Agreement includes full payment for the cost of replacing: \_\_\_\_\_ rods of woven wire fence, \_\_\_\_\_ rods of barbed wire fence, and \_\_\_\_\_ rods of board fence in kind.

### ***Fence Billing Agreement***

Purchase Agreements may grant the owner the right to remove existing fence from right of way. All such provisions shall agree to pay the fair and reasonable cost of replacing the fence in kind. It shall also provide that payment will be made on the basis of itemized receipts for the cost incurred. If the appraiser has allotted a sum for fencing, reduce the total lump sum amount by the amount allocated to fence and add the following clause to the Agreement:

In addition to the total lump-sum payment amount shown on page one of this agreement, the Buyer agrees to pay to the Seller the actual and reasonable costs of replacing length measurement of type fencing, not to exceed \$\_\_\_\_\_, as furnished

by Seller. Payment will be made on the basis of itemized bills and/or receipts furnished by the Seller to the Buyer after the Seller's construction of the fence. Payment will not be made for replacement of gates. The Seller may salvage any existing gates and/or fencing prior to construction of the project. Any existing gates and/or fencing that are not removed shall become the property of the Buyer.

Any costs to salvage existing fence will not be considered as a reimbursable item.

### ***Temporary Fencing***

Where the need for temporary fencing is known and the payment amount can be determined, expand the lump sum fence payment clause. If the amount of temporary fencing cannot be determined, use the temporary fencing clause:

It is understood and agreed that, in addition to the total lump-sum amount shown on page one of this agreement, the Buyer agrees to pay the Seller for the Seller's construction of temporary fencing that is necessary along the Temporary Easement area during the construction period. The resident construction engineer will measure the temporary fence, and payment will be made at the rate of \$\_\_\_\_\_ per rod for woven wire fence, \$\_\_\_\_\_ per rod for barbed wire fence and \$\_\_\_\_\_ per rod for electrical fence.

Temporary fencing will be measured by the Resident Construction Engineer. Payment will be made or arranged for by the Resident Construction Engineer.

### ***Fencing on Right of Way***

In no case shall the Acquisition Agent grant permission, to the Seller to fence on public right of way without express written consent from the District Maintenance Manager, or Resident Construction Engineer. This is often requested by the owner where irregular right of way is acquired for culvert extensions.

### ***Fencing for Water Gaps***

Water gaps usually will not be fenced where the proposed drainage structure is 48 inches or more or where a ditch channel exists. Owners are not permitted to anchor any water gap fencing to the State-erected fence.

On new highway alignments, such as a by-pass, the acquisition agent may be required to pay a property owner for a water gap. On widening projects water gaps are also often encountered. These are located at drainage structures such as culverts or bridges under the new road or an existing structure that is being extended. Water gaps are short sections of fence over a continuous flowing creek, or waterway that that runs full after heavy rains. There are varied ways of constructing a water gap. If the property owner is unfamiliar with this situation, the acquisition agent can refer to the Standard Road Plan Manual, details for Fence Construction if construction information is needed. If the property owner had an existing water gap, the cost to replace is based on existing materials such as posts, wire and cable, currently utilized. If

necessary, a cost estimate may be sought from a reputable fence contractor. The acquisition agreement should clearly state that payment for the water gap is included in the Total Lump Sum.

### ***OUTDOOR ADVERTISING DEVICES IN RIGHT OF WAY***

If required to purchase a sign located within the acquisition area, the sign shall be identified in the followings manner:

*And which include the following buildings, improvements and other property: All land, trees, shrubs, landscaping and surfacing attached to the premises sought and described herein and one (1) (describe) outdoor advertising device*

and/or adding a special clause to the Agreement stating:

It is understood and agreed that the advertising device located at Sta. \_\_\_\_\_, permit number \_\_\_\_\_, is considered to be personal property; and the relocation of which will be made part of the Relocation Assistance Program.

In the event the acquisition agent discovers a sign on the property during negotiations, they will promptly note the location on the plans and take a picture of the sign. Upon returning to the office the agent will notify the Acquisition Production Coordinator.

### ***NOTARIZING***

Agents are required to follow the procedures and specifications in accordance with the State of Iowa law established for notarizing signatures by the Secretary of State.

In all cases the owners are encouraged to sign as their name appears on the deed.

### ***ABSTRACTING REQUIREMENTS***

Abstracts shall be required by the terms of the Purchase Agreement for title opinion purposes in accord with the following policy:

#### ***Total Acquisitions***

In the case of a total acquisition, the Purchase Agreement shall require delivery of an abstract showing merchantable title in the seller on all but minor parcels. For this purpose, a minor parcel is any parcel (except an urban lot) where the land to be purchased is of one acre or less or where the appraised fair market value of the land is \$5,000 or less. Abstracts shall be obtained on any minor parcel containing excess land.

### ***Partial Acquisitions***

In the case of a partial acquisition, the Purchase Agreement shall require delivery and loan of an abstract continued to date, showing merchantable title in the seller where the transaction totals \$50,000 or more or the current value as determined by the Title and Closing Unit. Abstracts shall be required for transactions of lesser amounts where the parcel contains excess land.

### ***Minor Acquisitions***

Abstracts may be required on minor parcels for either total or partial acquisitions when title to the parcel is unusually encumbered. Such requests shall be supported by a judgment that the status of title is such that normal closing procedures do not appear to give reasonable assurance of the receipt of a sufficient ownership interest to support highway construction.

### ***ACCEPTANCE OF AGREEMENT BY IOWA DEPARTMENT OF TRANSPORTATION***

After obtaining the necessary Seller's signatures on the Agreement, and after reviewing the same for any possible errors, including checking that all signatures are correctly notarized, the Acquisition Agent turns in the signed Agreement and field file to the Project Agent. The Project Agent reviews the Agreement, and if found satisfactory, signs as Project Agent. The Project Agent then conveys the signed Agreement and field file to the Acquisition Production Coordinator.

All Right of Way Agreements must be approved to be a binding obligation. The Right of Way Director is authorized to approve and sign the Agreement for the Iowa DOT. When this has been done, the Agreement then becomes effective as of that date.

### ***TRANSMIT AGREEMENT TO FISCAL AND TITLE UNIT***

Completed Agreements are submitted to the Fiscal and Title Unit for closing and payment.

Right of Way Agreement submissions to the Fiscal and Title Unit shall include, a completed field file.

The Agreement must be supported by evidence that the property owner was presented a written offer to purchase containing a statement of the occupant's possessory rights. All subsequent offers to purchase must also be made in writing. The Agreement shall be supported by a signed Certification of Acquisition & Parcel Check Sheet.

It is the general policy of the Office of Right of Way that the Acquisition Agent shall, provide a written memo to the file, explaining all variances which result in an adjustment between the Review Appraiser's approved amount and the total lump sum specified in the Right of Way Agreement, exclusive of fencing.

The Acquisition Supervisor may approve such variances through the use of the Administrative Settlement Form or a similarly composed memo.

## ***INFORMATION FOR CONDEMNATION***

The procedure for submitting a file for condemnation is essentially the same as file submissions to the Title and Closing Unit with some exceptions.

- Two files will be submitted. One is for the Hearing Officer's use and one is for the Condemnation Unit.
- The Hearing Officer file is to be the complete file used by the Acquisition Agent during negotiations. When there are no signed Agreements three copies of the Agreement prepared for the property owner's signature are to be included.
- The Condemnation Unit file will have one copy of the prepared Agreement, all negotiator notes, first page of the Report of Liens, and all other file information. There need not be a copy of the appraisal since this is available from the Records Room file. However, if there are owner's appraisals or other appraisals that are not in the Records Room file, a copy must be included in the Condemnation file as well as the Hearing Officer file.
- Owners who are entitled to notice of a condemnation proceeding are the same persons who must sign Acquisition Agreements in order to convey merchantable title to the State, except owners with a registered agent who can accept service. The Acquisition Agent shall be responsible for furnishing current mailing addresses for all owners and/or their registered agent. **Post Office Box numbers are not acceptable.**

## ***DAMAGE CLAIMS***

Code of Iowa Section 6B.52 provides:

Whenever property or an interest therein has been taken by condemnation or has been purchased for a public use and a settlement for construction or maintenance damages has been thereafter entered into pursuant to said condemnation or purchase, the owner shall have five years from the date of said settlement to renegotiate construction or maintenance damages not apparent at the time of said settlement. The condemner or purchaser shall give written notice to the owner of such right of renegotiation at the time said settlement is entered into.

A Damage Claim form is used when it is agreed to that the State has caused a specified damage to the Seller during construction or maintenance damages. This form is to be used only with the approval of the Acquisition Supervisor.