

# Chapter 110 – Street Rights-of-Way and Other Real Estate Acquisitions

**Revised 11/07/17**

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## ARTICLE I. - IN GENERAL

Secs. 110-1—110-30. - Reserved.

## ARTICLE II. - RIGHTS-OF-WAY AND REAL PROPERTY ACQUISITIONS<sup>2</sup>

Sec. 110-31. - Right-of-way and real property acquisitions in general.

- (a) *Generally.* The county is authorized by the constitution and statutes of the state to acquire real property or real property interests for various public purposes including roads, streets, highways and parks upon payment of adequate or just compensation. The general county real estate policy (hereinafter "policy"), is intended to establish the process to be followed in the acquisition of private property for public purposes in accordance with state law and state department of transportation (hereinafter "TxDOT") as well as federal laws and regulations, which govern on federally funded projects. This policy will also address the process for the exchange, sale, or conveyance of county owned real estate, to the private sector, governmental entities or third party owner(s). It will further establish a process to handle the relocation of private owners, businesses and private enterprises displaced by the activities of acquiring property for a county project or other governmental purpose.
- (b) *Administration.* The county policy will be administered by the property division of the county public works department (hereinafter "division"). The policy will be administered in a consistent and fair means within the rights of all persons under Title VIII of the Civil Rights Act of 1964 (Title VI) and 1968 (Title VIII), (P.L. 90-284).
- (c) *Definitions.* The following definitions are abbreviated in some instances.

*Advertising sign* means an outdoor sign or display designed, intended, or used to advertise or inform, generally of two types, on-premise and off-premise signs.

*Appraisal.* means a written statement or report independently prepared by a qualified appraiser setting forth the appraiser's opinion of value of an adequately described property as of a specific date supported by relevant market information either as a severed tract of land or as a prorata portion of the whole property, the value of the property remaining without consideration of the area to be acquired prior to the acquisition,

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<sup>1</sup> **Editor's note**— Court Order No. 2001-1036, adopted May 29, 2001, changed the title of ch. 110 from "Streets and Other Right-of-Way" to "Street Rights-of-Way and Other Real Property Acquisitions."

**Cross reference**— Any order dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street saved from repeal, § 1-8(a)(8); any order establishing the grade of any street or sidewalk saved from repeal, § 1-8(a)(9); community development, ch. 18; environment, ch. 34; floods, ch. 42; parks and open space, ch. 50; road and bridge district, ch. 102; street name policy, § 102-71 et seq.

**State Law reference**— County roads and bridges, V.T.C.A., [Transportation Code § 251.001](#) et seq.; funds for county roads, V.T.C.A., [Transportation Code § 256.001](#) et seq.

<sup>2</sup> **Editor's note**— Court Order No. 2001-1036, adopted May 29, 2001, amended art. II of this chapter in its entirety to read as herein set out. Prior to amendment, former art. II, §§ 110-31, 110-32, pertained to rights-of-way acquisition and derived from Court Order No. 78-1284, §§ I, II, adopted Oct. 30, 1978; and Court Order No. 81-496, adopted March 16, 1981.

**State Law reference**— Procurement of professional and consulting services, V.T.C.A., [Government Code § 2254.001](#) et seq.; right of way acquisition, V.T.C.A., [Local Government Code § 262.024](#).

the value of the property remaining after the acquisition as if the new improvement was constructed and an opinion of the just compensation (adequate compensation) to which the owners are entitled.

*Appraised value* means an individual estimate of value of a specific tract of land established by a qualified appraiser, which is supported and documented by market research, exhibits and analysis.

*Approved value* means the recommended value of the review board representing the concurrence of a professional appraiser to the board based on their evaluation of the appraiser's solution to the appraisal problem. Such approved value is the county's determination of just compensation to be paid to the owners.

*Assistant director* means the assistant director of public works, property division.

*Bisected improvement* means a building or structure that is severed by the proposed right-of-way line.

*Category I bisected improvement* means a building or structure that is severed by the right-of-way line in such a manner that it would not be economical to reconstruct that portion outside the right-of-way to restore utility or constitutes a hazard to the project or public. Such a structure will be appraised as whole and the entire structure will either be acquired by the county or retained by the grantor. Requires special provisions in the instrument of conveyance and temporary right to enter upon the remaining property for the sole purpose of the removal of the structure, if demolished.

*Category II bisected improvement* means a building or structure that is severed by the right-of-way line in such a manner that would permit that portion outside the right-of-way to be economically reconstructed. This requires special provisions in the instrument of conveyance and may require the temporary right to enter upon the remaining property for the sole purpose of bisecting or temporary or permanent construction.

*Commissioners court* means the county commissioners court comprised of the county judge and each of the commissioners from each of the four county road and bridge districts.

*Construction (temporary easement)* means temporary use and possession of real property for a specified period of time for storage access or other specifically described temporary occupancy.

*County* means the County of Dallas, Texas.

*Damages* means the loss in value to the remaining property caused by the new facility. The loss in value must be an actual loss in value to the property itself and not to the operation of a business or due to the owner's inconvenience or preferences. That loss, which is recognized by persons that buy such property, should not be estimated, but determined by comparing the value of remainder after with the value of remainder before (see market value definition).

*Department* means the county public works department.

*Depreciation* means a loss of utility (value) from any cause. An effect caused by deterioration and/or obsolescence.

*Director* means the director of the county public works department.

*Division* means the property division of the county public works department.

*Donation* means the transfer of real property to the county by a landowner without payment of just compensation by the county. Such donation is a continuing offer until specifically accepted by the commissioners court. Property owners whose real property is to be acquired for a highway project may make a gift of the property, or any part of it, or of any of the compensation paid for it, to the acquiring agency.

*Drainage easement* means the acquisition of permanent real property interest to give the county the right to direct the flow of natural drainage water and/or storm runoff across land at a specific location. Conveys a part of the ownership title to the real property limited to those rights specially described in the easement.

*Driveway adjustment* means written permission by property owner granting access to the county or its agents to transition the existing driveway to the newly constructed street grade.

*Eminent domain* means the right of government to take or acquire private property for a public use upon the payment of just compensation.

*Enhancement* (as a result of county transportation; general enhancements) means the benefits which accrue to the community at large, to the area adjacent to the improvement, or to other property similarly situated as that taken, but which property is not taken, is not compensable.

*Enhancement, special* means those enhancements which accrue directly and solely to the advantage of the property remaining after a partial taking.

*Environmental due diligence* means the initiation of appropriate inquiry to find out as much as can be determined whether a property is environmentally damaged or has the potential for such damage.

*Expert witness* means one who is permitted by a court to testify as to their opinion of value or other items due to their qualifications, knowledge, helpfulness and foundation data.

*Hardship acquisition* means advance acquisition of a parcel at the owner's request due to the owner's personal need to dispose of the property as soon as possible. Must be acquired by negotiation rather than eminent domain.

*Improvements* means buildings or other relatively permanent structures or developments located on or attached to land, i.e., fences, landscaping, irrigation systems, etc.

*Just compensation (aka adequate compensation)* means the payment of the market value of the real estate which was taken plus the reduction in value to the remaining property, if any, with such reduction offset by any special enhancement. In condemnation, the amount of the loss for which a property owner has established a claim to compensation.

*Market value* means the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future.

*Noncompensable items* mean items that must not be included in the value such as personal property, cost to move personal property, circuity of travel, loss of business, etc.

*Off-premise sign* means a sign advertising activities not conducted upon the property where it is located.

*On-premise sign* means a sign advertising the sale or lease of property upon which it is located or a sign advertising activities conducted upon the property it is located.

*Police power* refers to the power exercised by a local government to enforce regulations passed for the health, safety and welfare of the public. Such police powers include zoning and control the flow of traffic in order to provide for the safe and efficient use of the facility. Unless a police power constitutes a "taking" of property under the state constitution, such regulation is non-compensable in the determination of just compensation.

*Protective acquisition* means advance acquisition of a parcel at the county's request to reduce right-of-way costs due to impending development of the subject or the surrounding property.

*Proximity damage* means a reduction in value to improvements caused by their location too close to an activity that is not compatible to their use.

*Remainder interests* mean the ownership of those property rights that remain with the owner after the acquisition of a portion of the property, i.e. acquisition of easements.

*Reserved property rights* means property rights which the owner reserves for their own use and does not transfer to the county, such as the right to maintain a water line or to use surface and or subsurface on land conveyed or transferred to the county.

*Retention value* means the value assigned to improvements located wholly or partially within the area to be acquired that are to be retained by the owner and removed from the right-of-way at the owner's expense. The amount to be deducted from the amount to be paid the owner when owner chooses to retain

any or all of his improvements, which is the value to the acquiring agency expected if such improvement were sold at public auction.

*Right-of-way* means a general term denoting land, property or interest therein, and improvements located thereon, usually a strip of land acquired for a public use, i.e., a transportation project.

*Right-of-way line* means a legally established line, which indicates the boundary between the street, road, or highway facility and adjacent property owner's holdings.

*Old right-of-way line* means the right-of-way line existing prior to acquisition of the area acquired.

*New right-of-way line* means the right-of-way line that denotes the boundary of the remaining property and the area acquired.

*Salvage value* means the amount of money a purchaser will pay for an improvement in place but to be removed from the property after purchase.

*Superfund Amendment and Reauthorization Act of 1986 (SARA)* means the United States federal statute that defines who is liable for the clean-up of hazardous waste that has contaminated the environment.

*Technical expert* means one who is qualified to be an expert in the valuation of a certain product other than real estate such as machinery, minerals, cost of special improvements, etc.

*Temporary easement* means the right to use and possession of a given tract of land for the purpose and period of time for the specific use as stated in the instrument of conveyance.

*TxDOT* means the state department of transportation.

*Updated appraisal reports* means a reinvestigation and analysis of all available market data, arriving at a conclusion of current market value or value made at some specified date. Brought up to date. Current.

(d) *Applicable laws/statutory authority for right-of-way acquisition.*

(1) *Generally.* The county is a subdivision of the state and has no powers except those granted to it by the state constitution and statutes. The power given to the county is shown in Vernon's Ann. Texas Constitution Article 5, § 18 which established the county commissioners court and gave it the power and jurisdiction over all county business, "as is conferred by this Constitution and the laws of the state, or as may be hereafter prescribed".

(2) *Statutory authority regarding the acquisition of right-of-way and other public land widely separated in different codes.* Regarding the acquisition of land for roadway purposes the following generally sets forth the county's authority.

a. *Incorporated county roads.* Statutory authority is found in V.T.C.A., [Transportation Code §§ 251.003](#) and [251.051](#). These sections give the county the authority to lay out, open, discontinue, close, abandon, vacate or alter a public road and make and enforce all necessary rules and orders for construction and maintenance. The county's general eminent domain authority is granted in V.T.C.A., [Local Government Code § 261.001](#). This acquisition authority by condemnation applies to land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, library or "another public purpose authorized by law."

b. *State highways.* The county is authorized to acquire state highway right-of-way when requested by V.T.C.A., [Transportation Code § 224.002](#). County authority for the acquisition by eminent domain, of state right-of-way as may be determined as being necessary by the TxDOT is found in V.T.C.A., [Transportation Code § 224.003](#).

c. *Within municipalities.* Authority also exists for county acquisition of street right-of-way and road construction within a municipality with the approval of its governing body by V.T.C.A., [Transportation Code § 251.012](#). County authority to acquire streets within a municipality through eminent domain, with the approval of the governing body, is authorized by V.T.C.A., [Transportation Code § 251.010](#).

- (e) *Conflict of interest.* The commissioners court has adopted a comprehensive conflict of interest policy pursuant to Court Order Nos. 82-1148 and 94-1327. The county comprehensive conflict of interest policy, as amended, is supplemented in entirety by the following:

No employee of the county public works department hereinafter "department", shall have any interest, direct or indirect in real property involved or related to a county project, TxDOT project or any governmental project for which he or she is associated, involved or has knowledge of as negotiator, appraiser, review appraiser and/or estimator evaluator. All information involving the acquisition of real property by the county is confidential and shall only be released in accordance with the Open Record Act provisions. No employee of the department shall use or provide internal information in a way that would affect, impact, increase or decrease the value, use, acquisition, sale or exchange of real estate. Any county real estate information, values, minimum bid amounts, tax valuation or other internal property knowledge used for the benefit of a relative, relation, partner, acquaintance, or business associate shall be considered a violation of the county comprehensive conflict of interest policy supplemented herein. Violation of this section of the policy will be sufficient cause for disciplinary action including termination.

- (f) *Record maintenance.* All information and documentation involving appraisal, negotiation and relocation of property owners and/or businesses related to a real estate transactions shall be kept in the division as follows:

- (1) All records involving appraisals and real estate transactions will be kept confidential. The parcel diary and file for each transaction shall be available for inspection only by personnel authorized by the director or state or federal officials in the exercise of their duties as a funding agent or in strict compliance with the Texas Open Records Act.
- (2) All legal case files and all real estate files involved in litigation are strictly confidential and are not to be released except as required by court order. All information and documentation as a result of acquisition by eminent domain shall be maintained in a separate file. All documents, including court judgments, evidencing ownership of real property by county shall be promptly recorded by the division staff in the office of the county clerk, and shall be retained in perpetuity.
- (3) Records containing information concerning the eligibility for and payment of relocation assistance may be inspected by the affected individual or his/her agent, authorized in writing by the director, pursuant to the appeals process under the county relocation policy, see exhibit B, section XIII (D), (E) of Court Order No. 2001-1036.<sup>3</sup>
- (4) All records, not otherwise specified, will be retained in an active status for three years and then remain in an inactive status for not less than five years. For federally funded projects, records will be retained for at least three years following the submission of the project's final expenditure to TxDOT. All deeds, permanent easements and judgments shall be recorded in the office of the county clerk.

(Ord. No. 2001-1036, 5-29-2001)

Sec. 110-32. - Right-of-way and real property required by the county.

- (a) *Appraisal process.*

- (1) *Generally.* The state constitution states that no person's property will be taken, damaged or destroyed or applied to a public use without prior payment of adequate compensation, unless by the owners consent. The U.S. Constitution requires that a property owner be paid just compensation for a government taking of private property. Adequate compensation and just compensation describe the same amount. This amount is to be established by an approved

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<sup>3</sup> **Editor's note**— Exhibit B of Court Order 2001-1036 has not been included within this Code, but may be found attached to said order on file with the commissioners court.

appraisal of the property required. On conveyances, sales or exchange of county owned property, state statutes require the county establish the fair market value pursuant to an appraisal of the property and the appraisal is conclusive of the fair market value of the interest being conveyed, sold, or exchanged.

- a. *Donations.* An appraisal is not required if a property owner donates the required property and releases in writing the county, from furnishing an appraisal. An appraisal, however, may be required to compensate the property owner for improvements in the "donated" area.
  - b. *Minimum value properties.* An appraisal is not necessary if the assistant director of the division, (hereinafter "assistant director"), determines that the valuation process is uncomplicated, there are no damages and the fair market value can be reasonably estimated to be \$2,500.00, or less, based on a review of available data.
  - c. *Detailed appraisal.* A detailed appraisal shall be prepared for all other acquisitions which shall reflect federal and state law and all state and local standards and nationally recognized appraisal standards including:
    1. Uniform Standards of Professional Appraisal Practice, Appraiser Qualifications Board (AQB) of the Appraisal Foundation.
    2. Criteria under state law and state appraiser licensing and certification board rules.
    3. Uniform Appraisal Standard for Federal Land Acquisition.
- (2) *Qualifications.* The department appraisers (i.e. staff appraisers) are required to be certified by the state appraiser licensing and certification board. The independent fee appraisers contracted by the department are required to be certified by the state. Real estate appraising is listed as a professional service under V.T.C.A., Government Code art. 2254, the Professional Services Procurement Act. All employment of real estate appraisers will be in strict conformity with its provisions. The division shall maintain a list of approved independent fee appraisers to be contracted on projects in accordance with the county policy for selection of independent appraisal services dated May 30, 1999 (see chapter 90, article V, sections 90-651 through 90-660 of this Code) and the county indefinite quantity contract outsource policy dated July 19, 1999 (see chapter 110, article III, sections 110-61 through 110-65 of this Code).
- (3) *Appraisal standards.* As a minimum the appraisal shall contain the following:
- a. The purpose of the appraisal or definition of the estate and fair market value, statement of assumptions and limiting conditions affecting the appraisal;
  - b. An accurate description of the physical characteristics of the property being appraised (and in the case of a partial taking, an adequate description of the remaining property), a statement of knowledge of the known and observed encumbrances, if any, title information, current zoning, current use and title information, and an analysis of highest and best use;
  - c. Execution of all relevant approaches to establish fair market value consistent with professional appraisal practices shall include an analysis that will support the opinion of value;
  - d. A description of comparable sales which includes all relevant physical, legal, economic factors, parties to the transaction, (verified by a party to transaction), source/method of financing, and at least a five-year sales history of the property;
  - e. An opinion of the fair market value of the real property to be acquired either independently or as a pro-rata share of the whole, which ever is applicable; for a partial acquisition such appraisal shall contain an opinion or statement of damages, if any, and enhancements, if any, to the remainder (before and after valuation analysis);
  - f. The effective date of valuation, date of appraisal, signature and certification of the appraiser.
- (4) *Types of determination of value.*

- a. *Project summary.* A detailed estimate of value developed by staff appraisers based on the final plan detailing the entire requirements for rights-of-way, and any other governmental purposes, including fee take, permanent easements, temporary or construction easements, slope easements and drainage easements for each parcel, including the land unit value, an estimate (not a appraisal) of the value of the taking, the value of the improvements in the take area and the compensation of any damages.
- b. *Memorandum of value estimate.* If the project summary or a site investigation indicates that: the probable value of the land and improvements to be acquired is \$2,500.00, or less, sufficient market data is available in the vicinity of the land in question, and/or the acquisition will result in no damages to the remainder; the assistant director may determine that an appraisal is not required. The appraiser will prepare the memorandum of value estimate using the form exhibit A.\* A discussion of the steps taken to arrive at the final compensation shall be provided in the summary of comments, conclusions and recommendations part of the form, which includes a statement, that it is "not an appraisal". <sup>1</sup>
- c. *Short form summary report.* Short form or summary report is an appraisal that establishes the appraiser's opinion of the fair market value of the area to be acquired, and a supportable opinion that the remaining property is not reduced in value or damaged. This form excludes from the appraisal report an opinion of value for the remaining property both prior to and after acquisition and from which right-of-way is to be acquired. Such opinion of no damages shall only be made after inspection of the property and the formation of an opinion that the remaining property is not considered to be damaged. Such opinion shall be, at a minimum, based on the following criteria:
  1. Property area is not reduced below the size required by zoning ordinance for highest and best use on which value is established.
  2. No dimension of the property is reduced below that required by zoning ordinance.
  3. The positions of existing structures on the remainder do not violate any zoning requirements.
  4. In the case of use areas such as parking, driveways, storage, and other similar uses, where a portion of these facilities are taken and sufficient unused areas exists in the remainder for these facilities to be effectively rebuilt.
  5. Access is not materially or substantially impaired.

The appraisal shall contain a listing of the items considered and information determined in the formation of the opinion. In the event that the property so appraised becomes the subject of Eminent Domain an appraisal of the remaining property both before and after the acquisition shall be made to verify and prove that no damages exist.
- d. *Long form/narrative appraisal.* This type of report will be the basis for just compensation to be paid for the property and includes a determination of the fair market value of the area to be acquired and also includes the requirement to determine an opinion of value using all three approaches to value for the remaining property from which right-of-way is to be acquired and may be considered to be damaged on the basis of the criteria listed in subsection (a)(4)c. of this section.
- e. *Dual appraisal.* When the value of the land to be acquired or the combination of the value for the land, improvements, and damages exceeds \$500,000.00, the assistant director may elect to require two appraisals. At least one of the appraisers must be a non-county fee appraiser certified by the state appraiser licensing and certification board while the other appraiser may be a county staff appraiser.
- f. *Appraisal review.* The department shall have an appraisal review process which shall comply with the following minimum standards or requirements:

1. A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal and legal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
  2. The review appraiser is responsible for recommending the fair market value or just compensation as established in the appraisal report for the property to be taken. The review will be thorough, comprehensive, and prepared in accordance with appraisal review procedures.
  3. If the review appraiser approves the fair market value or just compensation as found in the appraisal report the recommended value of the property shall be set forth in a signed statement that identifies the appraisal report reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be described in the statement.
  4. If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser, with the assistant director's approval, may develop appraisal documentation to support an approved or recommended value.
  5. An approved value sheet requesting approval of just compensation will be prepared. This form along with the appraisal report will be submitted to the review board for final approval.
- g. *Interoffice determination of value for in-house evaluations.* An interoffice determination of value for in-house evaluations is a type of report with limited research and analysis which is not considered an appraisal.

(b) *Review board.*

- (1) *Generally.* The purpose of the review board is to evaluate the estimates of value submitted on each parcel, tract or property to be exchanged, sold, conveyed, or acquired, for a county project or other government need by individual appraisers in an effort to ensure that all pertinent data has been considered and that the estimates of value are consistent throughout the project and in compliance with applicable standards and statutes. The review board will evaluate the appraiser's individual approaches and estimates of value to assure that the property owners are offered just compensation (based on current market value) for their property needed for county/government purposes. If the review board concurs with the appraiser's estimate of value and approach to value, it will recommend approval of the value to be offered to the property owner. In cases where the review board does not concur with the appraiser's appraisal value the review board will substantiate and document the reason for the non-concurrence and recommend the value to be approved based on the details of the evaluation. However, if the review board believes that the appraisal value may be less than the appraisal value submitted, it may recommend that another appraisal be performed.
- (2) *Review board membership.* Review board membership shall be comprised of the assistant director (chairman), senior acquisition manager and project manager. In cases of absence, the chairman may permit substitutions. The senior property appraiser and the appraiser performing the specific appraisal shall be required to attend the review board meeting to provide technical advise and assistance to the board.
- (3) *Basis of determining approved value.* The review board shall insure that the approved value reflects the current market value of the land to be acquired or transacted, plus the value of all the improvements lying within the property to be transacted, the values of the parts of bisected improvements which lie within the area to be acquired or transacted, plus the loss of values to the remaining land and improvements offset by any special enhancement which may be suffered as a result of the acquisition/transaction. The review board will ensure that no approved value is set or adjusted following its evaluation and review of all information submitted by the appraiser which is less than \$500.00.

- (4) *Retention value.* The review board shall establish the reasonable value to be assessed for improvements which the property owner is permitted to retain after the acquisition/transaction. The retention value is the amount the improvements are estimated to generate if sold at public auction but in no case shall the value be set at less than \$1.00.
- (5) *Final approval.* The review board shall on the basis of a majority vote set the approved value which shall be recommended to the director for final approval signified by signature of the approved value sheet. Just compensation to be offered to the property owner shall be the total amount on the approved value sheet, which shall not be less than the appraisal value.

(Ord. No. 2001-1036, 5-29-2001)

Sec. 110-33. - Property acquisitions.

- (a) *Generally.* Establishment of an approved value by the review board for identified parcels or tracts of real estate required for a county project or other government need, shall be the authority from the commissioners court for the property acquisition staff of the department to proceed with the acquisition.
- (b) *Negotiation process.* The property acquisition staff will thoroughly review and document the engineering plans, cross-sections, construction details, and drainage features associated with the parcel or tract to be acquired. The acquisition agent shall review the appraisal report or other information related to the fair market value placed on the parcels or tract to be acquired. The acquisition agent will also review and document the title information with particular emphasis on liens and other encumbrances against the property to be acquired.
  - (1) The acquisition agent will coordinate the entire process with the property owner, i.e. appraisal, acquisition, closing and relocation).
  - (2) The acquisition agent will present himself or herself to the property owner with the utmost courtesy and respect, showing understanding and sensitivity to the property owner's needs.
  - (3) The acquisition agent, during the initial contact with the property owner, will inform the owner of the reason and necessity for the particular project, explaining how the project will benefit the public.
  - (4) To the greatest extent possible, the acquisition agent shall make the written offer of just compensation to the property owner in person. In the event this is not possible, the written offer of just compensation shall be deposited in the United States mail certified, return receipt requested. Whenever a written offer of just compensation is made by mail, staff shall make a personal contact as soon as possible thereafter.
  - (5) The acquisition agent shall give to the landowner a copy of the appraisal report(s) used as a basis of the formation of the offer and receive an acceptance form signed by the owner. Such appraisal receipt shall be maintained as part of the permanent parcel record.
  - (6) The acquisition agent will maintain vigilant contact with the property owner and provide responses to any inquiries posed by the property owner. If the property owner disagrees with the offer of just compensation or any part of the appraisal report the acquisition agent shall request that the property owner submit relevant market valuation information which shall be reviewed by the county's appraisal staff to determine what effect if any it will have on the fair market value for the property to be acquired or just compensation. The review of the information furnished by the landowner shall state if any change is recommended in the offer to be made and shall be forwarded to the assistant director, property acquisition manager and negotiator for further action. In the event that a new offer is recommended the information shall be presented to the review board for its consideration and action.
  - (7) All contacts with the property owner(s) or representative shall be recorded in a parcel diary. This parcel diary shall remain confidential along with all records involving the appraisal and real estate transaction.

- (c) *Offer letter.* All offers to purchase real estate for a county project or other government need shall be a written offer to the owner(s) or their authorized representative. If the property owner desires to use a representative to handle all transactions such authorization must be in writing, executed by the owner. Every written offer shall include the following:
- (1) The name of the property owner(s) of record.
  - (2) A statement indicating the reason for the acquisition of the real property.
  - (3) The amount being offered for the real property including the amount attributable to damages, if any. In the event the offer includes the acquisition of improvements or structures and the owner is given the option to retain, then retention value will also be given.
  - (4) A complete legal description of the real property to be acquired.
  - (5) A statement that the just compensation of the offer is based on the fair market value established by a real estate appraisal or a memorandum of value estimate.
  - (6) A listing of improvements, structures and/or fixtures being acquired as real property. In the event tenant owned improvements exist and the fee owner has disclaimed any interest, the improvements being acquired from the tenant will also be listed along with a statement indicating the tenant is being compensated for the items listed.
  - (7) A statement regarding eligibility for relocation assistance benefits, if applicable. In the case of a residential owner-occupant, the maximum replacement housing entitlement shall be stated along with the additional information required to be included in the relocation offer.
  - (8) A statement of any conditions stipulated in the offer, which must be complied with prior to final acceptance.
  - (9) The name and telephone number of the acquisition agent that the owner may contact for additional information.
  - (10) Any other pertinent information required.
- (d) *Final offer letter.* Having exercised all available efforts to acquire a parcel of land by negotiations on a friendly basis and negotiations remain at an impasse, the assistant director shall make a written final offer letter to the property owner by depositing it in the United States postal office, certified, return receipt requested with restrictive endorsements. The property owner shall have ten days from the date of said final offer letter in which to respond to the final written offer. If an agreement has not been reached within the ten-day time period, the director shall recommend that the commissioners court initiate eminent domain proceedings.
- (e) *Administrative settlements.* The county may consider payment of an administrative settlement in excess of the approved value of just compensation to a property owner if such action is in the best interest of county and the general public.
- (1) *Director's authority.* When it is not possible to acquire a parcel or tract of land at the approved value and the property owner(s) or their representatives submits a reasonable settlement offer which is less than the property owner's opinion of the market value amount for the property the director after thorough evaluation of all pertinent issues and consultation may amend the approved value by a sum that is reasonable, prudent and in the public interest, not to exceed \$5,000.00 per parcel. The director shall prepare a written justification which shall include consideration of appraisals, recent court awards, estimated trial costs or valuation problems for the settlement which shall become a permanent addition to the parcel acquisition file. However, the number of parcels affected by this authority shall not exceed one-third of the total number of parcels on any given county project.
  - (2) *Commissioner court authority.* The commissioner court may authorize payment to a property owner which exceeds the approved value or the amended approved value established by the director if it is determined that such action is reasonable, prudent in the public interest and will avoid higher costs expected if acquisition is accomplished through condemnation when

consideration is given to recent court awards, estimated trial cost or valuation problems, including the high risk of exposure due to damages to remainder and or due to proximity damages.

In determining whether or not an administrative settlement will be awarded, the department will present to commissioners court its recommendation regarding settlement based on its thorough review of all pertinent information including, but not limited to:

- a. Appraiser's opinion of value;
  - b. Just compensation as recommended by the reviewing appraiser;
  - c. The acquisition representative's recorded information;
  - d. The opinion of legal counsel;
  - e. Recent court awards in the same project;
  - f. Estimated trial cost;
  - g. Valuation problems of either the area acquired or any potential damages to the remaining land; and
  - h. Any relevant additional market valuation data indicating a change in just compensation.
- (f) *Donations.* The county may accept the donation of real property which has been identified as necessary for a transportation project or other county/government need. The property owner(s) making the donation must sign a donation document waiving his/her right to have the property appraised and receive just compensation.
- (1) All offers for donation shall not contain any conditions which will equate to compensation for the donated property.
  - (2) The county shall advise property owner in writing prior to his signing a donation document of the property owner's right to have the property appraised and an offer of just compensation made on the basis of approved appraised value. Property owner who donates property is entitled to be compensated for any improvements in the take.
  - (3) The acquisition agent must insure that all properties to be donated in fee title or easement shall have no financial encumbrances, liens, delinquent taxes or other title encumbrances (i.e. tenant leases). The department shall prepare a title report or obtain title commitment to insure and clear any existing encumbrances.
  - (4) The commissioners court must formally approve all offers of donation. The action to accept a donation does not automatically relieve the county's responsibility to provide relocation assistance to the owner or tenant occupying the property.
- (g) *Condemnation.*
- (1) *Generally.* In the event that an agreement or settlement cannot be reached with the affected property owner, eminent domain action to acquire the property for a public use and purpose as authorized by the commissioners court shall be implemented in accordance with the statute giving the county authority to acquire by eminent domain and V.T.C.A., Property Code tit. 4, ch. 21. Possession and use of the property shall pass to the county upon payment of the amount of the award of special commissioners to the clerk of the court for the benefit of the property owner. Title to the property will pass to the county upon entry of a non-appealable judgment. When county acquires real property by agreement or by eminent domain within the limits of a municipality, it shall do so only with the prior consent of the municipality's governing body.
    - a. Prior to initiating eminent domain proceedings within the governmental jurisdiction of the city wherein the real property is located, county must first obtain inter-agency approval authorizing county to acquire the property by eminent domain within the municipality or town.

- b. The division shall furnish a current list of all ownership, liens or other encumbrances necessary for the county to acquire clear title to the property and necessary information to achieve service of process.
  - c. The division shall submit a court order to the commissioners court stating that a public necessity exists.
  - d. The civil section of the district attorney's office, hereinafter "district attorney's office", shall file such case in a court of competent jurisdiction and request that three special commissioners be appointed and a hearing be held to determine the amount of just compensation to which the land owner shall be entitled.
  - e. Payment of the sum of money as awarded by the special commissioners shall be paid into the registry of the court for the benefit of the landowners, at which time county shall have possession of the property.
- (2) *Notice of hearing.* Notices of hearings of special commissioners will be served by officers of the court from the county sheriff's department, constable's office or members of the property division, or as otherwise authorized by V.T.C.A., Property Code, ch. 21 depending on the circumstances.
- (3) *Appraiser testimony.* The appraiser(s) whose opinion has been relied upon for the determination of the offer amount will testify at hearings of the special commissioners involving those properties they appraised. In the event that such appraiser is not available, fails or refuses to testify the district attorney may request that either the staff review appraiser can testify to his opinion of value or a subsequent independent fee appraiser may be employed. In the event that the valuation of any appraisal is changed, a new offer will be made and the appraisal furnished to the landowner prior to any special commissioners hearing.
- (4) *Commissioners award.*
- a. The district attorney's office shall deliver a copy of the award of special commissioners to public works. It shall attach a recommendation as to the acceptance or appeal of the award. In the event that the district attorney's office recommends acceptance of the award and the director approves such recommendation, no objections will be filed. In the event that either the director or district attorney's office recommends the filing of objections such recommendation shall be submitted to the commissioners court for its consideration. All actions shall be accomplished to allow for the filing of objections within the statutory limit of 21 days from the date the commissioners award is signed by the judge.
  - b. In the event that no objections are filed by either party, the award of special commissioners shall become the judgment of the court and is unappealable.
  - c. If objections are filed, the case shall be docketed and tried as any other civil action, including the appellant process. A decisions regarding a request for jury trial to determine the issues of the right to acquire the property for a public purpose and the determination of just compensation shall be jointly determined by the director and district attorney's office.
- (5) *Jury trials.*
- a. Unless otherwise requested by the office of the district attorney, an independent appraiser may be used to establish value and to provide testimony at jury trials. The independent appraiser may be employed for the purpose of inspection, photographing and otherwise documenting the condition of the property at such time subsequent to a special commissioners hearing and filing of an appeal to the award. Such appraiser may be employed at a later time to produce a full appraisal report based upon the earlier documentation.
  - b. No action as shown herein shall in any way prohibit or prevent the eligibility of the land owner to relocation benefits to which such land owner would be eligible based upon the final determination of just compensation.

- c. The department will furnish and fund all required support to the district attorney's office, necessary for the presentation of evidence reflecting the county testimony as to the fair market value or just compensation to be paid.
- (6) *Property acquisition from elected county official, county employees or others.* Eminent domain proceedings will be required in all cases in which it is found that an elected county official or an employee who is directly associated with the acquisition of property has an interest in the property to be acquired. In addition, eminent domain proceedings may be required in those cases when, in the judgment of the director, a conflict of interest may exist. Anytime the department recommends the purchase of property from a county employee, the implementing court order will clearly state that the seller is a county employee and will further state the capacity in which this employee works for the county. In those cases where the condemnation procedure is not used, the department will ask for a review of its recommendation by a panel of three county personnel who are not employed in the department. The director shall be authorized to impanel department heads, administrators of the commissioners court or representatives designated by department heads, to serve in "friendly condemnation panel". One of the three members of the friendly condemnation panel shall serve as chairperson who shall insure that a written record of the proceeding is prepared.
- (7) *Donation/dedication.* Eminent domain proceedings or friendly condemnation will not be employed in cases where an elected county official or county employee elects to donate property that has been designated for right-of-way.
- (h) *Clearing right-of-way.*
  - (1) *Structures.* The department of public works shall be responsible for sale or removal of structures not reacquired or retained by the prior owner. Sales shall be by sealed bids, advertised as required by law, which will be opened and awarded in open court. When it is determined that a structure has no apparent salvage value, authorization may be given to city (where the structure is located) and/or county forces to demolish the structure, provided no direct costs are involved in the demolition. Demolition of structures may be included as part of the right-of-way clearing in the construction contract. All other circumstances involving the removal of structures from the right-of-way will require the approval of the commissioners court.
  - (2) *Fencing.* Fence removal, construction or relocation performed as part of clearing of right-of-way shall be performed on an annual time and materials contract, and each job shall be supported by cost estimates in advance of the work. Funds may be encumbered and expended for this purpose without individual approval of each situation.
- (i) *Relocation.*
  - (1) *Application.* This relocation policy is applicable only to those parcels wherein county has agreed or is specifically required to comply with the relocation requirements of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C.A. 4601, et seq., as implemented by 49 CFR 24. All other relocation shall be in compliance with V.T.C.A., Property Code § 21.043.
  - (2) *Generally.* During the acquisition of real property for a county project or other government need it may become necessary to displace private owners, individuals, families, businesses, farms and non-profit organizations. Further, the county may be involved in a cooperative project with the state department of transportation, hereinafter "TxDOT", or other projects eligible for federal-aid funding. As such V.T.C.A., Property Code, § 21.046, provides for relocation payments and advisory assistance to persons displaced by the acquisition of real property for any program or project undertaken by any state agency or political subdivision of the state. The act directs each agency to formulate the rules and regulations necessary to carry out the provisions of the act and authorized payments and expenditures not in excess of those authorized by or under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amendments thereto.

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Amended Relocation Policy as shown in Exhibit B\* of Court Order No. 200-1036 are made a part hereof by reference.

- (j) *Right-of-way acquisition policy (indefinite delivery quantity contract)*. See chapter 110, article III, right-of-way acquisition services, sections 110-61 through 110-65.

(Ord. No. 2001-1036, 5-29-2001)

Sec. 110-34. - Title requirements and procedure for title examination, escrow and closing.

- (a) *Owner's policy of title insurance, title commitments, title reports*. The county will obtain a title commitment and purchase a title insurance policy for all lands acquired having an appraised value greater than \$25,000.00, (except donated parcels or temporary easements). Title reports will be used on all parcels having an appraised value of less than \$25,000.00, donated parcels, and temporary easements. The title report may be prepared by a county staff abstractor, a local abstractor, a local abstracting firm, or an abstractor's certificate may be obtained from a title company. Title reports, title commitments, title insurance policies, title company closing procedures and escrow services are outlined in subsection (b) through (o) of this section.
- (b) *Mortgages and liens*. Where title insurance or a title report procedure is used, the county will not accept title to property subject to an outstanding mortgage or lien (except on temporary easements). This fact is to be shown in the owner title policy by inserting the word "none" after the exception for liens. If title insurance is being obtained the title company shall be responsible to withhold funds sufficient to clear any remaining interests at the time of closing the transaction and such amounts shall be shown in the title company's closing statement. Any form of release may be used that meets the requirements of the title company.
- (c) *Leases and private easements*. As a matter of policy, all easements, which are not compatible with the county's purpose for acquiring the real estate, are to be extinguished through the easement owner. Releases, quitclaim deeds, or other documents that meet the requirements of the title company are to be obtained for all leasehold interests. The only exception is for mineral leases, as outlined in subsection (h)(6) of this section.
- (d) *Public utility easements*. Easements held by public utility owners for utility and roadway purposes need not be acquired provided joint use is compatible and provided the utility owner will join the county in execution of a joint use agreement.
- (e) *Current and delinquent taxes*.
  - (1) *Past due or delinquent taxes*. When whole property takings are acquired by negotiation, payment is to be made of all past due or delinquent taxes using funds withheld from the compensation due the owner at the time of closing. If the property owner will not agree to such payment, it will be necessary to institute eminent domain proceedings to acquire the property and to join all taxing agencies claiming delinquent taxes. The determinative date for deciding whether or not taxes are delinquent will be the date the eminent domain proceedings are filed. On whole property takings when the amount of delinquent taxes exceeds the amount of compensation to be paid the owner, it will be necessary to secure releases from all taxing agencies for payment of delinquent taxes on a pro rata basis (or to obtain a partial release as to the take area). If any one of the agencies refuses this plan for pro rata payment of delinquent taxes, or to execute a partial release, it will be necessary to condemn the parcel with all taxing agencies claiming delinquent taxes being made party to the suit. On whole property takings all taxing agencies will be joined as parties in the eminent domain proceedings.
  - (2) *Partial property takings acquired by negotiation*. On partial property takings acquired by negotiation, current and delinquent taxes are excepted. The county will make payment to the property owner without regard to delinquent taxes. When it is necessary to condemn a partial

taking, all taxing agencies claiming delinquent taxes will be made party to the suit. See exception in subsection (h)(4) of this section.

- (3) *Current taxes.* On whole property takings the current taxes shall be prorated between the buyer and seller at the closing of the transaction. On partial property takings the current taxes owed by the landowner are to be prorated by the tax official of the taxing authority pursuant to subsection (e)a. of this section.
  - a. V.T.C.A., Tax Code, § 26.11 provides for complete tax proration by all taxing agencies on all acquisitions by governmental agencies or any other body politic having the power of eminent domain. Whenever the county or a state or city purchases or condemns land for a public purpose, including, but not limited to, parks, state or county/highway right-of-way, current taxes owed by the landowner are to be prorated by the responsible tax official of the taxing authority or agency involved on the basis of the months the land remained in private ownership or control, such date to be determined by the date of conveyance to the county or date of possession.
  - b. Date of possession on parcels acquired through condemnation proceedings will be the date that the special commissioners award is deposited in the registry of the court, or if no deposit is made prior to the date the judgment is rendered, the date of the judgment shall constitute the date of taking.
  - c. The principles outlined herein apply to all agencies authorized to collect ad valorem taxes on real property.
- (f) *Minerals.* Surface rights to oil, gas or sulphur will be acquired to prevent the use of the surface of the public use to extract or remove the oil, gas or sulphur.
- (g) *Curative work.*
  - (1) *Generally.*
    - a. It is the responsibility of the property owner to clear up any questions that may exist regarding title to his or her property so that clear title can be conveyed to the county. However, county personnel may give as much assistance as possible in such matters in the interest of good public relations and in order to expedite right-of-way acquisition.
    - b. The county, at its sole cost and expense, shall be responsible for obtaining the necessary releases, consents, affidavits, disclaimers, and other curative documents from current lienholders, holders of abstract of judgments, judgments, mechanic liens, state/federal liens, etc. of record in order to obtain the right- of-way free and clear of all liens. See subsection (p) of this section for additional information regarding payments.
  - (2) *Real property held in trust.* Pursuant to V.T.C.A., Government Code § 2252.092, the county must receive from the trustee a copy of the trust agreement identifying the true owner of the property held in trust prior to any purchase or sale.
- (h) *Acceptable title commitment and title policy exceptions.*
  - (1) Liens, defects and encumbrances. The title commitment and policy must indicate that the property is free of all liens, defects, and encumbrances subject to certain listed exceptions. The county will not accept an exception, which indicates a lien, exists against the property conveyed. See subsection (b) of this section.
  - (2) Restrictive covenants. The county will accept an exception showing that certain restrictive covenants exist if it is determined that the restriction will not effect county use of the property. However, it will be necessary that every restrictive covenant affecting the property be examined by the title company to determine whether there are reversionary or reverter provisions that would produce a loss or derogation of title. In such case, the title company shall be instructed to bring such matters to the attention of the department so that necessary curative work may be requested from owner. Exceptions as to restrictive covenants involving a loss or derogation of title are not permitted. See subsection (g) of this section.

- (3) Survey exception. The county will accept the standard exception as to survey. That exception provides for "any discrepancies, conflicts or shortages in area or boundary lines or any encroachments or protrusions, or any overlapping of improvements" which a correct survey would show. In this connection, careful effort should be made to check owners in possession against record titleholders and authorized lessees or tenants. Assistant director may require title company to except its boundary exception in those cases where it would be in the best interest of county.
- (4) Taxes and assessments. The county assumes no obligation for the collection of current taxes. When a property owner desires that prorated current taxes be paid out of the proceeds due from the county, the procedure will be as outlined in subsection (e) of this section. In such event, the title company is authorized to withhold such pro rata taxes from the owner's compensation and forward such taxes to the collecting agency. Delinquent taxes may be excepted only in the case of a partial taking. On a partial taking, the commitment and policy will include an exception as follows: "All standby fees, taxes and assessments by any taxing authority current and delinquent".
- (5) Easement exceptions. An exception may be taken to an easement right held by a public utility authorized to use the public right-of-way by statute. The county accepts such easements if there is to be joint usage of the property by the county and the utility owner. Any easement, which would interfere with the right-of-way being used for roadway or other county purposes, will not be accepted. The determination as to acceptability will depend on each individual case. In all cases the commitment and policy are to (1) give the name of the easement holder and (2) identify by general language the purpose of the easement and whether or not it is compatible with county operations. If no easement is to be excepted the title company is to complete the commitment form by inserting the word "none" in the space provided for the listing of easement exceptions. See subsections (c) and (d) of this section.
- (6) Leases and/or mineral exceptions. An exception in respect to mineral interests will be accepted under certain conditions. This exception generally deals with the oil, gas, and sulphur reservations or leasehold or other mineral interests as provided in the deed of conveyance or conveyance of an easement for right-of-way purposes. Although in such case the county has not taken these minerals in its acquisition from the property owner, the property owner has waived all rights of ingress and egress for the purpose of mining and developing those minerals. All eminent domain cases will contain language that the landowner shall have no right to enter upon the property for the removal or extraction of any minerals retained. However, the owner may still make a subsurface directional drill underneath the property from adjoining property where otherwise permitted for the purpose of obtaining such minerals. Any permissible directional drilling shall not interfere with the use of such property for roadway or other county governmental purposes.
- (7) Rights of parties in possession. An exception regarding rights of parties in possession will be accepted provided that the county will (1) make a careful on-the-ground inspection of the parcel site with respect to occupancy, (2) sign any necessary waiver of inspection required by the title company and (3) ascertain that there are no parties in adverse possession of the property when the title commitment is submitted. This exception applies only to one or more persons who are actually physically occupying the property and where there are no recorded documents evidencing their claim to such property.
- (8) Homestead or community property or survivorship rights, if any, of any spouse of any insured.
- (9) Any title or rights asserted by anyone, including, but not limited to persons, the public, corporations, governments or other entities:
  - a. To tidelands or land comprising the shores of beds of navigable or perennial rivers and streams, lakes, bays, gulf or oceans; or
  - b. To lands beyond the line of the harbor or bulkhead lines as established or changed by any government; or
  - c. To filled-in lands, or artificial islands; or
  - d. To statutory water rights, including riparian rights; or

- e. To the area extending from the line of mean low tide to the line of vegetation, or the right of access to that area or easement along and across that area.
- (i) *Selection of title companies and abstracting firms.* The department will select title companies and/or abstracting firms according to their schedules, project location, interest, cooperation and previous work history in performing the work for the county. An effort will be made to distribute the work among a wide cross section of county companies.
- (j) *Procuring title data.*
  - (1) *Generally.*
    - a. The county will secure the services of a title company and or abstracting company and furnish such title or abstracting company with sufficient preliminary title data so that it can determine the property descriptions of the parent tracts out of which parcels are to be procured. The county will provide, when available, a metes and bounds description and survey plat of the property to be acquired. A preliminary right-of-way map is also available, if requested, to assist the title company or abstracting company in determining the requirements.
    - b. Information derived by the county in its field contacts with regard to parties in possession, adverse possessors, leasehold interests, tenants, results of survey, and any information not normally reflected in the public deed records will be transmitted to the title company by written correspondence to assist the title company in locating all title defects, which the owner will be required to cure if not permitted as an exception in the title commitment and policy. From the aforementioned material the title company will be requested to furnish the county with preliminary information relative to present ownership's and property legal descriptions of the parent tracts. When furnishing this information, the title company will also furnish data relative to liens, easements, etc.
  - (2) *Purchase of title insurance and title insurance policies.* Instructions for purchasing title insurance on county roadway projects are to be applied separately to each authorized project having a separate general expenditure authorization. The department will send a letter to the title company specifying any special requirements and conditions regarding the issuance of title commitments and title insurance policies. The following guidelines shall apply:
    - a. The title commitment will reflect all of the real property that was acquired in the same title chain. If there are separate title chains, each commitment would have to be researched back to a common source of title.
    - b. Parcels referred to herein are the county numbered parcels.
    - c. A separate (state established) basic premium may be charged for each policy issued but no charges for additional chains of title are to be made in any case.
    - d. The department will negotiate the lowest possible escrow fee with the title company. Escrow fees are outlined in subsection (m) of this section.
- (k) *Commitments for title insurance.*
  - (1) *Generally.* After receipt of the title commitment from the title company, the department will prepare the necessary instruments of conveyance and all other documents needed to clear title, i.e., partial releases, affidavits, etc. After the preparation of these instruments and prior to their execution, they are submitted to the property supervisor for examination to ensure correctness. A complete property description of the county's taking shall be included in the owner's title policy commitment.
  - (2) *Negotiated parcels.* When a parcel is being acquired by negotiation, the title commitment will be issued by the title company within a reasonable amount of time upon receipt of the department's written request, field note description and survey plat of the property to be acquired by the county. All title commitments for negotiated parcels are to be prepared on forms for the writing of title insurance in the state, issued by the state department of insurance, and submitted to the

department in duplicate. Where there is more than one property interests to be acquired in a given parcel, e.g., there is a fee interest plus a separate leasehold interest(s) or there are various undivided interests, the title company will issue one commitment listing each interest separately, i.e., owner of fee estate, easement estate, leasehold estate, et al.

- (3) *Eminent domain.* When it becomes apparent that a parcel must be acquired through eminent domain proceedings, the department will advise the title company that the property will be acquired in such a manner. The title company will, at this time, make a recheck of the records and furnish the department with an updated commitment.
- (l) *Owner policy of title insurance.* Title Insurance policies are to be prepared in the manner prescribed by the state department of insurance. Since title is vested in the county through purchase and eminent domain proceedings, the name of the insured should be the County of Dallas, unless otherwise directed by the department. Policies will be written in the amount of the cash consideration paid for each parcel; the total consideration for contiguous parcels as received in the deed in cases of negotiation; in the amount of the value of the part taken, where appropriate, or in the amount of the final judgment in cases of eminent domain proceedings. The title company will issue the title policy to the county upon receipt of a county warrant for the title policy premium and related closing costs associated with the acquisition. In the event that the right-of-way is acquired for the state the title policy will be issued to insure the state.
- (m) *Fees for title services.*
  - (1) The county shall pay the title policy premium established by the state department of insurance for the issuance of title insurance. Such fee shall include title examination, five-year sales data, closing the transaction, securing and disbursing money and final search of title.
  - (2) On partial and or whole property takings, the department will negotiate the lowest possible escrow fee with the title company. On partial takings a reduced rate is negotiated, as the county acquisition agents are responsible for performing all curative work. The department provides the title company with the original executed conveyance documents and all curative documents required by the title company on schedule "C" of the commitment.
  - (3) On whole property takings the escrow fee is higher because the title company is responsible for performing all curative work. Care should be exercised to insure that the property owner is not charged with any closing expense incidental to the transaction other than those set forth under subsection (g) of this section.
  - (4) In determining the premium rates where one owner owns more than one parcel or several owners are involved in one purchase, the instructions in subsection (j) of this section must be followed.
  - (5) If the department requests a title company to furnish tax information when title insurance is ordered, the title company may be reimbursed for the documented costs of the required tax certificates. Tax certificates are required on whole property takings only. Unless otherwise specified by the department a tax certificate is not required on a partial taking. The title company's request for reimbursement must include documentation to support its cost for the certificates.
- (n) *Closing by title company.*
  - (1) The department will transmit the original closing documents, i.e., deeds, easements, releases, resolutions, and other documents required on schedule "C" of the commitment to the title company for their preparation in closing the transaction. The department will obtain approval of the commissioners court for authorization to disburse the funds to the title company for the account of the property owner for payment of the necessary land, improvements and damages, if any, for each parcel. The county's warrant will be mailed by us mail directly to the title company for the account of the property owner. The title company will deposit the county's warrant and will issue or deliver a new warrant to the property owner at the time of closing.
  - (2) The property supervisor or his or her designee will be the county's representative during the closing of the transaction. The department when submitting the original closing documents to the title company will provide the title company with the property owner's name or contact person and

telephone number. The title company is responsible for contacting the property owner and arranging the closing of the transaction. Costs of courier services will be kept at a minimum and should be used by the title company in the case of distantly located owners or when time is of the essence.

- (3) The title company, upon receipt of the county's warrant, will immediately take steps to see that the transaction will be promptly closed and that an appropriate title insurance policy is issued. See also subsection (o) and (p) of this sections.
- (o) *Title company's closing statement.* The title company will fax copies of the seller's and purchaser's closing statement to the property supervisor for review and approval prior to closing. Upon acceptance by the property supervisor, the property supervisor will execute and return the county's closing statement via fax and mail the original via U.S. mail to the title company. The title company, when requesting payment for title insurance policy services, will furnish the county with a closing statement detailing the disposition of the proceeds from the county's warrant. If all of the proceeds of the warrant are not at first disposed of and some money is retained in trust, then this statement is to so state. Subsequently, when all of the money is disposed of, the statements must show the amounts paid for settlement of liens, mortgages, taxes, etc., and the net amount paid to the grantor with a total equal to the amount of the county warrant. These statements must also show the right-of-way project/account number, parcel number, project limits, county warrant number and amount, and the closing date. The title company shall provide a signed copy of the seller's and purchaser's closing statement to the former owner or grantor and to the department, unless otherwise directed by the department.
- (p) *Recording of legal instruments.* All instruments conveying any real property interest to the county will be recorded in the county clerk office, immediately following the closing transaction. On county acquired right-of-way, the county pays the costs of recording such instruments. The title company will include these costs in their billing for incurred title expenses on the county's closing statement. Recording cost for curative work caused by errors in the documents in the property owner's chain of title, shall be the responsibility of the property owner. The title company will include these costs in their billing for incurred title expenses on the seller's closing statement. See subsection (g) of this section for additional information.
- (q) *Title reports and their usage.*
  - (1) Title reports will be prepared on all donated parcels, temporary easements, or parcels which have an appraised value of less than \$25,000.00, however, the assistant director has the sole discretion to purchase a title insurance policy on parcels which have an appraised value of less than \$25,000.00.
  - (2) The title search will commence with the current owner (as referenced in the preamble of the field note description), and or the last record owner owning the fee simple estate to the property.
  - (3) On whole property takings or partial property takings where a fee taking or permanent easement is required that includes a temporary easement, the title report will include the names of the owner(s) of record and all persons or entities owning or claiming any interest of record in such parcel (excluding taxes due as of the date of the report), the date of recording of such interest, a description of the estate or interest owned or claimed (when possible) as disclosed of record, and the names of persons or entities, as disclosed of record, from whom deeds or releases should be obtained to cure all defects in title, the clearance of which would result in fee title, i.e. Deeds of trust, mechanic's liens, state and federal tax liens, and all other restrictive covenants, liens or judgments that affect the property. The address of the current owner(s) shall be included when available. If the title report contains outstanding encumbrances and liens, it will be necessary to secure full or partial releases covering all of these. Taxes will be handled as outlined in subsection (e) of this section.
  - (4) On partial property takings where only a temporary easement is required, a "name search only" will be performed. The department will not clear title encumbrances on takings involving only a temporary easement.

- (5) The department will be responsible for obtaining the necessary information from the property owner to complete the applicable grantors clauses, i.e., marital status of each individual, if the property to be conveyed is their separate or community property, and or the proper legal capacity of the record owner(s), i.e., trustee, guardian, attorney-in-fact, etc. If it is necessary to use abbreviations, only those commonly recognized or legal (Latin) terms may be used.
- (6) The acquisition agent, on their initial visit with the property owner, is responsible for confirming with the property owner that the information in the title report is correct and that no transaction has occurred involving the property since the date of the title report.

(Ord. No. 2001-1036, 5-29-2001)

Secs. 110-35—110-60. - Reserved.

### **ARTICLE III. - RIGHT-OF-WAY ACQUISITION SERVICES<sup>4</sup>**

Footnotes:

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Sec. 110-61. - Scope of article.

The purpose of this article is to establish procedures and criteria for the employment of an outsource firm to provide right-of-way acquisition services for governmental purposes on behalf of the county in accordance with applicable county standards, rules, regulations, the constitution and laws of the state and all applicable federal laws and regulations. Such employment shall include but not be limited to title services, appraisal services, negotiations, closing services and condemnation support. This article applies to professional service contracts for right-of-way acquisition by outsource firms.

(Ord. No. 99-771, § I, 4-20-1999)

Sec. 110-62. - Selection criteria.

- (a) The procurement of right-of-way services shall conform to V.T.C.A., [Government Code § 2254.001](#) et seq. for professional services. The firm selected for these services shall be selected on the basis of demonstrated competence, qualifications, and not to exceed fee for the services to be performed. After selection, an indefinite quantity contract shall be executed at a not to exceed price with the most highly qualified firm.
- (b) The following selection criteria are defined to provide a systematic and impartial evaluation and documentation for use in the selection of a right-of-way acquisition firm. These criteria represent the basic standards to be considered in the selection process:
  - (1) *Qualifications, experience and capabilities.*
    - a. Experience and demonstrated knowledge of services requested include experience and qualifications of project manager, key personnel and project teams (subcontractors/consultants).

---

<sup>4</sup> **State Law reference**— Procurement of professional and consulting service, V.T.C.A., [Government Code § 2254.001](#) et seq.; right-of-way acquisition, V.T.C.A., [Local Government Code § 262.024](#).

- b. Experience with other similar projects for work performed in the state.
  - c. History of meeting deadlines.
  - d. Education and training of project managers and team.
- (2) *Time factors.*
- a. Personnel to be assigned to the project.
  - b. Proposed approach/attention to critical issues and resources committed.
  - c. Time frame and bar graph schedule for a typical project based on 100 parcels (60 residential, 20 vacant and 20 commercial with one commercial bisection).
- (3) *Women and minority participation.*
- a. The consultant's use of women and minority-owned business enterprises.
  - b. List of all women and minority-owned firms that will be involved in the project and nature of their involvement.
  - c. Women and minority interest/ownership of firm.
  - d. Assignment of qualified women and minority employees to project.
  - e. Demonstration of hiring practices which provide opportunities for work experience and encourage the professional development of women and minority employees.
- (4) *Data to be considered.* The following data shall be provided by the firm and will also be given consideration in the selection process:
- a. Firm's current contracts.
  - b. Firm's knowledge and experience of right-of-way acquisition in the state and local communities.
  - c. Current litigation, including litigation against the county; includes subcontractor/consultant litigation against the county.
  - d. Administration and management plan.

(Ord. No. 99-771, § II, 4-20-1999)

Sec. 110-63. - Right-of-way services procurement process.

- (a) *Procedure.* The director of public works will evaluate the pending workload in the property division and ascertain the need to solicit proposals for the needed right-of-way services. These services shall apply to federally funded projects, state department of transportation (TxDOT) projects, county thoroughfare bond projects, in-house or road and bridge district projects and other interdepartment projects.
- (1) The property division will identify the projects, parcels, and/or a combination of the same that cannot be completed by in-house staff and will require outsource assistance.
  - (2) The property division will coordinate with the county purchasing department and brief the commissioners court for authority to advertise for proposals.
  - (3) Funding for these services will be identified from the transportation bond program or will be provided by the county department and/or entity requesting assistance.
  - (4) The county public works department will provide project management and administration activities for all contracted right-of-way services.
  - (5) Procurement will be in accordance to:
    - a. V.T.C.A., Government Code § 2254.001 et seq.;

- b. Constitution and laws of state;
  - c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
  - d. County policies and procedures.
- (6) *Project announcement:* When the in-house workload is such that efficient acquisition of right-of-way is not possible due to pending workload, the public works department will brief the commissioners court providing a list of projects or parcels which require outsource services to include a defined scope of work for the various elements necessary to accomplish the services. After approval by the commissioners court of the project scope of work, the purchasing department shall have advertisements placed in local newspapers for a period of not less than two weeks. The announcements will request that all proposals be returned to the purchasing department.
- (7) *Processing proposals:* Upon receipt of proposals, within the specified time required, a tabulation will be made by the purchasing department on a standard form of the firms which have responded which will be distributed to the public works department and the evaluation committee. The evaluation committee shall consist of members appointed by the director of public works and will include assistant directors, project managers, the commissioners court administrative planning and development coordinator, a representative of the purchasing department, and the coordinator for minority/women business enterprises.

Each member of the evaluation committee independently shall evaluate each firm, utilizing the criteria outlined in section 110-62, as well as exhibit A, Right-of-Way Contractor Rating Form. The evaluator is expected to research the information submittal by each responding firm prior to assessing that firm's ranking. Rating forms from each member will be tabulated and retained for record purposes and for subsequent submission to the commissioners court. The coordinator for minority/women business enterprises shall review all submitted data with regard to item III of exhibit A.

(b) *Selection of Firms.*

- (1) *Factors.* The criteria established in section 110-62, selection criteria, shall be utilized in rating firms on the right-of-way services rating form, with emphasis on the following factors:
- a. Previous experience on similar projects.
  - b. Current firm's workload and availability.
  - c. Demonstrated ability to perform required services within a county time schedule.
- (2) *Additional factors.* In addition, consideration is given to the following:
- a. Firms, employees of firm, subconsultant/subcontractor involved in litigation with the county or representing clients in an issue in litigation are disqualified for the term of the litigation.
  - b. Firms owned or headed by a former county employee are disqualified for a period of one year after their departure from county employment.
  - c. Firms which have actively and successfully recruited a professional employee of the county are disqualified for a period of one year.
- (c) *Recommendations for approval of firms.* After the evaluation committee completes the task of rating firms and the director of public works has reviewed and approved the ratings, a complete listing of firms responding to the announcement (including a tabulation of the committee's ratings), along with a recommendation for selection of a successful firm will be submitted to the commissioners court by the public works department for award. The recommendation to the commissioners court shall include a complete and detailed statement of the scope of services to be provided along with source of funding and any other pertinent information.

(Ord. No. 99-771, § III, 4-20-1999)

Sec. 110-64. - Contract considerations.

- (a) *Basis for negotiations.* The intent of this article is to provide expedient right-of-way procurement services to advance the county transportation bond projects or other similar projects to construction. The firm to be selected to provide right-of-way acquisition services will be awarded an indefinite quantity contract, for a term of one year with option of extending contract for an additional one year, provided that both parties concur. This will apply to the extent that the contracted firm maintains the capabilities required to expedite the services as determined from its performance. The county shall have the authorization to distribute remaining projects or parcels to the next qualified firm. The commissioners court will authorize work orders specifying a variety of projects requiring, but not limited to, the services outlined in section 110-63, to be awarded to the firm under contract with the county. The commissioners court will specify a minimum amount to award upon execution of a right-of-way acquisition services contract, or establish a minimum amount of work to be available for outsourcing, whichever is deemed appropriate. The county shall not issue a work order known to have a completion schedule longer than the remaining term of the contract, including extensions.
- (b) *Award of contract.*
- (1) Upon approval by the commissioners court of the selected firm, an indefinite quantity contract will be executed with the most qualified firm. If, in the opinion of the director of public works, a contract cannot be executed with the highest ranked firm, negotiations will be formally terminated with that firm and initiated with the second most qualified firm, and so forth until a fair and reasonable contract can be awarded, within established budgetary limitations and acceptable to the committee, and the public works department. The evaluation committee, after review of the initial failure to award a contract to the top two ranked firms, may decide to request that the request for proposal is readvertised.
  - (2) The county may elect to designate or specify in the announcement for right-of-way acquisition services (request for proposals), the estimated right-of-way acquisition budget or specify the time frame to complete the project.
  - (3) For all projects or phases of projects where the scope of work has been clearly and fully defined, with a definite time frame and approved by the commissioners court, contracts will be awarded based upon a not to exceed negotiated fee rate per parcel for right-of-way acquisition services.
  - (4) Reimbursable fees shall be determined based upon the not to exceed product of negotiated hourly rate costs times actual units expended and subject to confirmation by an audit of the firm's financial records. Reimbursable expenses for subconsultant or subcontract services shall be determined on invoice costs, plus ten percent. Subconsultant or subcontract services agreements shall be subject to audit and subject to approval of the county public works department. All the county right-of-way acquisition services contracts will contain maximum "not to exceed" total fees based on unit line item prices submitted in the proposal, plus special services fees and reimbursable expenses.
  - (5) The attached contract format (exhibit B) shall be utilized to the maximum extent possible on right-of-way acquisition services contracts for the county public works department.

(Ord. No. 99-771, § IV, 4-20-1999)

Sec. 110-65. - Minority/woman-owned business involvement evaluation.

- (a) *Compliance with policy.* The proposing firm shall comply fully and totally with the county minority/woman-owned business involvement policy. This policy was adopted August 25, 1986, by Court Order No. 86-1198 and amended May 11, 1987, by Court Order No. 87-833 and February 28, 1988, by Court Order No. 88-334. All proposals (RFPs) for right-of-way acquisition services in response to project announcements shall include the appropriate forms with complete data regarding minority/women participation. Copies of the minority/women-owned business involvement policy, necessary forms and information may be obtained from:

Dallas County Minority/Women Business Coordinator  
 500 Main Street, 6th Floor, No. 613  
 Dallas, Texas 75202

- (b) *Minority/women participation.* The following criteria are defined to provide a systematic and impartial evaluation and documentation of the degree or extent to which minority/women participation in the project will be achieved:
- (1) Minority/women ownership/interest in the right-of-way acquisition firm. Percent of ownership and position in active operations or management of the firm shall be given.
  - (2) List of all other minority/women-owned firms that will be involved in the project and nature and extent of their involvement. This list shall provide percent of ownership, position and extent of management in operations of the firm.
  - (3) Assignment of qualified minority/women employees to the project. This shall include these employees of the firm and other firms involved in the project.

(Ord. No. 99-771, § V, 4-20-1999)

**EXHIBIT A  
 RIGHT-OF-WAY CONTRACTOR RATING FORM**

I.	Qualifications, Experience and Capabilities		
A.	Experience and demonstrated knowledge of services requested, include experience and qualifications of project manager, key personnel and project team (subcontractor/consultant) assigned to project.		10 points
B.	Experience with similar projects for work performed in the State of Texas.		10 points
C.	History of meeting deadlines.		10 points
D.	Education and training of project manager and team.		10 points
II.	Time Factors		
A.	Personnel assigned to the project.		15 points
B.	Proposed approach, attention to critical issues and resources committed.		15 points
C.	Time frame and bar graph schedule for completion of typical project, (based on 100 parcels (60 residential, 20 commercial, and 1 commercial bisection).		15 points
III.	Female and Minority Participation		

A.	Certified M/WBE firm.	6 points
B.	M/WBE involvement as subconsultants, subcontractors or suppliers.	6 points
C.	Female and minority employees assigned to project.	3 points
	TOTAL	100 points

(Ord. No. 99-771, exh. A, 4-20-1999)

**EXHIBIT B  
DALLAS COUNTY  
RIGHT-OF-WAY ACQUISITION SERVICES  
CONTRACT INDEFINITE QUANTITY**

KNOW ALL MEN BY THESE PRESENTS, this Contract is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and through the period of \_\_\_\_\_, \_\_\_\_\_, through \_\_\_\_\_, \_\_\_\_\_, by and between the COUNTY OF DALLAS (hereinafter referred to as "county") acting by and through the commissioners court of Dallas County, Texas, and \_\_\_\_\_ (hereinafter referred to as "contractor") with offices located at: \_\_\_\_\_

**WITNESSETH:**

WHEREAS, the county intends to contract for professional services for one year with the option to extend for a second year, providing both parties concur. County estimates a minimum of five projects or a minimum of 50 parcels comprising a mix of projects will be available annually; and

WHEREAS, the county desires to contract with contractor for complete right-of-way acquisition services as detailed in subsequent "work order(s)" (attachment 1) that may be issued under this contract; and

WHEREAS, the contractor has agreed to provide professional services as directed;

NOW THEREFORE, the county and contractor, in consideration of the terms, covenants and conditions herein contained, do hereby contract as follows:

**ARTICLE 1  
SCOPE OF SERVICES AND COMPENSATION**

- 1.1. As an independent contractor in its relationship with the county, the contractor shall perform all right-of-way acquisition services for any work order as authorized by the commissioners court. The indefinite quantity contract is to be used for a variety of right-of-way acquisition services/projects. The services may range from, but not be limited to, administration, appraisal, negotiation, title services/closing services, and condemnation testimony and support.
- 1.2. The county shall compensate the contractor in accordance with the schedule of rates detailed in subsection 1.3, compensation for services, of this contract, requirements of the request for proposal and the particulars contained in the authorized work order. In the event of a conflict, the terms and conditions of the authorized work order shall govern.

1.3. Compensation for services.

1.3.1. Basic services. The contractor's services under this contract for the purposes of payments will be negotiated separately for each work order issued and will be a lump sum or not-to-exceed contract. The type of fee basis used will be according to the requirements of each project in accordance to the per parcel schedule below:

1.3.2. Schedule of right-of-way services.

ACTIVITY	FEE RATE/PARCEL	NO. UNITS	TOTAL
<i>Administration</i>	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
<i>Appraisal:</i>			
Industrial	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Commercial	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Residential	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Undeveloped	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
<i>Negotiation:</i>			
Industrial	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Commercial	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Residential	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Undeveloped	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
<i>Condemnation Support:</i>			
Appraisal	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
Negotiation	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>
<i>Title</i>			
Research	<u>    </u> /PARCEL	<u>    </u>	<u>    </u>

	Insurance	<u>      </u> /PARCEL	<u>      </u>	<u>      </u>
	<i>Closing Services</i>	<u>      </u> /PARCEL	<u>      </u>	<u>      </u>

1.3.3. Reimbursable charges. In addition to the basic services fees, reimbursable charges may be authorized, including:

- A. Additional meetings/presentations where the county has requested the contractor's attendance will be compensated at a rate of \_\_\_\_\_ per hour. Chargeable time shall be computed from the time the contractor arrives at a prescribed meeting location through termination of meeting (minimum one hour), with no additional cost for travel expense.
- B. Assistance to the county as expert witness in any litigation with third parties and condemnation proceedings will be compensated based on an hourly rate for each hour in which the contractor's preparation and presence is required. Chargeable time shall be computed from the time the contractor arrives and departs the meeting and/or the actual documented time (time sheet) spent to prepare for such litigation, including travel costs. The total cost to the county shall not exceed \_\_\_\_\_ at \_\_\_\_\_ hourly rate.
- C. Special contract services, when required and approved by the county, will be compensated at the invoice cost to the contractor, plus ten percent.

The cost to the county shall not exceed \$ \_\_\_\_\_

TOTAL: \$ \_\_\_\_\_

**ARTICLE 2  
CONTRACTOR SERVICES**

2.1. Basic services.

The contractor's basic services consist generally of the phases described in this article, and include completed services. All contractor's subcontractors/subconsultants shall be subject to approval of the county through its director of public works. No subcontractor, subconsultant and key personnel having been submitted under qualifications, experience and capabilities part of this contract shall be replaced. The county reserves the right to replace any employee or key personnel deemed inappropriate. The contractor shall perform all work in a manner satisfactory and acceptable to the county, represented by its director of public works or his designee, referred to in this contract as "director." The performance schedule, as set out in section 2.8, administration and management, is agreed to by contractor, and the contractor agrees to use its best efforts to complete all services in accordance with such performance schedule. All services shall be performed to the highest professional standard. The contractor understands that no service under this contract or subsequent work orders shall be performed until the contractor receives a written notice to proceed. The contractor shall add the following to all correspondence to be used under this contract: "that it has been hired by Dallas County to provide right-of-way acquisition services related to (name of project/parcel no.) project, but the contractor has no authority to bind the county and that no offer or value shall be binding until approval by the Dallas County Commissioners Court." All offer letters, permission letters or other related correspondence shall be in the contractor's letterhead.

2.2. Specifications of proposal; scope.

This specification describes right-of-way services to include, but not limited to: administration, title services, appraisal services, negotiation, closing services and condemnation support. The contractor shall:

- 2.2.1. Be a firm or corporation regularly engaged in the real estate business, providing real estate services, and licensed to do business in the state.
- 2.2.2. Provide state certified appraisers in the state with a minimum of three years' experience in partial taking appraisal and partial taking appraisal review in the state. The county shall approve all appraisers to be used on county projects.
- 2.2.3. Provide licensed negotiators who are familiar with appraisal review reports and have a minimum of two years' experience in right-of-way negotiations.
- 2.2.4. Provide a project office located in the county, including a toll free telephone number or accept collect calls. The project office shall be in operation prior to any negotiations with property owners and remain in operation until the specified right-of-way services are complete. Office hours shall be at a minimum 8:00 a.m. until 5:00 p.m., Monday through Friday, with the exception of observed county holidays.
- 2.2.5. Provide all services to acquire instruments of conveyance providing superior title in the name of the county.
- 2.2.6. Maintain a complete set of project right-of-way plans, plats and property field note description at the project office location.
- 2.3. Description of services.

The contractor shall provide a nonfee, nonoffice title company, authorized to do business in the state, in good standing, and tax bond.

2.3.1. Title services shall include, but not be limited to, the following:

- A. Secure preliminary title commitment or preliminary title search from the title company that will be providing title insurance.
- B. Provide title insurance for all parcels acquired, ensuring clear title.

2.4. Appraisal services.

2.4.1. The contractor shall provide state certified land appraisers with qualifications and experience in right-of-way acquisition in the state.

2.4.2. The contractor shall ensure that the appraiser or appraisal firms used under this contract shall have no conflict of interest or pending litigation against the county.

2.4.3. Appraisal services are subject to the approval of the county and/or the city and the state department of transportation, depending on the type of project included in the work order.

2.4.4. The contractor shall prepare a preappraisal contact form for each parcel on forms provided by the county. If the appraisal report is not approved by the county or any of the approving authorities, the contractor shall require reappraisals as required to fulfill this requirement. Any delays to the delivery schedule will be at the contractor's expense.

2.4.5. The contractor shall secure permission, in writing, from the owner to enter the property from which the land is to be acquired. If the contractor, after diligent effort, is unable to secure the necessary letter of permission in writing from the property owner, the contractor shall notify the county in writing for record purposes only. The contractor's requirement to complete an appraisal shall not terminate due to failure to obtain letters of permission.

2.4.6. The contractor shall maintain permission letters with the appraisal reports.

2.4.7. The contractor shall prepare a complete appraisal report for each parcel to be acquired. These reports shall conform to the county policies and procedures and the Uniform Standards of Professional Appraisal Practices, which will be furnished to the contractor by the property division of the county public works department.

2.4.8. The contractor shall contact property owners or their designated representative to offer an opportunity to accompany the appraiser on the appraiser's inspection of the subject property and maintain a record of such contact in the file.

2.4.9. The contractor shall appear as an expert witness in eminent domain proceedings and be available for prehearing or pretrial meetings as directed by the county district attorney's office (civil section).

2.4.10. The contractor shall coordinate with the review appraiser (see section 2.4.7) regarding corrections and/or additional information which may be required.

2.4.11. The appraiser shall be selected from the county's list of state approved fee appraisers. The county shall approve all individual appraisers or appraised firms to be used in this contract. The appraiser list will be available at the preproposal conference and provided to the successful proposer.

2.4.12. The contractor shall notify the county public works department of underground tanks and other forms of environmental contamination found on the right-of-way to be acquired which could require environmental mediation.

2.4.13. Appraisal review.

- A. Prior to submittal, the contractor shall review all appraisal reports for each parcel to ensure that all supporting documentation supports the conclusion reached and are in compliance with the county policies and procedures and the Uniform Standards of Professional Appraisal Practices.
- B. The county appraisal review board will review all appraisal reports for consistency of values and prepare the approved value form or related forms for submittal as required. If required by the type of project in the work order, the county will submit the county approved appraisal report to the city and/or the state department of transportation for their approval. The contractor shall require its appraisal to address any actionable comments.
- C. The contractor and/or his appraiser shall be required to attend the county appraisal review board meeting.

2.4.14. The deliverables contractor shall ensure that all original data, electronic media, appraisal reports, photographs and negatives shall be delivered and become the property of the county without future demand by the contractor upon the completion and approval of the appraisal services part of the contract.

2.5. Negotiation.

All offer letters shall be in the contractor's letterhead and contain the nonbinding clause in section 2.1.

The contractor shall:

2.5.1. Be familiar with the appraisal and appraisal review reports.

Note: On congestion mitigation air quality (CMAQ) projects the contractor shall ensure that no negotiations are initiated with property owners until all appraisals have been approved by the county, the city (where the parcel is located) and the state DOT.

2.5.2. Analyze each preliminary title report to determine potential problems, proposed methods to cure title deficiencies and perform title curative work.

2.5.3. Prepare the offer letter, memorandum of agreement on the contractor's letterhead and other required county documents, based upon the appraised fair market value.

2.5.4. Contact each property owner or owner's designated representative, in person where practical, to present the offer, maintain followup contacts and secure the necessary documentation upon acceptance of the offer for closing. The contractor shall include a nonbinding statement in section 2.1 on all verbal or written correspondence with a property owner.

2.5.5. Provide a copy of the appraisal report for the affected property to the property owner or authorized representative at the time of the offer. Maintain a record of the receipt of the appraisal by the property owner in the file.

- 2.5.6. Respond to the property owner's inquiries verbally and in writing.
- 2.5.7. Maintain negotiator contact reports for each parcel on the county provided form.
- 2.5.8. Prepare all documents necessary for signatures to consummate each parcel. All documents will be provided by the county.
- 2.5.9. The contractor will submit the signed documents to the county property division for payment to the title company for the purchase of each parcel.
- 2.5.10. Maintain parcel files of original documentation related to the purchase of the real property.
- 2.5.11. Provide a recommendation for an administrative settlement process in accordance with the county policies and procedures.
- 2.5.12. Notify all property owners of their eligibility for relocation assistance and provide them with a relocation assistance brochure by certified mail. The county will provide the state DOT relocation brochures to the contractor.
- 2.5.13. The contractor shall contact the county in writing regarding all parcels it has failed to negotiate via friendly negotiations.
- 2.5.14. The contractor shall prepare a final offer letter (forms to be provided by the county) to be mailed certified allowing ten days for a response.

## 2.6. Closing services.

The contractor shall attend all closings.

2.6.1. The contractor's title company shall record all deeds and deliver the filed original deed to the county public works department.

## 2.7. Condemnation support.

2.7.1. The contractor shall submit to the county public works department, the necessary documents for filing condemnation. The property division will prepare the county commissioners court order authorizing condemnation proceedings.

2.7.2. The contractor shall assist the county district attorney's office (civil section) in all special commissioner's hearings.

2.7.3. The contractor shall coordinate the hearing date between all affected parties.

2.7.4. The contractor shall locate property owners and other interest holders and assist the county in providing service of notice of hearing to all defendants.

2.7.5. The contractor shall appear as an expert witness when requested to do so.

## 2.8. Administration and management.

2.8.1. The contractor shall prepare all correspondence and related electronic media on WordPerfect 6.1 for Windows. The contractor shall deliver all original correspondence, documents and electronic media (3½-inch diskettes) to the county public works department without further demands and restrictions.

2.8.2. The contractor shall maintain a fully functional office in the county and maintain all project files at this location during the term of the contract, after which they will be delivered to the county public works department.

2.8.3. All project files shall be set up and maintained in accordance to the county audit file standards, and made accessible for interim audits as may be required during the term of the contract.

2.8.4. The contractor shall prepare a request for payment utilizing standard payment submission forms provided by the county with supporting documentation.

2.8.5. The contractor shall maintain records of all payments and provide a project financial ledger including amounts, date paid and balance. This accounting information shall be maintained in LOTUS 123, Release 5 for Windows.

2.8.6. The contractor shall provide monthly summaries of project expenses including amounts authorized, amounts paid and budget forecasting.

2.8.7. The contractor shall provide a performance schedule of all major project components showing the scheduled start and end dates. (GANTT charts).

2.8.8. The contractor shall maintain and provide a progress report every two weeks of the current status of all parcel and project activities, showing via use of GANTT charts and bar graphs, the proposed schedule and the actual progress.

### ARTICLE 3 RESPONSIBILITIES OF COUNTY PUBLIC WORKS

#### 3.1. Provision of project management; review.

The county, through its public works department, shall provide project management for this contract. In this capacity, the public works department shall review all right-of-way acquisition documents prior to final approval. A review turnaround time of 30 days will be strived for, but in no case shall review time be longer than 45 days.

#### 3.2. Forms.

The county shall provide all necessary standard forms.

#### 3.3. Right-of-way maps; field notes.

The county shall provide right-of-way maps of the project and plats, along with field note descriptions for each parcel to be acquired.

#### 3.4. Survey and staking services.

The county shall provide survey and staking services, if necessary, for each parcel.

#### 3.5. Processing and issuing requests for payment of purchase prices.

The county will process and issue all requests for payment of agreed purchase prices for each parcel, relocation payment and incidental expenses involved in the transfer of property to the county.

#### 3.6. Final approval for appraisals, payments and title reports.

The county will provide final approval for all appraisals, payments and title reports.

### ARTICLE 4 WORK ORDERS

#### 4.1. Generally.

Work performed by the right-of-way acquisition contractor will be authorized by the county by a written work order issued prior to the work being performed. Each such work order shall be incorporated into and made a part of this contract. In no event shall the cumulative total cost authorized in all work orders exceed the maximum amount payable established in article 1, scope of services and compensation.

#### 4.2. Time constraints.

Time is of the essence as to the completion date in each work order. Any work order issued during the effective term of this contract and not completed within that period shall be completed by the contractor within the time specified in the work order, time being of the essence. This contract shall survive the termination date as to such orders and shall govern the county and contractor's rights and obligations with respect to that order, to the same extent as if the order was completed during the term of the contract,

specifically including all insurance and indemnification provisions contained in this contract. Such continuation of the contract shall terminate when either the county commissioners court shall accept the project as substantially complete or written notice is given to contractor by the county director of public works that the contractor's services are no longer required under the work order, whichever shall first occur.

#### 4.3. Preparation; inclusions; agreement; approval.

Each work order shall be prepared by the county and shall list the project and location of the work to be performed, a description of the work to be performed, any items to be furnished by the county and a maximum completion date for the work. Upon receipt of the proposed work order, the contractor shall furnish to the county a schedule for the work, suggested personnel required for the timely completion of the work based on the county's maximum completion date, itemized projected cost of the work order based on the negotiated rates for the schedule of services as shown in section 1.3, compensation for services, and a total, not-to-exceed, cost of the work order. The county may accept or reject, in whole or in part, such submission. In the event of rejection the parties agree to negotiate in good faith the work order items to reach agreement as to each item. Once agreement has been reached attachment 1 to exhibit B, the work order form, will be completed and signed by the contractor. Such work order shall be signed by the county public works department as recommended for approval. The work order will then be submitted to the county commissioners court for its consideration. The work order is contingent upon and not effective until approved by a formal order of the county commissioners court and notice to proceed has been issued by the public works department. Upon approval of the commissioners court, the work order shall be executed and delivered to the contractor.

#### 4.4. Refusal to negotiate or failure to sign.

If a negotiated work order cannot be agreed upon, the county shall furnish the contractor a work order based on the county's last negotiated position. The contractor must sign and return the work order within seven days after its receipt to signify acceptance. Refusal to negotiate a work order by rejection of, or failure to sign, within seven days shall terminate negotiations with the contractor and allow the county, in its sole discretion, to negotiate such project with the next most qualified proposer in compliance with V.T.C.A., Government Code § 2254.004. If the work order is accepted by the proposer, it will be submitted to the county commissioners court for its consideration.

#### 4.5. Issuance requirements.

Work orders will be issued at the sole discretion of the county. There may be no work orders issued under this or any subsequent contract. There is no limit, other than the total not to exceed amount as shown in article 1, compensation, on the number of work orders that may be issued. There is no guarantee of the issuance of any work orders or any amount of work under this contract.

*Notice:* Each work order is not effective, and the contractor shall not commence any work contained therein, until and unless the work order has been approved by formal court order of the county commissioners court and notice to proceed has been issued by the public works department. The county shall not be liable for, nor will it pay for any amount of work commenced prior to the approval of the work order by the county commissioners court and notice to proceed has been issued by the public works department.

## ARTICLE 5 AMENDMENTS

#### 5.1. Modification of work order.

Either the contractor or the county may initiate a written request for a modification of work order when, in the opinion of the requesting party, the needs and conditions of the project warrant a modification. Upon receipt of a request by either party, the contractor and the county shall review the conditions associated with the request and determine the necessity of a modification. When both parties agree that a modification is warranted, the contractor and the county shall negotiate the specific modifications and any changes in the cost, total not to exceed amount for the contract, unit prices for any item not previously agreed upon or completion dates resulting from the modification.

5.2. Fee/time increases.

Any other provision of this contract notwithstanding, it is specifically understood and agreed that the contractor shall not be authorized to undertake any services pursuant to this contract, or any modification to a work order requiring the payment of any cost stipulated in article 1, scope of services and compensation, of this contract or extension of time of completion without having first obtained specific authorization from the county in the form of a formal order of the county commissioners court authorizing a modification to work order, and without a written authorization to proceed from the county department of public works.

5.3. Approval of modification.

Approval of a modification shall be in the form of a written modification of work order which clearly defines the changes to the previously approved work order. Such written modification shall be approved by the contractor, authorized by the county commissioners court by a formal order and a written notice to proceed issued by the county department of public works.

ARTICLE 6  
OWNERSHIP OF DOCUMENTS

6.1. County proprietorship.

All contractor's work product under this contract including, but not limited to, appraisal reports, analysis, calculations, estimates, photographs, investigations, studies, electronic file/computer generated media and other documents, completed or partially completed, shall be the property of the county to be used as the county desires, without restriction. The contractor specifically waives and releases any proprietary rights or ownership claims therein and is relieved of liability connected with any future use by the county. Copies may be retained by the contractor. The contractor shall be liable to the county for any loss or damage to such documents while they are in the possession of or while being worked upon by the contractor or anyone connected with the contractor, including agents, employees, consultants or subcontractors. All documents so lost or damaged shall be replaced or restored by the contractor without cost to the county.

ARTICLE 7  
PROGRESS

7.1. Production tracking system.

The contractor shall develop and maintain a production reporting system tracking all critical events, both scheduled and actual, for each parcel on the project.

7.2. Reports on production; project meeting.

The contractor shall report on the complete status of right-of-way production on the project at least twice a month, relating current status to overall project schedule, noting exceptions and suggesting actions required to correct schedule exceptions. At least once a month, a project meeting shall be held with the county property division and appropriate contractor personnel.

7.3. Preparation and presentation of relevant information.

The contractor shall prepare and present such information as may be pertinent and necessary, or as may be requested by the county, in order to evaluate features of the work.

7.4. Conferences.

At the request of the county or the contractor, conferences will be held at a location designated by the county. Conferences shall also include evaluation of the contractor's services and work when requested by the county. The contractor will not be reimbursed for any travel expense for progress reports.

7.5. Review of work schedule; corrective action.

Should the county determine that the progress in production of work does not satisfy the work schedule, the county will review the work schedule with the contractor to determine the corrective action needed. Some work performed under the contract is subject to review by the Federal Highway Administration.

7.6. Advising county of events of significant impact on progress.

The contractor shall promptly advise the county in writing of events which have a significant impact upon the progress of the work including, but not limited to:

7.6.1. Problems, delays, adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated.

7.6.2. Favorable developments of events which enable the contractor to meet the work schedule goals sooner than anticipated.

## ARTICLE 8 CONTRACTOR RESOURCES

8.1. Warranty of sufficient personnel and all other goods and services.

The contractor warrants that the firm has adequate qualified personnel in its employment and all required transportation, equipment, materials, supplies and any and all other goods and services for performance of services required under this contract, including any work order, or will be able to obtain such personnel, transportation, equipment, materials, supplies, and any and all other goods and services from sources other than the county. Unless otherwise specified, the contractor for the compensation received shall furnish all personnel, transportation, equipment, materials supplies, and any and all other goods and services required to perform the work authorized in this contract at its sole cost and expense. All employees of the contractor or of any subcontractor shall have all required licenses, knowledge and experience as will enable them to perform the duties assigned to them. The contractor contracts and agrees that any employee of the contractor or any subcontractor who, in the opinion of the county, is incompetent or whose conduct becomes detrimental to the work or whose conduct reflects adversely on the county shall immediately be removed from association with the project.

## ARTICLE 9 SUBCONTRACTS

9.1. Prohibited without county approval; limits.

The contractor shall not subcontract or otherwise transfer any portion of the work authorized by the county without prior approval in writing by the county. Under no circumstances shall the contractor subcontract more than 50 percent of this contract.

9.2. Subcontractor requirements and responsibilities.

Subcontractors shall comply with the provisions of this contract and all work orders. No subcontract will relieve the contractor of its responsibility under this contract.

## ARTICLE 10 SUCCESSORS AND ASSIGNS

10.1. Binding nature of agreement; assignment, subcontract or transfer of interest in agreement.

The county and the contractor each binds itself, its successors, executors, administrators, assigns and subcontractors in respect to all covenants of this agreement. The contractor shall not assign, subcontract or transfer its interest in this agreement without the prior written agreement of the county.

ARTICLE 11  
RESPONSIBILITY FOR WORK, INDEMNIFICATION AND INSURANCE

11.1. Approval and acceptance of contractor work by county not a release of responsibility and liability.

Approval and acceptance of a contractor's work by the county shall not constitute nor be deemed a release of the responsibility and liability of the contractor, its employees, subcontractors, agents and consultants for the accuracy and competency of their work; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the county for any defect, error or omission in the work prepared by the contractor, its employees, subcontractors, agents or consultants. In this regard, the contractor shall defend, hold harmless and indemnify the county for damages resulting from such defects, errors or omissions and shall secure, pay for and maintain in force during the term of this contract sufficient professional liability or errors and omissions insurance in an amount of not less than \$250,000.00 single limit with certificates of insurance evidencing such coverage to be provided to the county. Such certificates of insurance shall specifically name the county as a loss payee. The contractor shall provide errors and omissions insurance for an additional five years following completion of the contract, including any authorized extensions.

11.2. Indemnification by contractor of county officers.

To the fullest extent allowed by law, the contractor agrees to indemnify and hold harmless the county, the county commissioners, the county judge, the county's elected officials, the director, employees, agents and representatives (referred to in this article as "indemnities") against all claims, demands, actions, suits, losses, damages, liabilities, cost and/or expense of every kind and nature including, but not limited to, court cost, litigation expense and attorneys' fees), paying the same as they accrue, and all recoverable interest thereon, incurred by or sought to be imposed on indemnities because of injury (including death) or damage to property (whether real, personal or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to:

- (1) The performance of, attempted performance of, or failure to perform, operation or work under this contract by indemnities, the contractor, its subcontractors and/or any other person or entity;
- (2) The condition of the real property, including any improvements, on which the operations or work are being performed;
- (3) The selection, provision, use or failure to use, by any person or entity, or any tools, supplies, materials, equipment or vehicles (whether owned or supplied by county, contractor, or any other person or entity) in connection with such work or operations; or
- (4) The presence on county real property, including any improvements located thereon, of the contractor, its subcontractors, employees, suppliers, vendors or any other person acting on behalf of the contractor.

This indemnification shall apply, whether or not any such injury or damage has been, or is alleged to have been, caused, in whole or part, by the negligence or fault of any indemnitee, or on any theory of liability, including negligence, intentional wrongdoing, strict product liability or breach of nondelegatable duty. The contractor further agrees to defend (at the election of any indemnitee) against any claim, demand, action or suit for which indemnification is provided.

11.3. Contractor bears entire risk of loss or injury to employees and vendors.

Without in any way limiting or restricting the indemnification and defense agreement stated in this article, the contractor agrees that it is the intention of the parties hereto that the contractor and its insurers bear the entire risk or loss or injury to any of contractor's employees, "borrowed servants," agents, representatives, subcontractors, vendors, materialmen, or any other person present on the premises or performing any other act or service on the contractor's behalf or at its request, whether or not any such loss or injury is caused, in whole or part, by and negligence or fault of any indemnitee, and without seeking any contribution therefor from any indemnitee or its insurers.

11.4. Minimum insurance coverages.

The contractor, at the contractor's sole cost, shall additionally purchase and maintain in force the following minimum insurance coverages during the term of this contract or as otherwise provided in this contract. Such insurance shall be in the amount and in full compliance with the terms and conditions of this section.

#### 11.5. Terms and conditions.

Within ten days after the effective date of this contract, the county requires and the contractor agrees that the following insurance coverage will be met and in effect for the life of the awarded contract, prior to any delivery of merchandise and/or performance of work. The contractor agrees to furnish and maintain in effect, for the duration of this contract and any renewal, the insurance listed in this section from an insurance company acceptable to the county and authorized to do business in the state. The contractor will submit verification of coverages to the county public works department.

11.5.1. Workers' compensation insurance or self-insured employee coverage as required by state or federal law, meeting the acceptability requirements as established by the Texas Workers Compensation Act, V.T.C.A., Labor Code § 401.001 et seq.

11.5.2. Comprehensive general liability insurance, including contractual liability covering, but not limited to, the liability for injury or death of the contractor's or county's employees and third parties, extended to include personal injury coverage, and for damage to the county's existing property and property of third parties, with the minimum limits for each occurrence of \$300,000.00.

11.5.3. Comprehensive automotive and truck liability insurance covering contractor or employee owned, hired and nonowned vehicles, with the minimum limits of \$300,000.00 per occurrence for bodily injury and property damages.

#### 11.6. Insurance contracts; required provisions.

The contractor agrees that, with respect to the insurance referenced in section 11.4, all insurance contracts will contain and state, in writing, the following required provisions:

11.6.1. Name the county and its officers, employees and elected representatives as additional insureds (as the interest of each insured may appear) as to all applicable coverage.

11.6.2. Provide for 45 days' notice to the county for cancellation, nonrenewal or material change.

11.6.3. Provide for an endorsement that the "other insurance" clause shall not apply to the county where the county is an additional insured on the policy.

11.6.4. Provide for notice to the county at the address shown by registered mail.

11.6.5. The contractor agrees to waive subrogation against the county, its officers and employees for injuries, including death, property damage or any other loss.

11.6.6. The contractor shall provide that all provisions of this contract concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.

#### 11.7. Change of insurance coverage.

The contractor shall notify the county in the event of any change in coverage and shall give such notices not less than 45 days prior to the change, which notice must be accompanied by a replacement certificate of insurance.

#### 11.8. Nothing herein to relieve contractors from full liability for damages and accidents.

Approval, disapproval or failure to act by the county regarding any insurance supplied by the contractor shall not relieve the contractor of full responsibility or liability for damages and accidents as set forth in this contract. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the contractor from liability.

11.9. Submission deadline for verification of insurance coverage.

Within ten days after the effective date of this contract and prior to, and as a condition precedent to the commencement of any work or delivery, the contractor agrees to submit verification of the insurance coverage in the type, amount and meeting all conditions as contained in this contract, showing the county as the certificate holder (general liability insurance).

ARTICLE 12  
DISPUTES

12.1. Resolution procedures.

The director of the county department of public works shall act as the referee in all disputes under the terms of this contract between the parties hereto. If the director or the contractor are unable to reach an acceptable resolution of disputes concerning the work to be performed under this contract, the director and the contractor shall negotiate in good faith toward resolving such disputes. The director shall present unresolved disputes arising under the terms of this contract to the commissioners court. The decisions of the commissioners court, as it pertains to unresolved disputes, shall be final and binding. Violation or breach of contract terms by the contractor may be grounds for termination. Should such disputes be irreconcilable, the county shall terminate the contract for default. Any additional or increased cost arising from the termination shall be paid by the contractor.

ARTICLE 13  
REMEDIES

13.1. Violation or breach of contract; payment by contractor.

Violation or breach of contract by the contractor shall be grounds for termination of the contract. Any increased cost to the county arising from the contractor's default, breach of contract or violation of terms shall be paid to the county by the contractor upon demand. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 14  
TERMINATION

14.1. Conditions which may cause.

This contract may be terminated before the completion date established in article 29 as a result of any of the following conditions:

14.1.1. By mutual consent and agreement of both parties hereto.

14.1.2. By the county, by notice in writing to the contractor as consequence of failure by the contractor to perform the services set forth in this contract in a satisfactory manner and within the limits provided, in the sole judgment of county, with proper allowances being made for circumstances beyond the control of the contractor.

14.1.3. By either party, upon the failure of the other party to fulfill its obligations as set forth in article 2, contractor services, or article 4, work orders, by giving written notice one to the other establishing the effective date of termination.

14.1.4. By the county, without cause for reasons of its own and not subject to the mutual consent of the contractor, upon not less than 30 days' written notice to the contractor.

14.1.5. By expiration of the term and satisfactory completion of all services and obligations described in this contract.

14.2. Costs due to contractor on completed work.

Should the county terminate this contract as provided in this article, no costs other than costs due and payable at the time of termination shall thereafter be paid to the contractor. In determining the value of the

work performed by the contractor prior to termination, the county shall be the sole judge. Payment for work at termination will be based on work complete at that time, including partially completed appraisals, subject to the conditions established in the following sections.

#### 14.3. Partially completed appraisals.

In the case of partially completed appraisals, eligible costs will be calculated based on the ratio of actual number of hours of work expended documented to the satisfaction of the county multiplied by the fee rate for the parcel authorized in attachment 1 to exhibit B, work orders, incurred to the date of termination remaining unpaid.

#### 14.4. Default or termination.

If the contractor defaults in performance of this contract or if the county terminates the contract for fault on the part of the contractor, the county will give consideration to the actual services performed to the date of default with the condition that the contractor shall first submit all data, records, files and other pertinent information in accordance with article 6, ownership of documents, of the contract. The cost to the county of employing another firm to complete the required work, the time required to do so and other factors which affect the value to the county of the work performed to the date of default may, at the sole discretion of the county, be offset against the amount of compensation, if any, to be paid.

#### 14.5. Completion of work by county; liability of contractor for county costs.

If the termination of this contract is due to the failure of the contractor to fulfill its obligations, the county may take over the project and prosecute the work to completion by contract or otherwise. In such case, the contractor shall be liable to the county for any additional cost occasioned the county thereby.

#### 14.6. Transition of services.

At the termination of the contract between the county and the contractor, the contractor shall furnish to the county a listing of current records pertaining to any outstanding obligations or other records or information required by the contract, including any work order or request in writing by the county in either printed or electronic format, or both. The contractor agrees to furnish such information in an electronic form which is compatible with the county's computer system and/or the computer system of any subsequent vendor or contractor of the county selected for continuation of the services as described, in whole or part, in this contract, including any work order, or as may be added by amendment. The contractor agrees to cooperate with any subsequent vendor or contractor of the county and to use its best efforts to ensure a transition of services without interruption or degradation of service. This section will survive the termination of this contract and shall be a continuing obligation until the transition of services is complete. All items listed or required in this section shall be furnished by the contractor to the county without additional cost or expense to the county.

### ARTICLE 15 COMPLIANCE WITH LAWS

#### 15.1. Generally.

The contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations and nondiscrimination laws and regulations. When required, the contractor shall furnish the county satisfactory proof of compliance therewith. The contractor shall be required to obtain permission, as required by the county rules and regulations, to enter upon private property to perform the work.

### ARTICLE 16 NONCOLLUSION

#### 16.1. Generally.

The contractor warrants that it has not employed or retained any company or persons, other than bona fide employees working solely for the contractor, to solicit or secure this contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the county shall have the right to annul this contract without liability or to deduct, at its discretion, from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**ARTICLE 17  
MINORITY AND WOMEN BUSINESS ENTERPRISES**

17.1. Compliance.

The contractor agrees to comply with the provisions of exhibit B to the request for proposals, minority/women business specifications for RFPs [not printed in this volume but on file in the county offices].

**ARTICLE 18  
INDEPENDENT CONTRACTOR**

18.1. Generally.

The contractor, at all times, shall be an independent contractor. The contractor shall be fully responsible for all acts and omissions of its employees, subcontractors and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the contractor and the county by virtue of this contract. No provision of this contract shall be for the benefit of any other party than the county and contractor.

**ARTICLE 19  
NOTIFICATION**

19.1. Generally.

When notice is permitted or required by this contract, it shall be in writing and shall be presumed delivered when delivered in person or three days subsequent to the date placed, postage prepaid, in the U.S. mail, certified or registered, return receipt requested, and addressed to the parties at the following addresses:

All notifications shall be made in writing to the following addresses:

For the contractor:	For the county:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Either party hereto may from time to time designate another and different address for receipt of notice by giving notice of such change of address.

**ARTICLE 20  
INCORPORATED DOCUMENTS**

20.1. Generally.

The following document is incorporated by reference as if fully reproduced in this section: Policy for Procurement of Right-of-Way Acquisition Services for Dallas County.

ARTICLE 21  
ORDER OF PRECEDENCE

21.1. Resolution of inconsistencies.

In the event of any inconsistency between the provisions of this agreement, the inconsistency shall be resolved by giving precedence in the following order:

- (1) The work orders;
- (2) This contract; and
- (3) The documents listed in article 20, incorporated documents.

ARTICLE 22  
CONFIDENTIALITY

22.1. Nondisclosure of information.

All information furnished to the contractor by the county, the contractor's work product, in any form, parcels, projects that are the subject of this contract and all other items developed by the contractor shall not be disclosed to any third party without the prior written consent of the county.

ARTICLE 23  
NONDISCRIMINATION

23.1. By contractor.

As a condition of this contract, the contractor will take all necessary action to ensure that, in connection with any work under this contract, it will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly, or through contractual or other arrangements. In this regard, the contractor shall keep, retain and safeguard all records relating to this contract or work performed under such contract for a minimum of three years, with full access allowed to authorized representatives of the county upon request for purposes of evaluating compliance with this and other provisions of this contract.

ARTICLE 24  
ASSIGNMENT

24.1. Generally.

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this contract. The contractor shall not assign, sublet or transfer this contract or any interest in this contract without prior written authorization of the county commissioners court.

ARTICLE 25  
SIGNATORY WARRANTY

25.1. Generally.

The undersigned signatory for the contractor hereby represents and warrants that he is an officer of the organization for which he has executed this contract and that he has full and complete authority to enter into this contract on behalf of the firm. The execution of such contract is the act of the contractor and has been delivered and, subsequent to execution by the county, constitutes a legal, valid and binding obligation

of the contractor, its successors and assigns and shall inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

## ARTICLE 26 MISCELLANEOUS GENERAL PROVISIONS

### 26.1. Applicable law.

This contract and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the state and venue shall be in the county. Notwithstanding anything in this contract to the contrary, this lease is expressly made subject to the county's sovereign immunity, V.T.C.A., Civil Practice and Remedies Code title 5, and all applicable state and federal laws.

### 26.2. Entire agreement.

This contract, including all work orders, all exhibits and addendum, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as provided in this contract.

### 26.3. Severability.

If any provision of this contract shall be held invalid, void or unenforceable, the remaining provisions of this contract shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

### 26.4. Default; waiver; mitigation.

It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit to any remedies set forth in this contract does not preclude pursuit of other remedies in this contract or provided by law. The contractor shall have a duty to mitigate damages.

### 26.5. Rights and remedies cumulative.

The rights and remedies provided by this contract are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights are in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

### 26.6. Headings.

The titles which are used following the number of each section or subsection of this article are only for convenience in locating various provisions of this contract and shall not be deemed to affect the interpretation or construction of such provision.

### 26.7. Number and gender.

Words of any gender used in this contract shall be held and construed to include any other gender. Words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

### 26.8. Counterparts.

This agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

### 26.9. Funding.

Notwithstanding any provisions contained in this contract, this contract is expressly contingent upon the availability of funding for each item and obligation contained in this contract for the term of the agreement and any extension thereto. The contractor shall have no right of action against the county if the county is unable to fulfill its obligations under this contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this contract or failure to budget or authorize funding for this contract during the current or future fiscal years. If the county is unable to fulfill its obligations under this contract as a result of lack of sufficient funding or if funds become unavailable, the county, at its sole

discretion, may, subsequent to execution by the county, provide funds from a separate source or terminate this contract.

ARTICLE 27  
FINANCIAL INTEREST PROHIBITED; CONFIDENTIALITY

27.1. By contractor.

The contractor covenants and represents that the contractor, its officers, employees, agents, consultants and subcontractors, will have no financial interest, direct or indirect, in the purchase or sale of any property, business or related venture associated with any land parcel under this contract.

27.2. By county.

The contractor understands that no officer or employee of the county shall have any financial interest, direct or indirect, in any contract with the county, or be financially interested, directly or indirectly, in the sale to the county of any land, property, tract, parcel or services, except on behalf of the county as an officer or employee. Any violation of this prohibition, with the express knowledge of the person or corporation contracting with the county shall render the contract involved voidable by the commissioners court.

27.3. Nondisclosure.

The contractor's reports, evaluation, electronic files/computer media and all other documentation and work developed by the contractor shall not be disclosed to any third parties without the prior approval of the director of public works.

ARTICLE 28  
ENFORCEMENT; VENUE; GOVERNING LAWS AND NOTICES

28.1. Generally.

This contract shall be enforceable in the county, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions in this contract, exclusive venue for the same shall lie in the county. This contract shall be governed by and construed in accordance with the laws and court decisions of the state.

28.2. Notices and correspondence.

All notices and correspondence to the county by the contractor shall be mailed or delivered as follows:

Dallas					County
Director		of	Public		Works
411	Elm		Street,	Fourth	Floor
Dallas, Texas 75202-3389					

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Street Address, No P.O. Box)

\_\_\_\_\_  
(City, State, ZIP Code)

ARTICLE 29  
TERM

29.1. Generally.

Unless sooner terminated in accordance with the applicable provisions of this contract, or extended by mutual agreement approved by the county commissioners court, the term of this contract shall be from the date of award and execution by the county commissioners court and continue one year with the option of extending the contract for an additional one year, provided that parties concur, or until the final completion of the project and all services in connection therewith and resolution of any outstanding project-related claims or disputes.

29.2. Schedule; personnel.

The contractor understands that the project performance schedule related to each work order is of critical importance and agrees to undertake all necessary efforts to expedite the right-of-way acquisition services required in this contract, so that the project can be let as scheduled. In this regard, the contractor shall proceed with sufficient qualified personnel and resources necessary to fully and timely accomplish all services required under this contract in the highest professional manner. Under no circumstances shall the contractor replace any key person, employee or subcontractor/consultant originally submitted for the purposes of securing this contract without prior approval of the county.

IN WITNESS WHEREOF, THE COUNTY OF DALLAS has caused this contract to be signed by its county judge, duly authorized to execute the same in its behalf by Court No. \_\_\_\_\_, approved by the commissioners court on (date), and, signing by and through its duly authorized representative, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this contract.

CONTRACTOR:	COUNTY OF DALLAS, TEXAS
_____	
By: _____ Name/Title	By: _____ (name), County Judge
Date: _____	Date: _____
	APPROVED AS TO FORM:
	By: _____ Assistant District Attorney
	Date: _____

(Ord. No. 99-771, exh. C, 4-20-1999)

ATTACHMENT 1 TO EXHIBIT B  
INDEFINITE QUANTITY RIGHT-OF-WAY ACQUISITION SERVICES WORK ORDER

\_\_\_\_\_  
CONTRACTOR:

WORK ORDER NO. \_\_\_\_\_ COURT ORDER NO. \_\_\_\_\_ DATE \_\_\_\_\_ /  
 \_\_\_\_\_ / \_\_\_\_\_

SCOPE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

TOTAL BASIC FEE (BASED ON ATTACHED SCHEDULE)	\$ _____
TOTAL REIMBURSABLE CHARGES (BASED ON ATTACHED SCHEDULE)	\$ _____
LUMP SUM TOTAL WORK ORDER NOTICE TO PROCEED	\$ _____
BEGINNING WORK ORDER ____ (date) ____	COMPLETION ____ (date) ____

General Provision: Terms and conditions of contract between Dallas County and \_\_\_\_\_ (contractor) approved by Commissioners Court Order No. \_\_\_\_\_ dated \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ remain in effect. This work order incorporation by reference the request for proposal and contractor's proposal response dated \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.

Recommended  
(name)  
Director of Public Works

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

APPROVED BY:	ACCEPTED BY:
_____ (name) County Judge	_____ Contractor's Name/Title

SCHEDULE OF RIGHT-OF-WAY SERVICES

	ACTIVITY	FEE RATE/PARCEL	NO. UNITS	TOTAL
	Administration:	_____/PARCEL	_____	_____
Appraisal:				

	Industrial	<u>      </u> /PARCEL	_____	_____
	Commercial	<u>      </u> /PARCEL	_____	_____
	Residential	<u>      </u> /PARCEL	_____	_____
	Undeveloped	<u>      </u> /PARCEL	_____	_____
Negotiation:				
	Industrial	<u>      </u> /PARCEL	_____	_____
	Commercial	<u>      </u> /PARCEL	_____	_____
	Residential	<u>      </u> /PARCEL	_____	_____
	Undeveloped	<u>      </u> /PARCEL	_____	_____
Condemnation Support:				
	Appraisal	<u>      </u> /PARCEL	_____	_____
	Negotiation	<u>      </u> /PARCEL	_____	_____
Title				
	Research	<u>      </u> /PARCEL	_____	_____
	Insurance	<u>      </u> /PARCEL	_____	_____
Closing Services		<u>      </u> /PARCEL	_____	_____

Reimbursable charges: In addition to the basic services fees, reimbursable charges may be authorized including:

- A. Additional meetings/presentations where the county has requested the contractor's attendance will be compensated at the rate of \_\_\_\_\_ per hour. Chargeable time shall be computed from the time the contractor arrives at the prescribed meeting location through termination of the meeting (minimum one hour) with no additional cost for travel expense.

- B. Assistance to the county as expert witness in any litigation with third parties and condemnation proceedings will be compensated based on an hourly rate for each hour in which contractor's preparation and presence is required. Chargeable time shall be computed from the time the contractor arrives and departs the meeting and/or the actual documented time (time sheet) spent to prepare for such litigation, including travel costs. The total cost to the county shall not exceed \_\_\_\_\_ at \_\_\_\_\_ hourly rate.
- C. Special contract services, when required and approved by the county, will be compensated at the invoice cost to the contractor plus ten percent.

The cost to the county shall not exceed \_\_\_\_\_ .

TOTAL \_\_\_\_\_

(Ord. No. 99-771, exh. A, 4-20-1999)

Secs. 110-66—110-90. - Reserved.

## **ARTICLE IV. - TAKINGS IMPACT ASSESSMENT POLICY**

Sec. 110-91. - Purpose.

The purpose of this policy is to establish guidelines and procedures for Takings Impact Assessment (TIA), pursuant to the provisions of V.T.C.A., Ch. 2007. This policy will be applicable to all county departments who submit items for consideration and formal action by the commissioners court.

(Ord. No. 2006-1454, 8-22-2006)

Sec. 110-92. - Background.

In 1995, the Texas Legislature passed Senate Bill 14, the Private Real Property Rights Preservation Act, which is codified in Chapter 2007 of the Texas Government Code. Beginning September 1, 1997, counties must begin complying with these provisions. Section 2007.043 of the Act requires that every county action, including every regulation, policy, guideline, court resolution or order, be analyzed to determine whether the action may result in a "taking" of private real property. This may be done one of two ways:

- (1) By determining that the action is not a taking because it falls within one of several predetermined categories of actions that by their nature will have no adverse effect on private real property, or
- (2) By performing a takings impact assessment (TIA). Even if a TIA has been performed, an affected property owner can sue, within 180 days, to validate the action and/or declare a taking, if they can prove that the action reduced the value of their property by 25 percent or more.

(Ord. No. 2006-1454, 8-22-2006)

Sec. 110-93. - Procedure.

Each item submitted for inclusion on the official commissioners court agenda for action by the commissioners court shall determine if a private real property interest is involved. If the answer to this inquiry is yes, the department will complete and have attached a completed "Takings Impact Assessment Checklist." This checklist has been designed to insure that TIAs are properly performed in compliance with statutory requirements. This checklist will then become part of the court record and maintained by the county clerk.

(Ord. No. 2006-1454, 8-22-2006)

Sec. 110-94. - TIA waiver.

In consideration of expediting and shortening the approval process for platting or any other commissioners court action that may result in a taking, the real property owner may elect to waive the rights granted under the Private Real Property Right Preservation Act, by executing a "Waiver of Takings Impact Assessment (TIA)". The waiver must be notarized and included with the proposed final action submitted to the commissioners court, if the developer elects to exercise this option.

(Ord. No. 2006-1454, 8-22-2006)