

Indiana Department of Transportation

Real Estate Division



PROPERTY MANAGEMENT MANUAL

2011 – 2014

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INTRODUCTION

Purpose

The purpose of this manual is to provide a guide for persons interested in INDOT procedures for managing properties acquired for transportation improvements and to ensure that the process is administered in an equitable and uniform manner to all persons affected by such projects. These procedures are determined by Indiana Statutes, Federal Highway Administration Procedures, and policies of the Indiana Department of Transportation and the Indiana Department of Administration.

Property Management has three basic objectives; deliver all payments for the acquisition of right of way, clear the right of way prior to construction and recover an optimum amount of expenses associated with land acquisition.

Operating procedures are prescribed for the functional areas of administrative practices, payment delivery, new acquisitions, property leasing, improvement removal, right of way clearance, disposal of excess land and outlines the District's responsibilities for Property Management procedures within the separate District areas prior to project lettings.

Conflict of Interest

Accountability to the public is focused upon by many people outside the department. Property Management agents must be constantly alert to the smallest perception that his or her activities could be questioned by the general public. Accountability starts with the individual agent and how the agent performs his or her job. When dealing with the public, honesty and appropriate business practices are very important. Although the department is not operating for a profit, it is responsible for a very large amount of money. Any time there is money involved, there is the possibility of fraud, waste, abuse or mismanagement of those funds. The property management agent must be constantly aware of the penalties of conflict of interest laws and procedures. The policy of the department follows the laws of the State and the regulations of the Federal Highway Administration. Indiana Code (IC) 35-44-1-3 states "A public servant who knowingly or intentionally (1) has a pecuniary interest in; or (2) derives profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony."

Federal Highway Administration Regulations, 23 CFR Sec. 1.33 states "No engineer, attorney, appraiser, inspector or other person performing services for a State or governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such office, employee or person have not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section."

CHAPTER 1

ADMINISTRATIVE PRACTICES

Administrative practices reflect standards that satisfy requirements of the Federal Highway Administration and State statutes. Records of projects involving Federal participation are subject to review and audited by the Federal Highway Administration representatives at any time.

Financial Transactions

Procedures for delivering land acquisition payments to landowners and receipts from sales, rentals, or other property transactions are prescribed by administrative directive and the State Board of Accounts. Diligent adherence to the established procedures provides standards of accountability adequate to meet requirements of the Federal Highway Administration.

Standard Forms

Routine forms have been designed for activities of a recurring nature. Sales contracts, lease agreements, receipts and closing statements are examples of forms currently in use. Standard forms appreciably lighten the burden of administrative correspondence and improve record keeping practices. Property Management is charged with the continuing task of designing and redesigning forms, as appropriate, for accomplishing actions that lend themselves to standardized procedures.

Advance Programming

The nature and scope of advance programming are determined primarily by acquisition lead-time. With adequate lead-time for the acquisition of improved properties ahead of construction operations, plans can be developed for the orderly and efficient disposition of improvements. The ultimate goal and primary objective is to certify prior to construction that the right of way is clear.

Property Inventory

Property Management maintains the inventory of all improvements on land purchased for transportation projects. The fixtures and improvements (items acquired), where applicable, are posted in the Land Records System (LRS). Property Management also maintains the LRS inventory of excess land and other property acquired by the State in fee title, by the eminent domain process, or by right of way grant and held for wetlands or other mitigating purposes.

CHAPTER 2

PARCELS, PAYMENTS and NOTICES

Parcel Files, Secured and Condemned

All parcel files are routed to Property Management to identify improvements in the right of way that require removal, to identify and record excess land that was acquired and to deliver payment for the acquisition.

1. Secured and condemned parcel files are reviewed to identify improvements or personal property in the acquired and existing right of way. Personal property or improvements in the acquired right of way are entered in the LRS as “Acquired”, “Cost to Cure”, “Both” or “None”. A brief description of the improvement is also entered.
 - a. **Acquired** improvements in the acquired right of way. These improvements are INDOT property after payment. A 30 day notice to vacate is not required and INDOT has these improvements removed in its own time by various methods explained in Chapter 3 once possession has been secured.
 - b. **Cost to Cure** improvements in the acquired right of way. These improvements are property for which the owner will be paid money to remove them from the acquired right of way. A 30 Day Notice to vacate is required to be delivered to the owner. If not removed within 30 days, the improvement becomes an encroachment and a final notice is delivered to the owner. If the owner fails to remove the encroachment, INDOT will remove these in its own time by various methods explained in Chapter 3.
 - c. **Encroachments** in the existing right of way. These are improvements that have been illegally place in the existing right of way. The appropriate district is responsible for the removal of encroachments in the existing right of way. An encroachment notice is sent to the district when identified in the appraisal. See Example 2-C, page 2-7.
2. Secured parcel files are reviewed for payment and delivery instructions, property taxes to pay, mortgage balance to pay, mortgage release to obtain, mobile home titles to obtain, etc.
3. Any necessary payment notices and closing statements are prepared for mailing or delivery with the payment for secured parcels.

4. Parcel files are reviewed to identify excess land, wetlands or any other special classification property. The buyer's status report and the appraisal in the parcel file should list any excess lands or wetlands acquired on the parcel. The information is entered in the LRS excess land inventory.
5. Parcel files are held in Property Management until all payments have been mailed or delivered. Once all Property Management information has been extracted, with Cost to Cure information sent to the District to monitor the removal and clearing and all payments have been delivered the parcel files are sent to Records for filing.

Delivery of Payments

When checks for property payment are received in Property Management from the Services Section, each check is accompanied by a copy of the claim voucher. The check payee name(s) and check amount(s) are compared with the claim voucher(s) and the warranty deed(s) to insure the total compensation due is ready for delivery.

When there is a difference of information the parcel file must be reviewed to ascertain the reason for the difference. The most common reason would be the owner has elected to retain certain items which INDOT purchased. A retention letter or Buyer's report would cite a retention value and that value should be the difference between the warranty deed amount and the check(s) total. See Example 2-G, page 2-11.

Checks are mailed or delivered in accordance with instructions on the reverse side of the claim voucher as written by the buyer. The information should include a contact person, their address and their telephone number. All checks mailed use the UPS mailing service to assure timely service, confirmation and monitoring delivery schedules. When requested per instructions hand delivery will be completed by Property Management Specialists. The check delivery method, the delivering agent and the delivery date are entered in the LRS.

1. **Payments mailed to property owner without 30 day notices:** The check and a closing statement are mailed to the property owner. The parcel paid date and the parcel clear date are entered in the LRS.
2. **Payments mailed to property owners with 30 day notices:** The check, closing statement, and a 30 day notice are mailed to the property owner. These items are mailed to the property owner using UPS mailing service. The service provides confirmation of delivery. The paid date and the 30 day expiration date are entered in the LRS.
3. **Payments delivered by agent when necessary:** The check, a closing statement and if necessary a 30 day notice are given to a Property Management Agent for delivery.

4. The delivering agent contacts all parties by telephone, verifies the terms of the payments, and schedules the closing. When the checks are delivered, the delivering agent dates the closing statement and has the statement signed by the check recipient. The delivering agent returns one closing statement for the records file. The parcel paid date and either the parcel clear date or the 30 day expiration date are entered in the LRS.
5. **Payments mailed to clerk of the courts:** Condemned parcel payments are ordered by the court where the eminent domain case was filed. Checks for such payments are made payable to the clerk of courts of the appropriate county. The check, the Attorney General's transmittal form, a claim voucher, and a copy of the court order are received in Property Management from the Services Section. Upon receipt of these documents, the court order is compared to the information in the LRS. The LRS information is revised to conform to the court order.

The check and a cover letter are mailed to the clerk of the court to whom the check is made payable. The clerk of the court is requested to send Property Management a receipt. Upon obtaining the receipt from the clerk of the court the paid receipt date is entered in the LRS as the money posted paid date. The receipt and all relevant documents are forwarded to Records for filing.

Notices and Closing Issues

Closing Statement. A closing statement is prepared for each parcel acquired. Each payee receives the closing statement. The closing statement includes the total amount of compensation for the parcel, the name of each payee and the amount of compensation to each payee. See Example 2-A, page 2-5.

30 Day Notice to Vacate. When a parcel involves improvements, e.g. a building, a sign, etc; a notice to vacate is sent or delivered, along with the acquisition payment, to the owner giving the owner 30 days to vacate the improvement or remove from the acquired right of way the improvements not acquired by the State. The 30 day expiration date is entered in the LRS. See Example 2-B, page 2-6. For condemned parcels the 30 Day Notice is not necessary per IC 32-24, INDOT takes possession when monies are posted to the court. Property Management will issue a 'courtesy' 30-Day Notice. See Example 2-B.1, page 2-6.1.

Special Notice Letters. When property owners are paid damages to replace certain items like septic systems, utility lines or livestock containment fences, special notice letters will be sent reminding them that they will soon lose the utility of those original items and that they should take steps to replace them. See Examples 2-C through 2-F, pages 2-7 through 2-10.

Mortgages. Closings may require mortgage payoffs and mortgage releases obtained from the lender. If the buyer was unable to obtain a needed mortgage release, instructions will be entered on the reverse side of the payment voucher. The instructions should include the contact person, address, telephone number and the mortgage account number. The agent mailing or delivering the payment makes prior contact by telephone with the mortgage company and the property owner to verify the amounts to be received before mailing to insure all checks and documents are accurate.

Property Taxes. When property taxes are to be paid as part of the acquisition a separate check is prepared with the property owner and the appropriate county treasurer as co-payees. Before mailing or delivering any payments the property management agent will check with the county prior to mailing or delivery to verify that the amount of property taxes due are covered by the check. If the check amount is not correct, a new check must be prepared if additional funds or a refund can not be arranged. The property tax check will be mailed to the owner using UPS delivery service for endorsement. The check will be returned by the owner to Property Management before any other funds are mailed or delivered.

EXAMPLE 2-A

	INDIANA DEPARTMENT OF TRANSPORTATION <i>Driving Indiana's Economic Growth</i>	
	100 North Senate Avenue Room N642 Indianapolis, Indiana 46204-2216 (317) 232-5005 FAX: (317) 233-3055	Mitchell E. Daniels, Jr., Governor Michael W. Reed, Commissioner

December 30, 2010
CLOSING STATEMENT

**Fee Owner(s)
 Address**

<u>County</u>	<u>Code</u>	<u>Parcel</u>

Location of Property:	
Area and Type of Interest Acquired:	

STATE WARRANTS

Payee	Purchase Price:
	Amount
Total of all Warrants:	
\$0.00	

x		Date
x		Date
x		Date

EXAMPLE 2-B

30-Day NOTICE TO VACATE

Code No.: 9999

Parcel No.: 99

County: Marion

The Indiana Department of Transportation has acquired the property, generally located at:

Address or Location: 9 South US 99

This is your order to vacate. In order to comply with State and Federal regulations, it is our responsibility to notify you that the item(s) which you agreed to move, must be removed from the right-of-way no later than Date: _____.

Items in the Right-of-Way: Personal property

In some instances, you may have been compensated for the loss of items that will be addressed by the construction contractor. (Ex. **RELOCATING** electric lines or sewer lines; **REMOVAL** of septic systems or fingers; etc). In these situations, this notification will alert you to take any necessary action to avoid interrupted utility of these items. (Ex. **INSTALL** new septic system, new septic fingers, new electric lines; etc.)

Be aware that any items left in the right-of-way after the specified date, will remain at your risk. Contractors will be authorized to remove these items and you may be charged for the expense, if you were paid to remove them. In order to ensure that the construction phase of this project goes smoothly for you, as well as the contractor, please contact _____ at _____ if questions arise.

Thank you in advance for complying with this request.

Sincerely,

Property Management Specialist
Real Estate Division

cc: Records
Relocation

EXAMPLE 2-B.1

December 30, 2010

Honest Abe Attorney
999 Elm St.
Anywhere, USA

RE: Code: **9999**
Parcel: **99**
County: Marion
Cause #: **9999 9999 9999 9999 9999**

The State of Indiana, on behalf of the Indiana Department of Transportation, has filed suit in eminent domain to acquire a portion of your client's, **Happy Gilmore**, real estate under the above-referenced project to improve **USR 1**. The Marion County Court has appropriated your client's real estate and appointed three appraisers to determine the value of that real estate together with any resulting damages caused by that appropriation. The appraisers have returned their report and have assessed total damages due under the appropriation at **\$1.00**. On **9-9-9999** the State deposited this amount with the **Marion** County Clerk and now, pursuant to IC 32-24-1-10, has a right to take immediate possession of that real estate appropriated by the Court.

Please instruct your client to remove any of their personal property remaining in the right of way, which includes a **sign** upon the appropriated real estate by **10-9-9999**. When the item(s) have been removed from the acquired right-of-way, please call my office to avoid further notices.

Respectfully,

Jeff Hinrichs
Property Management
Real Estate Division

JH;jh

Attorney General's Office
Records

EXAMPLE 2-C

District Encroachment Notification

317-999-9999

Date:

TO: Ima Engineer
District Permits Engineer
Best District

FROM: Jane E. Jones
Property Management Unit

RE: **ENCROACHMENT(S)**
Sta: Approx. Sta 999+999, Line "A", Right
Code No.: 9999
Parcel No.: 99
Contract No.: R-99999
Des. No.: 9999999
Road: US 99
County: Marion
Letting Date: December 17, 9999

We recently acquired the referenced parcel and it is noted in our file that this parcel contains an encroachment. This information is being provided for your information and files in order for the District to take any necessary steps to resolve this problem. The encroachment(s) may or may not interfere with the construction of the project, but I just wanted to give you an advance notice. Please let me know if you require any additional information. Pertinent information follows:

Owner's Name: John and Jane Smith
Owner's Phone No.: 999-999-9999
Location of parcel: 9 North US 99
Encroachment: Fence

JES:js
cc: Records

EXAMPLE 2-D

Special Letter – Sewer

317-999-9999

Date:

John and Jane Smith
999 Elm St
Anywhere, USA

Code No.: 9999
Parcel No.: 99
County: Somewhere in Indiana
Certified No.: 9999 9999 9999 9999 9999

The Indiana Department of Transportation has acquired the property, generally located at:

Address or Location: 9 North US 99

In order to ensure that the construction phase of this project goes smoothly for you, as well as the contractor, we wish to remind you that you need to pursue hooking up to the municipal sewers. Please feel free to contact Sarah Sherlock at (317) 111-1111 if questions arise.

Respectfully,

Jane E. Jones
Property Management

JES:js
cc: Records
File

EXAMPLE 2-E

Special Letter – Electric

317-999-9999

Date:

John and Jane Smith
999 Elm St
Anywhere, USA

Code No.: 9999
Parcel No.: 99
County: Marion
Certified No.: 9999 9999 9999 9999 9999

The Indiana Department of Transportation has acquired the property, generally located at:

Address or Location: 9 North US 99

Items in the Right-of-Way: Yard Light

In order to ensure that the construction phase of this project goes smoothly for you, as well as the contractor, we wish to remind you that you need to disconnect the electricity from the item(s) in the right-of-way. Please feel free to contact Sarah Sherlock at (317) 111-1111 if questions arise.

Respectfully,

Jane E. Jones
Property Management

JES:js
cc: Records
File

EXAMPLE 2-F

Special Letter – Livestock

317-999-9999

Date:

John and Jane Smith
999 Elm St
Anywhere, USA

Code No.: 9999
Parcel No.: 99
County: Somewhere in Indiana
Certified No.: 9999 9999 9999 9999 9999

The Indiana Department of Transportation has acquired the property, generally located at:

Address or Location: 9 North US 99

In order to ensure that the construction phase of this project goes smoothly for you, as well as the contractor, we wish to remind you that you were compensated to install livestock fence. Please feel free to contact Sarah Sherlock at (317) 111-1111 if questions arise.

Respectfully,

Jane E. Jones
Property Management

JES:js
cc: Records
File

EXAMPLE 2-G

Retention by Owner

DATE: July 1, 2009

BUYER: Jack Buyer

OWNER: John Jones

RETENTION BY OWNER

COUNTY: Marion

THE OWNER OF THE PROPERTY BEING ACQUIRED AS:

PROJECT: ST-9999-9(A)

PARCEL: 9999-99

MAY BE AUTHORIZED TO RETAIN THE FOLLOWING:

4 ceiling fans, 2 in the living room and 1 in each of the two bedrooms. The hot water heater and the dish washer.

FOR A SALVAGE VALUE ESTIMATE OF \$ 600.00

A RETENTION AGREEMENT WITH THE OWNER TO RETAIN THE ABOVE LISTED IMPROVEMENT(S) WILL BE REQUESTED AFTER THE RETENTION HAS BEEN ACCEPTED BY THE OWNER. THE AGREEMENT BETWEEN BOTH PARTIES STATES THE COVENANTS AND STIPULATIONS NECESSARY TO REMOVE ITEMS FROM THE PREMISES.

A Surety Performance Bond in the amount of \$ 0 is required.

The owner has 30 days from the date of payment to remove the improvements from the Right of Way.

Property Management Section Administrator

CHAPTER 3

CLEARING THE RIGHT OF WAY

The goal of Property Management is to clear all right of way acquired parcels prior to the project's scheduled right of way clear date. Bare land parcels, parcels with no improvements, are cleared upon payment.

Owner Retention of Improvements

An owner may opt to retain fixtures or improvements and remove them from the right of way purchased by INDOT. Generally this solution is the most advantageous if there is adequate lead-time to remove the fixture or improvement before the right of way clear date. Retentions fall into two categories, minor retentions consisting of fixtures to a building, signs, flag poles, etc. and major retentions, such as buildings on foundations.

Retaining Minor Improvements:

In the case of minor retentions INDOT's offer includes the improvement but the owner chooses to retain it. The INDOT Buyer determines an estimated retention or salvage value for the improvement. See Example 2-G, page 2-11. The estimated retention value is deducted from the original good faith offer. A 30-day Notice is issued to remove retained minor retention items.

Owners opting to retain minor improvements are responsible for leaving the site secure. All windows and doors are to be shut and locked. If windows and doors are retained, the openings must be boarded over.

Retaining Major Improvements:

When the owner wishes to retain major improvements the owner must hire a moving contractor establish the cost for both moving and site preparation at the new location. The cost estimate must be submitted to the Real Estate Division for retention values. See Example 3-F, page 3-15 & 16. The INDOT Buyer requests a retention value from Property Management using the Retention by Owner form. See Example 3-D, page 3-13. The Buyer prepares a retention agreement which lists the items to be retained and the owner's obligations to satisfy the agreement. See Example 3-A, page 3-4 through 3-8. A copy of this agreement is retained in the parcel file.

Property Management first determines whether there is sufficient lead time for the owner to remove the improvement. In considering lead time, generally 180 days are allowed for removal of improvements for major retentions. Property Management must also consider the time to process the payment as the owner will not be expected to begin removal for at least 30 days after payment.

Property Management determines the retention value by deducting from the appraised value of the improvement the estimated cost to remove and relocate the improvement and the cost to prepare a new site for the improvement. New site preparations may include a new foundation, septic or sewer installations, and minor repairs after movement. Property Management needs to confer with INDOT Relocation Unit to determine if any costs will be reimbursed under relocation entitlements.

Property Management also establishes the amount of the performance bond that will be withheld from the just compensation due to the property owner. This amount will be paid to the property owner once the items or improvements are removed from the right of way and all conditions of the retention agreement are met. This will be verified by INDOT District Staff. (See page 3-7 for explanations of performance bonds and release of retained amounts)

Property Management forwards the retention value and performance bond amount to the Buyer who deducts the retention value from the original good faith offer. The performance bond amount is withheld from payment until the retention agreement has been satisfied. The owner may opt to provide this bond separate from the acquisition transaction. (See page 3-7). The items retained are identified in LRS in the improvement description area of the parcel maintenance. This information might be pertinent when preparing a demolition list for a contract. If the owner disputes the retention value, Property Management will consider moving and new site costs submitted by the owner. Owner must seek moving contractor for moving costs and new site preparation cost and submit to the Real Estate Division for retention values.

Cost to Cure Improvements

A cost to cure improvement is one whose owner has been paid to remove or relocate it as a portion of the good faith offer. Large lawn ornaments, fencing and signs are examples of cost to cure improvements. Cost to cure means the owner is paid to cure the problem created by the project. This is not to be confused with improvements paid as cost to cure to replace an improvement. When an owner is paid cost to cure to replace, the improvement belongs to INDOT.

At the buying stage of acquiring the land, the owner signs a firm offer letter which contains the following paragraph:

“Any improvements or items within the State’s proposed right of way which you are responsible for moving must be removed within 30 days of the date you are paid. At the end of that 30-day period, any items remaining on State right of way become encroachments. Pursuant to Indiana law, the Department has the right to remove any encroachment from its right of way after giving the owner proper notice. If you have any questions concerning the removal of items, contact the Property Management Section”

Clearing Cost to Cure Items from the Right of Way

1. Property Management identifies a cost to cure when the secured parcel arrives for payment. At that time, the item(s), date, and location are posted in LRS.
2. Property Management sends a 30-day notice, Example 2-B, page 2-6, by mail to the owner with the parcel payment. Copies are made of pictures and descriptions of cost to cure items, as well as plan sheets and sent to the District to monitor the cost to cure items and the expiration of the 30-day notice.

Improvements Retained by INDOT or Other State Agencies.

When INDOT acquires the fixtures or improvements, the district may identify items that might be of use. If a district determines that there is a need for any of the items purchased by INDOT, a memorandum of request is prepared and signed by the District Director and forwarded to the Real Estate Division Property Management Section. See Example 3-E, page 3-14. The memorandum lists the specific items requested and explains where the items will be used; pictures of the requested item(s) must be attached to the request form. Internal Affairs Division has advised that items removed by the district not be put in storage for future use. Removal of the item(s) occurs only after the Real Estate Division Manager and the Facilities Management Manager sign the approval. When the request has been approved the district(s) makes arrangements for the removal of the item(s). Office of Facilities Management field administrators will, as a part of assessments, verify compliance.

Property Management may notify other State agencies of fixtures or improvements not wanted by INDOT. Whenever any of the State's agencies desire to obtain any of these items purchased by INDOT, a letter of request from the head of the requesting agency to INDOT's Commissioner through Real Estate Division Property Management is required. If the Commissioner approves, Property Management contacts the requesting agency and makes arrangements for their staff to remove the item(s).

Certifying the Right of Way Clear

Property Management is responsible for certifying that right of way is clear for construction projects. For right of way to be certified clear, all occupants and personal property must be removed from the acquired right of way. Certification letters are due to the Contracts Section not later than 10 days prior to the plans, specifications, and estimates (P S & E) due date to FHWA; this is approximately thirteen weeks before the bid letting date.

Prior to preparing a certification letter, Property Management checks the LRS to determine if all parcels on a project are clear for letting. If all parcels are clear, Property Management sends the certification letter. See Example 3-P, page 3-10. Certification letters are signed by the ORE Manager.

Certifications with Exceptions

Certifying a project with exceptions should be kept to a minimum, only utilized when requested by the Project Manager, not by the Real Estate Division, and should only be prepared and submitted when it is in the best interest of the public. Certifications with exceptions should be compliant with Federal Regulations (23 CFR part 635.309).

A certification letter with exceptions can be sent when a Project Manager requests it. If all parcels are not clear, Property Management checks with the Buying Manager and/or Project Manager to estimate when the unclear parcels will be secured, paid, and clear. The Buying Manager and/or Project Manager confers with the Designers and/or Design Consultants to determine if the contractor can start work without the exception parcels and whether or not work can progress until the parcels are secured and clear. If the start of construction is possible with the exceptions, a certification letter listing the exceptions is sent. See Example 3-C, page 3-11. The exception letter must list the parcel number, property owner's name, right of way stationing, reason for the parcel not being clear and estimated clear date.

Up-dated certifications are issued by Property Management as required or when all of the right of way is finally clear.

The date of certification and certification with exception, if necessary, is entered in the LRS. Original certification letters are to be sent to Contracts Section.

Before a project is certified clear, Property Management compares the Billboard Inventory with the LRS parcel listing to insure all billboards in the existing or new right of way have been addressed.

Billboard Inventory

Surveyors of new right of way are required to locate and identify all billboards located in the existing or proposed right of way. The surveyors provide this billboard inventory to the Real Estate Division.

The Review Appraiser compares this inventory with his own site inspection. The Review Appraiser determines the ownership of the billboard and verifies the location of the billboard. The Review Appraiser adds this information to the inventory. The Review Appraiser's entry identifies who is responsible for removing the billboard. If a supplemental parcel is needed, the Review Appraiser creates the parcel in LRS or requests that the Engineering Section create the parcel in LRS. The Review Appraiser notifies the Real Estate Division Property Management Section of any encroaching billboards. Property Management notifies the appropriate district of all encroachments. See Example 2-C, page 2-7.

EXAMPLE 3-A

RETENTION AGREEMENT OF PERSONAL ITEMS

PROJECT: _____
PARCEL(S): _____
CODE: _____
COUNTY: _____
GRANTOR: _____

THIS AGREEMENT, made this _____ day of _____, 2_____, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, hereinafter sometimes referred to as STATE, and _____, whose address is _____, Social Security Number _____, hereinafter referred to as OWNER.

The parties to this Agreement, in covenants and stipulations set out herein, agree as follows:

1. That the STATE requires certain real estate described to wit:

herein sometimes referred to as PREMISES.
2. That on said PREMISES there now exists certain property to which OWNER claims legal or equitable interest with said property being described as follows:

_____ herein sometimes referred to as PROPERTY.
3. Both parties stipulate to the need for the removal of the PROPERTY from the PREMISES, and the OWNER wishes to retain possession of the PROPERTY.
4. OWNER hereby understands and agrees to remove the PROPERTY from the PREMISES within _____ calendar days from the aforementioned PREMISES. Furthermore, OWNER is to leave if anything, only concrete flatwork on the PREMISES. Any excavation to facilitate moving of improvements or removal of

EXAMPLE 3-A Continued

shrubbery, trees or fences , shall be refilled and leveled during the time period stated above. Said removal process includes not only the items categorized as PROPERTY, but the representative items listed agreed in writing by both parties, STATE and OWNER, and all items which are a natural consequence of the removal process or are reasonable foreseeable by the parties.

5. OWNER hereby understands and agrees that the removal of the retained structure necessitates following the Asbestos NESHAP Inspection and Removal Requirements (see attachment). INDOT shall not be liable for any fees pertaining to the inspection or the removal of asbestos from the retained structure, or any fines levied for failure of required notifications.
6. Forty-eight hours prior to removal of the structure, the OWNER shall contact the Construction Engineer in the Indiana Department of Transportation's _____ District Office. Phone _____. All work must be done under the supervision of the Construction Engineer. Before the withheld portion of Just Compensation will be released, the Construction Engineer must approve the site from where the structure has been removed and sign the release form attached to this agreement. The OWNER shall be responsible for backfilling the crawl space and/or basement according to the specifications:
 - a. Remove all fixtures and appliances such as furnace, water heater, etc., from basement or cellar. Concrete and other debris shall not be discarded in basement.
 - b. All drains shall be sealed with concrete.
 - c. Basement floor shall be broken.
 - d. Basement or crawl space walls shall be demolished and removed down to a point two feet below ground level or sub-grade elevation, whichever is lower.
 - e. Basement or crawl space shall be backfilled with "B" Borrow (Pit run gravel).
 - f. Basement must be filled same day structure is removed.

Example 3-A Continued

7. OWNER shall only have the right to remove the PROPERTY and related matters, stated herein, and shall enjoy no other rights upon the PREMISES.
8. In consideration for STATE'S potential loss, damages and dilemma of having OWNER refuse or neglect to remove the PROPERTY from the PREMISES, the parties hereby mutually understand and agree that the STATE shall hold \$ _____ of the Just Compensation, which sum is calculated and agreed to prior to the OWNER signing this agreement, which such sum should be adequate to perform stated removal of the PROPERTY from the PREMISES, and payment for other damages occasioned by and because of non-performance of OWNER.
9. If OWNER refuses or neglects to remove the PROPERTY from the PREMISES within the stated time periods herein, OWNER shall be considered defaulted on the agreement, shall forfeit the entire sum withheld from the total Just Compensation as actual and liquidated damages, and the STATE shall have the expressed authority to remove the PROPERTY from the PREMISES without incurring any liability to OWNER.
10. OWNER understands and agrees to assume all liability for injuries to persons or property while removing the items referenced in Paragraph 2, and agrees to save the STATE harmless from and against any and all claims for damages emanating there from.
11. OWNER is solely responsible for securing all necessary zoning, building and moving permits and licenses. The STATE accepts no responsibility for requests or granting of their permits or licenses.

EXAMPLE 3-A Continued

IN WITNESS WHEREOF, the said parties have caused their signatures to be affixed by the appropriate officials or person(s) on the date first written above in the City of _____, State of _____.

OWNER

STATE

BY: _____
(Written Signature)

(Printed Name)

(Title)

(Date)

(Written Signature)

(Printed Name)

(Title)

(Date)

STATE OF INDIANA)

) SS:

COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County, personally appeared _____ and _____ being first duly sworn by me upon _____ oath, say(s) that the terms and conditions in the foregoing Agreement are true.

Signed and sealed the _____ day of _____, 2____.

(Written Signature)
Notary Public

(Printed Signature)
Notary Public

My Commission expires: _____

County of Residence: _____

(SEE CONSTRUCTION ENGINEER'S CERTIFICATION ATTACHED)

EXAMPLE 3-A Continued

CONSTRUCTION ENGINEER'S CERTIFICATION

I hereby approve the work done to remove said structures from the right of way and backfill, if necessary, the crawl space and/or basement according to the following specifications:

- A. All appliances and debris shall be removed and disposed of.
- B. All drains shall be sealed with concrete.
- C. Basement floor shall be broken.
- D. Basement or crawl space walls shall be demolished and removed down to a point two feet below ground level or sub-grade elevation, whichever is lower.
- E. Basement or crawl space shall be back-filled with "B" Borrow (pit run gravel).
- F. Basement must be filled the same day the structure is removed.

(Signature)
Construction Engineer

(Date)

(Printed Name)
Construction Engineer

(District) INDOT

EXAMPLE 3-B

(317) 232-5005

MEMORANDUM

TO: John Contracts, Manager
Contracts and Construction - IGCN-855

FROM: Kevan McClure, Manager
Office of Real Estate

RE: **CERTIFICATION LETTER**
CODE:
CONTRACT:
DES:
ROAD:
COUNTY:
LOCATION:
LETTING:

This is to advise that all parcels within the limits of the above referenced project have been acquired, and the right-of-way is clear for contract letting.

Title III, PL-646, and applicable rules and regulations of the Federal Highway Administration have been complied with in the acquisition of right-of-way.

No relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24 and Title II, PL 91-646, are not applicable.

-or

Relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24 and Title II, PL 91-646, are being applied.

KLM:SLC:slc
cc: Records

Electronic:

District Deputy Commissioner
District Construction Engineer
District Right of Way Services Manager
Project Manager
Program Manager
RFC Responsible Person
S. Penturf
M. Thomas
S. Languell
Property Management

EXAMPLE 3-C

(317) 232-5007

MEMORANDUM

TO: John Contracts, Manager
 Contracts and Construction - IGCN-855

FROM: Kevan McClure, Manager
 Office of Real Estate

RE: **CERTIFICATION WITH EXCEPTIONS**
 CODE:
 CONTRACT:
 DES:
 ROAD:
 COUNTY:
 LOCATION:
 LETTING:

This is to advise that all parcels within the limits of the above referenced project have been acquired, and the right-of-way is clear for contract letting, with the following exceptions.

Parcel : : Approx. Sta + , to + , Line “ “, . This parcel is active in buying and we anticipate it being paid by . Therefore, we anticipate that the right-of-way will be clear on or before .

Parcel : : Approx. Sta + , to + , Line “ “, . This parcel has been condemned and we estimate that money will be posted by . Therefore, we anticipate that the right-of-way will be clear on or before .

Title III, PL-646, and applicable rules and regulations of the Federal Highway Administration have been complied with in the acquisition of right-of-way.

Relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24 and Title II, PL 91-646, are being applied.

- Or -

No relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24 and Title II, PL 91-646, are not applicable.

KLM:SLC:slc
 cc: Records

Electronic:
 District Deputy Commissioner
 District Construction Engineer
 District Right of Way Services Manager
 Project Manager

Example 3-C Continued

Program Manager
RFC Responsible Person
S. Penturf
M. Thomas
S. Languell
K. Woodruff, FHWA

EXAMPLE 3-D

RETENTION BY OWNER

DATE: _____

BUYER: _____

OWNER: _____

COUNTY: _____

THE OWNER OF THE PROPERTY BEING ACQUIRED AS:

PROJECT: _____

PARCEL: _____

MAY BE AUTHORIZED TO RETAIN THE FOLLOWING:

FOR A SALVAGE VALUE ESTIMATE OF \$ _____

A RETENTION AGREEMENT WITH THE OWNER TO RETAIN THE ABOVE LISTED IMPROVEMENT(S) WILL BE REQUESTED AFTER THE RETENTION HAS BEEN ACCEPTED BY THE OWNER. THE AGREEMENT BETWEEN BOTH PARTIES STATES THE COVENANTS AND STIPULATIONS NECESSARY TO REMOVE ITEMS FROM THE PREMISES.

A Surety Performance Bond in the amount of \$ _____ is required.

The owner has _____ days from the date of payment to remove the improvements from the Right of Way.

Property Management Administrator

EXAMPLE 3-E

REMOVAL OF ITEMS IN THE R/W FOR USE IN THE DISTRICTS

Because of monitoring problems of items removed from properties acquired by INDOT for projects, we have provided new guide lines that **MUST** be followed. These guide lines will not be changed or altered and no special form is needed to apply, however any item removed from INDOT property must be documented by the following procedure.

1. Letter requesting to remove items must be approved by the District Director's **SIGNATURE**, not initials.
2. List of items to be removed.
3. List what the items will be used for.
4. List where the items will be used.
5. Submit request to Property Management Administrator, Stephen L. Catron, N642, Property Management, Office of Real Estate.
 - A. No items will be removed without Real Estate Division Manager's approval.
 - B. NO ITEMS WILL BE REMOVED AND STORED FOR FUTURE USE.**

EXAMPLE 3-F

MAJOR RETENTION QUESTIONNAIRE

Check all that applies.

LA Code: _____
Parcel #: _____
Buyer: _____
Date: _____

- 1 Story House?
- 2 Story House?
- Modular home?
- Mobile home?
- House with a crawlspace?
- House with basement?
- House with crawlspace and an attached garage?
- House with a basement and an attached garage?
- House on concrete slab?
- House only and not the attached garage?
- Garage only and not the attached house?
- Garage with concrete floor?
- Garage with stone floor?
- Pole Barn with concrete floor?
- Pole Barn with stone floor?
- Other items not mentioned above? List below:

_____ Square footage of structure to move.
_____ Square footage of basement to be constructed.
_____ Distance to move the structure (miles or feet).

_____ Can the structure be moved within 180 days from Secured Status
_____ If not, how much time is needed? The project schedule for letting the project may not allow additional time for the preparation of the building site and moving the structure to the new location.

Requestor to Provide Cost Estimates for the following for services needed:

1. Structure moving costs from a house/structure moving company
2. Building site preparation costs

- **The above information is to be returned to Property Management to determine a Retention Value.**

Example 3-F Continued

Requestor may want to consider the information mentioned below before making a decision to retain and move a structure to another location. The requestor may ask the moving company if any of these points are covered in the moving cost estimate.

- Your first step is to investigate your local by-laws and building restrictions to see if it possible to move the structure, set backs required, lot size needed, utilities available, zoning requirements, elevations needed and permits required.
- Contact utility companies for costs and removal of power lines and poles that could be removed and replaced for the move.
- Contact railroad companies for costs and permits needed to cross their lines.
- Roadway permits and road closures needed for moving the structure.
- Prior removal of trees, shrubs, landscaping, and other structures may need to be removed to allow the contractor access for structure preparation to move. Check your local authorities for permits needed.
- Costs for lot preparation, new foundation, concrete slab, or basement, utility hookups and or well and septic.

EXAMPLE 3G

OBTAINING RETENTION VALUES

- _____ Determine the square footage of structure to be moved.
- _____ Determine the square footage of basement, if any.
- _____ Determine square footage of garage to be moved, if any.
- _____ Determine amount for septic or city hook-up.
- _____ Determine amount for well or city hook-up.
- _____ Determine amount for possible repair to structure after moving.
- _____ Determine amount for electrical hook-up.
- _____ Determine amount for foundation replacement.

Square footage of structure w/basement or partial @ \$2500+ 10 % + \$6.00 = Surety Bond _____.

Contact a moving company to get an estimate for the following:

Cost of foundation.....	\$ _____
Cost of moving structure.....	\$ _____
Cost of replacement of septic.....	\$ _____
Cost of utility hook-up.....	\$ _____
<u>Cost of repair of structure after move.....</u>	<u>\$ _____</u>
Total Cost	_____

Cost of paid for the structure..... _____
minus Cost of expenses to move the structure ..
= the retention value of the structure..... _____

CHAPTER 4

ACQUISITIONS WITH BUILDINGS

The LRS (Land Records System) is updated daily, and the Project and Parcel Status Report, updated monthly, identify parcels with buildings included in the acquisition. Property Management routinely queries and reviews the LRS and the report to become acquainted with new projects and to plan and prepare for taking possession and the District to disposal of such buildings.

1. In the event an occupied building is within the right of way to be acquired, an electronic copy of the Relocation "Daily Notice", Example 4-A, page 4-4, is received from the Buying and or Relocation units within the Real Estate Division which describes the occupied buildings. Upon receipt of this preliminary information the property management parcel maintenance fields in LRS are completed.
2. A secured parcel file is reviewed to determine if a building within the acquired right of way has been retained by the owner. If an owner has chosen to retain and move the building, the building is identified as a cost to cure item in the parcel maintenance screen in LRS. The building must be removed within the time allowed in the retention contract as determined by the Project Manager and the District to meet the project schedule.
3. At the time payment is made to the owner, a 30 day notice to vacate the property is delivered to the owner and occupant of the building as explained in Chapter 2. The date of the expiration of the 30 days is entered in LRS. Renters will not be issued a 30 day notice before the owner.
4. Property Management must coordinate with Relocation on vacate notices. Even though a 30 day notice may have expired, occupants can not be required to vacate until the Relocation 90 day notice has expired.
5. On or before the expiration date of the 30 day notice, the District contacts the property owner and/or tenant or inspection to find out if they have moved. An extension of time to vacate or a lease may be discussed with the owner or tenant if there is enough time prior to the construction contract letting. Again, Property Management must coordinate with Project Manager, District and Relocation to see if there are special issues involved with having the occupants vacate.

Eviction

If an owner occupant or tenant fails to vacate after 30 days and an extension can not be allowed, eviction may be the only recourse for taking possession.

1. Secured Parcels.
 - a. If the occupants have not vacated within the 30 days, the District contacts Property Management to have a 10 day letter prepared and signed by a Deputy Attorney General (DAG) (Real Estate Litigation Section). After the letter is signed the DAG will send by certified mail and copy Property Management of the expiration date and notify the District. The expiration date of the 10 day notice is entered in LRS.
 - b. If the occupants have not vacated within the 10 days, Property Management will ask the DAG (Real Estate Litigation Section) to proceed with eviction. Property Management will send a documentation packet containing copies of all letters sent to the occupants, delivery confirmation information, the Acceptance of Offer, recorded warranty deed and state warrant cashed by the owner. Property Management will also provide the letting date of the project.
 - c. The DAG (Real Estate Litigation Section) will file for the eviction action and notify Property Management and notify the District of expiration date.
2. Condemned Parcels.
 - a. Copy of the 30 day notice should already have been sent to the DAG.
 - b. If the occupant does not vacate within thirty days, Property Management will notify the DAG (Real Estate Litigation Section). The DAG (Real Estate Litigation Section) will prepare and send a 10 day notice letter with a copy to Property Management. The expiration day of the 10 day notice will be entered in LRS.
6. If the occupant does not vacate within 10 days, Property Management will notify the Real Estate Litigation Section and send a documentation packet containing copies of all letters sent to the property owner or legal representative and delivery confirmation information. Property Management will also provide the letting date of the project. Property Management will notify the District of expiration of the vacate notice.
 - d. The DAG will file for the eviction action.

Property Inspection

After an owner or occupant has been paid, 30-day notice expired to vacate the property, INDOT takes possession, the Relocation agent contacts the District 48 hours prior to the inspection date, the responsibility to inspect is the Relocation Section and secure is the Districts. The property must be inspected and secured from intrusion. Relocation must inspect and verify that moves have occurred in accordance with entitlements and therefore it is most likely that Relocation will turn over keys to the District to be able to secure buildings. Thereafter, the Districts will monitor the property and prepare the property for demolition or add it to the prime contract.

District Responsibilities (See Chapter 8)

1. Monitoring Cost to Cure items in Right of way
2. Issuing 30-day Cost to Cure notices
3. Inspections of structures acquired with Relocation agents
4. Securing, baiting and posting acquired structures
5. Ordering Utility Disconnect notices
6. Ordering Asbestos Inspections
7. Posting right of way clear, structure to prime, or clear demolition in LRS
8. Monitoring removal of retained major retentions
9. Holding public auctions when needed
10. Trash and Weed Control
11. Police and Fire Department training agreements
12. Removal of unauthorized encroachments

INDIANA DEPARTMENT OF TRANSPORTATION, OFFICE OF REAL ESTATE

DAILY NOTICE

(This section to be filled out by the Relocation Unit)

Agent Assigned:	_____
Date Assigned:	_____
Date Due:	_____

Project: _____

Parcel: _____

Road: _____

County: _____

Code: _____

Total Take Partial Take

Temporary Take

Amount of Offer \$ _____

TO: **Supervisor, Relocation Unit**

1. The Date of Initiation of Negotiations for this parcel was: _____

2. Name of Owner: _____

Address: _____ Phone: _____

3. Buildings or Structures Occupied by:

Owner Contract Buyer Tenant Name: _____

Address: _____ Phone: _____

Use reverse side if more space is needed to show all Owners, Contract Buyers, and Tenants

4. Address (or Location) of Property in the Right of Way: _____

5. Describe Buildings / Structures and other Real Property included in the Offer: _____

6. Parcel Contains Landlocked Property with Building Structures Yes No

7. Signs in Right of Way but not included in the Offer: (Describe, and Include Station Numbers)

8. Remarks in General: _____

Original to Central Relocation Office

DATE: _____

Copy to Property Management

Copy to Records Unit

Copy to Parcel

Land Agent

CHAPTER 5

RENTALS, LEASES AND USE AGREEMENTS

Depending on projected contract letting dates, it may be economically feasible to rent improvements prior to their removal or sale. The decision to lease improvements is made during buying or relocation activities with the approvals of the Districts, Project Managers and Real Estate Division Manager. In any event the decision to lease to the owner or tenant is made as early in the acquisition process as possible.

Leasing Process

Property Management administers the leasing of state property that has been acquired for right of way. Factors that affect the decision to lease state property include:

1. Approval from District and Project Manager to lease back.
2. The delay of the occupant in vacating the premises beyond thirty (30) days after payment is made to the owner.
3. Adequate lead-time prior to project construction.
4. Financial return that could be realized through renting or leasing of property.

If it is determined that it is economically feasible to lease improvements prior to their removal or sale, the following procedures apply:

1. Contact the requester to determine what they want to lease and length of stay.
2. Identify the code number and parcel and check SPMS for adequate time to lease back prior to Ready for Contract (RFC) date.
3. Contact Project Manager to discuss time frame and feasibility.
4. Request Records file for information concerning parcel.
5. Review appraisal for amount paid for the subject property.

6. Establish the monthly payment amount. To do so, identify the amount that was paid for the property in the appraisal and use the mortgage amortization calculator found on the Web (Bankrate.com). Enter purchase price, going rate (current) over 360 months, which will give you a principal and interest amount. This amount will become the lease amount due each month. (See Example)

Example:

State purchased property for	\$450,000
Lessee to lease total acquisition	\$450,000
Current interest rate	5.5%
Over the term of 360 months equals	(\$2,555.05)

7. All leases to begin 30 days after payment.

Preparing the Lease Agreement

1. Property Management prepares a lease agreement and one copy. Property Management will have the lessee sign the lease and a non-collusion affidavit. See Example 5-A, page 5-7. Leases on current projects (short term leases) are signed by the Lessee, the Real Estate Division Manager, the Commissioner of Department of Administration, and the Budget Agency and approved by the Deputy Attorney General. After all signatures have been affixed, one copy is retained by Property Management and a fully executed copy is sent to the lessee. A copy is also sent to the district in which the property is located and to Records Section to be placed in the parcel file.
2. A “New Lease Account” letter, Example 5-B, page 5-8, is prepared and the original sent to the Agent Cashier in the Accounting Division in Room N725. The letter includes the name of the lessee, address of the property, project and parcel number, effective date of the lease, and monthly rental. A copy of this letter is sent to Relocation and one copy is retained by Property Management.
3. Property Management monitors rental collections through the period of the lease.
4. Property Management monitors the maintenance of the property and ascertains that the tenant is complying with the terms of the lease.
 - a. Property Management with District cooperation ensures that the improvements are vacated in sufficient time for their removal in accordance with the established right of way clear date.

5. All monies accrued by the INDOT from the rental property are receipted only by the Agent Cashier, Accounting Division, Room N725, State Office Building.
 - a. Payment for rent is by money order or certified check, made payable to the Indiana Department of Transportation. Cash sent by mail is discouraged. The tenant is instructed to make all payments in person or by mailing directly to:
 - b.

The Indiana Department of Transportation
Real Estate Division, Property Management
Room N642, State Office Building
Indianapolis, Indiana 46204,
ATTN: Dena Morgan
 - c. The Accounting Division sets up a receivable account for the new lease, and sends a receipt to the lessee for each payment received. A copy of the receipt is provided to Property Management.
 - d. Property Management maintains a record of payments made by each tenant.
 - e. Rental accounts are considered past due on the 10th day following the due date, and Property Management then initiates a past due notice to the lessee. One copy of the past due notice is retained in Property Management.
6. In some cases, a security deposit may be collected from the tenant. It is deposited with the agent cashier and designated as a security deposit instead of income.
 - a. Property Management posts all pertinent information concerning the lease in the LRS.

Insurance Furnished By Lessee

On residential leases, the lessee is required to furnish a policy of public liability insurance in the amount of \$100,000 against the claim of one person and \$300,000 against the claim of two or more persons.

When leasing to a commercial business, new or hold-over, the lessee is required to furnish a policy of public liability insurance in the amount of \$300,000 against the claim of one person and \$2,000,000 against the claim of two or more persons in one incident.

Termination/Eviction

Property Management sends out all termination notices to tenants. See Example 5-C, page 5-9. When a lease is terminated, a notice of termination, Example 5-D, page 5-10, is also sent to the Accounting Division. One copy of the notice is retained by Property Management. A copy is sent to Relocation if the lessee is a holdover occupant.

1. The tenancy of the lessee under the rental agreement may be terminated at any time by either party by giving the other party not less than thirty (30) days prior notice in writing.
2. Termination of the lease by INDOT for cause, failure to pay rent, or keep any covenant of the lease, is by letter stating the circumstances. Eviction for cause must conform to applicable state and local law. Any person who has lawfully occupied the real property prior to the State's acquisition, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in federal regulations.
3. Eviction action is initiated by Property Management any time the lessee fails to:
 - a. Vacate the premises after Ninety (90) day notice from the Relocation Section and thirty (30) day written notice from Property Management have expired. (Both notices can expire on the same day.)
 - b. Pay rent for a period in excess of thirty (30) days.
 - c. Keep any covenant of the lease.
4. The eviction process described in Chapter 4 is used to regain possession of the property.

Refund of Security Deposit of Leased Property

1. A claim voucher for the release of a security deposit is prepared and coded.
2. The lessee signs the claim voucher and a W-9 form.
3. The W-9 and voucher are processed per standard procedures.
4. The refund check is sent directly to the lessee by the Accounting and Control Division.

Air Space and Joint Use Leases

23 CFR 710.405, states that certain procedures are established relative to the use and control of airspace. Airspace, as used in this chapter, is that space located above, at, or below the highway's established grade-line, lying within the approved right of way limits. Land under an elevated highway is a good example of air space. Air Space is recognized on State Roads and Interstate Highways.

Where the Department of Transportation has acquired sufficient legal right, title, or interest in the right of way of a highway to permit the use of certain airspace for non-highway purposes, and where such airspace is not required presently for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted subject to prior approval by INDOT and FHWA. FHWA approval is only required on interstates, non-interstate roadways are exempt from FHWA approval. Such "Joint Use Leases", are also approved by the appropriate district director and the Real Estate Division Manager.

Joint Use Leases can have terms up to 40 years, but are renegotiated and renewed every four years. In cases where cities or counties wish to occupy air space an easement agreement may be negotiated for a 40-year term. All Joint Use Lease Agreements are signed by the Commissioner of the Department of Transportation, the Attorney General and the Governor.

Vegetation for Energy Production Leases

IC 8-23-24.5 encourages the use of highway right-of-way owned by the State to promote the growth and harvesting of vegetation to be used as fuels and other energy products. "Highway rights-of-way" refer to highway rights-of-way for which responsibility is assigned to the department. "Vegetation" refers to grasses or other plants that are suitable for processing into fuels or other energy products. The term does not include grasses or other plants that may be used to feed livestock. To the extent permitted by federal law, the department shall make the use of highway rights-of-way as provided in this chapter a priority over all other uses.

To the extent permitted by federal law and when consistent with public safety, the department may enter into leases with appropriate persons for the persons to plant, maintain, and harvest vegetation on the highway rights-of-way for use in production of energy. A lease under this chapter must provide for the planting, maintaining, and harvesting of the vegetation at the lessee's cost; the lessee becomes the owner of the vegetation when harvested; the harvested vegetation must be used for the production of fuels or other energy products and the lease must include limitations on the height of any vegetation that is grown.

A lease under this chapter may provide any term of the lease that the department considers best to implement the intent of this chapter, but not for more than four (4) years; for the lease of parcels of sizes that the department considers the best to implement the intent of this chapter and any other provisions that the department considers useful to implement the intent of this chapter.

The department shall also award a lease under this chapter to the responsive and responsible bidder who submits the highest bid for the particular lease.

Leasing Processes for Energy Production & Air Space and Joint Use Leases (as applicable):

1. District will provide Property Management with the following:
 - a. District Deputy Commissioner's Approval Letter approving the lease.
 - b. Copy of the requestor's letter to lease said area with detailed intent.
 - c. Plan sheets highlighting and identifying the parcel(s) requested.
 - d. Copy of the Deed(s) for the parcel(s) requested.
 - e. Review and supply a survey and plat of the requested property.
 - f. Completed Non-Collusion Affidavit from requestor.

2. Central Office Property Management will:
 - a. Request an appraisal.
 - b. Prepare Lease and send to DAG for review and signature.
 - c. Prepare a Commissioner's Order with all justification documents to approve the lease and the lease amount for approval and signature.
 - d. Forward all justification documents to Federal Highway for FHWA APPROVAL along interstates only, non-interstate roadways do not require FHWA approval.
 - e. Once all approvals have been received send lease to requestor for signature. Lessee will return signed lease, along with lease monies, back to Central Office Property Management for deposit with Agent Cashier.
 - f. Prepare receipt letter and send to Agent Cashier for deposit.
 - g. Forward a copy of lease agreement to the respective District Real Estate Manager and place original lease in the Central Office file.
 - h. Post necessary lease data on the R/W Vegetation Lease spreadsheet and or LRS for tracking.

Oil & Gas Unit Agreements on INDOT Right of Way

1. A petition letter and unit agreement is received by DNR from the oil company.
2. DNR presents it to their commission. If the petition letter is approved by the DNR Board of Commissioners, the unit agreement is sent to INDOT.
3. INDOT reviews the agreement.
 - a. To verify that the land in question is in the right of way.
 - b. To make sure the agreement excludes INDOT right of way from drilling or infection.
 - c. To make sure no access, storage of equipment or use of land surface is allowed in the agreement.
4. An approval letter is signed by the INDOT Commissioner and the unit agreement and signed approval letter are returned to DNR for completion.

EXAMPLE 5-A

NON-COLLUSION AFFIDAVIT

State Form 4391

STATE OF INDIANA

SS:

COUNTY OF _____

The undersigned, being duly sworn on oath says, that he is the contracting party, or that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of the annexed contract other than that which appears upon the face of the contract.

Signature _____

Printed Name _____

Title _____

Company _____

Before me, a Notary Public in and for said County and State personally appeared, _____,

who acknowledged the truth of the statements in the foregoing affidavit on this _____ day of _____ 20_____.

Notary Signature _____

County of Residence Commission Expiration Date

Notary's Name (*Print or Type*)

EXAMPLE 5-B

(317) 111-9999

DATE: _____

MEMORANDUM

TO: Molly Money
Head Cashier
Accounting and Control Division

FROM: Lisa R. Papers
Property Management Specialist
Real Estate Division

RE: New Lease Account

Listed below is the information, which pertains to our new lease agreement. Please let me know if any additional information is required.

NAME: _____

MAILING ADDRESS: _____

LEASED PROPERTY ADDRESS: _____

Code: _____

Parcel: _____

Project No.: _____

Amount of Monthly Payment: \$_____

Amount Enclosed: _____

LRP:lp

Cc: Relocation
File

EXAMPLE 5-C

317-232-5005

DATE: _____

NAME: _____

ADDRESS: _____

RE: Code No.: _____
Parcel No.: _____
Project No.: _____
Certified Mail: _____

Dear Mr./Mrs. _____:

In accordance with existing State and Federal regulations, you are hereby notified that the Indiana Department of Transportation has acquired the property generally located at:

Address or Location: _____

Items in the Right-of-Way: _____

Current construction schedules require that we now terminate the lease agreement on this property. Please consider this letter as a notification to vacate the acquired Right-of-Way and remove all personal property there from, no later than: Date: _____

Your cooperation in providing a modern transportation system is very much appreciated.

Respectfully,

Stephen L. Catron
Property Management Administrator

SLC:sc

Cc: Records
File

EXAMPLE 5-D

December 30, 2010

MEMORANDUM:

TO: Agent Cashier
Division of Accounting and Control
Room N725

FROM: Stephen L. Catron, Administrator
Property Management
Real Estate Division

SUBJECT: **Terminated Lease**

A lease for the rental of property located at: S. side of SR 662, 400' West of Pollack Ave. in Newburgh, in Warrick County **PROJECT: ST-E930(B)**
CODE: 2510, PARCEL: 54SA has been terminated with: Chancellor Outdoor Group, .

cc: Relocation
Records
District

CHAPTER 6

EXCESS LAND AND EXCESS RIGHT OF WAY

This chapter deals with the disposition of State owned property rights in excess land, excess right of way and easements that are no longer required for highway use.

Excess Land Inventory

An excess land inventory is maintained by Central Office Property Management along with each district monitoring and maintaining their respective inventories accordingly. Excess land may be held by the State in fee, by right of way grant (easement), or by gift. The inventory also includes right of way that has been declared and sold as excess, and land purchased for wetland mitigation or other mandated mitigation.

Property Management reviews secured parcels to identify acquired excess and mitigation land. Excess land and land purchased for mitigation purposes is identified in the “Buyer’s Status Report” and in the appraisal with the cost value and the area acquired. Excess land is also created when a district declares right of way excess. Excess previously unidentified may also be discovered by research of other persons. All identified and discovered excess and mitigation land is entered in the LRS excess land inventory.

The information entered into the inventory comes from the secured parcel file. Much of the basic information relevant to the excess purchase is entered in LRS when the parcel is created. This information includes the owner’s name, address, county, route, project number, code number, parcel number, plan sheet information, areas to be acquired and nature of title. When the parcel has been secured, Property Management verifies, corrects or enters this information from the secured parcel file. At this time Property Management also enters the cost of the excess, whether the excess is marketable or not, if it is wetland suitable land and assigns an asset number. Upon disposal of any part of any area of excess land Property Management enters the sale price, the date of sale, the name of buyer, the area sold, any federal participation and any federal refund.

Excess Land

Excess land is land located outside the right of way limits on approved plans. Excess land is acquired with State funding only. By agreement, FHWA does not participate in acquiring property outside of the right of way limits. Land purchased as uneconomic remnants are excess land. Excess land is most always purchased in fee title. All excess land purchases are forwarded to the Environment, Planning and Engineering Division so that the land can be evaluated for its potential to be replacement wetlands and identified as such.

Excess Right of Way

Excess right of way is land located within the limits of a highway right of way but no longer needed as operating right of way. INDOT may own this land in fee or by easement (right of way grant). Requests to declare right of way excess begin with investigation by the district.

Upon receipt of a request to purchase right of way, the district reviews the original design plans to determine whether revisions to the design features have eliminated the original need for the right of way. If no change in design features has taken place or if the right of way may be needed now or any time in the near future, the area of right of way is not considered excess and will not be sold.

If the design features have changed, eliminating the original need for the requested area of right of way, the district office responds to a sale request with a letter of instruction to the requestor. The requestor is required to provide documented proof of current title to the subject property and/or the abutting property in the form of a deed(s) and copy of the Auditor's plat. The requestor must provide a signed and notarized affidavit, Example 6-A, page 6-9, stating that he/she is the owner or successor in title to the property from which the right of way was originally cut and that he/she is legally authorized to purchase the excess right of way under IC 8-23-7-14.

Upon determining the requestor to be an eligible purchaser, the district views the proposed site with the owner to reach a common understanding of the area requested, to verify that no area beyond the requestor's extended property lines is being requested to be sold and to determine its preliminary suitability for sale. The district issues a preliminary finding of suitability and requests that the District Right of Way Engineering Section have the site surveyed.

The District, with the assistance of CO PM, researches INDOT's title while the site is being surveyed. If the excess right of way request is not abutting a state road, the District verifies whether the "S" line of the right of way has been relinquished and whether INDOT retained any ownership. After the survey the district office inspects the staking of the requested area with the requestor to determine that it is excess right of way and submits a declaration of excess right of way letter to CO PM.

Right of way declared excess is assigned a code and parcel number by the Records Unit Supervisor and is entered in LRS as excess land. The disposition of right of way declared excess is the same as for the disposal of excess land except those required steps already accomplished are not repeated.

All right of way that abuts an **Interstate** and is declared excess by the district must be approved by FHWA before disposal; FHWA **does not require** a review and subsequent approval of non-interstate right of way for disposal. For sales of non-interstate right of way FHWA requires a Notification Letter along with a receipt of sale immediately after the sale is complete. See Examples 8-G, pg. 8-27 and 6-D pg 6-27.

Disposal of Excess Land

The procedures for disposing of excess land and excess right of way are in accordance with Indiana Code and will be processed by the District as a priority with a valid request. The District will also effectively manage their excess parcels in accordance with Executive Order 05-06 by marketing their inventories appropriately. With the support of Central Office Property Management, the District will obtain as much information as possible about the land of interest. INDOT plans and records are studied to determine the nature of title INDOT has in the land, the project code and parcel number by which the land was acquired, and any other issues that might affect the sale. It is important at this stage to determine if the land requested abuts a parcel of land from which it was separated and acquired by INDOT. This usually occurs only when right of way has been declared excess. Such excess land must first be offered to the owner of the abutting property from which it was separated. (IC 8-23-7-14) After a complete investigation of the requested land, the District, with the assistance of CO PM, acknowledges in writing the receipt of the request and that the disposal process has begun and if the land must first be offered to the owner of the abutting property from which it was separated.

The District, with the assistance of CO PM, forwards the information to their Right of Way Engineering section to have the land area verified. This is accomplished by reviewing the legal descriptions, abstracts and/or by survey. The district reviews the area to insure the disposition would not affect operational maintenance of the right of way or future district improvement plans. The disposition must be approved or disapproved by the district development engineer first and then by the district director.

Upon district approval, the request is to be reviewed and approved by the District Environment, Planning and Engineering Division and the Department of Natural Resources. These reviews and approvals are to insure the land is not suitable for wetlands and does not have any archaeological or historical significance.

After district approval and while awaiting archaeological and historical clearances the plan sheets, transfer documents of the original taking, and legal descriptions of the requested area are forwarded to the Appraising Section for appraisal. Excess land must be sold at or above its fair market value as determined by appraisers of INDOT. (IC 8-23-7-13)

Once the appraisal has been completed the District, with the assistance of CO PM, determines whether FHWA approval is also required for this disposition to proceed. If this disposition involves eliminating or creating a limited access right of way or if the excess land is the result of declaring right of way acquired along an interstate with federal participation as excess, FHWA must approve the disposition.

When all approvals have been obtained the District, with the assistance of CO PM, prepares an order for the signature of the INDOT Commissioner or his designee. The order declares the land excess and approves the disposition. The Commissioner or his designee returns the order to the District.

The concluding procedures depend on which agency, INDOT or IDOA, has the statutory authority.

Disposal by INDOT – refer to process steps pgs. 6-28 through 6-32

Excess land acquired by right of way grant is an easement INDOT has for construction, reconstruction and maintenance of a highway. The ownership of the underlying fee title remains with the grantor of the easement or their successor in title. INDOT interests held by right of way grant are most always right of way as opposed to excess land. (IC 8-23-4-9)

- a. When right of way acquired by grant is declared excess by the district, the District will prepare an order of abandonment. The abandonment will be signed by the INDOT Commissioner or his designee and mailed by certified mail to the owner of the underlying fee.
- b. If consideration was paid to the original owner for the acquisition of right of way, INDOT shall process the abandonment to the underlying fee owner for an administrative charge.

Excess land abutting property from which it was separated and acquired by INDOT must first be offered to the owner of the abutting property. This requirement is regardless of the appraised fair market value. The District makes the offer by certified mail to the last known address of the owner. If the owner accepts the offer, the excess land is conveyed to the owner by quitclaim deed upon payment to INDOT for not less than the fair market value of the land as determined by the appraisal. (IC 8-23-7-14) If the owner of the abutting property fails to accept the offer within thirty (30) days, INDOT may dispose of the land to other interested parties. (IC 8-23-7-15) Dispositions under IC 8-23-7-14 do not require approval from IDOA.

Excess land valued at four thousand dollars (\$4000) or less may be sold by INDOT without advertising or competitive bids for not less than the appraised value of the excess land upon approval of the INDOT Commissioner and the Governor. (IC 8-23-7-16)

- a. Provided there is only one interested party, the offer is made to the requestor. The offer is sent to the requestor with a non collusion affidavit and W-9 form by certified mail. The requestor is given thirty (30) days to respond by sending the completed and signed non collusion affidavit and W-9 form and monies to the District which in turn will forward to CO PM for deposit with the Agent Cashier.
- b. The received monies are placed in the safe until a quitclaim deed has been prepared. The prepared quitclaim is sent to the Chief Counsel to sign as the “preparer”, the Office of the Attorney General to sign as to “form and legality” and to the Governor to sign as the grantor.
- c. When the signed quitclaim deed has been received from the Governor’s office, the monies are retrieved from the safe and delivered to the Agent Cashier. A memorandum to the Agent Cashier is prepared by CO PM explaining the monies and how they are to be credited.
- d. Four copies are made of the completed quitclaim deed. The original is mailed by certified mail to the requestor. Copies are given to the District Development Engineer, the District Right of Way Engineering Section and Records. A copy is also mailed to CO PM for file.

Disposal by IDOA – refer to process steps pgs. 6-28 through 6-32

If the excess land has an appraised value of more than four thousand dollars (\$4000); or if there is more than one requestor for excess land appraised at four thousand dollars (\$4000) or less; or the disposition will be to another State agency; or the disposition will be to a political subdivision, the sale is sent to the Indiana Department of Administration (IDOA) for processing. (IC 8-23-7-15) If there is an active INDOT RFP for dispositions then the District will follow the contract accordingly with the assistance of CO PM.

- a. The order signed by the INDOT Commissioner, plan sheets, legal description, statement of appraised value, environmental categorical exclusion, DNR approval letter and any other pertinent information are sent to IDOA.
- b. IDOA sells the excess land in accordance with IC 4-20.5-7. Under this code the notice of the proposed disposition is forwarded to other State agencies and State educational institutions. IDOA gives priority preference to other State agencies, then State educational institutions, then political subdivisions and then to public sales by competitive bids or auction.

- c. **Transfers to other State agencies** can be initiated by INDOT before sending the proposed disposition to IDOA or transfers can be initiated by other State agencies as a result of them being notified by IDOA of INDOT's desire to dispose of the land. (IC 4-20.5-7-7)
- (1) The chief administrative authority of the receiving State agency signs a resolution finding the property necessary for that agency's use. The District prepares a "Declaration of Departmental Transfer".
 - (2) The declaration is routed to IDOA, the Office of the Attorney General and the Governor for approval and signature.
 - (3) This process is the same when INDOT acquires land from another State agency.
- d. Appraisals are not needed to transfer property to other State agencies or to receive properties from other State agencies.
- e. **Transfers to political subdivisions** can be initiated by INDOT before sending the proposed disposition to IDOA or transfers can be initiated by political subdivisions as a result of them being notified by IDOA of INDOT's desire to dispose of the land. (4-20.5-7-10)
- (1) Transfers to political subdivisions can be made with or without consideration. Except for unusual circumstances INDOT will approve transfers to political subdivisions without consideration only if the land will be for public use. A clause is placed within the quitclaim deed that reverts the transferred land back to the State when it ceases to be used for public purposes.
 - (2) A non-collusion affidavit and a resolution stating the desire of the political subdivision to have title to the land must be signed by the official(s) authorized to do so.

- f. **IDOA sale by competitive bidding or auction** occurs when no State agency, State educational institution or political subdivision has interest in the proposed disposition. (IC 4-20.5-7-11)
 - (1) Upon completion of the sale and receipt of monies IDOA completes the quitclaim deed, notifies the successful bidder and sends INDOT a copy of the quitclaim deed.
- g. IDOA transfers the monies to INDOT and sends INDOT a copy of the Journal Voucher (receipt) of monies collected and monies used for advertisements.

Relinquishments

When a portion of state right of way no longer serves a state function but continues to serve a local function, INDOT may declare that portion state surplus and relinquish that portion of right of way to a city, county or other political subdivision for maintenance. Relinquishments are negotiated with the political subdivision by the Relinquishment Section of the Program Development Division. See Example 6-C, pgs. 6-11 through 6-26. Relinquishments usually do not transfer title, but do have a provision to do so upon request. Requests for title transfers require legal descriptions and a quitclaim deed signed by the Attorney General and the Governor.

Credit to FHWA may also be a consideration and is processed as described on pg. 8.

Exchange of Land and Property Rights

Land or property rights owned in fee simple by INDOT can be exchanged for land or property rights needed by INDOT. Both the lands being transferred to INDOT and the lands being acquired by INDOT are appraised. Any difference in value is paid or received by INDOT.

(IC 8-23-7-17 and IC 8-23-7-18) Exchanges are either part of negotiation to acquire new right of way by the Buying Section or they are initiated by a district to change ingress and egress in a limited access right of way.

When such an exchange involves improvements to be constructed on the land additional steps must be taken. The parties involved in the exchange shall enter into a contractual agreement stating the terms of the exchange. All appraisals required by such an agreement shall include, as an element of value, any improvements to be constructed on the land. Before any appraisal is made and a value assigned to any prospective improvements, a construction contract, performance bond, plans and specifications are attached to and made a part of the exchange agreement. An exchange deed shall not be executed and delivered nor shall any difference in value be paid or received by the Department, until the improvements have been constructed. (IC 8-23-7-20 through IC 8-23-7-21)

Limited Access Right of Way

Limited Access Right of Way is a recorded restriction on the right of way line. INDOT acquires limited access right of way as a parcel acquisition. Limited access right of way may be continuous across an abutting property or it may have a break. Any changes in the limited access right of way must follow the same procedure as that for declaring right of way excess.

In addition to approval by the district, changes in limited access right of way should also be reviewed, approved and or denied by INDOT's Chief Engineer and FHWA. Plan sheets, legal descriptions, an environmental categorical exclusion, documents verifying ownership by the requestor and district approvals are submitted to the Deputy Chief Engineer and Chief Engineer for review and approval before requesting FHWA approval.

Upon approval by the district, INDOT's Chief Engineer and FHWA the disposal of limited access right of way is the same as the disposal of excess land or the exchange of excess land or property rights; if the process is not approved by INDOT's Chief Engineer and or FHWA the process stops.

Credit to Federal Highway Administration

FHWA must be reimbursed any monies used to purchase excess land or right of way which has been determined to be excess and sold. In June of 1988 INDOT stopped using federal funds in the acquisition of any excess land and processed a one time pay back to FHWA for all excess land previously acquired with federal participation. In April of 1995 INDOT discovered an additional 19 parcels of excess land that had been missed in the 1988 pay back. FHWA was reimbursed for those purchases. As a result of the payments to the FHWA future credits should not be necessary in excess land sales.

When excess right-of-way is appraised at a value exceeding \$1,000.00, the amount to be reimbursed to the FHWA is recorded in LRS. However, credit to FHWA will still be a part of the process when right of way is no longer necessary for operating right of way and declared excess. In these cases if there was federal participation in the cost of acquiring the land, INDOT may dispose of excess land with an appraised value of up to \$1,000.00 without recording a credit amount for use in future federal aid projects (Illus. 30). These monies may be retained and used for Title 23 uses. If the excess land is sold for more than \$1,000.00, the percentage of federal participation must be recorded on a deposit form, Example 6-B, page 6-10, and sent to the Accounting Division

EXAMPLE 6-A

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

Comes now the Affiant(s), _____, and swear and affirm to the following:

- 1) That the above Affiant(s) is(are) the sole owner(s)/heir(s) of the abutting parcels of Right of Way requested. SEE ATTACHED EXHIBITS [Copy of Auditor Plat(s)]
- 2) That the above Affiant(s) is(are) the sole owners of the said parcel(s) from with the Right of Way was separated and is(are) legally entitled to acquire the property. [SEE ATTACHED WARRANTY DEEDS.]
- 3) That the above Affiant(s) is(are) not creating an Encumbrance to properties adjacent to the Right of Way requested.

SUBSCRIBED AND SWORN TO THIS _____ DAY OF _____, 20__.

Affiant's printed name

Affiant's signature

State of Indiana)
) SS:
County of _____)

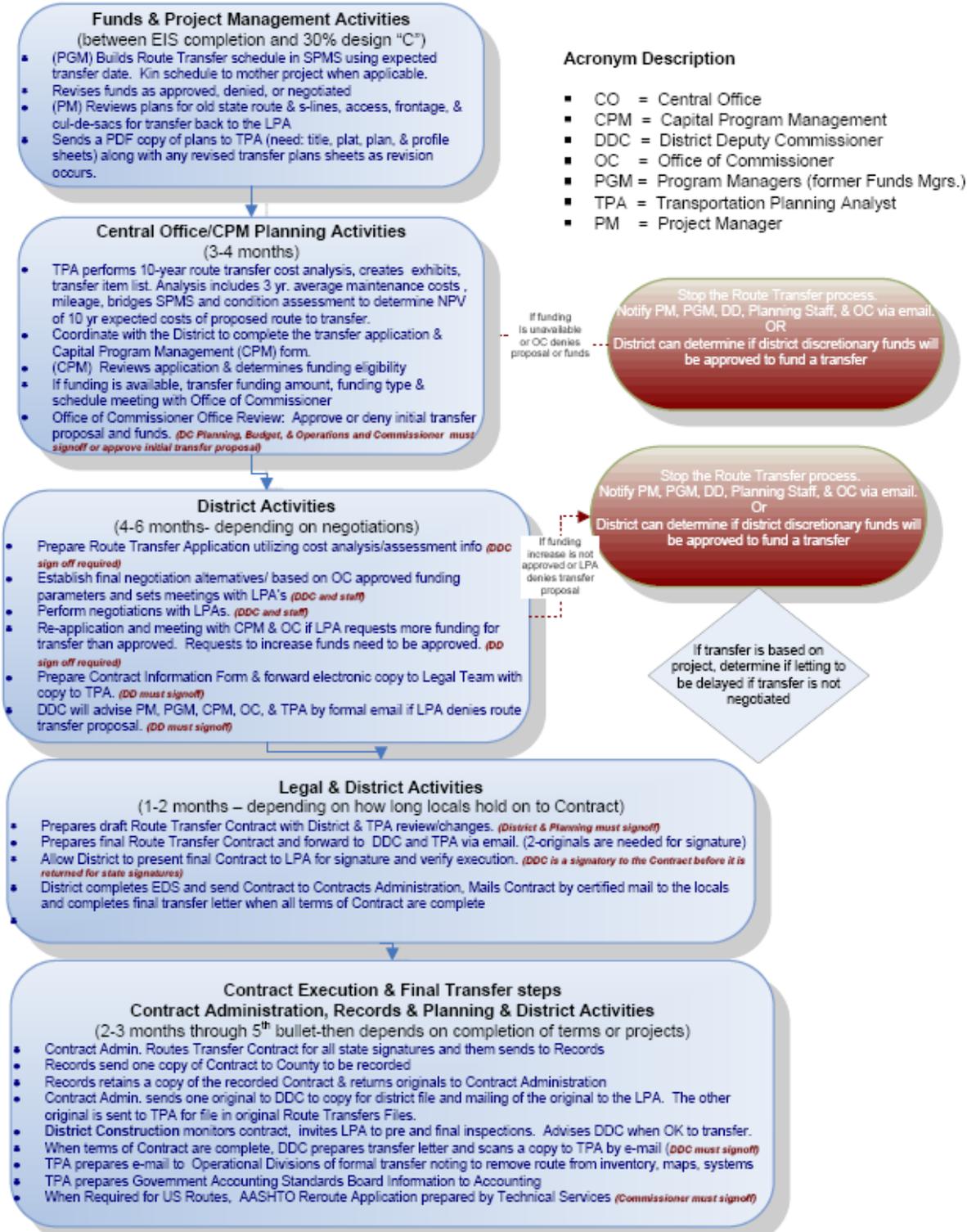
Subscribed and sworn to before me a Notary Public this _____ day of _____, 20__.

Notary Public

A Resident of _____ County Indiana
My Commission expires: _____

EXAMPLE 6-C

Route Transfer Process (Generalized Workflow)



EXAMPLE 6-C Continued

**ROAD TRANSFER
MEMORANDUM OF AGREEMENT
INDOT/CITY, COUNTY OR TOWN
For Transfer of the TRANSFERRED ROAD**

PREAMBLE

This Agreement is made and entered into effective as of _____, 2008 (hereinafter referred to as "Effective Date") by and between the Indiana Department of Transportation (hereinafter referred to as "INDOT"), and _____ (hereinafter referred to as the "CITY, COUNTY OR TOWN"), and jointly referred to as the "PARTIES."

RECITALS

WHEREAS, INDOT currently incurs the expense for the acquisition, operation, construction, maintenance, regulation and liability of the Transferred Road (as defined in Section 2(b) of this Agreement), including but not limited to, all right of way and all structures, the road surface, bridges, overpasses, tunnels, medians, pipes, snow and ice removal, sewers, storm water drainage, mowing, traffic signals, signs, outdoor advertising structures, driveways and permits relating to the Transferred Road; and

WHEREAS, INDOT desires to transfer, according to the terms of this Agreement, jurisdiction of the Transferred Road to the CITY, COUNTY OR TOWN, and the CITY, COUNTY OR TOWN is willing to accept in perpetuity jurisdiction of the Transferred Road under the terms and conditions set forth in this Agreement and assume full responsibility for all future operation, construction, maintenance, regulation and liability of the Transferred Road, including but not limited to, all right of way and all structures, the road surface, bridges, overpasses, medians, pipes, snow and ice removal, sewers, storm water drainage, mowing, traffic signals, signs, outdoor advertising structures, driveways and permits relating to the Transferred Road under the terms of this Agreement; and

WHEREAS, I.C. 8-23-4-10 and I.C. 8-23-4-12 authorize INDOT and the CITY, COUNTY OR TOWN to execute this Agreement; and

[INSERT ADDITIONAL RECITALS AS NECESSARY TO REFLECT THE REASONS FOR THE TRANSFER, ANY RELATED PROJECTS, AND MENTION OF ANY ASSOCIATED PAYMENTS.]

WHEREAS, the PARTIES agree that the Transferred Road will no longer be the most appropriate route to serve state traffic, but will continue to serve local access; and

WHEREAS, INDOT has identified the Transferred Road as a lower priority route in the state highway system but determined that the Transferred Road will continue to serve a useful purpose; and

EXAMPLE 6-C Continued

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the PARTIES hereto agree as follows:

1. Interpretation. The Preamble and Recitals recorded above are incorporated by reference into this Agreement.
2. Definitions.

[INCLUDE DESCRIPTIONS OF ASSOCIATED PROJECTS AND TRANSFERRED ROAD.]

- a. Project. The _____Project means_____. Following is a description of the elements of the _____Project.

[INCLUDE PROJECT DESCRIPTION OBTAINED FROM THE OWNER.]

- b. Transferred Road. The Transferred Road means the section of the [INSERT ROUTE NUMBER(S) OF THE TRANSFERRED ROAD E.G., “SR 111” described in Sections 2(b)(1) through 2(b)(3) below and illustrated in Attachments A and B, herein incorporated by reference

(1) [INCLUDE DESCRIPTION OF ROAD OBTAINED FROM THE OWNER]

(2) [INCLUDE DESCRIPTION AND BRIDGE INVENTORY NUMBERS OF ANY BRIDGES]

(3) [INCLUDE TOTAL MILEAGE].

- c. Date of Transfer. Date of Transfer means the date upon which INDOT will transfer the Transferred Road to the CITY, COUNTY or TOWN according to the terms of this Agreement. [INCLUDE EITHER THE DATE ITSELF OR THE METHOD BY WHICH SUCH DATE MAY BE IDENTIFIED IN THE FUTURE.]

3. Purpose. The purpose of this Agreement is to transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Road from INDOT to the CITY, COUNTY OR TOWN to the fullest extent permitted by applicable law. To comply with Indiana law regarding the sale of real estate, the PARTIES agree that INDOT is not transferring title to any real estate by way of this Agreement and that INDOT shall retain legal title of the Transferred Road including without limitation any real property underneath existing pavement and the accompanying right of way, as described in the land records of the COUNTY in which the Transferred Road is located.

EXAMPLE 6-C Continued

4. **Payment.** INDOT agrees to make payments to the CITY, COUNTY OR TOWN according to the terms listed below.

a. In lieu of (1) any additional improvements to the Transferred Road; (2) continued maintenance of the Transferred Road other than those described in Section of this Agreement, and/or (3) any costs that may arise pursuant to IC 8-23-21 with respect to an unofficial detour route resulting from any closure of ROAD, INDOT will pay the CITY, COUNTY OR TOWN in an amount not to exceed \$X,XXX,XXX.00 (XXXXXXXX DOLLARS).

b. The payment described in Section 4(a) above will be made to the CITY, COUNTY OR TOWN [in X installments] according to the following schedule:

1) *First Installment* of \$X,XXX,XXX.00 (XXXXXXXX DOLLARS) will be transferred to the CITY, COUNTY OR TOWN on or about DATE, but in no event before the Date of Transfer [OR INSERT ANOTHER DATE OBTAINED FROM OWNER].

2) *Second Installment* of \$X,XXX,XXX.00 (XXXXXXXX DOLLARS) will be transferred to the CITY, COUNTY OR TOWN on or about DATE, but in no event before the Date of Transfer [OR INSERT ANOTHER DATE OBTAINED FROM OWNER].

[INSERT ADDITIONAL INSTALLMENT DESCRIPTIONS AS NEEDED.]

c. The CITY, COUNTY OR TOWN agrees to remit an invoice to INDOT [for each installment] specifically referencing the Agreement on the invoice.

5. **Acceptance.** The CITY, COUNTY OR TOWN agrees to accept transfer of the Transferred Road on the Date of Transfer, according to the terms of this Agreement.

6. **Road Condition.** The CITY, COUNTY OR TOWN warrants and represents that it has had sufficient opportunity to inspect the Transferred Road and, agrees to accept the Transferred Road in “AS IS” condition.

7. **Change of Transferred Road Status.** The CITY, COUNTY OR TOWN agrees to notify INDOT if the CITY, COUNTY OR TOWN intends to make a finding that any portion of the Transferred Road no longer serves a transportation purpose, or if the CITY, COUNTY OR TOWN intends to otherwise cease using any portion of the Transferred Road for road transportation purposes. The CITY, COUNTY OR TOWN shall provide such notice to INDOT at least 90 days before any such final actions.

EXAMPLE 6-C Continued

8. No Cost or Expense to INDOT. Except as provided herein, the CITY, COUNTY OR TOWN agrees that INDOT shall not be responsible for any costs or expenses in any manner related to the Transferred Road after the Date of Transfer.

9. Cooperation/Other Projects. In order to expedite construction of the [PROJECT], the CITY, COUNTY OR TOWN agrees to allow INDOT to close [DESCRIBE ROAD TO BE CLOSED OR OTHERWISE AFFECTED]. The CITY, COUNTY OR TOWN further agrees to indemnify, exculpate, and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, wear and tear, or other casualties of whatever kind, or by whosoever caused, to the person or property of anyone on or off the [PROJECT] arising out of, or resulting from the closure of [ROAD TO BE CLOSED].

[DEPENDING ON WHETHER A CONSTRUCTION PROJECT IS ASSOCIATED WITH THE TRANSFER, OR WILL BE TAKING PLACE NEAR THE TRANSFERRED ROAD, SECTION 9 MAY BE DELETED FROM THE AGREEMENT.]

10. Limited Access Right of Way. To avoid confusion, the PARTIES agree that according to applicable law, including Federal Highway Administration (FHWA) laws and regulations, INDOT will retain control over breaks in limited access right of way. However, INDOT agrees in good faith to work with both the CITY, COUNTY OR TOWN and the Federal Highway Administration with respect to any requests to break the limited access right of way line.

[DEPENDING ON THE ROAD BEING TRANSFERRED, SECTION 10 MAY BE DELETED FROM THE AGREEMENT.]

11. National Truck Network or National Highway System Designation. The CITY, COUNTY OR TOWN understands that the Transferred Road has been designated by FHWA as a part of the National Truck Network (“NTN”) and/or the National Highway System (“NHS”), and as such, the CITY, COUNTY, or TOWN agrees to comply with the requirements of federal law, including 23 CFR Part 470 and/or 23 CFR Part 658, in maintaining and regulating the Transferred Road.

[DEPENDING ON THE ROAD BEING TRANSFERRED, SECTION 11 MAY BE DELETED FROM THE AGREEMENT.]

12. Standards

OBTAIN FROM OWNER STANDARDS FOR ROAD DESIGN, MAINTAINENCE, OR ANY OTHER, IF ANY.

EXAMPLE 6-C Continued

13. Use of Funds. The Parties agree that any payment (and any interest or other revenue derived therefrom by the CITY, COUNTY or TOWN) made pursuant to this Agreement shall be used solely and exclusively for the Project and for any improvements to connecting local roads and intersections only to accommodate vehicular traffic load and diversion attributable to construction of the Project. Further, the CITY COUNTY or TOWN agrees it will not transfer, pledge, assign, use as collateral or otherwise risk or encumber any funds made as payment (including interest or other revenue earned therefrom) from INDOT to the CITY, COUNTY or TOWN for the Project and Transferred Road.

[OBTAIN INSTRUCTION FROM THE OWNER IF LOCAL SHOULD BE RESTRICTED IN USE OF FUNDS FROM INDOT. IF NOT, DELTE THIS SECTION].

[Remainder of Page Intentionally Left Blank]

EXAMPLE 6-C Continued

GENERAL PROVISIONS

1. Access to Records. The CITY, COUNTY OR TOWN shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for five (5) years from the date of final payment under the terms of this Agreement, for inspection or audit by INDOT, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CITY, COUNTY OR TOWN agrees that, upon request by any agency participating in federally-assisted programs with whom the CITY, COUNTY OR TOWN has agreed to or seeks to agree to, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY, COUNTY OR TOWN in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. Audit. The CITY, COUNTY OR TOWN acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Agreement.

3. Authority to Bind CITY, COUNTY OR TOWN. The signatory for the CITY, COUNTY OR TOWN warrants that he/she has the necessary authority to enter into this Agreement. The signatory for the CITY, COUNTY OR TOWN represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY, COUNTY OR TOWN, and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY, COUNTY OR TOWN when his/her signature is affixed to this Agreement.

4. Certification for Federal-Aid Contracts Lobbying Activities. The CITY, COUNTY OR TOWN certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the CITY, COUNTY OR TOWN has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, COUNTY OR TOWN, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreements, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

EXAMPLE 6-C Continued

C. The CITY, COUNTY OR TOWN also agrees by signing this Agreement that it shall require that the language of this certification concerning lobbying activities be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

5. Compliance with Laws.

A. The CITY, COUNTY OR TOWN shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Agreement shall be reviewed by INDOT to determine whether formal modifications are required to the provisions of this Agreement.

B. The CITY, COUNTY OR TOWN and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, et seq., Indiana Code § 4-2-7, et. seq., the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005. If the CITY, COUNTY OR TOWN is not familiar with these ethical requirements, the CITY, COUNTY OR TOWN should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If the CITY, COUNTY OR TOWN or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Agreement immediately upon notice to the CITY, COUNTY OR TOWN. In addition, the CITY, COUNTY OR TOWN may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable state or federal laws.

C. The CITY, COUNTY OR TOWN certifies by entering into this Agreement, that neither it nor its principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CITY, COUNTY OR TOWN agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CITY, COUNTY OR TOWN. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the CITY, COUNTY OR TOWN becomes current in its payments and has submitted proof of such payment to INDOT.

D. The CITY, COUNTY OR TOWN warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, the CITY, COUNTY OR TOWN agrees that INDOT may delay, withhold, or deny work under any supplement, amendment, change order, contract or the like.

EXAMPLE 6-C Continued

E. If a valid dispute exists as to the CITY, COUNTY OR TOWN'S liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny work to the CITY, COUNTY OR TOWN, the CITY, COUNTY OR TOWN may request that it be allowed to continue, or receive work, without delay. The CITY, COUNTY OR TOWN must submit, in writing, a request for review to INDOT. A determination by the INDOT shall be final and binding on the Parties and not subject to administrative review. Any payments that the INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. The CITY, COUNTY OR TOWN represents and warrants that the CITY, COUNTY OR TOWN shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Agreement and grounds for termination and denial of further work with the State.

G. The CITY, COUNTY OR TOWN hereby represents and warrants that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

H. As required by IC 5-22-3-7: (1) the CITY, COUNTY OR TOWN and any principals of the CITY, COUNTY OR TOWN certify that (A) the CITY, COUNTY OR TOWN, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CITY, COUNTY OR TOWN will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law. (2) The CITY, COUNTY OR TOWN and any principals of the CITY, COUNTY OR TOWN certify that an affiliate or principal of the CITY, COUNTY OR TOWN and any agent acting on behalf of the CITY, COUNTY OR TOWN or on behalf of an affiliate or principal of the CITY, COUNTY OR TOWN (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

6. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the un-emancipated children of an individual.

"Interested Party," means:

1. The individual executing the Agreement;
2. An individual who has an interest of three percent (3%) or more of CITY, COUNTY OR TOWN, if CITY, COUNTY OR TOWN is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Commission" means the State Ethics Commission.

EXAMPLE 6-C Continued

- B. INDOT may cancel this Agreement without recourse by the CITY, COUNTY OR TOWN if any interested Party is an employee of the State of Indiana.
- C. INDOT will not exercise its right of cancellation under Section B, above, if the CITY, COUNTY OR TOWN gives INDOT an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of the interested Party does not violate any statute or code relating to ethical conduct of state employees. INDOT may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this section.
- D. The CITY, COUNTY OR TOWN has an affirmative obligation under this Agreement to disclose to INDOT when an interested Party is or becomes an employee of INDOT. The obligation under this section extends only to those facts that the CITY, COUNTY OR TOWN knows or reasonably could know.
7. Disadvantaged Business Enterprise Program Notice is hereby given to the CITY, COUNTY OR TOWN that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Agreement and, after notification, may result in termination of this Agreement or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent Agreements between the CITY, COUNTY OR TOWN and any contractors.

The CITY, COUNTY OR TOWN shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CITY, COUNTY OR TOWN shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted agreements. Failure by the CITY, COUNTY OR TOWN to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the CITY, COUNTY OR TOWN'S equal opportunity affirmative action program, CITY, COUNTY OR TOWN, it is required that the CITY, COUNTY OR TOWN shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise, vendors or suppliers.

8. Drug-Free Workplace Certification. The CITY, COUNTY OR TOWN hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the CITY, COUNTY OR TOWN in the State of Indiana has been convicted of a criminal drug violation occurring in the CITY, COUNTY OR TOWN'S workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of payments due under this Agreement, termination of this Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

EXAMPLE 6-C Continued

In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of \$25,000.00, the CITY, COUNTY OR TOWN hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all agreements with and grants from the State of Indiana in excess of \$25,000.00. No award of an agreement shall be made, and no purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the CITY, COUNTY OR TOWN and made a part of the agreement as part of the executed contract.

The CITY, COUNTY OR TOWN certifies and agrees that it will provide a drug-free workplace by:

- a. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CITY, COUNTY OR TOWN'S workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- b. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY, COUNTY OR TOWN'S policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the CITY, COUNTY OR TOWN of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- d. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- e. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

EXAMPLE 6-C Continued

9. Force Majeure. Before the Date of Transfer, in the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a Force Majeure Event), the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

After the Date of Transfer, a Force Majeure Event may not be declared by either party.

10. Funding Cancellation Clause. When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

11. Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana.

12. Indemnification. The CITY, COUNTY OR TOWN agrees to indemnify,  and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, or by whosoever caused, to the person or property of anyone on or off the PROJECT arising out of, or resulting from the work covered by this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent of negligence of the CITY, COUNTY OR TOWN, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. The CITY, COUNTY OR TOWN agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the CITY, COUNTY OR TOWN shall default under the provisions of this Section.

13. Non-Discrimination

A. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the CITY, COUNTY OR TOWN, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

EXAMPLE 6-C Continued

B The CITY, COUNTY OR TOWN understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the CITY, COUNTY OR TOWN agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY, COUNTY OR TOWN will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY, COUNTY OR TOWN shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Agreement.

14. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to: INDOT's _____ District Direct with a copy to the INDOT Legal Department, unless otherwise specifically advised.

15. Payment. All payments shall be made according to the terms of this Agreement and in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the CITY, COUNTY OR TOWN in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

16. Penalties, Interest and Attorney's Fees. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

17. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

18. Status of Claims. The CITY, COUNTY OR TOWN shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY, COUNTY OR TOWN resulting from any acts or omission relating to this Agreement and/or services performed under this Agreement.

19. General. This Agreement represents the entire understanding between the Parties relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Agreement must be in writing, reference this Section 19 and be signed by duly authorized representatives of the Parties. Neither this Agreement nor any portions of it may be assigned, licensed or otherwise transferred by the CITY, COUNTY OR TOWN without the prior written consent of INDOT. This Agreement will be binding upon the Parties and their permitted successors or assigns. Failure of either Party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings are inserted for convenience only and do not constitute part of this Agreement.

[Remainder of Page Intentionally Left Blank]

EXAMPLE 6-C Continued

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of the CITY, that he/she has not, nor has any other member, employee, representative, agent or officer of the CITY, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

In Witness Whereof, the CITY and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The Parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

CITY, COUNTY OR TOWN

By: _____

Title: _____

Date: _____

STATE OF INDIANA)
)SS:
COUNTY OF: _____)

Before me, a Notary Public in and for said County and State personally appeared _____, [TITLE OF SIGNING OFFICIAL, CITY OR COUNTY], Indiana, who acknowledged the execution of the foregoing road transfer agreement on this _____ day of _____, 20__.

NOTARY PUBLIC (signature)

NOTARY PUBLIC (printed)

My Commission expires: _____

My County of Residence is: _____

EXAMPLE 6-C Continued

APPROVALS

STATE OF INDIANA
Office of Management and Budget

Christopher A. Ruhl, Director

Date: _____

STATE OF INDIANA
Department of Administration

Carrie Henderson, Commissioner

Date: _____

Approved as to Form and Legality:

_____(FOR)
Steve Carter
Attorney General of Indiana

Date Approved: _____

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46060 by the undersigned attorney who affirms, under penalties of perjury, that all Social Security numbers have been redacted from the forgoing, and all attachments thereto, except as allowed by law.

[REDACTED], INDOT Staff Attorney
Attorney No. _____

EXAMPLE 6-D

Robert F. Tally, Jr.
Federal Highway Administration
575 North Pennsylvania, Room 254
Indianapolis, IN 46204
Attn: Kenneth Woodruff

RE: Project
 Road
 County
 Code
 Parcel

Subject: Notification of the Sale of **Non-Interstate** Excess Right of Way

Dear Mr. Woodruff,

This is a notification to FWHA that **Non-Interstate** Excess Right of Way has been sold on State Road .

In accordance with CFR 710.401, the State of Indiana, INDOT may sell excess Right of Way on a road, which is not Federal Interstate, without prior approval of FWHA.

All procedures were followed in this sale including approval from the INDOT District Deputy Commissioner and the INDOT Deputy Commissioner (designee for the INDOT Commissioner).

Enclosed is a copy of the accounting form stating if Federal funds were used in the acquisition of this property along with the percentage of the Federal funds appropriated.

This information is being provided to FWHA as documentation of the property transfer. Please note that this property is sold and is no longer excess Right of Way owned by INDOT.

Brian Hoyer
Office of Real Estate
Property Management

EXAMPLE 6-E

EXCESS LAND- NOT ABUTTING OWNER

(Requestor is NOT the abutting property owner from which the excess was separated)

- 1) District Deputy Commissioner's Approval letter approving the sale.
- 2) Copy of the requestor's letter to acquire the property.
- 3) Completed W-9 form and Non-Collusion Affidavit from requestor
- 4) Plan sheets highlighting and identifying the parcel(s) requested.
- 5) Copy of the Deed for the parcel requested.
- 6) Review and supply a survey and plat of the requested property. If the requestor supplies the survey and plat, the District for accuracy MUST REVIEW it.
- 7) Assure that excess area has not changed do to an increase in R/W needs.
- 8) Archaeological, HAZMAT, & CE from Environmental. Request the DNR Clearance letter certifying the property clear of Environmental issues.
- 9) Appraisal requested of property.
- 10) Prepare Commissioner's Order with all justification documents to Designee to approve the sale and the sale amount.
- 11) Prepare Quitclaim Deed with all justification documents and send to DAG to sign as to "Prepared By", Legality, and Form.
- 12) Once signed by DAG, prepare "Contract Summary" for Governor's Office, attach to Quitclaim deed and send to Governor's Office for review and signature.
- 13) Advertise, contact perspective buyers and sell (or auction the property to the highest bidder if appraisal is over \$4,000).
- 14) Collect monies; prepare the deed and Sales Disclosure Form; supply check with receipt and a copy of the deed to CO PM.
- 15) CO PM will post sale in LRS.

EXAMPLE 6-E Continued

EXCESS LAND - ABUTTING OWNER

(Requestor is the abutting property owner from which the excess was separated)

- 1) District Deputy Commissioner's Approval letter approving the sale.
- 2) Requestor's letter to acquire the property.
- 3) W-9 form and Non-Collusion Affidavit completed from requestor.
- 4) Affidavit stating requestor is sole owner of abutting parcel(s) of land requested.
Requestor providing deed-proving ownership of abutting parcel(s) of land requested.
- 5) Plan sheets highlighting and identifying the parcel(s) requested.
- 6) Deed for the parcel requested.
- 7) Review and supply a survey and plat of the requested property. If the requestor supplies the survey and plat, the District for accuracy MUST REVIEW it.
- 7) Verify excess area has not changed do to an increase in R/W needs.
- 8) Archaeological, HAZMAT, & CE from Environmental. Request the DNR Clearance letter certifying the property clear of Environmental issues.
- 9) Appraisal requested for property.
- 10) Commissioner's Order with all justification documents to Designee to approve the sale and the sale amount.
- 11) Offer Letter to the requestor giving 30-days to respond and receive monies.
- 12) Quitclaim Deed prepared with all justification documents and send to DAG to sign as to "Prepared By", Legality, and Form.
- 13) Once signed by DAG, prepare "Contract Summary" for Governor's Office, and attach Quitclaim Deed and send to Governor's Office for review and signature.
- 14) Collect monies; prepare the Deed and Sales Disclosure Form; supply check with receipt and a copy of the deed to CO PM
- 15) CO PM will post sale in LRS.

EXAMPLE 6-E Continued

EXCESS RIGHT OF WAY and Limited Access Right of Way

- 1) District Deputy Commissioner's Approval letter approving the sale (with NO structures to be maintained by INDOT).
- 2) Copy of the requestor's letter to acquire the property.
- 3) Completed W-9 form and Non-Collusion Affidavit from requestor
- 4) Affidavit stating requestor is sole owner of abutting parcel(s) of land requested.
- 5) Plan sheets highlighting and identifying the parcel(s) requested.
- 6) Copy of the Deed for the parcel requested.
- 7) Review and supply a survey and plat of the requested property. If the requestor supplies the survey and plat, the District for accuracy MUST REVIEW it.
- 8) Assure that excess area has not changed do to an increase in R/W needs.
- 9) Archaeological, HAZMAT, & CE from Environmental. Request the DNR Clearance letter certifying the property clear of Environmental issues.
- 10) Appraisal requested for property.
- 11) Prepare Commissioner's Order with all justification documents to Designee to approve the sale and the sale amount.
- 12) Determine if FEDERAL FUNDS were used to acquire right of way described.
- 13) Seek FHWA APPROVAL to sell **Interstate** excess when FEDERAL FUNDS were used originally.
- 14) Send Offer Letter to the requestor giving 30-days to respond and receive monies.
- 15) Prepare Quitclaim Deed with all justification documents and send to DAG to sign as to "Prepared By", Legality, and Form.
- 16) Once signed by DAG, prepare "Contract Summary" for Governor's Office, and attach to Quitclaim deed and send to Governor's Office for review and signature.
- 17) Collect monies; prepare the deed and Sales Disclosure Form; supply check with receipt and a copy of the deed to CO PM.
- 18) CO PM will post sale in LRS.

EXAMPLE 6-E Continued

NEW LIMITED ACCESS BREAKS OR EXCHANGE OF LOCATIONS OF LIMITED ACCESS IN R/W

- 1) Obtain District Deputy Commissioner's Approval.
- 2) Copy of the requestor's letter to acquire the property.
- 3) Completed W-9 form and Non-Collusion Affidavit from requestor.
- 4) Affidavit stating requester is sole owner of abutting parcel(s) of land requested.
- 5) Requestor providing deed proving ownership of abutting parcel(s) of land requested.
- 6) Supply written explanation and justification for opening and or exchange of opening locations.
- 7) Plan sheets highlighting and identifying location of the opening and or closing of the LA R/W.
- 8) Copy of the INDOT'S Deed for the property originally acquired.
- 9) Supply a survey and plat of the requested opening and or exchange location. If requestor supplies the survey and plat, it **MUST BE REVIEWED** by the District for accuracy.
- 10) Submit above information to Permits CO, for Deputy Commissioner, Dave Holtz's approval of the concept.
- 11) Request HAZMAT, & CE from Environmental Services Section
- 12) Appraisal request.
- 13) Prepare Commissioner's Order with justification documents to approve the sale and sale amount to Commissioner's Designee, Deputy Commissioner, David Holtz.
- 14) Determine if FEDERAL FUNDS were used to acquire right of way described.
- 15) Seek FHWA APPROVAL to open and or exchange opening locations. (FHWA, Realty Officer)
- 16) Send Offer Letter to the requestor giving 30-days to respond and receive monies.
- 17) Monies are deposited with the Cashier and federal participation percentage noted to cashier.
- 18) Prepare Quitclaim Deed with all justification documents and send to DAG for signing "Prepared By", Legality, and Form.
- 19) Prepare "Contract Summary" for Governor's Office and attach to Quitclaim deed.
- 20) When received from Governor's Office, make copy of signed deed for file.
- 21) Send Deed and Sales Disclosure to the requester; forward a copy of the deed to CO PM.
- 22) Post opening and/or exchange of openings; send copy of deed to Records Section. Close file and file folder.

EXAMPLE 6-E Continued

PROPERTY ACQUIRED BY RIGHT OF WAY GRANTS

Right of Way Grants are easements used years ago and only gives INDOT the right to use the property for highway purposes and **NOT OWNERSHIP**. Right of Way Grants can only be **released (abandoned)** to the underlying fee owner of the property.

- 1) District Deputy Commissioner's Approval letter approving the sale.
- 2) Requestor's letter to acquire the property.
- 3) W-9 form and Non-Collusion Affidavit from requestor.
- 4) Affidavit stating requestor is sole owner of abutting parcel(s) of land requested.
- 5) Requestor providing deed-proving ownership of abutting parcel(s) of land requested.
- 6) Plan sheets highlighting and identifying the parcel(s) requested.
- 7) **GRANT** copy for the parcel requested.
- 8) Survey and plat of the requested property. If the survey and the requestor supplies plat, the District for accuracy **MUST REVIEW** it.
- 9) Verify the Grant does not include any portion of the roadway to be maintained.
- 10) Archaeological, HAZMAT, & CE from Environmental Services; request the DNR Clearance letter certifying the property clear of Environmental issues.
- 11) Appraisal of the requested property.
- 12) Prepare **Abandonment** with all justification documents for Commissioner's Approval.
- 13) DAG **sent Abandonment** to sign as Prepared By, Legality, and Form.
- 14) Once signed by DAG, prepare "Contract Summary" for Governor's Office, attach **Abandonment** and send to Governor's Office for review and signature.
- 15) Offer Letter sent to the requestor giving 30-days to respond and receive monies.
- 16) Collect monies; prepare the **Abandonment** and Sales Disclosure Form; supply check with receipt and a copy of the Abandonment to CO PM.
- 17) CO PM will post sale in LRS.

CHAPTER 7

TAXES

There are three types of property related taxes associated with right of way acquired property. They are ditch assessments, conservancy taxes and real estate property taxes. All state property is exempt from property taxes however INDOT is not exempt from ditch assessments or conservancy taxes.

Ditch Assessments and Conservancy Taxes

After acquisition the appropriate district is responsible for paying ditch assessments and conservancy taxes. Property tax statements received in Property Management should be reviewed to determine what kind of tax has been assessed. If the statement is only for a ditch assessment or conservancy tax, the statement is mailed to the appropriate district administrative manager.

If the tax statement includes property taxes or penalties on property taxes, Property Management must clear those taxes first.

Real Estate Taxes

Real estate taxes in Indiana are paid in arrears. In other words, taxes for the year 2004 actually become due and payable in 2005. Tax statements are usually mailed in March with one payment due in May and a second payment due in November. Penalties and interest accrue on delinquent taxes. In order to convey clear title, the real estate taxes must be paid current or paid in advance, depending upon the nature of the taking. Prior to submitting a parcel for payment, the buyer is supposed to check the tax status and verify that it is current.

Upon receipt of the state's deed for recording, the county auditor will change the plat book to reflect the state's ownership. They will forward the deed to the assessor who will change the tax plat and status. The county treasurer will issue a new tax key number (on partial takings) or change the taxpayer information on a total acquisition. The State must not have taxes due on this new key number. If taxes are delinquent, the buyer should ask the owners to pay the past due taxes, penalties and interest.

INDOT will accept title to partial takings with the taxes only paid current as opposed to the full year. The after-value of the property must be sufficient to ensure that the owner will pay the fall installment when it is due, in order to avoid a tax sale loss of the residue.

INDOT requires that total takings have all assessed taxes paid prior to making payment to the owner. The buyer may arrange to have the taxes due amount deducted from the payment to the owner and vouchered to both the owner and the county for payment of the taxes.

The Indiana tax Commissioners and the Attorney General have determined that the effective date of transfer is the date the deed is signed, not the date of payment or the date the deed is recorded. See Example 7-B, pages 7-4 through 7-6. Therefore, if a deed is signed prior to December 31, the effective date of transfer to the State will be the date of the deed and taxes for that year, payable the next year, will be forgiven.

For example, if the deed was signed October 12, 2004, the buyer should have arranged for the owners to pay the November installment of the 2003 payable 2004 taxes. Even if the property payment is made January 6, 2005 and the deed is recorded February 20, 2005, the owner is not responsible for the 2004 payable 2005 taxes which will be due in May of 2005. Transfers that take place late in a calendar year may not allow enough time for the county auditor to change the ownership in the plat book before tax statements are mailed in 2005. If owners receive tax statements for 2005, they should forward those to Property Management for resolution.

IC 8-23-7-31(b) reads:

“Real property and interests in real property acquired for permanent highway purposes are exempt from taxation from the date of acquisition, provided that all taxes, interest, and penalties recorded on the property tax duplicates have been paid. Where real property or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor. A property owner who on or after March 1, 1965, conveyed real property or rights in real property to the department and who after July 8, 1965, is assessed taxes upon the property or rights conveyed and who pays the taxes by reason of the failure of the department to properly record the interest in the real property conveyed with the county auditor and recorder for tax purposes may recover the amount of the taxes from the department.”

If the deed, for example, is signed after December 30, 2004 and before the 2004 payable 2005 tax statements are issued, it is not possible to pay the taxes in advance because the amount is unknown, not assessed. However, the owner is responsible for the 2004 payable 2005 taxes because they had ownership and possession of the property for the entire year of 2004. Therefore, the buyer should add a clause to the deed which establishes the owner’s responsibility for the taxes when they become due. The buyer and the owner should both have initialed this clause:

“The Grantor(s) assumes and agrees to pay the 2004 payable 2005 real estate taxes on the above described real estate.”

Clearing Property Tax Liabilities

The first thing to do when receiving a property tax notice or a notice of property tax sale is to verify with Records that the property is INDOT property. If it is INDOT property, the parcel file needs to be reviewed to determine; one, the date the deed was signed in order to establish the date of transfer; two, if the former owner was obligated to pay any taxes; and three, whether the taxes were paid current at the time of acquisition.

If the taxes are valid, it must be determined who was at fault for the taxes not being paid. The state is at fault if the owners were not notified they would be liable and the warranty deed does not also say so. The owner is at fault if the warranty deed identifies an unpaid tax liability and the owner did not pay it. If the state is at fault for the unpaid taxes, process a voucher to pay the taxes. If the owner is at fault, determine if there is time to get the owner to pay before a possible tax sale. If there is time, contact the owner and attempt to get him to pay the property tax. If there is not time or the owner will not pay the property tax, process a voucher to pay the property tax and then have Accounting and Control establish a receivable account to recover the money.

If the taxes are not valid, a letter should be sent or delivered to the county auditor explaining that the taxes are not valid and should be removed from the duplicates. There is usually some confusion regarding the wording of IC 8-23-7-31(b), but the auditor will probably remove the taxes if given the code cite and explanation.

If the auditor refuses to remove the taxes, prepare a petition to the State Board of Tax Commissioners to have the taxes removed. Prepare the petition including certificate of service but do not enter the date of delivery. See Example 7-B, pages 7-4 through 7-6. Prepare a cover letter to the Commissioner explaining the petition. See Example 7-D, page 7-7. Send the cover letter and petition to the Commissioner. After the Commissioner's signature is obtained, send the petition to the Governor's office for signature. After the Governor's signature is obtained, check the property tax status one more time. If the tax is still a liability, prepare a cover letter for the petition to the Chair of the State Board of Tax Commissioners. See Example 7-E, page 7-8. Complete the service certificate. Deliver the petition with the service certificate under the cover letter to the Office of the State Board of Tax Commissioners on the 10th Floor IGCN. Mail copies of the petition with the service certification to the appropriate county treasurer and county auditor. Upon receipt of the order of the Tax Commissioners to the county auditor to remove the property taxes forward the order to Records to be put in the parcel file.

**EXAMPLE 7-B
STATE OF INDIANA**

**BEFORE THE
STATE BOARD OF TAX COMMISSIONERS**

**IN THE MATTER OF THE)
CANCELLATION OF TAXES)
ASSESSED AGAINST REAL)
PROPERTY OWNED BY THE)
STATE OF INDIANA,)
MARION COUNTY,)
INDIANA)**

PETITION

Comes now _____, Commissioner, Indiana Department of Transportation (“Department”) pursuant to the provisions of IC 6-1.1-36-7(b), as chief administrative officer of said Department, and petitions the Board to cancel certain property taxes assessed against real property owned by the State of Indiana; and, in support hereof would show the Board as follows:

1. The Department acquired two properties in Marion County, Indiana, for permanent highway purposes within the meaning of IC 8-23-7-31(b).
2. The two properties and the dates of acquisition are as follows:
 - a. Parcel number 7025480, 2402 N. Morning Star Drive, Indianapolis, acquired May 13, 1996;
 - b. Parcel number 7025481, 2401 N. Morning Star Drive, Indianapolis, acquired June 6, 1996.

EXAMPLE 7-B Continued

STATE OF INDIANA
BOARD OF TAX COMMISSIONERS
PETITION

1) The properties were acquired by and through the Department by Warranty Deed; were recorded in the Office of the Recorder of Marion County and in the Office of the Auditor of Marion County; and taxes have been assessed against said real estate for taxes claimed to be due for an assessment year that is the calendar year in which the property was acquired.

2) The properties are exempt from taxation for all taxes that were assessed in the year of acquisition of the property and payable in the ensuing year by reason of Indiana Code 8-23-7-31, which provides, in pertinent part, that:

Where real or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor.

WHEREFORE, the Department prays the Board cancel the taxes on said real property.

Respectfully submitted,

_____, Commissioner
Indiana Department of Transportation

APPROVED:

THIS DATE: _____

Mitchell E. Daniels, Jr.
Governor of Indiana

EXAMPLE 7-B Continued

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing Petition has been served upon the party listed below, by first-class mail, postage prepaid, this 29th day of December, 1997.

Marion County Auditor
City-County Building Offices, Suite 821
200 E. Washington Street
Indianapolis, Indiana 46204

Marion County Treasurer
City-County Building Offices, Suite 1060
200 E. Washington Street
Indianapolis, Indiana 46204

Stephen L. Catron, Administrator
Property Management
Office of Real Estate

Indiana Department of Transportation
N642 Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204
Telephone: (317) 232-5005

EXAMPLE 7-D

September 16, 20__

TO: _____
INDOT Commissioner

THRU: _____
INDOT Deputy Commissioner

FROM: _____
Manager, Office of Real Estate

RE: _____
Petition to Remove Property Tax

The attached is a petition to have property taxes removed from property acquired for improvements to SR 28 in Clinton County. Usually we are successful in convincing County Auditors that property taxes assessed in the year in which we acquire the property are to be removed from the tax duplicates in accordance with IC 8-23-7-31(b).

The Clinton County Auditor has refused to remove the taxes.

IC 6-1.1-36-7(b) authorizes the chief administrative officer of a state agency to petition the State Board of Tax Commissioners through the Governor to have property taxes removed from state owned property.

Please return the signed petition to Stephen Catron, Administrator, Property Management.

SLC:sc

EXAMPLE 7-E

September 30, 2004

(317) 232-5005

Chair
State Board of Tax Commissioners
IGCN N1058
Indianapolis, Indiana 46204

Dear Sir:

Please find enclosed a petition for the cancellation of property taxes assessed against real property owned by the State of Indiana in _____ County.

Sincerely,

Stephen L. Catron
Property Management Administrator
Office of Real Estate

SLC/sc

CHAPTER 8

District Responsibilities

Upon receipt of the 30-Day Notice (Example 2-B, pg. 2-6) and keys, when available, INDOT District personnel are responsible for inspecting, baiting and posting all improvements on acquired properties. Some improvements may remain on the property if the owner has received compensation, cost to cure or payment to remove the items. As such, District personnel should use caution when inspecting, clearing, baiting and posting improvements to ensure they are, in fact owned by INDOT.

Improvements acquired by INDOT and not retained for use by INDOT or another State agency are removed or disposed of through a public sale, separate demolition contracts or inclusion in the primary construction contract. Consideration is given to auction sales when the value and quality of an improvement is such that a sale would be economically feasible and in the best interest of the State. Demolition contract proposals have merit when it has been determined that a public sale would not attract a sufficient number of buyers because of the poor quality or insufficient number of improvements available for the sale.

Lead time is a major factor to be considered in the disposition of improvements. Lead time is the interim period between the date the State acquires ownership of the property and the estimated date the right of way is to be clear for the construction contract bid letting. Sales and demolition contracts are designed to accomplish right of way clearance on schedule and in a manner that represents the State's best interests. It is desirable to complete the planning for sales and demolition contracts on specific projects during the acquisition phase.

Removal of improvements occurs in one of six ways. The owner may desire to retain and remove the improvement. The owner may be paid a cost to cure to remove and relocate the improvement. Improvements can be retained for use by INDOT or another State agency by requesting the items to be used by the District and must be approved by the Real Estate Division Manager and Facilities Management Manager. The improvement may be sold at public auction. The improvement may be removed by a demolition contract. The improvement may be included in the primary construction contract as a demolition item.

District responsibilities include:

1. Determine if improvement(s) subject to INDOT inspection.
2. Conduct inspection, clearing, baiting, posting and securing.
3. Determine retained cost to cure items is removed.
4. Identify items that may be usable at District locations.
5. Determine method of removal of items by demolition or public auction.
6. Submit 10-week Letter (Example 8-M, pg. 8-33) to INDOT Contracts section for items to be part of the contract letting.

Parcels with Cost to Cure Items

Expiration of the 30-day notice inspection

1. When the 30-day notice expires, the District shall inspect the property to verify the item(s) have been removed:
 - a. If the improvement has not been removed, an extension may be given providing there is enough lead time ahead of the right of way clear date.
2. If the improvement has not been removed within the original 30-day period, it has become an encroachment on the right of way. The District, in accordance with IC 8-23-5-1 and 4-21.5-3, will proceed to remove the encroachment as follows:
 - a. A second 30-day notice, Cost to Cure Eviction (C-T-C) Notice, Example 8-A, page 8-14, is sent to the owner of the improvement and the owner of the property by mail. This notice shall specify the encroachment, the time limit in which it is to be removed, and the action that is taken by INDOT if it is not removed.
 - b. The District shall take a copy of the same 30-day “C-T-C” Eviction Notice and post it in a conspicuous place on the property preferably on the improvement/encroachment.
 - a. A picture of the improvement, with the C-T-C Notice in place, is made and placed in the Records files with copies of both 30-day notices.
 - d. When the second 30-day notice expires, the District shall inspect the property. If the improvement has not been removed and the second 30-day C-T-C Notice is not appealed, the District may proceed to remove the item in accordance with IC 8-23-5-1 and IC 4-21.5-3.
3. When an encroaching item remains in the acquired right of way it is at the owner’s risk and may be removed, if necessary, at any time by either the contractor or INDOT District employees at the direction of the District’s Construction Engineer.

ACQUISITIONS WITH BUILDINGS

LRS, updated daily, and the Project and Parcel Status Report, updated monthly, identify parcels with buildings included in the acquisition. Property Management routinely queries and reviews LRS and the report to become acquainted with new projects and to plan and prepare for taking possession and disposal of such buildings.

1. In the event an occupied building is within the right of way to be acquired, a copy of the Relocation “Daily Notice”, Example 4-A, page 4-4, is received from Buying which describes the occupied buildings. Upon receipt of this preliminary information the property management parcel maintenance fields in LRS are completed.
2. A secured parcel file is reviewed to determine if a building within the acquired right of way has been retained by the owner. If an owner has chosen to retain and move the building, the building is identified as a cost to cure item in the parcel maintenance screen in LRS. The building must be removed within the time allowed in the retention contract.
3. At the time payment is made to the owner, a 30 day notice to vacate the property is mailed to the owner and occupant of the building. Example 2-B, page 2-6. The date of the expiration of the 30 days is entered in LRS. Renters will not be issued a 30 day notice before the owner.
4. Property Management must coordinate with Relocation on vacate notices. Even though a 30 day notice may have expired, occupants can not be required to vacate until the Relocation 90 day notice has expired.
 - a. On or before the expiration date of the 30 day notice, the district contacts the property owner and/or tenant to find out if they have moved. An extension of time to vacate or a lease may be discussed with the owner or tenant if there is enough time prior to the construction contract letting. Property Management must coordinate with Relocation, the Project Manager and the District Real Estate Manager to see if there are special issues involved with having the occupants vacate.

Eviction

If an owner occupant or tenant fails to vacate after 30 days and an extension can not be allowed, eviction may be the only recourse for taking possession. The District notifies Property Management and Property Management requests all pertinent documents (notices sent to occupant) and requests Deputy Attorney General to prepare a 10-day letter to the occupant with a vacate date.

1. Secured Parcels.
 - a. If the occupants have not vacated within the 30 days, Property Management will have a 10 day letter prepared to be signed by a Deputy Attorney General. After the letter is signed the DAG will return the letter to Property Management to be sent UPS delivery service or the DAG may send the letter. The expiration date of the 10 day notice is entered in LRS.
 - b. If the occupants have not vacated within the 10 days, Property Management will ask the DAG to proceed with eviction. Property Management will send a documentation packet containing copies of all letters sent to the occupants, confirmation of mailings, the Acceptance of Offer, recorded warranty deed and state warrant cashed by the owner. Property Management will also provide the letting date of the project to DAG Office.
 - c. The DAG will file for the eviction action.
2. Condemned Parcels.
 - a. Copy of the 30 day notice should already have been sent to the DAG.
 - b. If the occupant does not vacate within thirty days, Property Management will notify the Real Estate Litigation Section. The Office of the Attorney General will prepare and send a 10 day notice letter with a copy to Property Management. The expiration day of the 10 day notice will be entered in LRS.
 - c. If the occupant does not vacate within 10 days, Property Management will notify the Real Estate Litigation Section and send a documentation packet containing copies of all letters sent to the property owner or legal representative and confirmation of mailings. Property Management will also provide the letting date of the project. Property Management will communicate and provide notices to the District.
3. The DAG will file for the eviction action.

Property Inspection

After an owner or occupant has vacated a property, INDOT takes possession. The property must be inspected and secured from intrusion. The District may find it beneficial to coordinate the necessary activities with Relocation with notification that they will inspect the property. The notice must be given to the district 48 hours prior to the inspection. The District and or Relocation agent must inspect and verify that moves have occurred in accordance with entitlements and therefore it is most likely that Relocation and or the District will be able to secure buildings and hand over the keys, if available, to the District. The District will then have full responsibility to monitor and maintain the property until the demolition or prime contracts are implemented.

District is responsible for:

1. Verifying that the property has been vacated.
2. Verifying that all fixtures and equipment acquired by the State remains on the property and determining their condition.
3. Ascertaining if the property is clear and free of fire, safety or health hazards and taking necessary steps to make it so. All refrigerators and freezers found abandoned on the property must have the doors removed.
4. Making a preliminary estimate of the sale value of fixtures and improvements and the condition of the building.
5. Protecting the vacated property from vandalism and fire by:
 - a. Cleaning all hazards.
 - b. Posting notice of State ownership on 4 sides of the building, in windows, or on the outside in public view, if feasible.
 - c. Alerting local law enforcement agencies for security purposes, when deemed necessary.
 - d. Securely locking all doors and windows.
 - e. Assessing each situation for possibility of unique protection requirements.
 - f. Making periodic checks of property until buildings are demolished or moved.

6. Winterizing all buildings and mobile homes by draining all water heaters, opening all faucet valves and for buildings that may be sold applying diluted antifreeze to all toilets and drains.
7. Applying rodent control in all buildings.
8. Requesting an asbestos inspection from Environmental Section to have each building inspected for potential asbestos content. An Asbestos report must be received in Property Management prior to demolition of buildings.
9. Entering in LRS information obtained from the field inspections.

Trash and Weed Control Procedures

District is responsible for the removal of trash in cities and urban areas on right of way projects where it is deemed necessary for the health and welfare of the community and to be in compliance with local laws.

The District in the area of the project supplies the manpower to accomplish the maintenance for compliance if possible. Federal participation may be available to comply with local governing laws or ordinances, which includes the cutting of weeds and or removal of debris from right of way on which a construction contract has not been awarded, CFR 23 PART 710.203. Mowing contracts may need to be considered.

Rodent Control Procedures

Implementation of an effective rodent and pest control plan should start not later than the relocation of the first occupant on the project. To be effective, rodent control treatment must begin as soon as the occupant vacates the building.

The appropriate rodent control materials are purchased and kept on hand. The District shall apply the materials to all buildings and document the date of such application in the LRS. The District applies rodent control packets to each room in the building acquired as necessary for adequate control measures.

Contracting with a qualified exterminator may be necessary in large buildings, food processing plants, restaurants, etc. When use of an exterminator is anticipated, a contract is awarded through the proper bid process prior to the first occupant leaving the project. Federal participation may be available to reimburse INDOT on Federal Aid project, CFR 23 PART 710.203.

Buyer Determined Minor Retentions

In some instances, the Buying negotiator may allow the seller of the property to retain minor items from the buildings acquired. He/she may compute a retention value on each item which is to be retained. Such retention shall cover only items such as bathroom fixtures, kitchen cabinets, and other items removable from the buildings without disturbing the exterior appearance of the building.

In such cases as outlined above, the negotiator completes a minor retention form. See Example 3-A, page 3-5. One copy is placed in the project parcel file to inform Property Management as to disposition of the items. The seller is expected to have all such items removed within 30 days after he/she receives payment for the property.

Police and Fire (Smoke Only) Training in Buildings to be Demolished

No training should be considered if the building is listed on a demolition or prime contract. District must obtain a written request for training from police and fire agencies to use buildings on INDOT property that INDOT is going to demolish. Generally only buildings on property acquired by INDOT, not buildings on temporary easements for building removal, should be considered. A building on temporary easement can be considered only if the requesting agency has obtained written permission from the underlying fee owner.

The District reviews the request and recommends approval upon verification of the following:

1. There is adequate time to conduct the training before scheduling the demolition contract,
2. The surrounding neighborhood of the building is such that disruption to residential homes and commercial businesses can be limited,
3. Salvage value will not be seriously reduced by smoke, fire or damage,
4. Buildings must not be suitable for resale or moving,
5. Police and fire agencies execute a liability agreement. See Example 8-N, page 8-34,
6. Police and fire agencies agree to secure all openings against entry, and
7. A confirmation of the dates for training has been obtained.

If District approves, approval is given and notifies the requester of the approval, training dates and use of the building.

Fire Training in Buildings to be Burned

The requirements in the preceding section apply to training by burning buildings. In addition the following will be considered:

1. The building must be suitable for burning,
2. An asbestos inspection must reveal there is no asbestos present on or within the buildings,
3. The building must be in rural locations,
4. The fire department will notify neighbors within close proximity of the buildings and notify the local media of the planned training,
5. Fire departments are responsible for any and all permits required.

District's Sale by Public Auction

If the owner does not retain improvements as a condition of right of way purchase negotiations, those improvements having a positive salvage value might be offered for sale at public auction. INDOT sells improvements in the right of way by authority of and in accordance with IC 4-13, IC 8-23-2-1 and IC 8-23-2-6. The procedure for sales has been established by the State Board of Accounts and may not be changed except by the Board's permission. The procedure is as follows:

1. A date is selected for the auction that is at least four months prior to the right of way clear date or ready for contracts date which ever is earlier. This allows time for advertising and gives the successful bidder at least 60 days after the auction to remove the improvement.
2. A minimum or starting bid for each improvement is established. The factors to be considered when setting the starting bid are the same as those used to determine the retention or salvage value for improvements retained by the owner. (See page 3-5)
3. A performance bond amount to be furnished by the successful bidder on each improvement purchased is determined.
4. A "Notice of Sale" letter is prepared for publication. See Example 8-B, page 8-16. The notice prescribes the date, time and location of the auction. The notice gives a description and location of the improvements to be sold, the minimum bid and bond required on each improvement. The terms of the sale are also published with the notice of sale. See Example 8-C, pages 8-17 and 8-18.
5. The auction is advertised two times in newspapers with general circulation in the county in which the property is located. The first publication is at least 30 days before the sale. The second publication is at least two weeks prior to the sale. A cover letter is sent to the newspapers along with the notice of sale and terms.
6. Property Management forwards to the district and the district maintains a list of persons who have requested notification when improvements are sold by INDOT. Thirty days before the auction, a notice of sale letter and the terms of sale are mailed to each person on the list.
7. Prior to the sale the clerk's report listing each improvement to be sold is prepared. See Example 8-D, page 8-19.

8. Prior to the sale a sales contract, Example 8-E, pages 8-20 through 8-25, for the individual improvement being offered is prepared. The "Terms of Sale" sheet is attached and becomes a part of the sales contract.
9. The auction is supervised by an agent from district. The bid process may be conducted by a professional auctioneer or the sale supervisor.
10. When the use of a professional auctioneer is not practical, the sales supervisor conducts the sale and accepts the bids while another district agent or district representative serves as clerk.
11. A successful bidder makes payment in full by cash, money order, cashiers check or certified check, made payable to the Indiana Department of Transportation. Payment is expected on the day of sale.
12. Upon receipt of payment from the successful bidder the sales supervisor prepares an official pre-numbered receipt. See Example 8-F, page 8-26. The original is given to the purchaser, the yellow copy is sent to the Accounting Division with the money from the sale and the pink copy remains in the receipt book.
13. The clerk completes the sales contract and obtains the successful bidder's signature. The sales supervisor notarizes the successful bidder's signature. The clerk also has the successful bidder complete an IRS form W-9. The INDOT commissioner signs the acceptance of the contract on behalf of the Department. The executed contract and an Executive Document Summary are sent to the Attorney General's office for approval.
14. Upon completion of a sale or a series of sales, the sales supervisor completes the prescribed transmittal form in duplicate for the deposit of money received from the sale. See Example 8-G, page 8-27. The sales supervisor signs the form in the lower right hand corner. Within the body of the transmittal form, the sales supervisor makes an entry noting the proper breakdown of the money. The district notifies the Accounting Division by memorandum of the sale and states the percentage of participation, 100% State funds or partially funded by Federal Highway Administration. This example of participation may read as follows:

A. 100% State	-	\$300.00
B. 10% State	-	\$ 30.00
C. 90% Federal	-	\$270.00
TOTAL	-	\$300.00

15. The monies are transmitted along with both copies of the transmittal form and the yellow copy of the official numbered receipt to the Division of Accounting. The Agent Cashier signs the original copy of the transmittal form and issues a receipt for the money deposited. It is ideal to have the money transmitted to the Division of Accounting within twenty-four (24) hours after the date of sale. The Division of Accounting keeps a suitable permanent record.
16. Whenever it becomes necessary to cancel a public sale which has been advertised, a letter similar to the sales letter is written and when the time interval allows, it is published in the same manner as a regular sales letter, except it is published only one time. Also, a copy is sent to each recipient on the mailing list who received a copy of the sales letter. A memorandum setting forth the causes leading to the decision to cancel the sale is prepared. One set of the letters and memorandum is placed in the project file and one set is placed in the district's file for that particular auction.
17. When the circumstances are such that there is no time to publish the sale cancellation, the auctioneer is notified by telephone that the sale is cancelled. The sales supervisor is present at the location to notify any persons who arrive for the sale that it is cancelled and the reason for such cancellation.
18. Each successful bidder is required to post a performance bond, in the amount specified in the sales letter. The bond is furnished at the time of sale or not later than ten (10) days following the sale. The bidder is not permitted to remove the improvement until the required bond is posted. If the bidder fails to furnish the bond during the ten (10) day period, the improvements purchased may be placed on the next demolition contract or an attempt may be made on the next sale to resell them. The bidder is not liable for demolition costs, but forfeits his purchase price. A memorandum is placed in the parcel and project files setting forth all the facts as to why the improvements are on a demolition contract or the attempt is being made to resell them. The State may take action against the bond when the successful bidder fails to fulfill the terms of the contract.

Performance Bond

The amount of the performance bond is determined by the estimated expense of having the improvement demolished if the successful bidder fails to comply with the "Terms of the Sale", for removal of the improvement. The bond may be a performance bond issued by an insurance company or a cash bond, which may be in the form of cash, cashier's check, or certified check payable to the Indiana Department of Transportation.

In the case of a cash bond, the sales supervisor brings the cash or check to district ORE and fills out a "Cash Bond Receipt" in triplicate. See Example 8-H, page 8-28. The original is sent to the successful bidder, one copy is sent to the sales supervisor and one copy is retained on file in district. (district keeps a copy of the check if bond is posted by check.) The money is deposited with the Agent Cashier in the Accounting Division. They issue an original of the receipt, which is kept on file in district ORE. For former owners removing improvements, INDOT could withhold the bond amount from the property payment to the owner until the retaining owner removes the improvement. Upon receipt of a performance bond issued by a surety company, a copy is sent to the bidder for his files.

Releasing Surety Performance Bond

At the close of each sale of each improvement, the results are entered in the LRS. Regular inspections are conducted by a field agent of any improvements sold or retained.

When circumstances are such that an extension of time is granted to the purchaser or retainer, an Extension of Time Agreement, Example 8-I, page 8-29, is signed by an INDOT official and the purchaser or retainer before the expiration of the original contract. The extension of time is noted in the LRS.

When removal of the improvements from the right of way has been completed by the purchaser or retainer, they have the project engineer sign the Approval of Improvements Removed form. See Example 8-J, page 8-30. When the right of way has been inspected and cleared by the field agent, a bond release form, Example 8-K, page 8-31, is completed. The original bond and original release is sent to the surety company posting the bond. A copy of the release goes to the Records Section and one copy is mailed to the insurance company. One copy of release and bond is also kept in district ORE files.

Releasing Cash Bonds

When the right of way has been inspected and cleared by a field agent, a claim voucher, Example 8-L, page 8-32, is filled out by district ORE and submitted to the Division of Accounting to release the cash bond posted by the owner. This voucher preparation and process is the same as for all payments.

Demolition Contracts prior to the Prime Contract

A demolition contract is considered when an improvement has the potential to become a public nuisance or hazard. Disposal of improvements by demolition contract consists of the satisfactory removal and disposal of all improvements for each parcel designated in the contract. INDOT Standard Specifications for demolition applies and is cited for all demolition contracts. Some examples are plugging or capping all wells, filling basements and swimming pools.

The size and content of contract proposals for right of way clearance work are designed to promote maximum competition in bidding and maximum potential financial return to the State. A memorandum is prepared and forwarded to Contracts and Construction Division listing each item or improvement, stationing and offset of each item and an estimation of the demolition cost of each item. An asbestos report, when necessary, accompanies the memorandum with plans and specifications. Estimated costs of the work associated with demolition of each improvement in a contract proposal are determined as accurately as possible.

Contract proposals for demolition are developed in cooperation with the Specification Writer in the Division of Contracts and Construction. Follow up is required to insure the contract was awarded.

Prime Construction Contracts

The disposal of improvements can most economically be accomplished by including provisions for demolition and removal as a separate item in the construction contract.

At least ten (10) weeks prior to the date that bids are to be received for a project; a list of all major improvements within the right of way limits is prepared. The improvements are identified individually by parcel number, location of improvements, by stationing and offset right or left of center line, house number if applicable, and a brief description of the improvement itself. An estimated demolition cost is also included.

A memorandum is forwarded to the Contracts and Construction Division containing the information identified in the preceding paragraph, and requests that necessary steps be taken to list each of these improvements in the primary road contract. See Example 8-M, page 8-33. It is further requested that the contractor not proceed with demolition of any individual improvement without express written authority from the Contracts and Construction Division.

Underground Storage Tanks (UST's)

Underground storage tanks acquired by INDOT will be listed for demolition as soon as possible. When the sole purpose of the demolition contract is to remove USTs, the demolition contract request lists only the parcel most recently acquired on any given project unless it is known with absolute certainty that more UST parcels will be acquired within 60 days of the first. The demolition contract may include other improvements unless obtaining asbestos reports will delay the contract letting. The goal is to have all INDOT UST's removed within 12 months of acquisition. Circumstances that may inhibit this goal are negotiated terms, site re-configurations for uninterrupted operations or Attorney General settlements.

Upon acquiring a parcel with an UST, a notice is forwarded to Environment Services Section, and the district and an immediate demolition contract request is prepared to have all UST's in the take removed. Notice to the Environmental Services Section and district is given at the same time and the same date as the 30-day notice to the property owner. The notification lists code, parcel number, DES number, project number, date paid, number of UST's, the capacity of each tank to be removed, contents, if known, and the anticipated letting date. A copy of the notification is placed in the Records file with the parcel file.

No extensions will be granted to the owner to clear the property beyond the 90 day relocation expiration and the 30 day property management expiration whichever is later. The properties must cease fuel dispensing operations immediately upon acquisition and the properties must be vacated immediately upon expiration of the later of the 90 day relocation expiration date or the 30 day notice periods. Cost to cure evictions must be posted and delivered immediately. The only exception to this paragraph will be because of an order by a court.

EXAMPLE 8-A

COST TO CURE EVICTION NOTICE

Phone number _____

RE: Code:
Parcel:
County:

Dear _____ :

On _____, the Indiana Department of Transportation purchased land from you located at _____. On _____, you were paid for this land; a portion of that amount was paid for _____.

At the time of payment you were issued a thirty-day notice giving you until _____ to remove the item(s) from the right-of-way. As of this date, the item(s) have not been removed. Pursuant to IC 8-23-5-1, the item(s) are now encroaching on the right-of-way.

Pursuant to IC 8-23-5-1, IC 4-21.5-3-5, and IC 4-21.5-3-6, you are hereby given notice of the Department's Order that by _____, the aforementioned item(s) must be removed from the right-of-way.

In the event the Order contained in this letter is not appealed and the encroachment(s) is/are not removed or terminated by _____, the Department may proceed to remove the aforementioned item(s) in accordance with IC 8-23-5-1. Also in accordance with IC 8-23-5-1, you may be held liable for the expenses incurred to remove the encroachment(s). This serves as your final notice to move the items from the right-of-way.

If the item(s) have been removed from our Right-of-Way, please notify _____.

Sincerely,

Joe District
Office Real Estate
Somewhere District Office

JD:jd

cc: Records

EXAMPLE 8-B

PUBLIC NOTICE
STATE OF INDIANA
INDIANA DEPARTMENT OF TRANSPORTATION
SOMEWHERE ST.
ROOM 9999
ANYWHERE, INDIANA 1111
OFFICE OF REAL ESTATE DISTRICT OFFICE
LETTER NUMBER 06
SALES SUPERVISOR - _____
TELEPHONE: (317)_____

The Indiana Department of Transportation, acting for the State of Indiana as prescribed by Acts of Legislature, will offer at a Public Sale, the following described improvements at the designated location and time.

COUNTY: _____
PROJECT: _____
CODE: _____
PARCEL: _____

Sale site - _____

SALE DATE: _____ **at** _____ **AM. LOCAL TIME**

It is highly recommended that all prospective bidders seek professional advice from a reputable "home moving" company before bidding.

Structure can be previewed on _____ **20** **from 4-6 PM**

All structures will be sold without reserve in "AS IS" condition with no guarantees as to the structures, equipment, or appliances. THE STATE OF INDIANA RESERVES THE RIGHT TO REFUSE ANY OR ALL BIDS.

DESCRIPTION OF IMPROVEMENTS:

Sale # 1:

Suggested minimum bid: \$_____. Bond required \$_____

Sale # 2:

Suggested minimum bid: \$0000.00. Bond required \$0000.00.

Smaller items may be sold individually and must be removed the day of sale.

EXAMPLE 8-C

TERMS OF SALE

A maximum of ____ days from the date of sale shall be allowed for removing the improvements purchased.

Sale will be for cash, certified check, cashier's check or bank draft payable to the Indiana Department of Transportation. **Personal checks cannot be accepted.**

THE STATE OF INDIANA RESERVES THE RIGHT TO REFUSE ANY OR ALL BIDS.

Successful bidder will be required to execute a contract agreeing to the following conditions:

1. To supply a satisfactory faithful Performance Surety Bond, similar in language and requirements to a sample available from the Sales Supervisor, or a cash bond consisting of a cashier's check, certified check or bank draft made payable to the Indiana Department of Transportation. The amount of the bond shall be in the amount stated in the advertisement of sale and shall be a minimum of \$0000.00 for a house or major structure or \$0000.00 for a garage, shed or other small structure. Such performance bond or cash must be provided within (10) days of date of sale. If the buyer does not furnish the bond within the (10) specified days, the buyer will be considered to have defaulted and will forfeit the purchase price and the State of Indiana will sell, demolish or remove the improvements without incurring any liability to the buyer.
2. No improvements will be removed prior to posting of the Surety Performance Bond.
3. Forty-eight hours prior to removal of the structure, the successful bidder shall contact the District **Construction Engineer in the Indiana Department of Transportation's** _____ **District Office. Phone** _____.
4. Notify the Indiana Department of Environmental Management and the US Environmental Protection Agency at Least ten working days before removing the structure. There will be a notification fee payable to IDEM. Notification forms will be available from the Indiana Department of Transportation, Sales Supervisor on the day of sale.
5. There shall be no burning of debris on the site.
6. All work must be done under the supervision of the District Construction Engineer. Before the Surety Performance Bond will be released, the District Construction Engineer must approve the site where the structure has been removed.
7. To remove the improvements purchased within the specified period of time normally sixty (60) days after the date of the sale. Within ten (10) days after removal of the improvement, to complete the removal of all combustible material and other rubbish, including shrubbery and trees cut or uprooted to facilitate moving operations, leaving only concrete flatwork on the premises. Any excavation made to facilitate the moving of the improvement must be refilled and leveled.

EXAMPLE 8-C Continued

8. The successful bidder shall be responsible for backfilling the crawl space and/or basement according to the following specifications:
 - a. All appliances and debris left on site shall be removed and disposed of.
 - b. All drains shall be sealed with concrete.
 - c. Basement floor shall be broken.
 - d. Basement or crawl space walls shall be demolished and removed down to a point two feet below ground level or sub-grade elevation, whichever is lower.
 - e. Basement or crawl space shall be backfilled with "B" barrow (pit run gravel).
 - f. Basement must be filled the same day structure is removed.
9. Buyer shall have the right to remove only the improvements specifically purchased and shall enjoy no other rights upon the premises.
10. The bidder is solely responsible for securing all necessary zoning, building and moving permits and licenses including those required by local City, County and the Indiana Department of Transportation. The Sales Supervisor accepts no responsibility for the requests or granting of these permits or licenses.
11. Upon acceptance of the Contract of Sale by the State of Indiana, if buyer defaults in any of the obligations mentioned above and in the Contract Sales Agreement, the State may demolish or remove the improvements at the buyer's expense or may take action against the bond for the cost of such demolition or removal.

EXAMPLE 8-D

AUCTION CLERK'S REPORT

PROJECT _____

PARCEL NO. _____
BUYER _____
STREET ADDRESS _____
CITY _____ **STATE** _____ **ZIP** _____
PHONE _____
ITEM _____ **PURCHASE PRICE** _____
BOND AMOUNT _____ **BOND RECEIVED** _____

PARCEL NO. _____
BUYER _____
STREET ADDRESS _____
CITY _____ **STATE** _____ **ZIP** _____
PHONE _____
ITEM _____ **PURCHASE PRICE** _____
BOND AMOUNT _____ **BOND RECEIVED** _____

PARCEL NO. _____
BUYER _____
STREET ADDRESS _____
CITY _____ **STATE** _____ **ZIP** _____
PHONE _____
ITEM _____ **PURCHASED PRICE** _____
BOND AMOUNT _____ **BOND RECEIVED** _____

PARCEL NO. _____
BUYER _____
STREET ADDRESS _____
CITY _____ **STATE** _____ **ZIP** _____
PHONE _____
ITEM _____ **PURCHASED PRICE** _____
BOND AMOUNT _____ **BOND RECEIVED** _____

CLERK'S SIGNATURE _____

EXAMPLE 8-E

Project _____
Parcel _____
County _____
Grantor _____
Removal Date _____

CONTRACT FOR SALE AND REMOVAL OF PERSONAL PROPERTY

THIS AGREEMENT, made this _____ day of _____, _____, by
and between the State of Indiana, acting by and through the Indiana Department of Transportation,
hereinafter referred to as the Seller, and _____,
Social Security Number _____, hereinafter to as Buyer, Witnesseth: That the
Seller, in consideration of the amount of money, promises and conditions herein contained and in
accordance with the terms of the advertising for the sale hereof, promises and agrees to sell, and does
hereby sell, to the Buyer, the following personal property to wit:

The Buyer now pays to the Seller the amount of \$ _____ being the amount bid by said
Buyer at the public sale of said property, receipt of which is hereby acknowledged. The Buyer promises
and agrees to remove said personal property from said real estate upon which it is now located, promptly
but no later than sixty (____) days from the date of execution of the Contract for sale and Removal of
Personal Property. Substantial compliance with this Contract means performance of all obligations stated
herein.

Time is of the essence for all performance obligations stated herein. The performance times may be
extended by a written extension, signed by Indiana Department of Transportation, given prior to the
deadline and for such reasonable time as the Seller may determine, when in the Seller's sole opinion the

EXAMPLE 8-E Continued

Buyer is delayed in work progress by fire, weather, injuries, or other causes beyond the Buyer's control or which justify the delay. Buyer agrees to keep the work premises and adjoining ways free of waste material and rubbish, including shrubbery and trees which have been cut or uprooted to facilitate moving operations, caused by his work or that of his agent or employees. Buyer further agrees to remove all such waste material and rubbish, together with all of his tools, equipment, machinery, and surplus materials, promptly on termination of the project, but no later than ten days after the removal of the personal property from the real estate, leaving only concrete flatwork on the premises. Reasonable rental, storage, and removal fees will be charged for items remaining, and Seller may dispose of the same where verbal notice is given and Buyer fails to remove or pay such fees.

Buyer agrees to fill the basement and/or crawl space according to the terms of this sale and refill and level any excavation, which was made to facilitate moving operations. A copy of the "Terms of Sale" is attached to and becomes a part of this Contract.

Buyer shall have the right to enter the premises for the purpose of removing the personal property and performing other work described in this Contract for Sale and Removal of Personal Property. Buyer is permitted to store equipment and materials, used in the removal of the personal property, on the premises for a reasonable time, but in any event, for a time no longer than is permitted for the completion of the work. Buyer shall enjoy no rights upon the premises.

Buyer will execute a satisfactory Faithful Performance Surety Bond, as attached, or a Cash Bond, in the amount of \$ _____, this amount being the amount stated by the Sales Supervisor at the time of sale (minimum amount of bond being \$ 500.00). A bond must be furnished on each successful bid within ten (10) days after the auction. Buyer will not remove any property until the bond has been furnished. If the bond is not furnished within the specified ten (10) days, the Buyer will be in default on the Contract

EXAMPLE 8-E Continued

for Sale and Removal of Personal Property and will forfeit the purchase price, and the Seller may, in addition to all other remedies available at law or equity, sell, demolish, or remove the personal property without incurring any liability to the Buyer or be accountable for proceeds.

The Buyer, his agents, servants, and workmen will be liable and responsible for all damage done to other property adjoining the property of the Seller and will be responsible and liable for any damage done to any person that might be injured while the personal property is being removed. Buyer shall provide and maintain all guards, fences, lights and other facilities necessary for protection of the public and the workmen employed about the site as required by public authority or local conditions. Persons not directly connected with the work shall be kept entirely away from the site during the execution of the work.

Buyer agrees to indemnify, defend, and hold harmless the Seller, and its agents and employees, from and against all claims, damages, losses, and expenses, including reasonable attorney's fees in case it shall be necessary to file a lawsuit to enforce the provisions of this agreement or defend an action, arising out of the performance of the work herein, which is (1) for bodily injury, illness, or death, or for property damage including loss of use, and (2) caused in whole or in part by the Buyer's negligent act or omission, or that of an agent, or that of anyone employed by them or for whose acts Buyer or his agent may be liable. Buyer shall perform the contract as an independent contractor and not as an agent or employee of the Seller, and nothing herein shall be construed to be inconsistent with this relationship or status.

Buyer will give all notices and obtain all permits, licenses, bonds, and franchises that may be required for the removal and transportation of buildings or other personal property by federal, state, county, or municipal laws, rules, statutes, regulations, or ordinances. The Buyer will give all such notices and secure all such permits, licenses, bonds, and franchises before he begins the work described in this

EXAMPLE 8-E Continued

Contract for Sale and Removal of Personal Property.

Upon acceptance of the Contract by the Seller, if the Buyer defaults in any of its obligations under the Contract for Sale and Removal of Personal Property, the Seller may sell, demolish, or remove the personal property at the buyer's expense or may take action against the bond for demolition, removal, and site clearance.

After the personal property has been removed from the site and all other obligations of the Contract for Sale and Removal of Personal Property have been performed, the Seller will, upon request, deliver to the Buyer a Receipt of Sale of Surplus Property. The Bond executed pursuant to this Contract will be released upon performance of all obligations on the part of the Buyer.

Buyer acknowledges that prior to signing this Contract for Sale and Removal of Personal Property, he has fully examined the personal property which is the subject of this transaction, and Buyer has found the personal property to be suitable for his purposes and has not received or relied upon any representation of the Seller, its agents, or employees with respect to quality, quantity, condition, or nature of the present property or the title thereto. Seller does not give any warranty, expressed or implied, as to description, quality, interest, or title in the personal property.

This Contract for Sale and Removal of Personal Property shall be effective only upon acceptance by the Indiana Department of Transportation and review and approval by the Office of the Attorney General of the State of Indiana.

Pursuant to IC 22-9-1-10, Buyer shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, terms,

EXAMPLE 8-E Continued

conditions or privileges of employment or any matter directly or indirectly related to employment because of his race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract.

IN WITNESS THEREOF, the parties have caused their signatures to be affixed by the appropriate officers.

Buyer: _____
Signature

Printed Name

STATE OF INDIANA)

) **SS:**

COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County, personally appeared _____ and _____ being first duly sworn by me upon _____ oath, say(s) that the terms and conditions in the foregoing Agreement are true.

Signed and sealed this _____ day of _____, 20____.

(Written Signature)
Notary Public

(Printed Signature)
Notary Public

My Commission expires: _____

County of Residence: _____

EXAMPLE 8-E Continued

ACCEPTED BY:

INDIANA DEPARTMENT OF TRANSPORTATION

, **Commissioner**

STATE OF INDIANA)

COUNTY OF _____) SS:

Before me the undersigned, a Notary Public in and for said County, personally appeared _____ and _____ being first duly sworn by me upon _____ oath, say(s) that the terms and conditions in the foregoing Agreement are true.

Signed and sealed this _____ day of _____, 20____.

(Written Signature)
Notary Public

(Printed Signature)
Notary Public

My Commission expires: _____

County of Residence: _____

This instrument was prepared and approved as to legality and form by the undersigned who affirms under penalties for perjury, that he has taken reasonable care to redact each Social Security number in this Document, unless required by law.

Name: _____
INDIANA ATTORNEY GENERAL

By _____
Deputy Attorney General
Chief, Transportation Practice Group

EXAMPLE 8-F

Receipt

DATE _____ NO. 1700

RECEIVED FROM _____

ADDRESS _____

FOR _____ DOLLARS \$ _____

ACCOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID		CHECK	
BALANCE DUE		MONEY ORDER	

BY _____

FORM 45808 © **Tops**

EXAMPLE 8-G



SALE OF SURPLUS PROPERTY

INDIANA DEPARTMENT OF TRANSPORTATION

Office of Real Estate

District Office

Anywhere, Indiana 9999

FAX: () _____

Writer's Direct Phone: () _____

DATE:

TO: Cashier
Accounting and Control
Room N725

FROM: District Office of Real Estate

Amount is the payment covering proceeds from sale of surplus property

Date of Sale Amount of Sale \$

Amount Paid \$ Receipt #

Payer Name
Address

Project
Parcel

County

Code

Federal Funds were involved in this acquisition. YES NO
Credit to FHWA required 0 % FEDERAL FUNDS CREDITED % 0

STATE FUNDS %
8-27

EXAMPLE 8-H

CASH BOND RECEIPT

DATE: _____

In receipt of _____, from _____
(Amount of cash or check) (Owner or highest bidder)

Social Security Number _____ serving as a performance bond for
the removal of a building (retained by owner) (purchased at auction) from the Indiana
Department of Transportation.

Project: _____, Code: _____, Parcel: _____,

County: _____.

Submitted by: _____
(Buyer – Negotiator) (Sales Supervisor)

(Signature)

Office of Real Estate
District Office, _____, IN

EXAMPLE 8-I

Phone number

DATE: _____

Notice of Time Extension

NAME: _____
ADDRESS: _____
ZIP CODE: _____

Dear _____:

You are hereby granted an extension to complete the terms of sale for the auction property you purchased on _____ 20____, located at _____, IN. The extension will expire at noon on _____, **20**____. At that time all terms of sale must be met.

Sincerely,

Name:
District Office of Real Estate,
_____ District Office

EXAMPLE 8-J

Phone Number
Office of Real Estate
Manager, _____

CONSTRUCTION ENGINEER’S CERTIFICATION

All work must be done under the supervision of the District’s Construction Engineer before the Bond is released by Property Management. The District construction Engineer must approve the site from where the structure has been removed and the release, below will be signed and forwarded to Property Management.

I hereby approve the work done to remove said structures from the right of way and backfill, if necessary, the crawl space and/or basement according to the following specifications:

- A. All appliances and debris shall be removed and disposed of.
- B. All drains shall be sealed with concrete.
- C. Basement floor shall be broken.
- D. Basement or crawl space walls shall be demolished and removed down to a point Two feet below ground level or sub-grade elevation, whichever is lower.
- E. Basement or crawl space shall be back-filled with “B” Borrow (pit run gravel).
- F. Basement must be filled the same day the house is removed.

Construction Engineer (Signature)

(Date)

Construction Engineer (Printed Name)

Indiana Department of Transportation District

EXAMPLE 8-K

DATE: _____

(317) 233-3644

RE: Bond Release

Project:
Parcel:
Code:
County:
Bond No.:

Dear Sir:

The sites, within the State owned Right of Way, from which buildings were removed by ___ at ___ have been inspected by personnel of this office and the performance under the contract has been satisfactorily completed. Your bond dated ___ number ___ in the amount of \$___ is hereby released.

Respectfully,

Office of Real Estate
District Office

EXAMPLE 8-L

INDIANA DEPARTMENT OF TRANSPORTATION CLAIM VOUCHER

State Form 23216 (R7/6-02) Approved by State Board of Accounts - July 1, 2002

SERVICE DATE:

Instructions: This agency is requesting disclosure of your Social Security Number in accordance with I.C. 4-1-8.

VENDOR INFORMATION				AGENCY INFORMATION			
DOCUMENT NUMBER C800	Date (MM,DD,YY)			AGENCY NAME	INDOT		
VENDOR NAME				AGENCY NUMBER	800		
ADDRESS (NUMBER,STREET)				SOCIAL SECURITY NUMBER	0		
				FEDERAL I.D. NUMBER	0		
CITY	STATE	ZIP		VENDOR	0		

AREA BELOW TO BE COMPLETED BY AGENCY

DATE (MM,DD,YY)	AMOUNT	FUND	OBJECT	CENTER	QTY.	LOAN/INV NBR	UNIT	DESCRIPTION / 1099 IND
REMIT TO:								

GROSS AMOUNT:

DOC I.D. : PV 800

INDOT ACCOUNTING LINE DISTRIBUTION										
LN	INVOICE NUMBER	FUND	AGCY	ORG	APPR UNIT	ACTV	OBJ	JOB/PROJ NUMBER	PRTY	AMOUNT
01			800							
02			800							
03			800							
04			800							
05			800							
06			800							
07			800							
08			800							

RECOMMENDED FOR APPROVAL

INDOT OFFICIAL INITIATING THE CHARGE

DATE

I certify that this claim is correct and valid and is a proper charge against the State Agency, Fund and Center indicated.	
Authorized Signature of State Agency	Date (Month, Day, Year)
Pursuant to the provisions and penalties of Indiana Code 5-11-10-1, I hereby certify that the foregoing Fund and Center is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.	
Signature of Vendor	Date (Month, Day, Year)

EXAMPLE 8-M

Phone #: _____

MEMORANDUM

TO: Contracts and Construction - IGCN-855

FROM: District
Office of Real Estate

RE: **10 WEEK LETTER**, Clearing of Right-of-Way, Demolition Items
CODE:
CONTRACT:
DES:
ROAD:
COUNTY:
CN PROJECT:
LETTING:

Please take the necessary action to include the following demolition items in the construction contract. **Please coordinate the demolition of these items with the current certification letter to determine if the parcel has been cleared for demolition**, or if you have any questions contact District Office , Phone # _____ before demolition.

<u>Parcel</u>	<u>Structure</u>	<u>Stationing</u>	<u>C/L</u>	<u>Demolition Estimate</u>	<u>Contractor may proceed:</u>
		+ to	,-		
		+			
		+ to	,-		
		+			
		+ to	,-		
		+			

SC:sc
cc: Records

EXAMPLE 8-N

Date: _____

July 26, 2025

Fire Chief Civil Servant
Anywhere Fire Department
123 Main Street
Anywhere, Indiana 46999

RE: Use of INDOT property for Fire/Police department training exercises

Dear Chief Servant:

This letter of agreement is entered into this _____ day of _____, 2000, between the Property Management Unit of the Land Acquisition Division of the Indiana Department of Transportation and the Anywhere Fire Department in Anywhere County, Indiana.

The State of Indiana, through the Indiana Department of Transportation, owns and manages the following property:

And having a common address of:

Code 9999 Parcel 1 1115 Pine Lake Avenue, Anywhere, Indiana 46999

This parcel being acquired for project: NH-999-6(003).

The Anywhere Fire Department, through Civil Servant, its Fire Chief, has requested permission to use these frame buildings to train fire department personnel in (whatever kind of training the department is planning to do).

The Anywhere Fire Department, having secured the proper permits from state and/or local officials, is hereby granted permission to use the above-noted dwellings for fire/police training purposes provided the following conditions are met:

1. The Anywhere Fire Department shall hold the State of Indiana, the Indiana Department of Transportation, their officers, employees and agents harmless and at no time shall they be liable for any damages or injury to person or property that are the result of the training activities engaged in by the Anywhere Fire Department personnel.
2. During the training exercises, no persons other than Anywhere Fire Department personnel and their invited guests shall be allowed on the property noted above.

Signed: _____
Civil Servant, Fire Chief
Anywhere Fire Department

Date

Signed: _____
District Deputy Commissioner

Date

CHAPTER 9

STATUTORY REFERENCES

This chapter is a listing of State and Federal codes affecting the policies and procedures of the Property Management activities for the Indiana Department of Transportation.

Indiana Code Title 8

IC 8-23-2-6, Department powers; contracts and leases with transportation finance authority; confidential documents

IC 8-23-7-2, Purposes for acquiring real property

IC 8-23-7-12, Vouchers for payment; certification; payment

IC 8-23-7-13, Sale of surplus property

IC 8-23-7-14, Sale of surplus property separated from abutting parcel; offer to abutting property owner

IC 8-23-7-15, Sale of surplus property separated from abutting parcel; procedure when abutting property owner fails to accept offer

IC 8-23-7-16, Sale of surplus property valued at \$4,000 or less

IC 8-23-7-17, Exchange of lands, rights, and easements; criteria

IC 8-23-7-18, Exchange of lands, rights, and easements; valuation; payments for differences in value

IC 8-23-7-19, Exchange of lands, rights, and easements; improvements

IC 8-23-7-20, Exchange of lands, rights, an easements; attaching construction contracts, bonds, or plans to exchange agreements

IC 8-23-7-21, Exchange of lands, rights, and easements; improvement completion requirement

IC 8-23-7-31, Acquisition of property, rights, and easements; legal description; taxation

IC 8-23-5-1, Encroachment on state highways; removal, prevention, and termination; notice; entry; costs; exception

Indiana Code Title 4

IC 4-20.5-7, Disposition of Property

IC 4-20.5-7-1, Application of chapter

IC 4-20.5-7-6, Notice of proposed transfer

IC 4-20.5-7-7, Transfer of property between agencies or educational institutions

IC 4-20.5-7-7.1, Transfer of property between agencies or educational institutions; notice of availability; disposal of property

IC 4-20.5-7-7.3, Priority of transfers

IC 4-20.5-7-8, Transfer to political subdivision or public utility or sale

IC 4-20.5-7-9, Appraisal

IC 4-20.5-7-10, Transfer to political subdivision by gift or sale; preference to political subdivisions

IC 4-20.5-7-10.7, Transfer of property to person for property of like value

IC 4-20.5-7-11, Sale through competitive bids or auction

IC 4-20.5-7-15, Sale at less than appraised value; grant of easement

IC 4-20.5-7-16, Cash sale; proceeds depository

IC 4-20.5-7-17, Instrument of transfer; signatures

IC 4-21.5-3, Adjudicative Proceedings

Code of Federal Regulations

23 CFR Part 710 Subpart C Reimbursement Provisions

23 CFR Part 713 Subpart A Property Management

23 CFR Part 713 Subpart B Management of Airspace

23 CFR Part 713 Subpart C Disposal of Rights of Way

CHAPTER 10

ABBREVIATIONS AND DEFINITIONS

CFR	Code of Federal Regulations.
C-T-C	As used in this manual the cost to remove and relocate an improvement as determined by the appraiser and included as a portion of the good faith offer.
DAG	Deputy Attorney General.
Disposition	To sell, transfer, or otherwise dispose of or encumber the property.
Excess Land	Land that is surplus to INDOT needs. Land acquired in fee simple that is no longer needed to locate, relocate, construct, reconstruct, repair, or maintain a state highway; to widen or straighten a highway; to clear and remove obstructions to vision at crossings and curves; to construct weigh stations and rest areas; to provide scenic easements and other areas necessary to cooperate with the federal government or carry out a federal law; to facilitate long-range transportation planning.
Excess Right of Way	Land located within the limits of the highway right of way, but that is no longer needed as operating right of way.
FHWA	Federal Highway Administration.
Fixture	Personal property that has been so affixed to land or a building that it becomes part of the real estate.
IDOA	Indiana Department of Administration.
Improvement	Generally, buildings, but may include any permanent structure or other development, such as fences, patios, signs, fountains or ponds, drives, etc.
INDOT	Indiana Department of Transportation.
Limited Access	Limited, in total or in part, right of an owner or occupant of real property abutting an existing or newly constructed highway to direct access to that highway.
LRS	Land Records System, Land Acquisition's Data Base.
Owner	As used in this manual owner will refer to the owner of the parcel of land or improvement being acquired by the department.

Property Management	The Property Management Unit of the Acquisition Assistance Section in the Land Acquisition Division of the Indiana Department of Transportation.
Retention	Retention is when the owner wishes to retain a fixture or improvement originally appraised by INDOT and included in the offer to buy. A salvage or retention value is established and that value is deducted from the offer. The owner retains ownership and responsibility to remove the fixture or improvement.
UST	Underground Storage Tanks
LUST	Leaking Underground Storage Tanks

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