



Form ROW-RM-37

Replaces Form ROW-RM-37 and ROW-RM-38

(Rev. 10/2005)

GSD-EPC

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CONTRACTUAL AGREEMENT FOR RIGHT OF WAY PROCUREMENT - LOCAL GOVERNMENT

County:

Federal Project No:

ROW CSJ No:

District:

Highway:

This Agreement by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the **State**, and _____, Texas, acting by and through its duly authorized official pursuant to an Ordinance or Order dated the _____ day of _____, hereinafter called the **Local Government**, *shall be effective on the date of approval and execution by and on behalf of the State.*

WHEREAS, the **State** has deemed it necessary to make certain highway improvements on Highway No. _____ from _____ to _____, and which section of highway improvements will necessitate the acquisition of certain right of way; and

WHEREAS, it is agreed such right of way purchase shall be a joint effort of the **State** and the **Local Government**;

NOW, THEREFORE be it agreed that acquisition of such right of way shall be in accordance with the terms of this agreement and in accordance with the Texas Department of Transportation Right of Way Manual and all applicable Federal and State laws governing the acquisition policies for acquiring real property. The **State** hereby authorizes and requests the **Local Government** to proceed with acquisition and the **State** agrees to reimburse the **Local Government** for its share of the cost of such right of way, providing such acquisition and reimbursement are accomplished according to the provisions outlined herein and agreed to by both parties hereto.

Location Surveys and Preparation of Right of Way Data: The **State**, without cost to the **Local Government**, will do the necessary preliminary engineering and title investigation in order to supply to the **Local Government** the data and instruments necessary to obtain acceptable title to the desired right of way.

Determination of Right of Way Values: The **Local Government** agrees to make a determination of property values for each right of way parcel by methods acceptable to the **State** and to submit to the **State's** District Office a tabulation of the values so determined, signed by the appropriate **Local Government** representative. Such tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land taken, itemization of improvements taken, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in arriving at all determined values. Such work will be performed by the **Local Government** at its expense without cost participation by the **State**. The **State** will review the data submitted and may base its reimbursement on the values which are determined by this review. The **State**, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by **State** employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for **State** reimbursement. If at any stage of the project development it is determined by mutual agreement between the **State** and **Local Government** that there should be waived the requirement that the **Local Government** submit to the **State** property value determinations for any part of the required right of way, the **Local Government** will make appropriate written notice to the **State** of such waiver, such notice to be acknowledged in writing by the **State**. In instances of such waiver, the **State** by its due processes and at its own expense will make a determination of values to constitute the basis for **State** reimbursement.

Negotiations: The **State** will notify the **Local Government** as soon as possible as to the **State's** determination of value. Negotiation and settlement with the property owner will be the responsibility of the **Local Government** without participation by the **State**; however, the **Local Government** will notify the **State** immediately prior to closing the transaction so that a current title investigation may be made to determine if there has been any change in the title. The **Local Government** will deliver properly executed instruments of conveyance which, together with any curative instruments found to be necessary as a result of the **State's** title investigation, will properly vest good and indefeasible title in the **State** for each right of way parcel involved. The **Local Government** will also deliver to the **State** an owner's policy of title insurance for each parcel, except as otherwise specifically approved by the **State**. Upon payment to the property owner of the agreed purchase

price, the **Local Government** is authorized and directed to secure for the **State** possession of each parcel in accordance with all applicable Federal and **State** laws governing relocation assistance, notices to vacate and forcible detainer. The costs incidental to negotiation, recording the right of way instruments, and securing possession of the parcels will be the responsibility of the **Local Government**. The cost of title insurance, closing services and all costs of relocation assistance as authorized by applicable Federal and **State** laws will be the responsibility of the **State**.

Administrative Settlements: After the offer has been delivered to the property owner, and prior to the Commissioners' Hearing, the property owner may deliver one written counteroffer ("Administrative Settlement Proposal") to the **Local Government**. The **Local Government** will evaluate the Administrative Settlement Proposal and make a recommendation of approval or disapproval to the **State** through the **State's** appropriate District Office. The District Office will then submit the Administrative Settlement Proposal, together with the **Local Government** and District recommendations, to the **State** Right of Way Division office for final approval in accordance with current **State** procedures. The **State's** approval of the Administrative Settlement Proposal is only for purposes of closing the purchase of the property prior to the Special Commissioners' Hearing. In the event a closing of the purchase does not occur prior to the hearing, the **State's** approval is automatically, without further action, withdrawn, and the **State** will participate only in the original approved value. In the event the **State** does not approve the Administrative Settlement Proposal, and the **Local Government** elects to purchase the property at a value greater than the original approved value, the **State's** participation in the purchase price will apply only to the original approved value, and the **Local Government** will pay one hundred percent (100%) of the costs which exceed the original approved value, even if the applicable county qualifies as an economically disadvantaged county.

Condemnation: Condemnation proceedings will be initiated at a time selected by the **Local Government** and will be the **Local Government's** responsibility at its own expense except as hereinafter indicated. The **Local Government** will obtain from the **State** without cost current title information and engineering data at the time condemnation is to be initiated. Except as hereinafter set forth the **Local Government** will concurrently file condemnation proceedings and a notice of lis pendens for each case in the name of the **State**, and in each case so filed the judgment of the court will decree title and possession to the property condemned to the **State**. The **Local Government** may, as set forth herein under "Excess Takings" and where it is determined to be necessary, enter condemnation proceedings in its own name. Property acquired in the **Local Government's** name for the **State** must comply with requirements set forth in the engineering data and title investigation previously furnished to the **Local Government** by the **State** at such time as the **Local Government** conveys said property to the **State**.

Court Costs, Costs of Special Commissioners' Hearings and Appraisal Expense: Court costs and costs of Special Commissioners' hearings assessed against the **State** or **Local Government** in condemnation proceedings conducted on behalf of the **State** and fees incident thereto will be paid by the **Local Government**. Such costs and fees, with the exception of recording fees, will be eligible for ninety percent (90%) **State** reimbursement under the established reimbursement procedure provided such costs and fees are eligible for payment by the **State** under existing law. Where the **Local Government** uses the **State's** appraisers employed on a fee basis in Special Commissioners' Hearings or subsequent appeals, the cost of the appraiser for updating the report, for preparing new reports, preparing for court testimony and appearing in court to testify in support of the appraisal will be paid direct by the **Local Government**, but will be eligible for ninety percent (90%) **State** reimbursement under established procedure provided prior approval for such appraiser has been obtained from the **State**. The fee paid the appraiser by the **Local Government** shall be in accordance with the fee schedule set forth in the appraiser's contract for appraisal services with the **State**.

Excess Takings: In the event the **Local Government** desires to acquire land in excess of that requested by the **State** for right of way purposes, the **State's** cost participation will be limited to the property needed for its purposes. If the **Local Government** elects to acquire the entire property, including the excess taking, by a single instrument of conveyance or in one eminent domain proceeding, the property involved will be acquired in the name of the **Local Government** and that portion requested by the **State** for right of way will be separately conveyed to the **State** by the **Local Government**. When acquired by negotiation, the **State's** participation will be based on the **State's** approved value of that part of the property requested for right of way purposes, provided that such approved value does not exceed actual payment made by the **Local Government**.

When acquired by condemnation, the **State's** participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the **State's** approved value to the **State's** predetermined value for the whole property.

Improvements: Property owners will be afforded an opportunity in the negotiations to retain any or all of their improvements in the right of way taking. In anticipation of the owner desiring to retain improvements, the **State's** approved value will include the amounts by which the upper limit of **State** participation will be reduced for the retention. It is further agreed that the upper limit for the **State's** participation in the **Local Government's** cost for an improved parcel will be reduced as shown in the **State's** approved value where the owner retains an improvement which is to be moved by either the **Local Government** or the owner. In the event improvements which are, in whole or part, a part of the right of way taking are not retained by the owner, title is to be secured in the name of the **State**.

The **State** will participate in the acquisition of a structure severed by the right of way line if the part of the house, building or similar structure which lies outside the right of way cannot be reconstructed adequately or there is nothing but salvage left, provided that the **State's** value is established on this basis and provided that title to the entire structure is taken in the name of the **State**. The **State** shall dispose of all improvements acquired. The net revenue derived by the **State** from the disposition of any improvements sold through the General Services Commission will be credited to the cost of the right of way procured and shared with the **Local Government**.

Relocation of Utilities: If the required right of way encroaches upon an existing utility located on its own right of way and the proposed highway construction requires the adjustment, removal or relocation of the utility facility, the **State** will establish the necessity for the utility work. **State** participation in the cost of making the necessary change, less any resulting increase in the value to the utility and less any salvage value obtainable, may be obtained by either the "actual cost" or "lump sum" procedures. Reimbursement under "actual cost" will be made subsequent to the **Local Government's** certification that the work has been completed and will be made in an amount equal to ninety percent (90%) of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the **State** establish the eligibility of the utility work and enter into a three-party agreement with the owners of the utility facilities and the **Local Government**, which sets forth the exact lump sum amount of reimbursement as approved in such agreement. The utility will be reimbursed by the **Local Government** after proper certification by the utility that the work has been done, said reimbursement to be based on the prior lump sum agreement. The **State** will reimburse the **Local Government** in an amount equal to ninety percent (90%) of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum approved value shall not exceed \$20,000, except as specifically approved by the **State**. In those cases where a single operation is estimated to exceed \$20,000, the transaction will be brought to the attention of the **State** for determination of proper handling based upon the circumstances involved. Such utility firm commitment will be an appropriate item of right of way. The adjustment, removal or relocation of any utility line on publicly owned right of way by sufferance or permit will not be eligible for **State** reimbursement. The term "utility" under this agreement shall include publicly, privately and cooperatively owned utilities.

Fencing Requirements: The **Local Government** may either pay the property owner for existing right of way fences based on the value such fences contribute to the part taken and damages for an unfenced condition resulting from the right of way taking, in which case the estimated value of such right of way fences and such damages will be included in the recommended value and the approved value, or the **Local Government** may do the fencing on the property owner's remaining property.

Where the **Local Government** performs right of way fencing as a part of the total right of way consideration, neither the value of existing right of way fences nor damages for an unfenced condition will be included in the recommended value or the approved value. **State** participation in the **Local Government's** cost of constructing right of way fencing on the property owner's remainder may be based on either the actual cost of the fencing or on a predetermined lump sum amount. The **State** will be given credit for any salvaged fencing material and will not participate in any overhead costs of the **Local Government**.

If **State** participation is to be requested on the lump sum basis, the **State** and the **Local Government** will reach an agreement prior to the actual accomplishment of the work as to the necessity, eligibility and a firm commitment as to the cost of the entire fencing work to be performed. The foregoing is subject to the provision that the lump sum approved cost shall not exceed \$20,000, except as specifically approved by the **State**. In the event the cost of the fencing is estimated to exceed \$20,000, the transaction will be brought to the attention of the **State** for determination of proper handling based upon the circumstances involved.

Reimbursement: The **State** will reimburse the **Local Government** for right of way acquired after the date of this agreement in amount not to exceed ninety percent (90%) of the cost of the right of way acquired in accordance with the terms and

provisions of this agreement. The **State's** reimbursement will be in the amount of ninety percent (90%) of the **State's** predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount. All requests by the **Local Government** for reimbursement shall comply with the then current reimbursement submission requirements set forth in the Texas Department of Transportation Right of Way Manual.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation", the participation by the **State** shall be based on the final judgment, conditioned upon the **State** having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. The **State** shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings. All other items of cost shall be borne by the **State** and the **Local Government** as provided in other sections of this agreement.

If a lump sum fencing or utility adjustment agreement has been executed, the **State** will reimburse the **Local Government** in the amount of ninety percent (90%) of the predetermined lump sum cost of the right of way fencing or utility adjustment.

If the **Local Government** prefers not to execute a lump sum agreement for either fencing or utility adjustments, the **State** will reimburse on the actual cost of such fencing or adjustments. The **Local Government's** request for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

Inspection of Books and Records: The **Local Government** shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the **State** and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the **State** and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The **State** auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the **State** auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

General: It is understood that the terms of this agreement shall apply to new right of way authorized and requested by the **State** which is needed and not yet dedicated, in use or previously acquired in the name of the **State** or **Local Government** for highway, street or road purposes. This agreement shall also apply, with regard to any existing right of way, to outstanding property interests not previously acquired and to eligible utility adjustments not previously made, as authorized and requested by the **State**.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the **State** and the **Local Government**.

LOCAL GOVERNMENT

By: _____

Title: _____

Date: _____

EXECUTION RECOMMENDED:

District Engineer, District

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
John P. Campbell, P.E.
Director, Right of Way Division