

Section 7.2

NEGOTIATION PROCESS

TABLE OF CONTENTS

PURPOSE.....	7-2-1
AUTHORITY	7-2-1
REFERENCES.....	7-2-1
SCOPE.....	7-2-1
DEFINITIONS	7-2-2
7.2.1 Authorized Project.....	7-2-3
7.2.2 Agent's Price Estimate	7-2-3
7.2.3 Notification to Real Property Owners	7-2-4
7.2.4 Condominium Notices.....	7-2-5
7.2.5 Property Owner/Business Owner Requests for Records	7-2-6
7.2.6 Binding Offers for the Purchase of Real Property	7-2-7
7.2.7 Delivery of Initial Binding Offers	7-2-8
7.2.8 Form and Content of Binding Offers	7-2-8
7.2.9 Conditional Offers for the Purchase of Real Property	7-2-9
7.2.10 Offers for Tenant-Owned Improvements.....	7-2-9
7.2.11 Uneconomic Remnants.....	7-2-9
7.2.12 Minimum Offers.....	7-2-10
7.2.13 Negotiations for Purchase of Real Property	7-2-10
7.2.14 Representative Authorization	7-2-10
7.2.15 Acquisition of an Entire Property.....	7-2-11
7.2.16 Purchase of an Entire Improvement.....	7-2-11
7.2.17 Mediation	7-2-12
7.2.18 Binding Agreements.....	7-2-12
7.2.19 Threat of Condemnation	7-2-13
7.2.20 Execution of Agreements by Less than All Landowners	7-2-13
7.2.21 Clarifying Language Added To Agreements	7-2-13
7.2.22 All-Inclusive Settlements.....	7-2-14

7.2.23	Acquisition of an Outdoor Advertising Structure.....	7-2-14
7.2.24	Non-Monetary Negotiable Items	7-2-15
7.2.25	Owner Retention	7-2-15
7.2.26	Holdback Warrant	7-2-16
7.2.27	Inclusion of Relocation Assistance Benefits in Negotiated Agreements ...	7-2-16
7.2.28	Administrative Settlements.....	7-2-16
7.2.29	Settlement Approval Authority.....	7-2-18
7.2.30	Final Agency Acceptance	7-2-19
7.2.31	Protective Leasing	7-2-19
7.2.32	Central Office Projects	7-2-20

Section 7.2

NEGOTIATION PROCESS

PURPOSE

This section explains the real property negotiation process from project authorization through completion of the **Purchase Agreement** or the decision to place a parcel in suit.

AUTHORITY

Section 20.23(3)(a), Florida Statutes (F.S.)
Section 334.048(3), Florida Statutes (F.S.)

REFERENCES

Acquisition Process Pamphlet
Property Owner's Questionnaire, Sample Form Attachment A
Review Appraiser's Statement
Rule Chapter 12 B - 4.014, Florida Administrative Code
Section 73.015, F.S.
Section 73.073, F.S.
Section 119.0711, F.S.
Section 253.025, F.S.
Section 6.1, Appraisal and Appraisal Review
Section 7.4, Fees and Costs
Section 7.5, Legal Documents and Land Acquisition Closing
Section 7.8, Right of Way Resolutions
Section 7.10, Acquisition of Right of Way from Governmental Agencies
Section 7.11, Contaminated Parcels
Section 9.2, General Relocation Requirements
Section 12.1, Outdoor Advertising Signs

SCOPE

The District and Central Offices of Right of Way will use this section.

DEFINITIONS

Administrative Settlement: An agreement to pay an amount in excess of just and full compensation or an amount greater than the Florida Department of Transportation (Department's) initial business damage counteroffer, exclusive of fees and costs, which is closed prior to finalizing an Order of Taking by a court deposit.

Agent's Price Estimate: An estimate by an FDOT Right of Way Agent/Specialist of the amount of just and full compensation for an uncomplicated, noncomplex, low-value parcel (\$35,000 or less). Please note that Districts are authorized to utilize a single agent to perform both appraisal waiver valuation and negotiation in conjunction with the conflict-of-interest provisions for up to a maximum of \$15,000. Anything over \$15,000 requires a separate agent to perform negotiations and estimates of value.

Binding Agreement: An agreement that is either (1) an agreement equal to the Department's last approved just and full compensation, exclusive of fees and costs with no added terms or conditions, executed by the landowner as Seller and the Department's negotiating agent as Buyer, or (2) an agreement that includes an administrative increase, fees, costs, business damages, or other terms or conditions not included in the Department's last approved just and full compensation, executed by the landowner as Seller and the District Right of Way Manager or designee as Buyer.

Binding Offer: A formal written offer by the Department to a landowner for the purchase of his/her property that is binding on the Department and is available to the landowner to accept until formally withdrawn in writing or superseded by a higher formal written offer from the Department.

Certified Mail: A delivery service provided by the U.S. Postal Service or a private document delivery company that provides proof of mailing/shipping and confirmation of delivery.

Conditional Offer: Offers made during negotiations that modify the terms or conditions of the Department's latest binding offer.

Fees and Costs: Reasonable costs associated with obtaining one real estate appraisal per parcel, one business damage estimate per eligible business, reasonable attorney's fees, and other reasonable costs as appropriate in accordance with **Section 7.4, Fees and Costs**.

Initiation of Negotiations: The date the initial written offer of just compensation is made by the Department to the owner to purchase the real property for the project.

Just and Full Compensation: The recommended compensation established by the review appraiser in the Review Appraiser's Statement, or the amount of the authorized Agent's Price Estimate, or the amount determined by the District Right of Way Manager when the recommended compensation does not provide just and full compensation. Just and full compensation is exclusive of attorney fees and costs

Uneconomic Remnant: Property remaining after a partial taking that has little or no utility or value to the owner, as determined by the reviewer.

7.2.1 Authorized Project

The acquisition of transportation right of way must be authorized in writing by the District Secretary. A project resolution prepared and executed in accordance with **Section 7.8, Right of Way Resolutions** is the usual and preferred form of authorization. For those advance acquisition parcels or projects not under the threat of condemnation whereby a project resolution may not be prepared, written authorization from the District Secretary will be sufficient. Transportation right of way shall be acquired in compliance with the requirements of this procedure.

Note: Properties acquired for purposes other than transportation right of way, such as for office buildings, maintenance yards, and similar facilities must be titled in the Trustees of the Internal Improvement Trust Fund and shall be acquired in compliance with **Section 253.025, F.S.**

7.2.2 Agent's Price Estimate

7.2.2.1 At the discretion of the District Right of Way Manager, a Department Right of Way Agent may prepare an Agent's Price Estimate for noncomplex parcels having a value not to exceed \$35,000 as set forth in **Section 6.1, Appraisal and Appraisal Review**.

7.2.2.2 For those parcels where the Agent's Price Estimate will exceed \$15,000 the landowner must be given the option of having the Department appraise the property rather than having the property valued by Agent's Price Estimate. If the landowner elects to have the Department prepare an appraisal, the Department shall obtain an appraisal to establish just and full compensation. The official parcel file must be documented showing the landowner was advised of the right to have an appraisal prepared and of the landowner's election.

7.2.2.3 The Right of Way Agent shall analyze available, relevant market data prior to preparing the Agent's Price Estimate. Changes in the amount established as just and full compensation through Agent's Price Estimates must be supported by market data.

7.2.2.4 An Agent's Price Estimate must include all takings from the parent tract. For example, if there is a fee acquisition and temporary and permanent easements from a single tract, the value of all three interests combined must not exceed \$35,000.

7.2.2.5 The District Right of Way Manager or designee must authorize the Agent's Price Estimate for negotiations. Each Agent's Price Estimate must include: "Agent's Price Estimate Authorized for Negotiation" with a signature line and date for the authorizing official.

7.2.2.6 The Right of Way Agent who prepares the Agent's Price Estimate may be permitted to negotiate the acquisition of the parcel only if the offer to acquire the property is \$15,000 or less.

7.2.2.7 An appraisal must be prepared when:

- (A) The landowner elects to have the Department prepare an appraisal pursuant to **Section 7.2.2.2**;
- (B) The Agent's Price Estimate will exceed \$35,000;
- (C) A proposed administrative settlement is greater than the limits established in **Section 7.2.2.8**, or
- (D) The parcel cannot be settled by negotiation; in which case an appraisal must be prepared prior to submittal of suit information.

7.2.2.8 The following limitations apply to administrative settlements affecting parcels valued by Agent's Price Estimate:

- (A) For parcels with Agent Price Estimates up to \$2,500, the total settlement amount shall not exceed \$5,000.
- (B) For parcels with Agent's Price Estimates over \$2,500 and up to \$35,000, the amount of the increase shall not exceed the lesser of 100% of the Agent Price Estimate or \$15,000.
- (C) Where there are multiple takings, such as, fee, temporary and/or perpetual easements from a single parent tract, the above limits apply to the combined value of all interests being acquired.

7.2.3 Notification to Real Property Owners

7.2.3.1 The Department will notify each fee owner of property needed for a project of his/her rights as required by **Section 73.015, F.S.**

7.2.3.2 Notices to property owners may be delivered simultaneously with or at any time prior to delivery of the initial binding offer. Notices should be delivered at or before the time the District gives notice to proceed to its fee appraisers or alternatively assigns staff to appraise or prepare an Agent's Price Estimate. The offer shall not be delivered prior to the notice.

7.2.3.3 The District shall deliver property owner notices either personally or by certified mail, return receipt requested. Notices delivered by certified mail will be delivered to the owner's last known address listed on the county ad valorem tax roll. Notice to one owner of a multiple ownership parcel constitutes notice to all owners of the property. If the notice is delivered by certified mail, the return of the notice as undeliverable by postal authorities will constitute compliance with this section.

7.2.3.4 Property owner notices will be prepared using **Form No. 575-030-31, Notice to Owner**, or **Form No. 575-030-32, Notice to Owner (Spanish)**, as appropriate. Both forms have two versions: one version is for notices sent prior to the offer and the other version is for notices sent simultaneously with the offer. Enclosures shall include a copy of the **Acquisition Process Pamphlet** (English or Spanish), a legal description, or right of way map delineating the parcel, **Property Owner Questionnaire (See Attachment A)**, and a self-addressed stamped envelope.

7.2.3.5 If the ownership of the property changes after delivery of the **Notice to Owner**, but prior to an offer being made, the District shall provide a new **Notice to Owner**.

7.2.3.6 The Department will deliver the **Notice to Owner** directly to the property owner, not to a representative of the owner. The **Notice to Owner** is the official notice of the property owner's rights and responsibilities pursuant to **Section 73.015, F.S.** The delivery date constitutes the date of official notice.

7.2.3.7 Notification is not required when acquiring property from federal or state agencies. See **Section 7.10, Acquisition of Right of Way from Governmental Agencies**, for guidance.

7.2.3.8 The District shall notify property owners in writing when changes occur to the legal description, construction plans, or right of way maps which materially affect the owner's property such as size of the taking, parcel boundaries, or relationship of the parcel to the project.

7.2.4 Condominium Notices

7.2.4.1 Pursuant to **Section 73.073, F.S.**, when portions of the common elements of a condominium are to be acquired, the Department shall notify all condominium unit owners that the condominium association has the authority to represent unit owners during the acquisition process and to convey the common elements of the condominium unless the unit owner objects. The notice shall be delivered by certified mail to all condominium unit owners on the current list obtained from the condominium association or the appropriate taxing authority.

The timing of the delivery of this notice is discretionary. The notification shall contain:

- (A) The name and address of the District office;
- (B) A written description of the property;
- (C) The public purpose for which the property is needed;
- (D) The appraised value of the property to be acquired;
- (E) A statement relating to the owner's right to object to the taking or appraised value, and/or object to the procedures and the effects of exercising those rights; and
- (F) A statement relating to the power of the association to convey the property on behalf of the condominium unit owner if no objection to the taking or appraised value is raised and the effects of this alternative on the unit owners.

7.2.4.2 Each condominium unit owner must be allowed 30 days to respond from the date of their receipt of the notice. In the absence of a response from the unit owner within 30 days, the unit owner shall be deemed to have acquiesced to the association acting as the unit owner's representative in any subsequent proceeding relating to the parcel. The Department shall negotiate with the condominium association and all unit owners who objected within the 30-day periods.

7.2.5 Property Owner/Business Owner Requests for Records

7.2.5.1 When requested by a property owner/business owner, or his/her authorized representative, the Department shall provide the approved appraisal, agent's price estimate, or other documentation on which the Department's initial offer is based. The **Review Appraiser's Statement** may be provided at the discretion of the District Right of Way Manager. If the property owner requests a copy of an appraisal prior to delivery of the binding offer described in **Section 7.2.6.1**, the property owner must be notified within 15 business days after receipt of the request that a determination of the amount of the Department's offer has not been made. The property owner must be given an approximate date the offer will be made and that they will be provided a copy of the appraisal on which the offer is based at that time.

7.2.5.2 If requested by the property or business owner, the Department shall provide copies of right of way maps and other documents depicting the proposed acquisition, and copies of construction plans showing the improvements to be constructed on the property being acquired, and any improvements to be constructed adjacent to remainder properties. The portions of the construction plans to be provided must include, but are not limited to, plan, profile, cross-section, drainage, pavement marking sheets, and driveway connection detail. Copies of right of way maps and construction plans must be provided to the extent

they are prepared at the time of the property owner's request. Copies should be marked as to their status at the time they are provided.

For example, if at the time of the owner's request, the right of way maps have been approved by the District Right of Way Surveyor, they are complete maps and do not require any notations as to their status. If the maps have not been approved at the time they are provided to a property owner, the maps should be marked "preliminary and subject to change." The same approach should be used for construction plans.

7.2.5.3 Copies of the materials described in **Sections 7.2.5.1** and **7.2.5.2** must be provided free of charge to the property owner, business owner, or their authorized representative within 15 business days after receipt of the request. If any of the requested materials are unavailable at the time of the request, the requestor must be notified in writing that the materials are not presently available and give the date the materials are expected to be available. This notification must be provided within 15 business days after the District receives the property/business owner's request. All materials provided as a result of the request must be accompanied by a written transmittal, a copy of which must be retained in the official parcel file.

7.2.6 Binding Offers for the Purchase of Real Property

7.2.6.1 The Department shall provide the landowner a non-conditional binding offer to purchase his/her property in an amount not less than the Department's established just and full compensation. A subsequent binding offer shall be made to the landowner if the amount of just and full compensation changes so as to exceed the previous binding offer. Binding offers shall be available for the landowner to accept until withdrawn in writing or superseded by a higher binding offer from the Department. The Department shall not provide final agency acceptance to an offer for a period of 30 days, but the Department may give conditional acceptance to any offer. However, a conditional acceptance is still subject to final agency acceptance, per **Section 119.0711, F.S.**

7.2.6.2 If the Department determines that it cannot honor a previously delivered binding offer, the offer must be formally withdrawn in writing. Examples of situations that may require the formal withdrawal of a binding offer are: reduction in the established just and full compensation due to changes in the valuation; substantive design changes; voiding of the parcel; or cancellation of the project. If the landowner accepts a binding offer prior to its being withdrawn, the Department shall honor the offer, enter into a purchase agreement and close the agreement.

7.2.6.3 Subsequent to a binding offer in the amount of established just and full compensation, the District may, at the discretion of the District Right of Way Manager, make another binding offer in an amount higher than established just and full compensation, provided the higher amount can be justified as an administrative or legal settlement.

7.2.6.4 If the Department withdraws its binding offer and will not make a new offer for an extended period of time, the Department may pay reasonable attorney's fees and costs incurred by the landowner resulting from the previous binding offer and its withdrawal.

7.2.7 Delivery of Initial Binding Offers

7.2.7.1 The Department shall deliver the initial binding offer directly to the property owner per **Section 73.015, F.S.** If the owner has authorized a representative, the Department should provide the representative with confirmation of the offer. If the owner desires, the representative may be present when the offer is delivered.

7.2.7.2 The Department must obtain a written acknowledgement of the property owner's receipt of the offer.

7.2.7.3 The initial binding offer should be delivered in person, if possible. However, when personal delivery is not practical, the offer may be delivered via certified mail, return receipt requested. For offers delivered in person, the actual delivery date of the offer shall be the date of initiation of negotiations. For offers delivered by certified mail, the date of the initiation of negotiations shall be the date of delivery as shown on the return receipt. If no received date is entered on the receipt, the date the receipt is received in the District office shall be the date of initiation of negotiations.

7.2.8 Form and Content of Binding Offers

Binding offers shall be prepared using **Form No. 575-030-08, Statement of Offer**. The following information must be included when preparing binding offers:

- (A) A statement of the amount offered as just compensation including separate amounts for land, improvements, and real estate damages/cost to cure, as appropriate;
- (B) A description and location identification of the real property and the interest in the real property to be acquired;
- (C) An identification of the buildings, structures, and other improvements, including building equipment and trade fixtures, or items of personal property, if any, that are included in the offer; and
- (D) An identification of any separately held ownership in the property, such as a tenant-owned improvement for which separate offers will be made.

7.2.9 Conditional Offers for the Purchase of Real Property

Conditional offers are offers made during negotiations that modify the terms or conditions of the Department's latest binding offer. Conditional offers must be conditioned on acceptance by the District Right of Way Manager or designee. Conditional offers must clearly indicate all terms and conditions of the offer and must be presented to the District Right of Way Manager or designee on **Form No. 575-030-07, Purchase Agreement**, after signature by the landowner as Seller. Execution of the **Purchase Agreement** is subject to the requirements of **Section 7.2.18**.

7.2.10 Offers for Tenant-Owned Improvements

7.2.10.1 The Department shall make a separate offer and negotiate for tenant owned improvements directly with the tenant, provided the Department documents that the property owner claims no interest in the improvement. Documentation may be either a disclaimer of interest in the improvement signed by the property owner or a copy of a binding lease agreement between the property owner and the tenant that clearly indicates the improvement is the sole property of the tenant.

7.2.10.2 The Department shall not make a separate offer to the tenant if the property owner claims an interest in the improvement or if a dispute arises as to ownership of the improvement.

7.2.10.3 Leasehold interest value, if any, may be included in the offer for tenant-owned improvements.

7.2.10.4 The Department may settle a tenant-owned interest apart from the real property provided no duplication of compensation is made. It is recommended that all real property interests be settled at the same time.

7.2.11 Uneconomic Remnants

7.2.11.1 If a partial acquisition will leave the landowner with an uneconomic remnant, the Department shall initially make two binding offers to the property owner. One offer will include the uneconomic remnant; the other will not.

7.2.11.2 Offers that include an uneconomic remnant contaminated with hazardous materials must be contingent on the owner accepting responsibility for environmental remediation of the remnant. However, where the remediation cost for the remnant cannot be distinguished from the remediation costs for the required right of way, the offer can be made without this contingency.

7.2.11.3 Parcels with uneconomic remnants may be acquired either through voluntary negotiated settlements or through stipulated final judgments. The uneconomic remnant may not be acquired by condemnation.

7.2.11.4 The District Right of Way Surveyor must be notified in writing when the negotiator reaches an agreement to purchase an uneconomic remnant. New deeds and right of way maps reflecting the change in the area being acquired must be prepared. The Deputy District Right of Way Manager - Appraisal shall be copied on the notification.

7.2.12 Minimum Offers

The District Right of Way Manager may establish a district wide minimum offer of up to \$500 per parcel.

7.2.13 Negotiations for Purchase of Real Property

The Department shall negotiate expeditiously and in good faith with the owner of property being acquired or his/her representative. Property owners must be given at least 30 days from the date they receive the Department's initial binding offer as described in **Sections 7.2.6** and **7.2.7** to respond to the offer before the Department files a condemnation suit. In the event the offer is made by mail, and the offer is returned as undeliverable by the postal authorities, the 30 days will begin on the date the offer is returned as undeliverable. The Department shall not file an eminent domain action prior to expiration of the 30-day period unless the 30 days are waived by the property owner in writing.

7.2.14 Representative Authorization

7.2.14.1 The Department shall negotiate with a property owner's properly authorized representative. Property owners may authorize a representative by providing the Department a written notification naming a representative and requesting the Department deal primarily with that representative. The representative must also agree in writing to represent the owner. **Form 575-030-02, Representative Authorization**, may be used to appoint a representative.

7.2.14.2 In order for an attorney to accept legal service on behalf of a property owner, the attorney must be a member of the Florida Bar, the property owner must notify the Department in writing that he/she wishes the attorney to accept service of process on his/her behalf and the attorney must agree in writing to accept service of process on behalf of the property owner.

7.2.14.3 In order for a representative who is not a member of the Florida Bar to accept service of process for a property owner the property owner must provide the Department a notarized letter or affidavit stating that he/she wishes the representative to accept service of process on his/her behalf and the representative must provide a notarized letter

or affidavit agreeing to accept service on behalf of the property owner. This requirement does not apply to persons registered with the Secretary of State as registered agents.

7.2.14.4 With the exception of the initial contact and offer per **Section 73.015, F.S.**, the Department will, to the greatest extent possible, conduct all negotiations through the authorized representative. However, if the representative is unresponsive, non-communicative, or otherwise uncooperative, the negotiator shall advise the owner of the attempts made to contact the representative and attempt to negotiate with the property owner. A contact of this nature shall not be made by an attorney representing the Department.

7.2.14.5 Property owners who have authorized a representative may in some cases wish to negotiate with the Department directly. The Department will negotiate with the owner. However, the Department will not initiate direct negotiations with the owner except as specified in **Section 7.2.14.4**. The District should obtain a letter from the owner modifying the representative authorization. In all cases the District shall document the official parcel file as to the owner's decision.

7.2.15 Acquisition of an Entire Property

7.2.15.1 The Department may acquire an entire property as a voluntary transaction where only a partial take is needed for the project and the remainder is not an uneconomic remnant. The portion not needed for the project cannot be condemned. Acquisition of an entire property as described in this section must be in the best interest of the public and must be justified on **Form No. 575-030-24, Settlement Approval**.

7.2.15.2 When deciding to acquire an entire property, the District must consider the potential for environmental contamination including potential liabilities and the cost of cleanup of that portion of the property not needed for construction of the project. The requirements of **Section 7.11, Contaminated Parcels**, must be followed.

7.2.15.3 The District Right of Way Surveyor must be notified in writing of all changes affecting the amount of land being acquired. Revised right of way maps, legal descriptions, and conveyance documents must be prepared. The Deputy District Right of Way Manager – Appraisal must also be notified of all changes affecting the area being acquired.

7.2.16 Purchase of an Entire Improvement

The Department may acquire an improvement located in whole or part on an owner's remainder property if the acquisition of the improvement is in the best interest of the public. The acquisition must be justified on **Form No. 575-030-24, Settlement Approval**. The owner must provide **Form No. 575-030-15, Right of Entry Agreement** and **Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey**, to allow the improvement to be removed and to allow asbestos surveys.

7.2.17 Mediation

7.2.17.1 For mediation, whether voluntary or involuntary, where the difference between the Department and landowner's appraisals exceeds \$1 million, the District shall notify Central Office, prior to mediation, of the Department's expectations for an acceptable settlement. The District Right of Way Manager may elect to use voluntary mediation, with concurrence of the landowner, to facilitate an agreement as to real estate and business damage compensation claims. The mediation may be held after the eminent domain action is filed.

7.2.17.2 Agreements reached as a result of voluntary mediation shall be subject to the requirements and approvals described in **Section 7.2.18**, **Section 7.2.28**, and **Section 7.2.29**. The agreement must incorporate by reference the right of way maps, construction plans, and/or other documents related to the parcel which is the subject of the agreement. Both the Department and the property owner will be bound by the written agreement as though the parcel had been acquired through eminent domain, with the maps, plans, and other documents being made part of the record.

7.2.18 Binding Agreements

7.2.18.1 Binding offers equal to the Department's last approved just and full compensation, exclusive of fees and costs with no added terms or conditions, become binding agreements when **Form 575-030-07, Purchase Agreement**, is signed by the Department's agent and the landowner and a copy of the agreement has been delivered to both parties.

7.2.18.2 Offers that include administrative settlements, fees, costs, business damages, or valuable consideration not included in approved just and full compensation shall become binding agreements when **Form No. 575-030-07, Purchase Agreement**, is executed by the landowner and the District Right of Way Manager or designee and a copy of the agreement has been delivered to both parties.

7.2.18.3 Administrative settlements must be approved as described in **Section 7.2.29** prior to the execution of **Form No. 575-030-07, Purchase Agreement**, by the District Right of Way Manager or designee.

7.2.18.4 The District Right of Way Manager or designee may negotiate and commit to binding agreements, subject to the limits in **Section 7.2.29.2**, prior to preparation and approval of **Form No. 575-030-24, Settlement Approval**. The **Settlement Approval** must be completed and approved within ten (10) business days after the date of the binding agreement.

7.2.18.5 Prior to execution of **Form No. 575-030-07, Purchase Agreement** by the District Right of Way Manager or designee, the form shall be completed with all other required

elements (including all copies of **Form No. 575-030-08, Statement of Offer**) and submitted to a Department attorney for legal review. Such review shall be evidenced by the signature of the reviewing attorney on the form.

7.2.19 Threat of Condemnation

Acquisitions under threat of condemnation are not subject to documentary stamp tax, pursuant to **Rule Chapter 12 B - 4.014, Florida Administrative Code, Conveyances Not Subject to Tax**. Generally, all acquisitions by the Department are under threat of condemnation where the Department has authority to acquire the parcel in question by condemnation. If property is being acquired without threat of condemnation, the negotiating agent must strike through **Section III (e) of Form No. 575-030-07, Purchase Agreement**. Language similar to the following must be written or typed in **Section III** of the form: "It is mutually understood that this property is not being acquired under threat of condemnation." Documentary stamp taxes will apply. Refer to **Section 7.5, Legal Documents and Land Acquisition Closing**, for payment of documentary stamps.

7.2.20 Execution of Agreements by Less than All Landowners

Binding Agreements must be executed by the landowner or the landowner's authorized representative. In situations where all landowners are not available to sign the binding agreement, execution of the agreement by at least one landowner or the landowner's authorized representative as seller is acceptable if:

- (A) The negotiator knows that all landowners agree with the terms and conditions of the purchase; and
- (B) The purchase is under threat of condemnation; and
- (C) There are no obligations contained in the agreement that bind the landowners after the date of closing.

7.2.21 Clarifying Language Added to Agreements

7.2.21.1 At the discretion of the District Right of Way Manager, language similar to the following may be inserted in **Section III (i) of Form No. 575-030-07, Purchase Agreement**:

- (A) When there are no known or anticipated fees, costs, or business damage claims – "Buyer and Seller agree there are no fees, costs, or business damage claims associated with this agreement."
- (B) When all fees, costs, or business damage claims are reflected on the **Purchase Agreement** and no additional claims are anticipated – "Buyer and Seller agree all fees, costs, or business damage claims associated

with this agreement are identified in **Section II** of this agreement.”

- (C) When there are outstanding fees, costs, or business damage claims which are not reflected on the **Purchase Agreement** but will be handled on a separate supplemental **Purchase Agreement** – “Buyer and Seller agree the fees, costs, or business damage claims associated with this agreement will be handled on a separate supplemental **Purchase Agreement**.”
- (D) When there is an all-inclusive settlement, which includes fees, costs, and business damages, and the actual or estimated amounts are not itemized on the **Purchase Agreement** – “Buyer and Seller agree all fees, costs, and business damage claims are included in this **Purchase Agreement**.”

7.2.21.2 The District should modify the above language to remove the business damage element for those parcels where there is no business damage claim.

7.2.22 All-Inclusive Settlements

7.2.22.1 It is often beneficial to enter into an all-inclusive settlement that includes all property owner fees and costs. This type of settlement does not detail on **Form No. 575-030-07, Purchase Agreement**, the amounts or purpose for fees and costs, but provides for a lump sum to the property owner. Prior to entering into an agreement for an all-inclusive settlement, the negotiator must analyze the particular parcel, breaking the total settlement into its applicable components, for example, land, improvements, attorney’s fees, etc. If actual amounts attributed to each component cannot be documented, the negotiator must estimate a reasonable amount for each appropriate component based on available information for the parcel and known amounts for similar parcels previously settled. This analysis is necessary to determine if the settlement is beneficial to the Department and must be explained in **Form No. 575-030-24, Settlement Approval**.

7.2.22.2 All-inclusive lump sum settlement amounts may be used when completing **Form No. 575-030-07, Purchase Agreement; Form No. 575-030-16, Closing Statement**, and **IRS Form 1099-S**. An amount, either actual or estimated, must be inserted for each applicable component of the all-inclusive settlement when completing **Form No. 575-030-24, Settlement Approval**, and **Form No. 575-090-12, Right of Way Invoice Transmittal**.

7.2.23 Acquisition of an Outdoor Advertising Structure

Outdoor advertising (ODA) signs shall be acquired, relocated, or re-established pursuant to **Section 12.1, Outdoor Advertising Signs**. For each ODA sign acquired the District shall send a copy of the conveyance document, a completed **Form No. 575070-12, Outdoor Advertising Permit Cancellation Certification**, and the permit tags, if available, to the Office of Outdoor Advertising Control (OAC). The District shall provide these items

within 30 days after the closing or 30 days after the last day of any extended possession. **Section III (f) of Form No. 575-030-07, Purchase Agreement**, must be modified to indicate that **Form No. 575-070-12** and the permit tags will be surrendered at the end of the lease term. The actual date the lease will expire must also be included.

7.2.24 Non-Monetary Negotiable Items

Non-monetary items, such as median and curb cuts, temporary access, extended possessions, etc., must be made part of the written **Purchase Agreement** and must be approved by the District Right of Way Manager. Non-monetary items require the prior approval of the Project Manager and/or District personnel authorized to make these commitments on behalf of the Department. The specific contractual language to be included in the **Purchase Agreement** must be reviewed and approved by the District General Counsel.

7.2.25 Owner Retention

7.2.25.1 If the property owner or tenant elects to retain improvements or furniture, fixtures and equipment (FF&E) listed in the Department's approved appraisal, the salvage value of the retained improvements or items of FF&E will be entered on **Line (e), Section II of Form No. 575-030-07, Purchase Agreement**. The amount entered will be indicated as a negative number with a notation that this amount reflects the salvage value of the retained improvement(s). The amount entered will be subtracted from the purchase price.

7.2.25.2 If the property owner or tenant is retaining items at no cost, the salvage value of the items will be treated as an administrative increase and must be fully supported in **Form No. 575-030-24, Settlement Approval**. In this event, a notation will be placed in **Section III (i), of Form No. 575-030-07, Purchase Agreement**, indicating that the owner is retaining the improvements for zero (0) consideration.

7.2.25.3 If improvements or FF&E are retained by the property owner or tenant, an addendum must be attached to **Form No. 575-030-07, Purchase Agreement**, providing:

- (A) A description of the improvement(s) or FF&E being retained;
- (B) The date by which the owner or tenant must remove the improvement(s) or FF&E;
- (C) A statement that if the improvement(s) or FF&E is not removed on or before the date set forth in **Section 7.2.25.2(B)**, the improvement(s) or FF&E will be considered abandoned property and will be subject to demolition and/or removal by the Department;

- (D) A statement that the property owner or tenant agrees to provide **Form No. 575-030-15, Right of Entry Agreement**, at closing if the Department requires access to the remainder property to remove the improvement(s) or FF&E if not removed by the property owner or tenant;
- (E) A statement regarding the disposition of any associated holdback warrant if the improvement or FF&E is not removed by the property owner or tenant;
- (F) A statement that the owner or tenant is not eligible for relocation benefits for the retained items;
- (G) A statement that the provisions of this addendum survive the closing.

7.2.25.4 Items retained by the property owner or tenant must be documented on **Form No. 575-060-01, Property Inventory**, in accordance with **Section 10.1, Inventory of Properties Acquired through the Right of Way Process; Rodent Control Inspections; Maintenance**.

7.2.26 Holdback Warrant

When a property owner is obligated to conduct activities on a parcel after closing, such as vacate at the conclusion of an extended possession, remove a retained improvement, or reface a building cut as a result of the acquisition, the Department should retain a portion of the total compensation by means of a holdback warrant until the landowner has completed the required activity. The amount retained must be indicated in **Section II (g)**, of **Form No. 575-030-07, Purchase Agreement**. The District Acquisition Administrator may determine if a holdback warrant is appropriate and the amount and terms for delivery of the holdback warrant.

7.2.27 Inclusion of Relocation Assistance Benefits in Negotiated Agreements

If relocation benefits are included in a negotiated settlement, the District must comply with all requirements of **Section 9.2, General Relocation Requirements**.

7.2.28 Administrative Settlements

7.2.28.1 Administrative settlements shall be submitted using **Form No. 575-030-24, Settlement Approval**. The District Right of Way Manager must ensure the written explanation fully describes how the settlement is reasonable, prudent and in the best interest of the public. The extent of the explanation shall depend on the complexity of the settlement and the amount of money involved. Amounts for land, improvements, real estate damages, business damages, fees and costs, etc., must be fully explained.

7.2.28.2 The District should consider and address the following factors as appropriate when preparing **Form No. 575-030-24, Settlement Approval**:

- (A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider information in available reports which might create exposure to a higher value being determined at trial.
- (B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts may have on the outcome of litigation; for example, highest and best use of a parcel.
- (C) **Complexity of Severance or Other Issues Leading to Uncertainty in Value:** Identify complex valuation issues, such as severance damages, which may have an unfavorable impact on the litigation outcome.
- (D) **Handling of Legal Issues in Approved Appraisals:** Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Department's attorney.
- (E) **Consideration of Time to Anticipated Title Transfer Date:** Apply a time adjustment to the amount of just and full compensation if appropriate.
- (F) **Credibility of Expert Witnesses:** Identify the strengths and weaknesses of expert witnesses for both the Department and the owner.
- (G) **Likelihood of Jury Sympathy for the Owner:** Analyze intangible items which might influence a jury.
- (H) **Possibility of Obtaining an Unbiased Jury:** Juries are presumed to be unbiased. However, if a rare set of specific circumstances exists that are expected to create a bias against the Department, this potential bias may be considered a factor in recommending a settlement.
- (I) **Recent Court Awards for Eminent Domain Takings:** Consider recent jury verdicts for similar properties acquired by eminent domain in the same geographic area.
- (J) **Potential Cost of Litigation:** Consider the anticipated cost of supporting the eminent domain action and identify the savings expected to result from avoiding some or all of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled;

i.e., an estimate of additional cost beyond that already incurred. Potential cost of litigation may be used as the sole criterion for settlement if the amount of the increase on the parcel is \$20,000 or less.

- (K) **Other Relevant Information:** If there is other relevant information that would support a settlement, it should be explained in the written recommendation.

7.2.29 Settlement Approval Authority

7.2.29.1 Settlement approvals shall be evidenced by the appropriate signatures on **Form No. 575-030-24, Settlement Approval.**

7.2.29.2 The settlement approval authority levels outlined below exclude fees and costs:

- (A) The District Right of Way Manager or designee may approve settlements in amounts up to \$500,000 regardless of the percentage of increase over recommended compensation as reflected in the latest approved appraisal.
- (B) The District Right of Way Manager or designee may also approve settlements in amounts greater than \$500,000 with up to a 15% increase over recommended compensation as reflected in the latest approved appraisal.
- (C) The District Director of Transportation Development or designee must approve settlements in amounts greater than \$500,000 and not above \$1 million with more than a 15% increase over recommended compensation as reflected in the latest approved appraisal.
- (D) The District Secretary or designee must approve settlements in amounts above \$1 million with more than a 15% increase over recommended compensation as reflected in the latest approved appraisal.

7.2.29.3 At the discretion of the District Right of Way Manager, one or more employees within the District Right of Way Office who are members of the Selected Exempt Service may be designated as having general settlement authority. The District Right of Way Manager may also grant this authority to Career Service employees when the difference in the monetary positions is \$500,000 or less.

NOTE: The individual who appraised or reviewed the appraisal of the parcel being settled cannot approve the settlement.

7.2.29.4 Only individuals with delegated settlement authority as set out in **Sections 7.2.29.2 and 7.2.29.3** may execute the **Purchase Agreement.**

7.2.29.5 The District must keep the Director, Office of Right of Way informed on high profile/sensitive issue parcels, in writing or by teleconference. Additionally, within three (3) working days of approval, the Districts must also do one (1) of the following for all settlements that require the District Secretary or designee's approval:

- (A) Email a copy of the settlement to the Director, Office of Right of Way; or
- (B) Notify the Director, Office of Right of Way that the settlement has been uploaded in the Right of Way Management System (RWMS).

7.2.30 Final Agency Acceptance

7.2.30.1 Closings shall not be conducted prior to final agency acceptance as required by Section 119.0711, F.S. Final agency acceptance will be granted by the Department when the Department has obtained a binding agreement, has delivered a copy to the seller and at least 30 days have elapsed since the date of execution of the binding agreement by all parties.

7.2.30.2 Final agency acceptance is to be granted by the District Right of Way Manager, delegate, or an employee who has been designated as having settlement authority included as a responsibility in his/her position description. In the absence of these individuals, the District Director of Production or District Secretary may grant final agency acceptance.

7.2.30.3 Final agency acceptance may be withheld when the Department has information that the transaction resulted from fraud, coercion, or the exercise of undue influence. If an agreement does not receive final agency acceptance, the District must provide the Director, Office of Right of Way, a detailed explanation of the circumstances that led to the withholding of final agency acceptance. The Director will coordinate with the District to determine the extent of any investigation or corrective actions that must be undertaken.

7.2.31 Protective Leasing

7.2.31.1 The Department may at any time prior to closing or order of taking deposit, lease vacant residential or commercial rental units located on parcels to be acquired, provided:

- (A) The cost of the lease will be less than the anticipated cost to relocate potential tenants. This determination must be documented in the official parcel file;
- (B) The parcel on which the rental unit to be leased is located, is scheduled for acquisition and subject to condemnation if negotiations are not successful; and;

- (C) The rental unit has not been vacant for six months or more prior to the initiation of negotiations.

7.2.31.2 Protective rent agreements must take the following into consideration:

- (A) The negotiated rental amount should not exceed the market rent for like units within the area;
- (B) The rental payments to the lessor are assured;
- (C) There will be no cleanup, painting, or improvements required prior to the lease;
- (D) The lessor will not be responsible for maintenance, and
- (E) Negotiations should begin at a rate equal to the average yearly occupancy rate multiplied by the most recent periodic rent previously paid for the unit.

7.2.31.3 The District Right of Way Manager or an employee who has been designated as having settlement authority for right of way purchases is authorized to execute protective lease agreements.

7.2.31.4 Periodic rental payments will be processed using **Form No. 575-030-36, Invoice for Protective Rent Payment**, approved by the District Acquisition Administrator. The last periodic payment shall be prorated to the date of closing or order of taking deposit as appropriate. Copies of the executed lease agreement and the **Invoice for Protective Rent Payment** shall be attached to **Form No. 575-090-12, Right of Way Invoice Transmittal**, when presented to the Department's Comptroller for payment.

7.2.31.5 To the extent possible, acquisition of parcels subject to protective lease agreements should be expedited.

7.2.32 Central Office Projects

For projects managed by Central Office Right of Way, the Deputy Director, Production, shall have the same authority as a District Right of Way Manager.

TRAINING

Training for this section is provided to all participants in the Right of Way Fundamentals training class, a required element of the Right of Way Training Program.

FORMS

The following forms are available on the FDOT Infonet and Internet:

575-030-02, Representative Authorization
575-030-07, Purchase Agreement
575-030-08, Statement of Offer
575-030-15, Right of Entry Agreement
575-030-16, Closing Statement
575-030-24, Settlement Approval
575-030-36, Invoice for Protective Rent Payment
575-060-01, Property Inventory
575-060-17, Release and Right of Entry Agreement for Asbestos Survey
575-070-12, Outdoor Advertising Permit Cancellation Certification
Internal Revenue Service, Form 1099-S

The following forms are available through the Right of Way Management System (RWMS):

575-030-31, Notice to Owner
575-030-32, Notice to Owner (Spanish)
575-090-12, Right of Way Invoice Transmittal

QUESTIONNAIRE

ITEM/SEGMENT NO.: _____
MANAGING DIST.: _____
F.A.P. NO.: _____
STATE ROAD NO.: _____
COUNTY: _____
PARCEL NO.: _____
ATTENTION: _____

Dear Property Owner:

Please provide the following information and mail to this office.

1. Are you the owner of the property identified above? _____
2. I have sold all _____ or part _____ of the property to:
Name: _____
Address: _____
Approximate Date Sold: _____
3. Other than my spouse, I share ownership of this property with:
Name: _____
Address: _____
Telephone No.: _____
4. Name and Title: _____
Address: _____
Telephone No.: _____
Email Address: _____
5. Is there an ongoing business on this site? _____
6. If yes, who owns the business?
Name: _____
Address: _____
Telephone No.: _____
Email Address: _____
7. Additional Comments: _____

Property Owner's Signature

Printed Name and Title

Date