



**Office of Right of Way**

**Property Management  
Policy and  
Procedure Manual**

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# **INTRODUCTION**

Revised 5/2007

## **Please Note**

*The goal of this manual is to provide current information in an ever changing world. Providing this manual through an electronic format allows updates and modifications to be added much faster than through paper manuals. If you are using a paper version of this manual, please consult the electronic version for the most current information. Should you wish to contact someone concerning the manual please, visit our web site at [www.iowadot.gov/rightofway/propertymanage/pm\\_manual.html](http://www.iowadot.gov/rightofway/propertymanage/pm_manual.html), or contact the Property Management Section, Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, or (515) 239-1300.*

*We have tried to write this manual for you, the user. We hope you find the informal style user-friendly and a useful working tool.*

## **MANUAL FORMAT**

Your manual has been written in several chapters. Each chapter will provide specific information for a particular property management activity. The appendices contain samples of forms and other materials for your reference.

## **OUR GENERAL RESPONSIBILITIES**

The Property Management Section is a part of the Office of Right of Way and operates under the general administration of the Chief Property Manager. In addition to property management services, the Section is responsible for record center, payment and audit, and local public agency activities. However, this manual is limited only to the property management activities. Manuals describing the other activities are also available.

The Property Management Section acts as a steward for the public's assets. We accept possession of real estate for the Department of Transportation (DOT) and clear the right of way of property interests and improvements before construction. When practical, we lease land and improvements as a source of revenue for the public and to lower management expenses. We provide general management of real estate before, during and after projects. After the project has been completed we dispose of land and improvements no longer needed.

## **CIVIL RIGHTS COMPLIANCE AND AFFIRMATIVE ACTION POLICY**

Federal and State laws and regulations provide for the fair treatment of the public during the property management process. Land, buildings, and improvements are managed and/or offered for rent, on a nondiscriminatory basis without regard to race, color, sex, or national origin. All leases incorporate nondiscrimination provisions. These provisions are discussed in the Lease Section of this manual and sample leases have been provided in the appendix section.

Our written agreements incorporate nondiscrimination provisions as required by Federal law and regulations. When obtaining outside services we will provide opportunities to known minority real estate brokers, auctioneers, and contractors, including African-Americans, Hispanics, Native Americans, Asian-Indian, Asian-Pacific Islanders, or others as applicable by race, creed, color, sex, religion, or national origin.

## **CONTRACT MANAGEMENT**

We are committed to securing service agreements are with those persons agreeing to perform the service at the lowest price. We are committed to compliance with <http://www.fhwa.dot.gov/legsregs/legislat.html> Code of Federal Register 49 CFR 18. 36(12). Any protest, appeal or dispute concerning a selection or a question of fact in concerning an agreement or the performance of any contractual obligation shall be referred to the DOT's Right of Way Director, who shall hear and consider all of the evidence and notify the Consultant, in writing, of his/her decision. That decision shall be final and conclusive unless, within thirty (30) days from receipt of notification of such decision by the Right of Way Director, the Consultant shall appeal, in writing, to the Highway Division Director, who will review and consider both the evidence and the decision by said Right of Way Director, whereupon said Highway Division Director shall make a final, conclusive and binding determination and furnish the Consultant a written copy thereof.

## **CONFLICTS OF INTEREST**

At the DOT we must be constantly aware of even the perception of conflict of interest. DOT employees have requested the opportunity to purchase items sold through the Property Management Section. As a result, DOT executive management has determined that sales of land, improvements and personal property may be made to an employee of the DOT only when the employee is the highest bidder at a public sale by sealed bid or auction. We will not sell or lease real or personal property to DOT employees through direct negotiations.

In addition, employees of the Office of Right of Way are specifically excepted and shall not be allowed to purchase or bid on land, improvements or personal property.

# **CHAPTER ONE**

## **Basic Terminology**

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### **INTENT**

Every type of work uses special terms or jargon. While terms and jargon are useful, the usage often confuses people who have not been exposed to the particular meanings. We hope to limit these types of problems by providing a brief discussion of some of the basic terminology involved in property management. This section is not intended to include all terminology but to provide us with a starting point.

### **ADJACENT / ABUTTING OWNERS**

One of the most confusing aspects of property management is the difference between an adjacent owner and an abutting owner. Usually when people use the terms adjoining or abutting they mean the same, but for disposing of land, Iowa law has narrow and specific definitions. The "adjacent owner" is provided a purchase preference in Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>, while the "abutting owner" does not receive the statutory preference.

#### ➤ ***Adjacent Owner***

Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html> prescribes how unused right of way shall be disposed. The term "adjacent owner" is defined in this Code section as the person(s) owning the remaining tract from which the property was originally acquired.

For example, the DOT acquires 20 acres from an 80-acre farm. Later, the DOT decides to sell 10 acres. The adjacent owner is the present owner of the remaining 60-acre tract, regardless of the physical location of the tract to be disposed and the remaining property.

#### ➤ ***Abutting Owner***

The owners of land contiguous to the subject property.

### **TYPES OF OWNERSHIP**

The DOT acquires property rights for public purposes. Sometimes all of the owner's property rights are required, while other times only a portion of the owner's rights need to be acquired. The DOT will acquire "fee title" or an "easement" depending on the needs of the proposed project. We have provided a brief discussion of the different types of ownership comparing similarities and differences.

➤ ***Fee Simple or Acquired in Fee***

"Fee" describes exclusive ownership of real property. All of the owner's property rights have been acquired. The State may sell the property upon disposal and convey the ownership rights. Title is acquired through a warranty deed or condemnation of a fee simple interest.

➤ ***Easements***

When the State requires something less than fee ownership, an easement may be acquired. An easement is a right to use property only for a specified purpose. Easements may be permanent or temporary acquisitions.

- ❖ Permanent Easement - Often the DOT acquires a permanent easement over property. Examples of permanent easements are for highway purposes or to construct and maintain a structure. Easements may be abandoned, terminated or transferred as part of highway right of way to another governmental agency.
- ❖ Temporary Easement - These easements acquire the right to use land for a specified purpose for a specified time. For example, the right to construct a sidewalk and the easement terminates upon completion of the construction.

## **EXCESS LAND INVENTORY**

At one time we inventoried land by many different categories. Each category described land acquired for specific purposes or under specific circumstances. While that system was very detailed, it was also very confusing. We wanted a classification system that was easy for everyone to understand. We now classify land in two general categories; required or excess. The excess land inventory breaks down excess land into two groups; committed and non-committed land.

➤ ***Excess Land***

Excess land is simply land not required for the construction and maintenance of the existing highway. Often, excess land is acquired along with land required for the highway project. Often, excess land is acquired under the assumption that it would never be used as highway right of way and can be purchased with or without federal aid participation. The determination to acquire excess land may be made during the acquisition process for a number of reasons.

➤ ***Committed Land***

This land may be described as land being held until the present highway project is completed or for future highway improvements. For example, the land may not be

required for the current highway, but the land will be needed for an anticipated future expansion. Or, as in the case of a borrow, the land is required during construction activities, but after construction the land will no longer be needed.

➤ ***Uncommitted Land***

Land available for disposal.

➤ ***Inventory Value***

The prorated acquisition cost of the excess land. The cost of the entire parcel acquired is prorated on the basis of the acreage of land acquired as excess, including the cost of acquiring buildings or improvements located on excess land.

➤ ***Borrow Land***

Borrow describes land necessary to provide fill material for the actual highway area. Borrows purchased in fee simple and held for borrow material to be used on a project are committed land until after the completion of the project when they become non-committed land. Borrow land that is acquired by easement is not placed on the inventory. Borrow lands are identified on the excess land inventory under the remarks section.

## **EXCESS LAND DETERMINATION FORM**

This form is also known as an "Excess Land Plat." Excess land should normally be identified through an Excess Land Determination form (Exhibit No. 1, Appendix "A"). This form originates in the Right of Way Design Section and a copy is sent to Property Management. The Right of Way Design Section records and plats the acquisition of excess land by quantity and location. After acquisition, Payment and Audit (within the Property Management Section) codes or audits coding for payment and for cost accounting. The excess land is then entered on the inventory, payment is provided, and we obtain possession of the parcel.

For a number of reasons an excess land determination form may not be available at the time of acquisition. When the final project plans are available the Property Manager will need to request a completed form from the Design Section.

## **OTHER CLASSIFICATIONS OF LAND**

➤ ***Miscellaneous Lands***

These are properties that were not acquired as part of a highway project. For example, maintenance sites and material pits. When these types of properties are disposed, the sites are placed on the excess inventory and then removed after disposal.



# **CHAPTER TWO**

## **Pre-Highway Construction**

### **Property Management**

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Prior to highway construction, the Property Management Section is responsible for managing all land, improvements, and personal property located on the land acquired for the project. When construction starts the Resident Construction Engineer becomes responsible for the management of required right of way, and Property Management remains responsible for all excess land. Property Management during the pre-highway construction process involves three separate areas.

1. *Planning*
2. *Receiving Possession of Property*
3. *Clearing the Right of Way*

## **PLANNING**

The earlier Property Managers become involved in the project, the more effective their efforts can become. For example, field reviews are generally held early in the design process for most large projects. Office of Design, District, and Office of Right of Way staff physically inspect the project. The field review is an opportunity to discuss and review property management concerns.

Involvement with the Design, Appraisal, Acquisition, Relocation and Title and Closing Sections allows the Property Manager to foresee potential problems and address difficulties early in the process.

## **RECEIVING POSSESSION OF PROPERTY**

Owners and tenants provide possession of property per the terms of the acquisition agreement, or in the case of condemnation, as prescribed by law. We accept possession of improvements and personal property as a result of a coordinated effort with owners, tenants, and all the Sections of the Office of Right of Way.

Receiving possession of property involves several steps. Each step is an important part of the process. The critical steps are as follows:

- *Determine What Property We Are To Receive*
- *Schedule When We Receive The Property*
- *Ensure We Receive The Property From The Right Person(s)*
- *Complete The Possession Process*

In order to obtain possession, the Property Manager must know what is being acquired, at what time, by whom, and how the transaction is to take place. All this information is provided by the various Sections of the Office of Right of Way. These four steps will provide us the basis necessary to secure possession of the land and improvements that have been acquired.

➤ ***Determine what Property we are to Receive***

The right of way acquisition contract describes what land, improvements and personal property are being acquired. Payment and Audit Coordinators (part of the Property Management Section) provide the Property Manager with a copy of the approved contract. More detailed descriptions of the acquisition can be found in the parcel appraisal(s). Often the Appraisal Section provides copies of the reports to Property Management, but the Property Manager may also find copies of the appraisal in the Right of Way Record Center (also part of the Property Management Section).

Identifying the acquired property is made easier through the visual aids provided by the Right of Way Design Section. Design provides us with construction plans, strip maps, aerial photos, plot plans and excess land plats.

➤ ***Schedule when we Receive the Property***

The Title and Closing Section provides closing sheets that tell us when the transaction has been or will be closed. The Relocation Assistance Section provides current information as to when the owners or tenants will be in a position to surrender possession of the property. Examples of possession time frames have been provided:

- ❖ Conveyance and Possession to Occur Simultaneously - Sometimes surrender of possession happens at the same time as the conveyance of title. In these cases the closing agent will notify the Property Manager if the transaction involves improvements, personal property, and/or excess land through a copy of the Title Audit. The Property Manager may be required to assist in the closing process in some cases.
- ❖ Possession to be Given After Closing - Often we receive possession of improvements after conveyance of title. The closing agent provides the Property Manager with a copy of the closing letter to the property owner and the completed Closing Statement. The Closing Statement denotes that while title has passed, possession has not. The Closing Statement also reminds us of the agreed upon possession date in the contract. The Property Manager will then assume responsibility for obtaining possession and delivering possession payments.
- ❖ Early Surrender of Possession - Sometimes our customers decide they want to surrender possession of their property earlier than agreed upon. The Right of Way acquisition contract contains a provision allowing early possession upon 10-day notice from the owners. When we receive these types of requests the Property Manager will arrange to accept early possession. But, the owner should be informed that we might not be able to provide the possession payment until the time of conveyance. The Property Manager should determine when the possession payment will be made and inform the owner.
- ❖ Extending Possession Dates - Extending possession dates is the responsibility of the Right of Way Relocation Assistance Section. The possession date is established by the acquisition contract and is based on many considerations. The contract

possession date may, or may not be based solely on project schedules. In any event, the occupant is entitled to a reasonable time to relocate. Any extension of this date is a change of a contractual agreement and will only be changed by the Relocation Assistance Supervisor.

Normally, an extension will not be granted for longer than three to four weeks past the possession date established by contract. Longer occupancy may require the occupant to enter into a lease.

- ❖ Possession of Property Acquired by Condemnation - Iowa Code §6B.25 and 6B.26 set forth possession rights following a condemnation. In most cases the right of possession passes to the DOT when the Compensation Commission award is deposited with the Sheriff (Iowa Code §6B.25) <http://www.legis.state.ia.us/IowaLaw.html>.

Iowa Code §6B.26 details the right of possession when a landowner's residence, dwelling, house, outbuildings (if the owner's residence or dwelling house is also acquired), orchard, or garden is acquired. Should the Compensation Commission award be appealed to District Court, the DOT cannot require the owner to surrender possession until after the damages have finally been determined and paid, **or** 180 days after the Compensation Commission award, **whichever comes first. Note: This section of Iowa law applies to other acquiring agencies differently.**

Once the DOT has the right to take possession following a condemnation, the law authorizes and enables the State to enter, manage, sever, remove, and otherwise dispose of all improvements and personal property necessary to clear the right of way and to proceed with construction. Owners and tenants may be evicted by the State after the State has obtained the right to take possession of the land condemned. However, such actions should be viewed as a last resort option. These types of evictions **require involvement by the General Counsel staff and concurrence by the Iowa DOT Director.**

- ❖ Possession of Mobile Homes - Securing possession of mobile homes requires the following steps:
  - The Title and Closing Section obtains a title and tax clearance statement.
  - The Property Manager delivers the possession warrant and receives the keys and title/tax clearance.
  - The Property Manager forwards the title and tax clearance documents to Vehicle Registration Special Service (VRSS) office in Des Moines (Telephone No. 515-237-3052).
  - The new title will be mailed to the Property Management Section.
  - Otherwise, the process is similar to securing possession of other improvements.
- ❖ Securing Possession through Eviction of Contract Seller and Tenants - The eviction process may become necessary in order to protect the public's interests. However, such cases should always be considered as a last resort situation. Should eviction become necessary the Property Manager will work closely with the Chief Property

Manager, Acquisition Section, Relocation Section, Director of Right of Way and the General Counsel staff. We have been directed that these types of evictions will also **require the approval of the Iowa DOT Director.**

**NOTE:** This discussion of eviction actions is limited to legal occupants as of the date of acquisition. Tenants secured by Property Managers as part of the asset management program shall be discussed later in this manual and are **not** a part of this discussion.

➤ **Ensure we Receive the Property from the Right Person(s)**

This discussion is written primarily for parcels involving improved properties. Many people may have interests in a property, but usually only one or two people will actually give possession to the Property Manager. Determining which person(s) will actually give us possession of property is once again a team effort with the other sections of the Office of Right of Way. Relocation Assistance agents provide Property Managers excellent first hand knowledge of the people involved. The parcel file will contain applicable telephone numbers and addresses as well as contact notes that may contain valuable information. Title and Closing agents also provide important information for Property Managers.

When securing possession we need to know who we will meet with, what they will provide us, and why they are involved. We may receive possession of all the property acquired from one person or we may receive parts of what was acquired from several persons.

➤ **Complete the Possession Process**

Securing possession of real and personal property can be done efficiently and with a minimum of problems if the Property Manager is adequately prepared. The process for obtaining possession actually occurs over a period of time. We may describe the time periods as pre-possession, possession and post-possession.

❖ Pre-Possession - The successful Property Manager plans and prepares before traveling to the field. A few of the tasks completed before traveling to secure possession have been provided.

- Generally the DOT makes one payment when the owners convey title and another payment when the owners surrender possession. The Property Manager orders the possession check to be drawn and then delivers the possession payment.
- The Property Manager schedules the appointment for the transfer of possession with the applicable parties.
- To avoid confusion during the possession process the Property Manager should remind the owner(s) of their responsibilities prior to the meeting. For example, all debris and junk should be removed prior to transfer of possession.
- The Property Manager ensures they have the necessary possession cards, possession warrants, key boxes and other items ready.
- Possession - This period is when the Property Manager actually meets with the person(s) and obtains possession of the property for the State. The following steps should be taken at this time:

- Inspect the property to ensure compliance with the Acquisition Contract concerning physical condition, required items are present, and that all other items have been removed.
  - Measure all improvements for the demolition form.
  - Secure owner's signature on possession cards and receive keys.
  - Deliver possession warrant.
  - Install key box with keys included.
- ❖ Post-Possession - After possession has been transferred, the Property Manager completes the balance of the Possession Process.
- Deliver applicable possession card to the County Treasurer.
  - Determine whether improvements shall be sold, leased or demolished.
  - Transfer or disconnect utilities based upon the preceding decision.
  - Update Property Management parcel files, inventories, and ledgers.

## **CLEARING THE RIGHT OF WAY**

Highway projects cannot be built until all improvements and personal property, whether owned by the State or by private parties, are removed from the right of way. As Property Managers, we must ensure all property is disposed of prior to construction activities. Clearing the right of way should be scheduled and accomplished on or before the R-5 (Relocation) function date provided in the DOT production schedule.

### ➤ ***Excess Land Exception***

Improvements and personal property located on land acquired as required right of way need to be removed in a timely manner, but improvements and personal property located entirely on excess land not needed for highway purposes are a different situation. The Property Manager must exercise good judgement as to whether to demolish, sell or retain the improvements to be sold later with the land. The Property Manager should develop a management plan and document the reasons for selecting the course of action taken. The Chief Property Manager and Property Management Production Coordinator should be kept informed as to what processes are being implemented. Complex cases, situations involving significant money and/or possibly controversial parcels may require involvement of the Chief Property Manager, the Property Management Production Coordinator, and others during the decision making process.

### ➤ ***Uses for Improvements / Personal Property***

Often we find markets for all types of improvements and personal property. We generally market such items by sealed bid, auction, or negotiated sale. Sale procedures are discussed extensively later in this manual. We should also consider if other offices within the DOT could utilize the improvements. For example, different maintenance groups have used trees and plantings on other DOT lands. Maintenance staff have moved and used metal buildings for their official activities. Environmental offices have used excess

land for petroleum farming. The list of uses is extensive and only limited by the imagination of Property Managers.

➤ **Demolition Process**

If the improvements cannot be economically sold and no other group within the DOT is interested, demolition is probably required. Each Property Manager maintains an improvement inventory and conveyance ledger that records the status and disposition of the property on projects the Property Manager is responsible to manage. The Property Manager shall keep the Chief Property Manager and Property Management Production Coordinator informed of any problems associated with disposition or demolition of improvements which may prevent certifying the project as clear for construction contract letting purposes.

Whenever improvements or personal property become the property of the DOT the Property Manager shall review and inspect each parcel. The purpose of this review and inspection is to determine the appropriate course of action. If the demolition option is selected, all inspections shall be written, dated and signed by the inspecting Property Manager on the request for demolition form (please refer to Appendix "A", Exhibit 2). This form was created to comply with several state and federal regulations and accomplishes several tasks. A brief discussion has been provided.

- ❖ Pest or Rodent Control - We are responsible for controlling or exterminating pests or rodents on acquired property. Local health officers may be consulted and invited to attend property inspections in determining what pest or rodent control or extermination measures should be taken. Although this problem may be most noticeable on complex urban projects, we have an obligation to remain good neighbors on all projects.
- ❖ Measurements of Improvements - When the owner(s) grant possession of the property the Property Manager measures all improvements including their foundation, driveways, sidewalks and miscellaneous concrete slabs. These measurements will be reported on the "*Request for Demolition*" memo to the Office of Contracts along with the foundation type, location of wells and septic systems, pest or rodent control to be done, and a recommendation to rent, sell or demolish the improvements. This form is used by the Office of Contracts to let bidding contracts for demolition work and must include a plat or drawing of the property. Copies are sent to Office of Location and Environment, Right of Way Design, the applicable District Engineer and Resident Construction Engineer, and the Parcel File. Additional copies may be sent at the Property Manager's request.
- ❖ Protection for Property - On occasion special protection of property may be warranted and practical. When necessary, local law enforcement agencies may be notified of the fact that State owned property is vacant and/or security personnel may be hired to protect the property. We may consider providing security when the property is valuable, not readily accessible to surveillance by local law enforcement authorities, or if the property cannot be reasonably closed or secured against entry by the general public.

- ❖ Asbestos Inspection - The Office of Location and Environment inspects all improvements to be demolished for the presence of asbestos. If asbestos is present, Environmental Services will arrange for removal by a qualified contractor prior to the demolition. The Property Manager notifies the Office of Location and Environment through the "*Demolition Request Form.*"
- ❖ Asbestos and Improvements to be Moved - Houses or other buildings are frequently moved by the original owner or subsequent buyers. These cases are not a removal of asbestos within the meaning of Chapter 88B of the Code of Iowa <http://www.legis.state.ia.us/lowaLaw.html>, or the rules pursuant to that chapter. Although there is not a need to remove asbestos from the improvement to be moved, asbestos located in the remaining foundation or exposed as a result of separating the improvement from the foundation must be abated in conformance with applicable laws, codes and rules. In these cases, the Property Manager informs the Office of Environmental Services and they will identify and abate any concerns created by separating the improvement from the foundation.
- ❖ Hazardous Wastes and Storage Tanks - Underground and Above Ground - An initial hazardous waste inspection should have been completed in the planning process. The Office of Location and Environment is responsible for tank closures and removals. Property Managers should look for any signs of underground tanks or soil contamination from any cause and work with the Office of Environmental Services to ensure appropriate actions are taken concerning storage tanks.
- ❖ Archaeological, Historical or Gravesites - An initial inspection should have been completed in the planning process. However, Property Managers should assure themselves archeological, historical and gravesite issues have been addressed. Properties with these types of significance as noted by Environmental Services should not be cleared or demolished until all studies are completed. Any indication of archaeological or gravesite findings, should be reported to Environmental Services who will make arrangements for site investigation.
- ❖ Parcel Inventory Records - Each Property Manager shall keep a record of parcels acquired that include a description of the improvements, how the improvements were disposed and the date of each disposal action. The records shall be maintained on a project basis and should reflect what disposition has been made of improvements and miscellaneous items. For example, parcel inventory records would include routine disposal work products such as an auctioneer's agreement, bid acceptance recommendation, demolition agreements, bill of sale, transfer memo, etc.

➤ ***Land Clearance Schedule***

When clearance lead time permits, the Property Manager shall develop and maintain a land clearance schedule in order to assure timely project clearance.

- ❖ Intra-Departmental Transfers - All offices who have received intra-departmental land use transfers, shall be notified of the land clearance schedule and requested to terminate their land use within the land clearance schedule.
- ❖ Thirty-Day Cancelable Leases - All leases requiring a 30-day notice of cancellation shall be given notice of cancellation at least 90 days prior to the letting date of the project. These cancellations may require coordination with the Relocation Assistance Section if the lessee is also a project displacee.
- ❖ Year-to-Year Leases - The lessees shall be notified of the DOT intention not to renew the leases for the year in which construction is scheduled.
- ❖ Vacation of Residents - Land acquired for local public roads and expressways but programmed for deferred stage construction shall be cleared of buildings and improvements as owners/tenants vacate.
- ❖ Emergency Clearance Prior to Staff Action Approval - From time to time it is necessary to obtain immediate or interim DOT approval of an auctioneer's agreement, immediate approval and acceptance of a sealed bid, a negotiated sale, or a demolition or removal agreement. This is usually in cases of inadequate land clearance lead time. Immediate approval may be necessary to avoid unreasonable disruption of construction contract letting schedules or to avoid unreasonable interference with construction, or to meet other project related contract or public commitments. In all such cases, Property Management shall record the circumstances and recommend a method of clearance. The Right of Way Director shall approve the recommendation and Property Management shall prepare an appropriate Staff Action Order, if necessary, for approval.
- ❖ Certify Clearance of Land - After clearance of each parcel of land on a project, the Property Manager shall make final entry in the Improvements Inventory and Conveyance Ledger. The Resident Construction Engineer is notified of the results of the sales. If an item is not disposed of by sale, we are authorized to negotiate the disposition of the item.

Should lead time or circumstances prevent or delay clearance of any parcel of land, the parcel not cleared shall be listed on the Right of Way Certificate as an exception.



# **CHAPTER THREE**

## **Managing the Right of Way**

Revised 5/2007

This section of the manual has been devoted to the decision making process involved in managing right of way. This section probably offers the most challenges and opportunities. Each situation is unique and often there will be no "right " answer as to how a particular situation should be managed. The Property Manager must use sound judgement, experience and knowledge in deciding what action to take.

Making good management decisions is the most challenging aspect of Property Management. The goal of this section of the manual is to provide basic information that will assist in making right of way management decisions. We will discuss four general areas.

1. *Basic Parameters or Ground Rules*
2. *Sources of Property Management Assignments*
3. *Approaches to Management*
4. *Available Support and Resources*

### **BASIC PARAMETERS OR GROUND RULES**

Assignments become manageable when we understand the basic parameters that we need to work within. When managing right of way, we need to accomplish our activities without compromising or conflicting with our basic parameters. A brief list and discussion of the principles that make up our parameters have been provided. These principles have been listed in order of importance with the most important principle first.

➤ ***Compliance with Laws, Regulations and Policies***

State and federal laws, regulations and established policies govern our work. The Property Manager must base all right of way management decisions on these guidelines. When other interests conflict with laws and regulations, legal compliance must take precedence.

➤ ***Maintain Integrity of Project***

We must remember that the purpose for acquiring land and improvements is to accomplish a larger public improvement project. The managing of right of way cannot interfere with the efficient progress of the overall public improvement.

➤ ***Protection of the Public's Assets***

The general public provides the funds to acquire property. The property has become an asset of the public. As stewards of the public's assets, we have a responsibility to ensure the wise management and use of these assets.

➤ ***Service for the Individual Customer***

All of our customers are important and their requests deserve serious consideration. We should search for ways to accommodate the individual request that conform with the preceding principles.

### ➤ ***Necessary Department Approvals***

The information provided here may be repeated in other sections of the manual. The intent was to provide one area to serve as a brief guide for required approvals.

❖ Staff Action - DOT Policy and Procedure No. 300.02 requires certain transactions to be submitted for Staff Approval through a Staff Action. Property Management transactions may include Land Sales, Leases, Bills of Sale (personal property and buildings), Contracts for Valuation Opinions, Contracts for Appraisal Review, Contracts for Special Demolition and Maintenance Repair, and Contracts for Auctioneer's Agreements. Specific examples have been provided:

- All land disposal sale transactions, abandonments, flowage easements, and permanent interdepartmental land transfers in excess of \$10,000
- Authorization to dispose of Facilities properties
- Disposal of excess right of way or Facilities properties over \$10,000
- Sales of miscellaneous improvements exceeding \$10,000. The Chief Property Manager is authorized to approve all sales of improvements under \$10,000.
- Contracts for demolition, maintenance, auctioneer services and repair work over \$10,000. The Chief Property Manager is authorized to enter into these agreements for amounts up to \$10,000. Whenever practical, cost quotes shall be obtained from at least two firms or individuals for purchases of more than \$1,000. We may waive these quotes to obtain the services of a person experienced in selling specialized or unique items of property and in emergency situations when materials, supplies or services are urgently needed to avoid damage, deterioration of the property or to eliminate dangerous or hazardous conditions.
- Contracts for appraisal, review appraisal, realtor services, over \$10,000. The Chief Property Manager is authorized to enter into these agreements for amounts up to \$10,000.

### ➤ ***Basic Management***

We should consider demolition, removal, maintenance or repairs when these activities will reduce hazards to the public, enhance the property's market value or support a higher rental rate. Property Managers are responsible for general maintenance and upkeep as long as the property is under the control of the Property Management Section. Often debris, junk and other miscellaneous items accumulate on our right of way. These items may not warrant requesting a demolition contract. In some cases, improvements and

personal property may be cleared, maintained, or managed through a negotiated agreement for services.

Unless a request for demolition has been submitted to the Office of Contracts, the Property Manager will coordinate the removal of all junk, refuse and litter from the property through private contractors. Vacant buildings shall be closed, and when practical, locked or boarded up. Basements shall be fenced.

## **SOURCES OF PROPERTY MANAGEMENT ASSIGNMENTS**

The Property Manager receives work requests from three basic sources. As these sources are different, the criteria used by the Property Manager for arriving at decisions may also be different.

### ➤ ***Project-Based Property Management***

Property Management starts during the planning process, progresses through the Acquisition Phase, continues throughout Construction, and finishes with the disposal of excess lands after completion of construction.

Generally 5 to 7 years, or more, of property management activities are required for complex projects, while many other projects will only require short term property management attention. Property Management decisions will be influenced by the type of project, the current status of the project, and when the project is scheduled to be completed.

### ➤ ***Continuous Property Management***

Often Property Management assumes the right of way management role on operating highway facilities. These situations may require solutions that continue far into the future and the decisions may be for extended or indefinite periods of time. A common example is Right of Way leases that automatically extend themselves year after year. Maintenance staff are generally involved and active in these types of situations.

### ➤ ***Individual Cases***

We regularly receive individual customer requests. Often these requests involve the sale or leasing of land that has been owned by the State for 30, 40 or even 50 years. These types of requests require anticipating future needs, developing historical research, and active involvement of Maintenance staff.

## **APPROACHES TO MANAGEMENT**

There are a variety of different ways to manage right of way. We will discuss a few of the available methods in this area of your manual.

### ➤ ***Demolish and Clear***

Often demolishing improvements and clearing land makes the most sense; for example, when construction is to occur soon after we receive possession. Another example is when the improvements are not decent, safe and sanitary. When the demolish and clear approach is used the Property Manager may still be responsible for the next approach, maintain.

➤ ***Maintain***

Property Management remains responsible for managing the right of way until the construction or maintenance staffs assume responsibility. When a contract for construction has been let, the construction engineer assumes responsibility and after completion of the project the Maintenance staff assumes responsibility for required right of way.

During the time the land is the responsibility of the Property Manager, general maintenance work must be arranged through Property Management. The Property Manager hires the necessary contractors or individuals.

➤ ***Sale***

Selling unwanted assets is another approach. Improvements are routinely sold to be moved from required right of way. This procedure is covered extensively later in this manual. Usually land cannot be sold until completion of the project.

➤ ***Lease***

Leasing can be an effective way of managing property. Typically maintenance becomes the responsibility of the tenant relieving the Property Manager of these responsibilities. Leasing is also covered extensively in this manual.

➤ ***Transfer of Jurisdiction***

On occasion property may be transferred to the jurisdiction of other governmental entities. Details as to when this approach may apply can be found later in this manual.

➤ ***Other Internal Uses***

Often other groups within the DOT can utilize the assets acquired as right of way. For example, excess land has been used for removing contamination from other lands, buildings have been moved for Maintenance uses, and trees have been replanted on other DOT properties. The successful Property Manager should always be searching for ways to use the assets we acquire for other DOT purposes.

## **AVAILABLE SUPPORT**

The Property Manager is not alone when deciding how the right of way should be managed. Several areas for support are available. We have provided a few examples but there are certainly other resources available.

➤ ***Within the Property Management Section***

The Property Manager can find support, assistance, knowledge, experience and expertise within the Property Management Section. Co-workers, the Property Management Production Coordinator, and the Chief Property Manager are available to serve as resources.

➤ ***Within the Office Of Right Of Way***

Necessary information and data are available through the other Sections in the Office of Right of Way. The successful Property Manager must develop a strong working relationship with other right of way staff and utilize the Office as a resource.

➤ ***Within the DOT***

Scheduling, recommendations, approvals and ideas are just a few of the services provided by the other groups within the DOT.

➤ ***Outside Support***

The successful Property Manager constantly consults and confers with members of other governmental entities and members of the public.

# **CHAPTER FOUR**

## **Leases**

Revised 5/2007

We usually administer several hundred leases annually. Leasing is a valuable property management tool and this manual has dedicated a large section to cover the leasing process. The lease discussion has been divided into six basic aspects, plus we provide an overview of the process:

1. *The Basics*
2. *Types of Leases*
3. *Essential Lease Terms*
4. *Administration of Leases*
5. *Cancellation/Termination of Leases*
6. *Lease Renewals*
7. *Overview of Process*

### **THE BASICS**

We should always consider renting both improvements and personal property to obtain the optimum return on the investment and to protect the property from vandalism. We will only rent houses that are decent, safe, and sanitary.

#### ➤ ***What is an Airspace Lease?***

An airspace lease is defined in Title 23 of the Code of Federal Register 710.105 <http://www.fhwa.dot.gov/legsregs/legislat.html> as that space located above, at, or below the highway's established grade line and lying within the approved right of way limits of a highway. Considering this definition, the word "airspace" may be confusing. An airspace lease applies to all land, above, at, or below the highway. This applies to all land acquired for highway purposes, and not limited to air rights leases.

#### ➤ ***Setting Rental Rates***

Our policy prescribes that rental agreements shall not be offered other than on a year-to-year (with 30-day cancellation clauses) or month to month basis, at the fair market rental rate as determined by the Property Management Section. Rental rates are set by Property Managers considering the length of time the property may be available, the state of repair, potential uses for the property, prevailing market rental rates for similar property in the area and the ultimate disposition of the property. The fair rental rate may be for mutual benefit when the State receives benefits such as reduced maintenance costs, protection of the property from vandalism or other identifiable benefits. In these cases, the lease file will contain documentation as to the estimated market rent and the estimated savings as a result of the lease.

#### ➤ ***Land that may be Leased***

Land held in fee, as well as land acquired by permanent easement being held for an anticipated highway improvement, may be leased on a cash basis. Land held by easement for which there is no anticipated highway improvement may be leased on a mutual benefit basis. Serious consideration should be given to abandoning the easement rather than leasing the property. Renting land held by easement can become a sensitive issue; care should be taken.

Iowa Code §6B.60 <http://www.legis.state.ia.us/lowaLaw.html> prohibits rent to be charged until after the owner receives just compensation for their land.

➤ ***Internal Recommendations***

When we are not sure if leasing would be counterproductive to other offices within the DOT, we secure internal recommendations. Periodically, we may also use this process when renewing leases.

➤ ***Selecting Tenants***

We select tenants pursuant to requirements established in Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended. These requirements shall be strictly adhered to. Discrimination represents unacceptable behavior and will not be tolerated.

- ❖ Agricultural property - In the case of agricultural leases, the former owners or former tenants should be provided the first opportunity to lease the land. If former owners or tenants are not interested, abutting owners and other interested parties in the area should be provided an opportunity to lease the property. Generally, advertising is not necessary in these cases.
- ❖ Non-Agricultural property - The Property Manager should keep lists of interested parties. The property may be advertised through the use of signs and/or newspaper or other media advertising. The Property Manager may also hire a local realtor to find tenants.
- ❖ If a tenant cannot be found - We should review the situation to determine the feasibility of leasing the property.

➤ ***Managing the Rentals***

Even though properties are leased, we still need to ensure that properties are maintained in a safe manner rather than a public nuisance. Property Managers continue to manage and oversee all maintenance, advertising, and similar expenses incurred by or on behalf of the

DOT on each rental item. The amount, date, and purpose for which the expense was incurred shall be approved by the Property Manager and documented in the file. Claims are then processed, and payment made, through Universal Payment Voucher.

## TYPES OF LEASES

### ➤ *Residential Leases*

A Residential Lease includes the lease of a home, an apartment, or any other building or space in any structure or improvement used as a dwelling place (see Appendix "B", Exhibit 1). Only properties that are decent, safe and sanitary may be leased. Decent, safe and sanitary requirements are extensively discussed in the Relocation Assistance Manual. Residential tenants are found through advertising efforts, inquiries from perspective tenants or through the services of a local realtor.

- ❖ Short-Term Occupier - Historically we have considered residential tenants as either "short-term occupiers" or "long-term occupiers." A "short-term occupier" leases the property with the full knowledge that they must vacate the property within 6 months from the time it is rented. The market rent charged to the short-term occupier is usually less than if the property could be leased for a longer period of time. The Property Manager determines the amount of rent to be charged. The Property Manager should also determine if having someone occupy the property, even for just a short time before the construction letting, is good management practice or not.
- ❖ Long-Term Occupier - A "long-term occupier" applies when the residence may be occupied for at least longer than six months and possibly for several years. The rental rates in these cases must be based on current market rates. These cases are found when the property was acquired far in advance of the actual construction date or on projects that were postponed or canceled for one reason or another.

**NOTE:** Even though we anticipate the availability of the property over a longer term, the Property Manager must reserve the right to cancel the lease in 30 days in the event the DOT determines the property must be vacated.

- ❖ Determining Rental Rates - Rental rates are based on the rental rates for similar properties in the area.
- ❖ Damage Deposits - Property damage deposits are required for residential tenants. The damage deposit should be equal to one month's rent and is due before the tenant is allowed possession of the property. Damage deposits and rent payments shall be made by certified check, money order or cashier's check made payable to the DOT. Cash shall **not** be accepted.
- ❖ Length of Lease - Residential Leases shall normally be for one year and shall terminate on the anniversary date of the lease. Residential Leases with terms of less than one year shall contain a termination date agreed to by both parties. Either party can cancel the lease by providing a 30-day Written Notice.



- ❖ Lead-Based Paint - Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead based paint hazards in the dwelling. Lessees must also receive a federally-approved pamphlet on lead poisoning prevention.
- ❖ Disclosure of Lead-Based Paint Form - Lessees shall sign a "Disclosure of Lead-based Paint and/or Lead-based Paint Hazards" form provided by Property Management and approved by the EPA. This form shall be kept in the lease file (see Appendix "B", Exhibit 6).

### ➤ **Commercial Leases**

A few examples of Commercial Leases are offices, apartment buildings, other buildings to be used solely for business purposes and parking lots (see Appendix "B", Exhibit 2). These types of properties are not to be used as residences. Commercial leases may or may not involve improvements. The purpose for which the property is intended to be used determines whether or not a commercial lease should be used. Commercial tenants are found through advertising efforts, inquiries from prospective tenants or through the services of a local realtor.

- ❖ Short-Term Occupier - Historically we have considered commercial tenants as either "short-term occupiers" or "long-term occupiers." A "short-term occupier" leases the property with the full knowledge that they must vacate the property within 6 months from the time it is rented. The market rent charged to the short-term occupier is usually less than if the property could be leased for a longer period of time. The Property Manager determines the amount of rent to be charged. The Property Manager should also determine if having someone occupy the property, even for just a short time before the construction letting, is a good management practice or not.
- ❖ Long-Term Occupier - A "long-term occupier" applies when the residence may be occupied for at least longer than six months and possibly for several years. The rental rates in these cases must be based on current market rates. These cases are found when the property was acquired far in advance of the actual construction date or on projects that were postponed or canceled for one reason or another.

**NOTE:** Even though we anticipate the availability of the property over a longer term, the Property Manager must reserve the right to cancel the lease in 30 days in the event the DOT determines the property must be vacated.

- ❖ Length of Lease - Commercial Leases shall normally be for one year and shall terminate on the anniversary date of the lease. Leases with terms of less than one year shall contain a termination date agreed to by both parties. Either party can cancel the lease by providing a 30-day Written Notice.
- ❖ Rental Rates - Rental rates are based on the rental rates on similar properties in the area.

- ❖ Damage Deposits - Property damage deposits are required for commercial leases on properties with buildings. The amount of the damage deposit is determined by the Property Manager. Damage deposits and rent payments shall be made by certified check, money order or cashier's check made payable to the DOT. Cash shall **not** be accepted.

➤ ***Agricultural / Farm Leases***

A Farm Lease includes any land rented for any agricultural use (see Appendix "B", Exhibit 3). In general, a Farm Lease is only used when we think the land will not be needed for construction for at least one year and the land is of a size and shape that would make it economically feasible to farm.

Former owners or former tenants should be provided the first opportunity to rent the land they used to farm. If necessary, other tenants may be found through inquiries by prospective tenants or abutting owners/tenants.

Farm Leases shall normally have a commencement date of March 1 and shall terminate at the end of February of the following year. In situations where the leased area is required for construction purposes, a termination date when the crop has been harvested (late October - December 1) may be used. Farm Leases may be terminated earlier than the end of February if the lessee violates the terms of the lease.

The DOT and Property Management Section promote conservation tillage and appropriate soil conservation practices when renting farmland. As a general principle, fall plowing of excess land is discouraged.

In areas where the Property Manager has notice from Maintenance staff of a wind erosion traffic safety related problem, fall tillage of both required right of way and excess land may be prohibited by the lease. Strict enforcement shall be requested when blowing soil and snow are known to be a hazard to the traveling public. When a tenant has violated a no fall plowing agreement in a wind erosion traffic hazard area, Property Management shall notify the tenant of the violation in writing. The notice shall state that the tenant may be found to have liability for negligently contributing to the cause of any accidents arising out of blowing or drifting soil.

Farm Leases shall prohibit row crops on land when it is evident soil erosion has been or would be excessive due to the slope or poor soil conditions. Generally these will be areas where the slope is over three percent and contour or strip farming is not being done. Farm Leases, which prohibit row crops, shall limit use to pasture or hay and shall contain appropriate provisions for noncompliance. These provisions may require the tenant to rehabilitate the area by repairing, fertilizing and reseeding.

Property Managers may contact the tenant to determine if they would consider using conservation tillage practices on parcels of excess land of 20 acres or more. Property Managers may encourage conservation tillage but may negotiate and accept leases without such practices when the excess land will be disposed of within the next three crop

years. When a parcel exceeds 20 acres and will be held for three or more crop years the parcel may be offered for rent with specified conservation tillage practices for a three-year term. The Property Manager shall determine the most appropriate and profitable conservation tillage practices being used in the area with the assistance of the local NRCS office.

➤ ***Right Of Way Leases – Mutual Benefit – Harvesting Grass***

A Right of Way Lease is a mutual benefit lease for land held by the DOT in fee or easement and when, in the judgement of the Property Management Section the land has no cash rental value or the benefits received off-set the market rental value (see Appendix "B", Exhibit 4). For land held by easement the underlying title holder or abutting owner shall have preference.

Mutual Benefit Leases are normally for less than one acre, but may also include larger areas when the quality of the land is minimal (rough terrain), or the physical configuration and features of the area lends little or no value.

Prospective Right of Way Lease tenants are usually interested parties who have contacted the DOT. Right of Way Leases shall be cancelable on a thirty-day notice. In all cases this notice shall be given as a Notice of Termination of Right of Way Lease (see Appendix "B", Exhibit 7). If the Right of Way Lease was recorded, we shall record the Termination in the county where the lease was originally recorded.

Maintenance staff is responsible for issuing permits to authorize haying or harvesting grass within highway right of way required for the construction and maintenance of the existing highway. Property Management is responsible for right of way being held in advance of a construction project. The policy for the administration of private use of right of way is contained in the Administrative Code. Questions concerning harvesting grass should be referred to the Area Maintenance Manager who will issue the permit.

➤ ***Contractor's Lease Agreement***

A Contractor's Lease Agreement may be negotiated at the request of the contractor (see Appendix "B", Exhibit 5). These leases are based on the recommendations of the District Office or Resident Construction Engineer and approved by the Chief Property Manager.

Contractors request the right to lease excess land (not required regular right of way) for a variety of purposes. These requests may include equipment repair and storage, plant sites and haul roads. The contractor's use of excess land is permitted and controlled by the Lease Agreement. The Property Manager determines the rental rate, unless the construction plans specifically provide that the State will provide the land to the contractor for their use. A performance deposit/bond in the form of a cashier's check, money order or certified check is required. Any damage to the value of the land or improvements as a result of the contractor's use may be collected and paid through the contractor's performance deposit/bond. Borrow areas shall not be leased to contractors when the State only acquired a temporary easement or if the proposed site is within the excavation limits of a borrow acquired in fee.

➤ ***Excess Land Lease Agreement (Special)***

These agreements address fencing problems, special access problems and public utilities. These agreements may have a variety of terms ranging from a few days to an indefinite date. A nominal fee or minimum rent may be assessed. Agreements should not be entered into that involve right of way required for the construction and maintenance of the existing highway. All right of way use permits or licenses to use required right of way shall be issued by the Maintenance staff. Excess Land Lease Agreements (Special) should be coordinated with Maintenance Services when they affect the DOT use of required right of way.

➤ ***Intergovernmental Leases***

Intergovernmental Leases are normally short-term use agreements allowing another governmental authority the temporary use of excess land. Long-term situations are generally accomplished through disposals as opposed to leases. Excess land and required right of way can be leased to other governmental entities for public parking when the parking does not interfere with the highway systems; for example, a parking lot under a bridge. If the area to be leased is used expressly for governmental purposes the lease may be for mutual benefit. However, if the land is to be used for proprietary purposes, fair market rent must be charged.

➤ ***Additional Lease Forms***

As we have seen, the types of lease agreements are numerous. Each situation may be different or require a different type of form. An additional lease form, a "Lease Agreement " has been provided (see Appendix "B", Exhibit 8).

➤ ***Leasing Wells***

The Attorney General's Office has advised us not to lease wells or water systems on excess or required right of way in light of recent groundwater legislation.

➤ ***Rental Agreement - To Prevent Subsequent Tenants***

Often tenants move as soon as they receive their tenant compensation package even though the DOT and the owner are still negotiating for the sale of the property. The owner is then free to rent the property to a subsequent tenant and the subsequent tenant then becomes eligible for relocation assistance. If the subsequent tenant receives benefits and moves while negotiations with the owner are continuing, additional subsequent tenants may result. Obviously avoiding these types of situations is in the best interest of the general public. In order to prevent these situations, the acquisition or the relocation agent may enter into an agreement with the owner to leave the property vacant until the acquisition process is completed (see Appendix "B", Exhibit 9).

The payments to the owner for leaving the property vacant are handled through the Property Management Section, but these agreements do not put the DOT in the position

of being a tenant and therefore the State does not assume any maintenance or utility responsibilities.

Usually, the Relocation Agent will bring these situations to the attention of the Relocation Assistance Supervisor. If a decision is made to acquire the right to rent property, an acquisition agent or a relocation agent will present the agreement to the owner, and the signed agreement will be returned to Property Management to make the necessary payments at the agreed fee.

The Acquisition Section Supervisor will inform Property Management when the property has been acquired or when the agreement is terminated. The costs incurred in the acquisition of the owner's right are acquisition, not relocation costs. Please refer to the Relocation Manual for complete instruction on this procedure.

## **ESSENTIAL LEASE TERMS**

The lease forms used by Property Management are documents that have been created through a long history of different experiences and assembling knowledge. The forms are living documents that can and should be modified as time goes on, but changes should only be made after careful consideration with input of Property Managers, management and legal advice. With this in mind a brief discussion of essential lease terms has been provided.

The lease forms previously mentioned and provided in Appendix "B" contain several "boiler plate" clauses generally used in each type of lease. It is not the intent of this manual to describe each such "boiler plate" clause in detail. The intent of this section of the manual is to provide a discussion of a few essential terms that should be present. This list does not include all necessary terms and you should refer to the accepted lease forms for further reference.

### ➤ ***Term of the Lease***

The period of time the lease shall run is an essential term that must be included in all leases. Leases are not generally written for longer than one-year periods and are cancelable with 30 days notice.

All leases written for periods longer than one year and cancellation clauses longer than 30 days shall be developed with the full input of the Property Management Lease Coordinator or the Chief Property Manager with the express approval of the Chief Property Manager. The lease file shall contain documentation as to the reasons for granting the extraordinary time periods and if necessary concurrences from other impacted offices.

### ➤ ***Uses to be Allowed***

The use(s) allowed must be specifically addressed in the lease.

### ➤ ***Rental Rate***

The amount of rent to be paid must be written in the lease.

➤ ***Cancellation Clause***

The DOT acquires land for highway purposes. We need to remember that although land can and should be leased, the primary purpose for owning land is to satisfy the needs of the highway system. To ensure that all property can be used for highway purposes if necessary, all leases must have a cancellation clause as part of the document. Generally, cancellation clauses will allow the DOT to cancel the lease without cause with a 30-day notice.

➤ ***Insurance Requirements***

We have several requirements concerning insurance in our lease agreements:

- ❖ Liability Insurance - Commercial tenants will be required to maintain public liability insurance for the tenant's uses of the property. The DOT shall be named as an insured party and proof that the insurance is in force shall be maintained in the file. Failure to obtain or to maintain public liability insurance shall be cause to forfeit, cancel and terminate Commercial Leases. The average minimum standard for coverage is \$1,000,000 per occurrence and \$1,000,000 aggregate total. The coverage should not be for coverage limits less than the business has maintained prior to becoming our tenant.
- ❖ Fire Insurance - When the original owner remains in possession of the property they shall be required to maintain fire insurance until they surrender possession and vacate the premises. All insurance proceeds shall be made payable to the DOT. Once the original owner surrenders possession of improvements and vacates the premises, the State shall be self-insured for fire loss purposes. The acquisition contract shall describe the owner's obligations. All Property Management leases with original owners shall require fire insurance. The original owner shall be requested to maintain their existing fire insurance policy.

➤ ***Civil Rights Addendum***

Each lease shall contain the Civil Rights attachment identified as Appendix "A", Attachment to Lease. This clause is provided as part of the sample leases found in the Appendix "B" of this manual.

## **ADMINISTRATION OF LEASES**

This portion of the lease discussion is dedicated to the "nuts and bolts" of lease administration.

➤ ***Approvals***

Generally leases are signed by the Property Manager responsible for developing the lease and then approved by the Chief Property Manager. Office of Facilities properties leased in excess of \$25,000 per year shall also require Staff Action.

Some airspace leases require FHWA approval prior to leasing:

- ❖ All proposed leases of airspace under a structure or over a highway facility when the highway is on the Interstate System (Example: parking lots under bridges and/or buildings being constructed in the right of way or over the highway).
- ❖ All proposed leases of Interstate airspace (right of way) regardless of size.
- ❖ In the past, FHWA required a "credit" whenever property purchased with any federal money was sold. FHWA now requires a credit or that the money be used in other highway projects eligible for Title 23 funding. The DOT has adopted the policy that all proceeds realized from the leasing of assets must be deposited into the Primary Road Fund and used on Title 23 eligible projects.

➤ ***Recording Leases***

Generally, the only leases recorded are those leases for terms of more than one year: for example, Right of Way Leases; or leases with cities and counties, regardless of the term. All recorded leases are to be recorded in the county where the land is located.

➤ ***Rental Deposits***

We require an amount of at least one month's rent from residential tenants as a rental damage deposit. If appropriate, we may require a higher rental deposit not to exceed two months' rent as authorized by Iowa Code §562A.12 <http://www.legis.state.ia.us/lowaLaw.html>. Deposits are held in a non-interest bearing account maintained by the Office of Finance. Within 30 days from termination of the lease, Property Management shall, by universal payment voucher, request the Office of Finance to return the rental deposit. Amounts may be withheld to pay unpaid rent, to restore the property to its condition when the property was leased (ordinary wear and tear excepted) and to recover expenses incurred in acquiring possession from the tenant.

If any of the deposit is withheld, the tenant must be sent a written statement showing the specific reason for withholding all or part of the rental deposit. This statement must be sent within 30 days from the lease termination date, or the right to retain rental deposit is forfeited.

In renewing a year-to-year lease, we shall notify the tenant that the rental deposit will be retained. The rental deposit is also retained on a month-to-month lease.

➤ ***Payments and Receipts for Rent***

All rent is due upon execution or renewal of a farm lease. All rental payments, except Farm Leases, will be paid by money order, cashier's check or certified check, or personal check. Monthly rental payments shall be due on the first of the month. If the lease is terminated in advance (in the middle of a month) only the prorated amount shall be due. Tenants shall be instructed to send all rental payments to the Office of Finance.

In limited situations the Property Manager may consider accepting rent in two installments. Installments should only be considered in cases where significant acres and a minimum rental payment of \$15,000 is involved. In these cases the Farm Lease installment payments shall be made 50% in advance of the March 1st lease date and 50% on or before November 1st.

➤ ***Delinquent Rental Accounts***

The following process has been established for determining and accounting for deficiencies in rent payments for leases:

- ❖ Review Rent Payment Deficiency - Property Management shall review deficient rental accounts on the tenth of the month. The tenant shall be sent a "*Delinquent Long-term Receivable Invoice*." The tenant is also sent a *3-day Notice to Vacate* letter (see Appendix "B", Exhibit 10).
- ❖ Determine Whether to Evict - Property Management shall take further action on all accounts 45 days delinquent. Determinations shall give consideration to the rental rate, the likelihood of obtaining a new tenant, start of construction, possible loss due to vandalism, the tenant's property maintenance record, the tenant's probable ability to pay the rental charge and the tenant's payment record.

Failure to comply with the terms of a lease includes, but is not limited to, nonpayment of rent, holding over after termination of the lease, or failure to maintain the premises or otherwise holding contrary to, or in violation of the terms of the lease.

- ❖ Statement of Delinquent Account - It is the responsibility of Property Management to prove the amount due on a delinquent account. Delinquent rental shall be the amount of rent due and unpaid under the terms of the lease. In determining delinquent rent chargeable against the account, consideration shall be given to any rental deposit. Any balance remaining in the rental deposit fund shall be returned to the tenant.
- ❖ Filing Claims to Collect Damages - Property Management shall obtain possession of the property by filing suit in Small Claims Court and shall document the records of any amounts not collected as uncollectible. When delinquent rent or our claim exceeds the \$4,000 jurisdictional limit of the Small Claims Court, the Attorney General staff shall be requested to bring the action in the District Court or turned over to the Iowa Department of Revenue and Finance pursuant to Iowa Code §421.17(34) <http://www.legis.state.ia.us/lowaLaw.html>. The Department of Revenue and Finance will collect debts per the terms of a 28E agreement between the DOT and Department of Revenue and Finance. Submittals to the Department of Revenue and Finance shall be handled through the Lease Coordinator and under the general supervision of the Chief Property Manager.
- ❖ Collection by Collection Agency - When attempts to collect rent fail, it is permissible to contract with a collection agency, or preferably the Iowa Department of Revenue and Finance, to recover debts owed and other damages.



- ❖ Collection by Deduction from Relocation Assistance Payments - If a tenant is also a displaced person entitled to relocation assistance payments, unpaid rent may be collected by deducting rent from relocation payments. Property Management coordinates these types of collection with the Relocation Assistance Supervisor.

➤ ***Documentation of Files***

Effective Property Management and Lease Administration requires flexibility. Warranted departures from standard practices will occur. These decisions accompanied by the rational considered must be documented in the lease files. Examples of departures are provided.

- ❖ Reductions in rent
- ❖ Rental allowances for tenant provided labor
- ❖ Forgiveness of back rent
- ❖ Mutual benefit or rental rates below market value

The above departures may be prudent and necessary in individual situations. The basis for the decision and supporting rational must be documented in the lease file through notes, estimates, or memorandums to the file.

Unusual agreements may also be necessary in specific, individual situations. Decisions involving these types of situations must also be documented through the lease file. A few examples are provided.

- ❖ Police or Fire agreements
- ❖ Salvage agreements
- ❖ Mutual benefit agreements

## **CANCELLATION / TERMINATION OF LEASES**

We must consider leases in force at the time of land disposal. Leases on land to be disposed can either be terminated or modified to exclude the land to be disposed. The procedure for these types of lease terminations are the same procedures used in terminating leases for clearing land when preparing for highway projects.

If the property is sold without terminating the lease, the DOT will retain all rental payments until the full amount of the purchase price is paid. Rents may be prorated as of the date full payment is received for the land. Land being sold with a Farm Lease shall be sold subject to the existing lease.

Normally, Residential Leases are canceled in order to have possession before the property is needed for the project or other public purpose. The land or improvements may be needed for highway construction, or Property Management may need possession for disposal purposes or the property may be vacated for other reasons.

Eviction procedures shall be used to cancel leases for the tenant's failure to maintain the premise, or for nonpayment of rent or deterioration of the property to a less than decent, safe and sanitary condition.

The following guidelines have been established for canceling Residential and Commercial Leases:

➤ ***Noncompliance with Rental Agreement***

If the tenant has failed to comply with the rental agreement, except for nonpayment of rent, we shall send a written notice specifying the areas of the lease that have been breached. The notice shall provide the tenant 14 days in which to remedy the breach, and if the tenant fails to do so the lease will terminate on a specified date not less than 30 days after tenant's receipt of the 14-day notice of breach of agreement. If the same act or omission recurs (within six months for Residential Leases), we may terminate the lease upon at least 14-days written notice.

➤ ***Terminating or Canceling Leases for Nonpayment of Rent***

Leases contain lease cancellation clauses that authorize the DOT to cancel or terminate leases for nonpayment of rent upon 30 days notice. This notice for Residential Leases must also be given in the manner required by the Uniform Residential Landlord and Tenant Law.

If residential rent is unpaid when due, we shall send a three-day notice of nonpayment stating that the rental agreement will terminate if the rent is not paid in three days on a specified date (see Appendix "B", Exhibit 10). If unpaid, a second notice is sent stating that the Residential Lease is terminated on a specified date not less than 30 days after the tenant's receipt of the three-day notice of nonpayment. If we accept the late rent we have waived our right to terminate for nonpayment of rent.

If the tenant remains in possession after we have terminated the residential rental agreement, the tenant can be evicted as a Tenant Unlawfully Holding Over. We shall bring an action for possession and to recover actual damages sustained by the DOT and reasonable attorney's fees.

➤ ***Month-to-Month Tenancies***

Residential and Commercial Leases are typically not renewed for another one-year term. After the first year, DOT standard lease forms allow the tenant to remain in possession as a month-to-month tenant.

Month-to-month tenancies may be terminated by written notice given to the tenant at least 30 days prior to the periodic rental date specified in the notice. If a month-to-month tenant unlawfully holds over, we may bring action to obtain and recover possession, for the payment of actual damages sustained and for reasonable attorney's fees.

➤ ***Farm Lease Cancellation Procedure***

Farm Leases shall terminate or be canceled in the manner specified by Iowa Code §562.5, 562.6, and 562.7 <http://www.legis.state.ia.us/lowaLaw.html>, and discussed in the following paragraphs:

Farm Leases for premises of thirty-nine acres or less which specify a time for the termination of farm tenancy, even though both occupied and cultivated, shall terminate automatically at the time agreed upon without notice. As a courtesy, we will send the termination notice and also keep the field offices aware of the status.

All Farm Leases of forty acres or more, when the premises is both occupied and cultivated and the tenant is not in default in the performance of the terms of the lease, continue automatically for the following crop year upon the same terms and conditions as the original lease unless written notice for termination is given either by the DOT or the tenant.

The Lease Coordinator shall automatically terminate all farm leases over 40 acres every July, and send the applicable Notice of Termination. If the property is still available for lease, the Property Manager may write a new lease effective the following crop year.

Farm Leases when the tenant is in default in the performance of the terms of the existing lease will not continue for the following crop year. This is true even though the DOT fails to provide written notice for termination of the lease.

➤ ***Notice of Termination of Farm Tenancy***

When termination of farm tenancy is required, a Notice of Termination of Farm Tenancy is sent (see Appendix "B", Exhibit 11). The lease may have granted a right to the tenant to renew a Farm Lease. Both rights must be canceled in order to obtain possession of the premise at the end of the term. Cancel the tenant's automatic right of renewal under the law by sending the required Notice of Termination of Farm Tenancy. Cancel the tenant's right of renewal under the lease by sending notice of such cancellation, in writing, as required under the terms of the lease.

The title of the notice should include, "...and cancellation of right of renewal." The body of the notice should include, "...This notice is given to you in accordance with the provisions of Iowa Code §562, and Paragraph \_\_\_\_ of your lease."

➤ ***Consent for Early Termination***

Consent from the farm tenant must be obtained in any case when possession of the leased premise is required in advance of the time in which the lease may be terminated. All such consent shall be obtained in writing and, when necessary, the lease shall be renegotiated, modified or otherwise adjusted to reflect the terms or conditions of any such adjustment. Property Managers negotiate such early terminations and may agree to pay for field preparation and other similar damages or losses.

➤ ***Certified Mail Notice Required***

Notices to quit shall be sent by certified mail, return receipt requested, as authorized for residential tenancies in Iowa Code §562A.8(2) <http://www.legis.state.ia.us/IowaLaw.html> and for other leases in Iowa Code §562.7(3) (see Appendix "B", Exhibits 12 and 13). Copies shall be sent to the District Engineer, Area Maintenance Manager and Resident Construction Engineer. If keys are to be obtained by or delivered to the Resident Construction Engineer, this fact must be indicated on that Engineer's copy.

➤ **Selecting an Eviction Remedy**

In most instances, Property Management shall select remedies to effect eviction although sometimes the Attorney General staff's involvement may be necessary.

There are two basic remedies through which a tenant might be evicted. They are through an action to recover real property Iowa Code §646 <http://www.legis.state.ia.us/IowaLaw.html> or through proceeding for forcible entry or detention of real property Iowa Code §648. An Iowa Code §646 proceeding is a complete remedy in the sense that it can obtain possession and judgments for delinquent rent and property loss or damage. An Iowa Code §648 remedy is the quickest way to obtain possession (usually 15 days after sending a three-day notice to quit for nonresidential property), but the delinquent rental account cannot be collected through this remedy.

When the tenant has either vacated the premise or has made arrangements to vacate the premise, and there is no construction or other need for immediate possession, Property Management shall institute proceedings in Small Claims Court for the recovery of real property under Iowa Code §646.

When there is an immediate construction or other need for possession of the premise, and the amount of delinquent rent exceeds the rental guarantee, Property Management shall institute concurrently a proceeding in Small Claims Court for forcible entry and detainer to obtain possession and a proceeding to recover real property to obtain collection of the rental account. A similar recommendation shall be made in the case of known property loss or damage to the premises.

## **LEASE RENEWALS**

All leases that are to be renewed should be periodically reviewed to ensure the terms and rental rates are still current and reasonable. We should review all leases annually, obtain and consider recommendations from the District Offices to determine if the lease should be renegotiated. Long-term rentals must be based on the current fair market value. These properties require inspection periodically and rent evaluated every two to three years. If necessary, these leases will not be renewed but will be renegotiated for the adjustment of rental rates. If the property is not being maintained or the terms of the lease are not being complied with, corrective measures must be initiated or the lease canceled.

➤ **Non-Farm Lease Renewals**

We do not renew leases when possession of the premises will be required during what would be the renewal term or when terms or conditions of the lease must be added or revised in order to be consistent with construction or other needs. When a lease will not be renewed, the lease shall be renegotiated in a manner consistent with needs for the property or the tenant shall be allowed to remain in possession of the premise as a tenant at will.

When a Residential Lease is to be renewed, send the tenant a letter of lease renewal 30 days in advance of the end of the lease term. The letter shall specify the monthly remittance. Property Managers shall request the tenant to make remittance for the first month of the renewal term. Do not send this letter if the lease is to be renegotiated or if this is to be a month-to-month tenancy at will.

➤ ***Farm Lease Renewal***

Property Management shall make an annual review of Farm Leases for construction needs and request lease management recommendations from the Districts. This review is normally made in June and July for the upcoming crop year, which is from March 1st to February 28th. Farm Leases, which terminate at the end of the term specified in the lease or as agreed upon, shall be reviewed and when practical, renewed. A Long-term Receivable Invoice which serves as a Lease Renewal Notice shall be first sent prior to September 1st. It shall identify the lease, state the amount of rental due and the date upon which payment is due. The notice shall be accompanied by a card instructing the Lessee to sign and return said card on or before October 1st and to indicate their intentions for the renewal of their Farm Lease.

If the tenant fails to submit rent when rent is due, a Delinquent Invoice will be sent on or about January 10th. When necessary, a third notice of delinquent rent will be sent on or about the 10th of February. (The second invoice may be marked "Second Notice" and the third invoice shall be marked "Final Notice".)

If a farm tenant fails to transmit rental remittance with a "Final" Delinquency Notice, a Property Manager shall obtain a new farm tenant.

All agricultural lease over 40 acres must be written as new leases annually.

**Lease Inventory and Management Record**

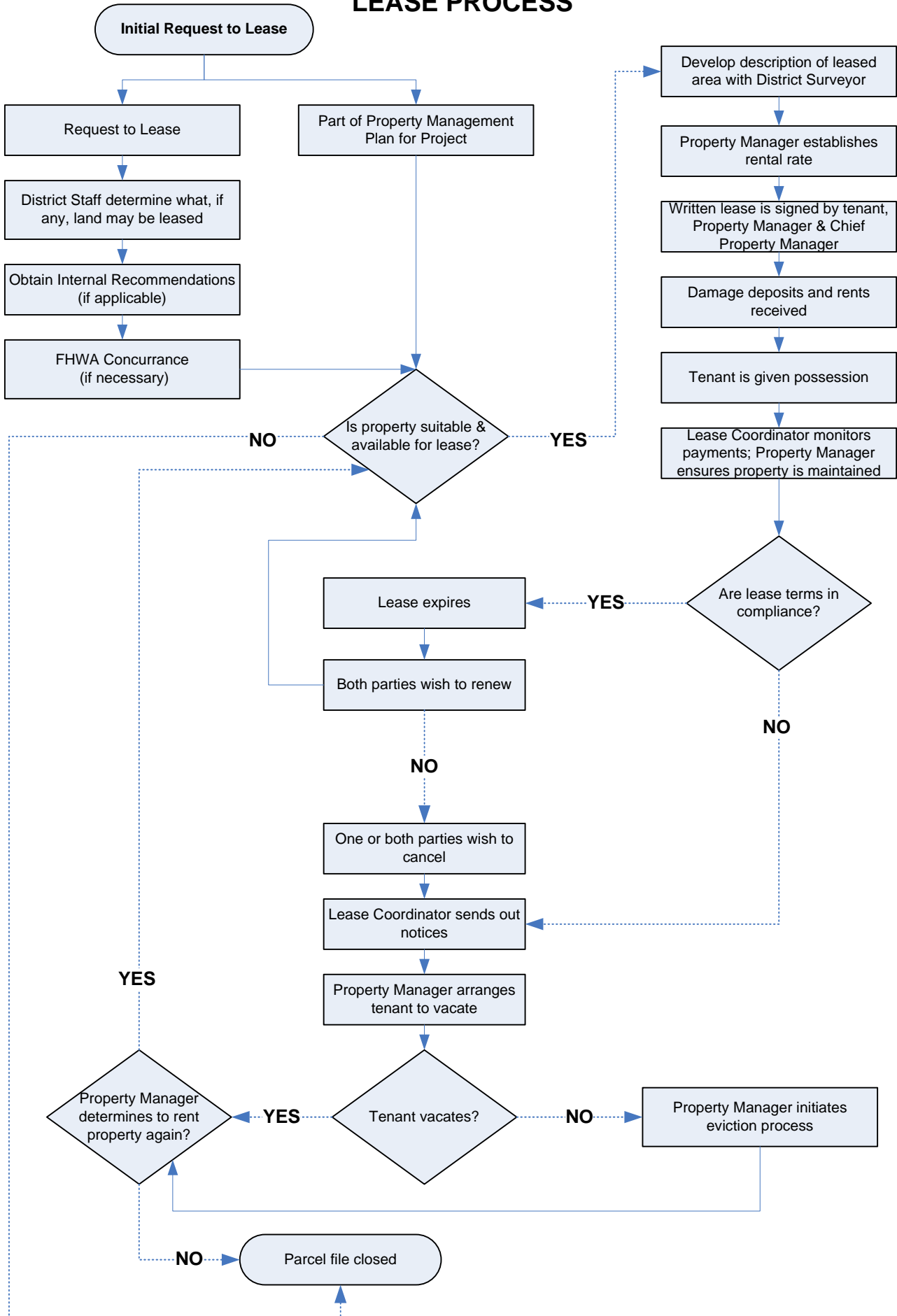
An inventory of leases shall be maintained. The lease inventory and Property Management lease file shall record lease management activity monthly. The Property Management Lease Coordinator shall prepare a monthly activity report for the Chief Property Manager.

## OVERVIEW OF PROCESS

Now that you understand several of the terms and details of our Lease Program, we thought that a simple overview of the process might be helpful. In this way perhaps we can "bring it all together."

- ***The Property Manager Decides to Lease the Property***
  - ❖ Decision based on Project Property Management or request from customer
  - ❖ If necessary internal recommendations are obtained
  - ❖ If necessary obtain FHWA approval
  - ❖ Ensure property is suitable and available for leasing
  
- ***Rental Rate is Established***
  - ❖ Property Manager studies the local market
  - ❖ Property Manager considers other factors and establishes rental rate
  
- ***An Agreement with a Tenant is Made***
  - ❖ Written lease is signed by tenant, Property Manager, and Chief Property Manager
  - ❖ Damage deposits and rents are received
  - ❖ Tenant is given possession
  
- ***Administer the Lease***
  - ❖ Lease Coordinator processes payments
  - ❖ Lease Coordinator ensures rent is current
  - ❖ Property Manager ensures lease stays in compliance
  - ❖ Property Manager sees that property is maintained and repairs made if necessary
  
- ***Renew Lease if Applicable***
  
- ***Cancel or Terminate the Lease***
  - ❖ Lease Coordinator sends applicable notices
  - ❖ Property Manager ensures tenant vacates or starts eviction process
  - ❖ Lease Coordinator handles eviction process involving Attorney General's staff if necessary

# LEASE PROCESS



# **CHAPTER FIVE**

## **Sales and Disposals of Improvements and Personal Property**

Revised 5/2007

Personal property and improvements must be removed from land required for construction projects. We have two basic options for removing personal property and improvements; sell or dispose. This section of your manual will talk about both sales and disposals.

### **SALES**

Our sales process may appear confusing at first glance, but when we break down the parts the process is straightforward. We have broken down sales of improvements and personal property into five areas, plus we provide an overview of the process:

1. *Making the Decision to Sell*
2. *Sales to Former Owners*
3. *Direct or Negotiated Sales*
4. *Competitive Public Sales*
5. *Administration or Technical Aspects of Sales*
6. *Overview of Process*

When improvements and personal property are sold the funds are returned to the Primary Road Fund, and money may be saved on demolition costs. First we need to decide if the improvements can and should be sold, so the appropriate starting place is making the decision to sell.

### **Making the Decision to Sell**

Each Property Manager decides when to sell and not sell improvements. The decision is based upon a few basic criteria.

➤ ***Time***

We must first determine if the items be sold and removed without interfering with the overall highway project. The sale of an item cannot warrant delaying a project.

➤ ***Practicality***

We must determine if the sale of the improvements is practical. A sample of considerations has been provided.

- ❖ Is it practical for the items to be moved?
- ❖ After considering any potential liabilities, is a sale worth the effort?
- ❖ Is the time and expense of a sale worth what the items would probably sell for?



If the answer to these or other applicable questions is no, we should question if the sale is practical.

➤ ***Market for Items***

Items should not be marketed if there is not an interested market available.

➤ ***How and to Whom to Offer Items for Sale***

This part of the decision making process will be discussed in detail as we review the different types of sales. Sales may be offered to different parties in different ways, such as:

- ❖ Original owners
- ❖ Interested parties
- ❖ General public
- ❖ Direct or negotiated sales
- ❖ Public competitive sales

Once the decision has been made to sell and how we will offer items for sale, we are ready to proceed through the sale process.

## **Sales to Former Owners**

Sometimes the former owners of real and personal property may want to retain or buy back their interest. These requests deserve serious consideration and DOT policy has historically encouraged sales to former owners. Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html> provides purchase preference of land sales to former owners. Sales or disposals of improvements and personal property to former owners may occur at two different times.

➤ ***During Negotiations***

During acquisition negotiations, the owner may reserve the right to remove improvements and personal property as part of the acquisition contract. The contract will provide for a specified time period to remove the improvements. This right is normally described as an option to retain improvements and personal property at salvage value determined by Property Management.-

Failure to Remove Reserved Items - Should the original owner fail to remove improvements and personal property, additional time may be granted by the Property Manager so long as the extension does not interfere with construction. Additional time to remove the property may be denied to the original owner when, in the judgement of the Property Manager, the owner has not made a reasonable attempt to remove the property. In all cases, Property Management shall remove and dispose of the property in the manner determined to be in the best interest of the DOT.

- ❖ Determining Salvage Values - Estimating salvage or retention values on personal property, buildings and improvements located within the right of way is the responsibility of Property Management. Requests for values typically are generated from the Acquisition Section. Personal property generally consists of movable items not permanently affixed to or a part of the real estate. When the acquired improvements can be leased or sold to be moved, the Acquisition Agent must request Property Management approval prior to reserving fixtures to the former owner.
- ❖ Criteria for Salvage Values - Property Management salvage value estimates are based on past sales data, estimating the property's remaining useful life or utility, determining the scarcity of comparable or similar items and the sound judgement of the Property Manager. A value shall be placed on individual items of personal property. Consideration may include moving the improvements off the right of way. The Property Manager establishes an estimate for a specified amount, not a range of values. The estimate is then reviewed and approved by the Chief Property Manager or the Property Management Production Coordinator before being sent to the Acquisition Section.
- ❖ Determining Items that Should Not be Salvaged - There are situations when Property Management should not approve items to be salvaged or sold back to the owners. We have furnished three different situations along with examples. It is the responsibility of the Property Manager to recognize when reservation or salvage agreements should not be entered into and inform the Acquisition Agent when requests for salvage values are received.
  - *Time Restraints* - When time will not allow for the removal of items before the construction project is to start, we should refrain from entering into reservation or salvage agreements.
  - *Safety Issues* - When the owners salvage efforts would leave the remaining property in an unsafe condition or a public nuisance, we should not enter into reservation or salvage agreements.
  - *Damage To The Public Asset* - When we know the improvements can remain on the land and sold in place after the project, reservation or salvage of items will reduce the value of the public's assets and should be avoided.

➤ ***After Negotiations but Before the Highway Project Starts***

Sometimes after negotiations have been completed, owners decide they would like to retain ownership of items. We should attempt to provide these types of services to former owners when practical and when the interests of the public are not adversely impacted. The Property Manager may consider negotiating a direct sale to the former owners, provided a salvage estimate is prepared as previously described. The Property Manager may not negotiate a direct sale to former owners if any of the following situations apply:

- ❖ There is not adequate time to remove the improvements before the project has been let.

- ❖ The improvements have been sold or offered to someone else.
- ❖ The sale of improvements has been advertised to the general public.
- ❖ The property has been turned in for demolition.
- ❖ Salvage activities would interfere with the sound property management of the property.
- ❖ If the Property Manager believes the salvage efforts would not be in the best interest of the DOT or general public

➤ **Forms for Sales to Owner**

The two situations described will require the use of different forms in each case:

- ❖ Reservations During Negotiations - This type of sale is handled within the Acquisition Contract by the Acquisition Agent. The Property Manager must complete a salvage estimate signed by the Property Manager and approved by the Chief Property Manager (or Property Management Production Coordinator).
- ❖ Direct Sale After Negotiations - This type of sale is handled the same as any other direct sale. See the discussion of direct sales, the next area of your manual.

## **Direct or Negotiated Sales**

Sometimes selling improvements or personal property through a competitive public sale is not practical. There are many situations when a negotiated direct sale is the only prudent or practical way to sell items. A few examples have been provided but this list should not be considered as the only situations when direct sales should be considered.

- ❖ Little or no market for the items to be sold
- ❖ Minimal value of the items to be sold
- ❖ Limited time available before the project contract letting
- ❖ Sale to another public entity
- ❖ No bids or no acceptable bids are received at a sale

In some situations land may be cleared of improvements or personal property by negotiated sale. A Bill of Sale may be used to document a negotiated sale of improvements or personal property (see Appendix "C", Exhibit 1). If the offer is acceptable, the bill of sale is processed as a voucher and constitutes proof of purchase (see Appendix "C", Exhibits 2 and 3). All items disposed of exceeding \$10,000 shall be approved by Staff Action.

The Property Manager will estimate a value for the item before a negotiated sale. In determining a reasonable sale price, consideration shall be given to the property's salvage value, its mobility, its utility, the nature of the probable market, its condition or state of repair, DOT removal costs and land clearance lead time. The original owner of improvements or personal property may be given an opportunity to purchase property through a negotiated sale at the property's salvage or retention value.

The buyer shall be required to pay sales tax on sales of personal property. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.

## **Competitive Public Sales**

The DOT recognizes that, when practical, all interested parties should be allowed an opportunity to bid on sale items. Competitive sales promote equitable treatment for the public, a better return on the sale of assets and provide an open atmosphere to conduct business. For these reasons and others, we offer public sales for buildings, fixtures and equipment when there is time to do so and there exists a general market for the sale of the property. We offer two types of public sales; our in-house sealed bid sale and auction sales.

### ➤ ***Sealed Bid Process***

This is our most common type of public sale. Sealed bid sales are handled totally by Property Management staff. The Property Management Section holds a sealed bid sale at least once a month, but additional sales are scheduled as needed. The more potential buyers we can locate for a sale the better. We use different approaches for attracting and notifying the public of our sales.

❖ Mailing List - Property Management maintains two mailing lists of prospective purchasers for land and improvements.

- The preferred list is an electronic format that notifies all members of every sale by E-mail from the Property Management Sales website <http://www.iowadot.gov/rightofway/propertymanage/bidder.htm>.
- A paper list is also maintained and names are added to the mailing list as requests are received. These notifications are mailed via the USPS. There is no charge for the mailing list and prospective purchasers may request information based upon:
  - Land and/or improvements
  - By County
  - By District
  - Statewide

Whenever we offer assets for public sale, notices are sent to those on the mailing lists and any other known interested party. The notice describes the improvements and personal property to be sold and informs those interested how to get information and bid forms.

❖ Web Site – Property Management maintains a web site <http://www.iowadot.gov/propmanage/> providing information of current offerings, past sales history, information as to how to bid on items, and contact information. Sales of improvements should include a picture of the item(s) to be sold.

- ❖ Advertising - Advertisements include the time and the date that bids are due, the general description and the location of the items to be sold, who to contact for bid forms and other pertinent information about the items for sale. We advertise in local publications but we can also advertise in other newspapers, trade magazines or journals when necessary to inform and attract prospective bidders. Proof of advertising shall be kept in the sale file.
- ❖ Signs - We also place "For Sale" signs where the improvements are located. The signs identify the Seller as the DOT and provide the Property Management telephone number for inquiries.
- ❖ Open House - It is not practical to show improvements every time a prospective purchaser would like to view what is being sold. Property Managers schedule open houses that allow prospective purchasers the opportunity to view what is being offered for sale.
- ❖ Sealed Bid Proposals - These forms describe what is to be sold and the terms of the sale. Sealed bid proposals can describe improvements, personal property and/or land. The proposals for improvements and/or personal property should contain the following items:
  - Set forth a general description of the improvements or personal property.
  - Describe a clear identification of applicable bid deposits and removal performance deposit requirements.
  - Provide a statement of the terms, conditions and restrictions of the sale.
  - Detail applicable conditions and restrictions for the moving or removal of the items offered for bid.
  - Include provisions notifying the bidder the property is to be sold "as is" and that the burden of inspection is upon the buyer and that the DOT makes no representation or warranties regarding the quality of the property.
  - Furnish return addressed envelopes clearly marked as a sealed bid.
  - Send bid proposals to any person requesting a form (see Appendix "C", Exhibit 4).
- ❖ Security of Sealed Bids - When the DOT receives the sealed bids by mail the bids are delivered unopened to Property Management. The bids remain unopened and secured in a designated locked place until the bid opening. We cannot provide any information concerning bids received to the public prior to the bid opening, for example, the number of bids we have received or the names of bidders.
- ❖ Opening the Bids - Bids are to be opened at the time and place designated per the sale notice. The bid openings are open to the public and anyone may attend. At a minimum, two Property Management staff shall be present. As the bids are read, all applicable information shall be put on the Bid Tabulation Form (see Appendix "C", Exhibit 5).

Consideration shall be given only to those bids that are received by Property Management on or before the time due and are accompanied by a bid deposit in the

form of a check or money order drawn in not less than the required amount. Cash will **not** be accepted.

- ❖ Sealed Bid Acceptance Recommendation - Following the opening of bids, Property Management must determine its recommendations. Typically the Property Manager and the Chief Property Manager prepare the recommendation together. Bids for improvements and personal property are usually recommended for acceptance as long the bid represents at least minimal compensation for the item and the other terms in the bid proposal are in compliance. There are instances when bids should be rejected. A few examples have been provided.
  - When conditions are placed on the bids by the bidder
  - When the bid is not made in accordance with the bid terms in the proposal
  - When the bid is not complete per the proposal terms
- ❖ Notify Successful Bidder - Property Management shall promptly inform the successful bidder that their bid has been recommended for approval and promptly inform the successful bidder again when the DOT has officially accepted the bid. The notice of official acceptance shall also request the balance due, if any. In the case of the sale of improvements and/or personal property, the notice shall require timely removal of the purchased item. The bid deposit from the successful bidder shall be retained. Unsuccessful bids and bid deposits shall be returned as soon as possible.
- ❖ Right to Waive Technicalities - We do reserve the right to waive technicalities and accept bids as part of the proposal forms. This allows waiving technicalities when in our judgement; the public is best served by waiving the technicality and accepting the bid. When in our judgement the public is best served we also reserve the right to reject all bids and withdraw part or the entire sale. Failure to timely submit a written bid proposal with a bid deposit is not considered a technicality.
- ❖ Purchase Payments - Payment is required as a condition of the acceptance of a sealed bid, a bid at an auction, and/ or as a condition of acceptance of a negotiated sale. The payment shall be in the form of a check or money order drawn in an amount not less than 100% of the bid or negotiated purchase price of the improvement or personal property. Cash will **not** be accepted. The purchase payment will be accepted when the DOT approves the sale and accepts the bid. The purchase payments shall be returned to the bidder or prospective purchaser if the DOT either fails to approve the sale, fails to accept the bid, or approve the negotiated purchase price. The purchase payment will be retained by the DOT when the bidder or prospective purchaser rejects his/her bid or negotiated offer of purchase, or refuses or fails to complete the transaction in accord with its terms.
- ❖ Unsuccessful Bidders - Unsuccessful bidders shall be notified of the amount of the high bid, and the name of the high bidder, as soon as possible and have their purchase payments returned with their notification.
- ❖ DOT employees may bid on items offered by public sale. However, Office of Right of Way employees may not bid or purchase items through Property Management sales.

➤ ***Auction Sale Procedures***

Usually we only sell personal property at auction sales. But in unique situations, we have considered selling land at auction. A discussion of auction sales has been included in the General Sales information section of your manual and the same basic rules apply for the sale of real or personal property by auction.

When Property Management decides to sell personal property or land at auction, we should attempt to locate auctioneers with prior experience in selling similar types of properties. In cases of specialized or unique items the Property Manager should try to supply bid proposals only to auctioneers with the appropriate experience. Property Management shall review the proposals received and recommend approval of the lowest acceptable proposal. A Staff Action shall be used to approve an auctioneer contract if the auctioneer's fee amount will exceed \$10,000.

If approved, Property Management notifies the approved auctioneer and proceeds with the sale. If not approved, we may either renegotiate the proposed agreement or try to obtain additional proposals. Sample auctioneer agreements have been provided (see Appendix "D", Exhibits 1, 2 and 3).

When there is a unique property that would require special expertise, or if time is of the essence, we may directly hire a qualified auctioneer, with the approval of the Chief Property Manager.

➤ ***Auction Sales require Completion of Specific Tasks***

- ❖ Proof of Advertisement - When the auctioneer is required to advertise the sale, the auctioneer shall furnish proof of advertisement prior to the sale.
- ❖ Auctioneer's Performance Bond - A reasonable auctioneer's performance bond may be required for the purpose of assuring that the sale will be held and that the proceeds of the sale will be deposited. When a bond is required it must be delivered to Property Management as specified prior to the date of the sale. Failure to timely deliver a required bond shall be reasonable cause for canceling the agreement.
- ❖ Duties of Auctioneer - The auctioneer shall offer for sale and sell all items listed in the sale inventory plus any additions, except when the terms of the agreement direct otherwise. The auctioneer shall collect, report and pay sales tax due pursuant to Iowa Code §422.48 and 422.49 <http://www.legis.state.ia.us/IowaLaw.html>. The auctioneer shall announce to the assembled prospective buyers all the terms, conditions and restrictions of both the sale and removal of any improvement or item of personal property.

The auctioneer shall collect the total proceeds on the sale of the personal property. The auctioneer shall collect not less than ten percent of the final bid on real estate being sold. Sale of real estate will require that the auctioneer accept only payment in the form of a cashier's check, certified check, money order, or personal check unless otherwise set forth in the conditions of the sale.

The auctioneer shall give the first copy of any Agreement and Bill of Sale (see Appendix "C", Exhibit 1) for sale items to the Property Management sale representative, the second copy to the buyer and the third copy may be used as the auctioneer's.

- ❖ Attendance at Auction Sales - A representative of Property Management shall attend auctions. This representative shall observe and assure compliance with all the terms and conditions of the auctioneer's agreement. The representative may assist the auctioneer to re-inventory items.
- ❖ Auctioneer's Closing Sale Procedures - The auctioneer shall be directed to promptly forward all Bill of Sale copies, the total proceeds of the sale and all bid deposits to Property Management. The proceeds shall be in the form of the auctioneer's business check made payable to the DOT. Sales tax proceeds will be provided by separate check. Any auctioneer's performance bond will be returned to the auctioneer upon payment of the sale proceeds check and the DOT receipt of bid deposits.
- ❖ Sales Tax Collection - Auctioneer's agreements shall require that bill of sale forms used for the sale of personal property inform bidders that payment of sales tax is required. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.
- ❖ DOT employees may bid on items offered by public sale. However, Office of Right of Way Employees may not bid or purchase items through Property Management sales.

## **Administration or Technical Aspects of Sales**

This area has been saved as a "catchall" for the other information you should know about sales. The information is not in any specific order.

- ❖ Lead-Based Paint - Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978, shall be notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and an impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead based paint hazards from risk assessments or inspections in the seller's possession and to notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based hazards is recommended prior to purchase (see Appendix "C", Exhibit 6).

Federal Environmental Protection Agency regulations require that a "*Disclosure of Lead-Based Paint*" form and informational pamphlet be provided to every prospective purchaser of every pre-1978 house to be sold. Purchasers shall sign a "Disclosure of Lead-Based Paint and/or Lead-Based Paint Hazards" form provided by Property



Management and approved by the EPA. This form shall be kept in the sale file (see Appendix "C", Exhibit 6).

- ❖ Performance Bonds / Deposits - Sound business practices support requiring a bond or deposit that is returned when the buyer fulfills their obligations of the sale. For example, when a house is sold to be moved we require a deposit. After the buyer has removed the house and satisfied the other terms of the agreement, the deposit is returned. Should the buyer fail to live up to the terms, all or part of the deposit may be kept to cover costs incurred to the State as a result.

We have historically called these deposits performance bonds. A better term may be performance deposit. The performance bond/deposit is generally handled in the form of a cashier's check, certified check, money order, official bank check, or personal check that is cashed by the DOT. Cash will not be accepted. Funds are returned to the buyer upon completion of the sales agreement via a State Warrant.

Performance bonds/deposits may be required as a condition of an auction bid, or for property sold by sealed bid or by negotiated sale when the buyer agrees to remove or demolish improvements. The deposit guarantees removal of the property and completion of the other applicable terms of the sale. The amount required should reasonably reflect the cost of the removal, storage and resale or disposal of the property should the buyer fail to perform. Should the buyer refuse or fail to timely remove the property, the transaction may be declared in default. The performance deposit for any transaction declared in default shall be retained. The proceeds of the deposit shall be accepted as payment for any loss, damage or expense by the party's failure to timely remove the property. Collection or deposit procedures shall be the same as for rental guarantee and property damage deposits.

- ❖ Possession of the Purchased Item - Possession of the purchased item shall be given to the purchaser upon full payment of the total bid. When a performance deposit is required, the deposit shall be delivered to Property Management before possession is given to the buyer, per the terms of the agreement. The performance deposit shall be returned to the buyer upon satisfactory completion of the agreement terms.
- ❖ Removal of Purchased Items - The buyer shall be required to remove the purchased item within the time specified in the conditions of the sale. When no condition is made, the purchaser shall remove the item within 30 days of the sale date. Should the purchaser fail to remove the item, Property Management may sell, remove, or dispose of the item as it sees fit. The purchaser shall be notified of the default and the performance bond will be retained by the DOT in accord with the terms of the agreement.
- ❖ Sales Tax Collection - Auctioneer's agreements shall require that bill of sale forms used for the sale of personal property shall inform all parties that payment of sales tax is required. Payment of sales tax due shall be paid at the time of the final settlement for the payment of the item. City sales tax shall also be collected when applicable.

- ❖ Moving Houses, Structures and Loads of Excess Weight - The buyer is solely responsible for obtaining permits to move the house or structure. The Bid Proposal Form shall include the following statement: *IMPORTANT NOTE TO BIDDERS: PERMITS ARE REQUIRED TO MOVE SOME ITEMS ON CITY STREETS AND IOWA HIGHWAYS. YOU ARE ADVISED TO CONTACT IOWA DEPARTMENT OF TRANSPORTATION PERMIT CENTER, DES MOINES, IOWA. TELEPHONE NO. 515-237-3264 FOR MOVING DISTANCE AND PERMIT INFORMATION PRIOR TO SUBMITTING YOUR BID.* That office is responsible for the issuance of permits to move vehicles and loads of excess size and weight. Rules to do so are contained in the Administrative Code as required to implement Chapter 321E, Iowa Code <http://www.legis.state.ia.us/IowaLaw.html>. Bills of Sale or other agreements selling such property shall make the buyer fully responsible for obtaining and complying with all permit requirements of the law.

## Overview of Process

An overview of the sales process has been provided for your future reference.

### ➤ ***Making the Decision to Sell***

- ❖ Is there time?
- ❖ Is it practical to sell?
- ❖ Is there a market?

### ➤ ***Sales to Former Owners***

- ❖ As part of the negotiated acquisition contract
- ❖ As a direct/negotiated Property Management sale before construction

### ➤ ***Direct or Negotiated Sales***

These types of sales are applicable when:

- ❖ Little or no market for the items to be sold
- ❖ Nominal value of the items to be sold
- ❖ Limited time available before the project contract letting
- ❖ Sale to another public entity
- ❖ No bids or no acceptable bids are received at a sale

### ➤ ***Competitive Public Sales***

#### ❖ Sealed Bid Sales

- Send notices per mailing list
- Advertise
- Hold open house if applicable
- Open sealed bids day of sale
- Recommend acceptance/rejection
- Notify bidders of sale outcome
- Process payments

#### ❖ Auction Sales

- Select auctioneer
- Ensure sale is advertised
- Attend sale
- Audit Auctioneers final records
- Process payments

### ➤ ***Administration or Technical Aspects of Sales***

## DISPOSALS

We have talked about sales of improvements and personal property, but often we cannot sell these items and the right of way still needs to be cleared. In these cases we need to simply dispose of the unwanted items. This discussion has been divided into four areas:

1. *Trees and landscaping*
2. *Disposal through internal use*
3. *Historical Preservation*
4. *Demolitions, Asbestos and Removal Agreements*

## **Trees and Landscaping**

We often receive requests to buy trees and shrubs on land that the DOT has acquired. The DOT has maintained a long-standing policy not to compete with local nurseries by selling nursery stock.

Iowa Code §177A, Code of Iowa Crop Pests and 21 IAC 46 (Crop Pests) <http://www.legis.state.ia.us/lowaLaw.html> describes requirements necessary for the DOT to sell any tree or shrub. In order to sell a tree or shrub to be transplanted, a qualified and knowledgeable individual must inspect the item for the presence of disease and insect pests. If any plant material is found to be diseased or infested with pests, it will not be offered for sale. If the tree or shrub is found healthy, a value must be determined and the item must be advertised and bids must be accepted. The DOT cannot guarantee or warrant the item. Considering these expenses and the past experience of very minimal amounts received, it is not economically feasible or practical to sell trees/shrubs.

Requests to purchase trees for firewood are also denied because of the liability exposure resulting from these types of activities. The liability exposure far exceeds the monetary amount received from the sale of the trees.

There are several opportunities for the Property Manager to consider when the DOT purchases trees and shrubs. We can notify the DOT Roadside Development personnel to determine if the DOT can utilize the items and move them to DOT facilities. If a large stand of nursery stock is acquired and the DOT does not have a use, a sale may then be feasible. Prior to any sale, an inspection to certify health must be completed, trees would be tagged, values determined, advertisements made and bids accepted. In instances where there is nursery stock and the DOT cannot utilize the stock, we may consider providing the stock to local public agencies for their use. In the case where there is marketable timber (walnut lumber, etc.), the trees which could be sold must be identified and marked and would then be advertised and offered for sale as a lump sale item.

The most common, as well as most practical option, is to clear the right of way through a clearing and grubbing contract. These contracts are let through the Office of Contracts.

## **Disposal Through Internal Use**

Different groups within the DOT can often use improvements and personal property. Trees and landscaping are moved to serve other DOT properties. Metal buildings have been

successfully moved and used by DOT maintenance staff. Property Managers should always be looking for ways we can utilize improvements and personal property internally.

## **Historical Preservation**

Concurrence from the Office of Location and Environment must be obtained prior to the disposal of any historical property. Special interest groups occasionally express interest in acquiring items of historical significance that may have little or no value and are to be demolished. A waiver releasing the DOT from all liability should be obtained from the interested parties before allowing them to enter DOT property if a regular Bill of Sale is not used. In certain situations, agreements entered into by the DOT, SHPO (State Historic Preservation Officers) <http://www.nps.gov/history/nr/shpolist.htm> and other interested agencies may mandate the disposal process for historical improvements.

## **Demolitions, Asbestos and Removal Agreements**

In some situations, the most efficient disposal of improvements or personal property is demolition or clearing. The most common process we use for a demolition is submitting a request for demolition through the Office of Contracts. This process is discussed extensively in the "Clearing the Right of Way" section of this manual.

However, the Property Manager may find it necessary to avoid unreasonable loss or delay, to have the land cleared of improvements and personal property by demolition or removal agreement. Demolition agreements may be sought on a plus or minus basis so that the contractor specifies what they offer to pay or what they propose to charge on a single form. The need to pursue an agreement usually occurs when no auction or sealed bid is received, when bids are rejected or when the buyer fails to remove the property in the time allotted.

When experience indicates a lack of a probable market for a particular improvement, Property Management may clear the right of way by demolition or removal agreement without attempting a sale of the improvement. Normal procedure is to request to the Office of Contracts to place the improvements on a demolition/grading project letting. Agreements with a demolition contractor obtained by Property Management usually are with local building or demolition contractors to dispose of individual or miscellaneous improvements.

Improvements may also be moved from required right of way to excess land to stockpile or organize improvements or personal property for the ultimate sale or disposal. Stockpiling may avoid loss of assets and ensure timely clearance of the required right of way. Stockpiling may be useful when storing items for other units within the DOT. Alternate sites may include land other than excess land.

Asbestos removal activities are the responsibility of the Office of Location and Environment.

# **CHAPTER SIX**

## **Basics for Sales and Disposal of Land**

Revised 5/2007

Public land disposal is a highly regulated process ensuring private and public interests are all considered. Detailing these procedures requires a significant portion of this manual. This Chapter will cover basics that apply to both sales and other types of land disposals. Four basic areas will be discussed, plus we provide an overview of the process.

1. *Authority to Sell / Dispose and Approvals Necessary*
2. *Determining the State's Ownership*
3. *Determining Present and Future Land Needs (Internal Recommendations)*
4. *Survey Plats and Legal Descriptions*
5. *Overview of Process*

After these discussions we will be prepared to proceed with information for sales and other types of disposals of land.

### **AUTHORITY TO SELL / DISPOSE AND APPROVALS NECESSARY**

Sales/disposals of land and improvements are regulated through laws, regulations and policies. This chapter of your manual hopes to provide a basic understanding of what these requirements are and where the requirements may be found.

#### ➤ ***Disposal of Land With a Federal Interest***

In recent years our federal partners have provided the states greater latitude in all right of way processes, including property management and land disposals. Lands acquired as excess or uneconomic remnants and shown as excess on the final Right of Way plans may be disposed of without prior FHWA approval <http://www.fhwa.dot.gov/legsregs/legislat.html>. Present DOT policy requires that we shall not dispose of land or rights in land on federally aided projects by negotiations, except when negotiations are based on current appraised market value.

When FHWA approval is required, requests for the disposal of land shall show facts supporting the land will not be needed for highway purposes in the foreseeable future. The requests shall state that the right of way being retained is adequate under present day standards for the highway involved and the disposal will not adversely affect the federal aid highway facility or the traffic thereon.

The following airspace uses will be sent to FHWA for prior approval before disposal:

- ❖ All disposals of Interstate airspace
- ❖ All proposed easements on Interstate airspace

In the past FHWA required a "credit" whenever property purchased with any federal money was sold. FHWA now requires that a credit or that the money be used in other highway projects eligible for Title 23 funding. The DOT has adopted the policy that all proceeds realized from the sale/disposal of assets must be deposited into the Primary Road Fund and therefore used on Title 23 eligible projects.

➤ **State Law**

Perhaps the best place to start our discussion on State law is the Code Section that authorizes the DOT to sell land.

❖ Iowa Code §306.22- Sale of Land for Cash <http://www.legis.state.ia.us/lowaLaw.html>

This section of the Code contains two separate grants of power to the DOT to sell land. The first is a grant of authority to sell land "for cash" and the second is a grant of authority to sell land "on contract."

The first sentence of the Section authorizes the DOT to sell for cash, "any tract of land...when...the tract will not be used...." There are no restrictions on the power to sell land for cash in the Section other than the last sentence.

The second unnumbered paragraph of Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> is a separate and additional grant of authority to sell land. "The Department may contract for the sale of any tract of land subject to the following terms and conditions...." This paragraph was added to the Section in 1975 as a result of a Right of Way drafted and DOT sponsored legislative bill. There are limitations on the authority to sell land on contract, all of which are set out in the numbered subparagraphs of the second unnumbered paragraph of Iowa Code §306.22, and none of which conditions apply to sale of land "for cash."

The last sentence of the Section makes all sales, whether by cash or on contract, subject to the rights of utilities in possession. This last sentence establishes that the conveyance by the State does not adversely affect the right of utilities in place at the time of the disposal to occupy the premises.

The words "for cash" as they appear in Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> mean "and not for credit." Our DOT policy has interpreted as payment of the fair market value, as measured in terms of money, for all land sold. Normally, money is received by the DOT in payment for land being sold, but value received other than cash can be considered. The value other than cash should be documented and justified so that a reasonable person can read the justification and understand why we believe the public received fair market value for the property. The land patent provisions of the law further support this fair market value standard, which require us to inform the State Land Office of the appraised value of the property.

❖ Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>

This code section is a procedural statute. The first sentence of Iowa Code §306.23 requires the DOT to send by certified mail to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally purchased or condemned for highway purposes and to the person who owned the land at the time it was purchased or condemned for highway purposes, notice of the DOT's intent to sell the land, the name and address of any other person to whom a notice was sent, and the fair market value of the real property based upon an appraisal by an independent appraiser .

These directions can be confusing, so we will try to provide a less confusing explanation. Two different ownerships may be entitled to purchase preference. The owner at the time of acquisition is the first ownership. The second ownership is "the present owner of the adjacent land from which the tract was acquired." The Property Manager must be careful when identifying this ownership. Lands that are next to or abut the property to be disposed may not be the tract "from which the property was acquired" and therefore a purchase preference is not provided.

The second sentence of Iowa Code §306.23 requires the DOT to give an opportunity to the present owner of adjacent property and the person who owned the land at the time it was purchased or condemned for highway purposes to be heard and make offers within sixty days of the date the notice is mailed for the tract, parcel or piece of land to be sold. An offer, which equals or exceeds in amount any other offer received, and which equals or exceeds the fair market value of the property shall be given preference by the DOT (see Appendix "C", Exhibit 7).

There is no language in Iowa Code §306.23 that indicate the legislature intended to limit or restrict the DOT power to sell land for cash. The notice provisions of Iowa Code §306.23 are mandatory. When there is no adjacent property owner because the entire parcel was originally acquired, the notice to adjacent property owner provision does not apply. However, the provision pertaining to the owner at the time of acquisition does apply. Adjacent property owner notices are sent in every case when a portion of the original tract from which it was acquired is being offered for sale.

❖ Iowa Code §306.42 - Transfer of Right of Way

<http://www.legis.state.ia.us/IowaLaw.html>

This section of the Code provides a limited grant of authority to convey highways and adjacent property to other governmental entities for roadway purposes. For example, the DOT constructs a bypass for a community, and upon completion of the project the former highway is to become a city street or county road. This section of the Code allows the DOT to transfer the right of way for roadway purposes. This Section does not require the public authorities receiving such conveyances to pay cash for the transfer. The compensation for such transfers is a token \$1.00. Land transferred to public authorities for other than highway purposes is transferred by DOT policy for its fair market value.

In the case of a transfer of a road from one highway authority to another, the consideration required is that there is an agreement between the two authorities. The receiving highway authority is not required to pay cash for a Quit Claim Deed to a



highway even though there may be an exchange of money required by the agreement to bring a road to a certain state of repair or to pay the receiving authority to do so.

Sub-paragraph two also contains a second authorization to the DOT to transfer adjacent unused right of way located outside cities to county for use and benefit of the county conservation board whether held by easement or fee simple, as long as the land is suitable for purposes specified in Iowa Code §350.4(2) and is adjacent to roads which the county maintains jurisdiction. If title is only an easement for road purposes, it is in the county's best interest to purchase underlying title. By Property Management policy these lands are transferred to local conservation authorities for their appraised fair market value.

- ❖ Iowa Code §306.39 and 306.40 - Floodway Easement Agreement <http://www.legis.state.ia.us/IowaLaw.html>

These sections are special statutes granting authority to the DOT to convey flowage easements to the Federal Government. These statutes are used to support the establishment of federal water control, dam, and park and recreational projects. Flowage easements are conveyed for no consideration other than an agreement between State and Federal authorities for the construction of such projects (see Appendix "E", Exhibit 1).

- ❖ Iowa Code §15.272 - Welcome Centers <http://www.legis.state.ia.us/IowaLaw.html>

This section grants authority whereby the Department of Economic Development and the DOT are to jointly establish a statewide plan for developing and operating welcome centers throughout the state. The DOT shall arrange to acquire title to land and buildings for use as state-owned welcome centers. The DOT may use any funds available including Federal grants for these purposes. In this context, right of way may be used for the above purpose.

### ➤ ***Iowa DOT Policy and Procedures***

Policy number 300.02 of the Iowa DOT Policy and Procedures Manual requires approvals through Staff Actions for certain types of sales/disposals. A brief description of those transactions requiring a Staff Action approval has been provided.

- ❖ Jurisdictional transfers of roads
- ❖ Disposal of excess Facilities properties
- ❖ Excess Right of Way or Facilities properties over \$10,000

## **DETERMINING THE STATE'S OWNERSHIP**

Prior to the sale or disposal of land, Property Management must determine the type of ownership the State holds, for example, fee title or easement. A State Patent disposes of Land owned by the State in fee title. Land held by the State by easement for highway or highway related purposes is disposed of by abandoning the easement. More detailed explanations of these types of disposals are provided later in this manual.

An examination of the original acquisition and conveyance documents is necessary to make this determination. These records are located in the Right of Way Record Center in the Property Management Section. We have included a brief list of concepts you may use in your examination of title.

➤ ***Interpreting Acquisition Documents***

**Acquired prior to 1956 under the authority of what is now Chapter 306A, the acquisition language usually would read:**

**Acquired post 1956 under Chapter 306A:**

- (1) Deed: "For road purposes and for use as public highways."
- (2) Condemnation: "Property in \_\_\_\_\_ County for highway purposes."  
or  
"Real Property for Primary highway purposes."

This language was omitted. Added "The Grantors warrant to defend the title to said premises."

This language was omitted. Added "Fee title sought to be appropriated."

The Attorney General’s staff and the Office of Right of Way have agreed that the pre-1956 acquisitions acquired only easements for highway purposes unless further language in the specific instrument or proceeding provide more specific language. Any lands acquired under the authority of Iowa Code §306A <http://www.legis.state.ia.us/lowaLaw.html> using current acquisition language acquire a fee interest and disposal is to be made by a state patent.

➤ ***Permanent Easements***

As we have discussed, pre-1956 acquisitions will generally be permanent easements. Permanent easements have been and are still being acquired for purposes such as highways that do not require access control, local public service roads, and specific purposes such as to construct and maintain culverts, and highway related purposes.

Again, most pre-1956 acquisitions were by permanent easement. Post-1956 easements are clearly written in the conveyance document. Wording such as "Easement for Highway Purposes" or "Easement for the Construction and Maintenance of a Culvert" will be present.

➤ ***Temporary Easements***

Temporary easements are routinely acquired for borrow areas, detour or haul roads, equipment or material storage areas, and other highway purposes. These easements are acquired with automatic or semi-automatic reversion provisions within the acquisition documents. Some examples of temporary easement activities are borrow temporary construction maintenance uses. Temporary easements are handled and released by the Resident Construction Engineer.

➤ **Required Title Search**

Researching title includes a thorough review of the available acquisition and conveyance documents. Determining the remaining land from which the tract was originally acquired may require a similar review of abutting and neighboring properties. A specific search may be done if needed to review restrictions, conditions, exceptions or agreements that may affect either the State's right to sell the property or which will require conditions limiting the buyer's right to use the land. Applicable documents include Right of Way contracts, deeds, condemnation proceedings, and stipulations of settlement, land use agreements, access permits, court orders and other documents.

## **SELECT THE APPROPRIATE DISPOSAL PROCESS AND FORM OF CONVEYANCE**

After we establish the type of ownership the State holds, we can determine the appropriate disposal process and conveyance document. The types of conveyances we can choose from are very limited. We have provided a list of the basic choices available. Detailed discussions of these choices will be provided later in this section of your manual.

❖ Land Held by Fee Title

- Convey by State Patent.
- Convey by Quit Claim Deed only when transferring the right of way for an operating highway to another governmental entity.

❖ Land Held By Permanent Easement

- Abandonment.
- Convey by Quit Claim Deed only when transferring the right of way for an operating highway to another governmental entity.

❖ Land Held By Temporary Easement

- Release of Easement.

## **DETERMINING PRESENT AND FUTURE LAND NEEDS (INTERNAL RECOMMENDATIONS)**

Determining the DOT's present and future needs is the logical first step in the disposal process. Obviously we do not want to dispose of any property rights that are presently needed or will be needed in the foreseeable future, but we do not have the knowledge or expertise in Property Management to determine those needs. Maintenance Staff and Staff Engineers in the District are the appropriate starting place for determining present and future needs. If the District Staff determines the land should not be sold, interested parties should be notified and the efforts to dispose dropped. If District Staff agrees that the DOT no longer needs the property, we may proceed to obtain the other necessary internal recommendations.

➤ ***Necessary Internal Recommendations and Approvals to Sell or Dispose***

In order to make informed decisions about present and future needs we need input from other sources. Obtaining internal recommendations may appear as "red tape" but the DOT is a large organization and no one person can possibly be familiar with all the activities being planned. Obtaining internal recommendations is simply an effort to enhance disposal decisions.

Recommendations allow us to determine what land is needed for present and/or future highway right of way. These recommendations also determine what limitations or conditions must be placed upon land to be disposed. When we are asked to dispose of land in advance of the completion of construction or prior to the opening of the highway, it is necessary to coordinate with the District to confirm the location of the right of way line and to avoid conflicts with the contractor (see Appendix "C", Exhibit 8).

❖ Recommendations to dispose of land (see Appendix "C", Exhibit 9) shall be sent to:

- District Offices
- Office of Design
- Location and Environment
- Facilities Support
- Systems Planning
- Office of Traffic and Safety
- FHWA (when applicable)

Design will forward parcels to Roadside Development for review of any sites that may contain wetland, wildlife habitat, scenic vistas, quality vegetation areas or any sites that could be developed to support such uses (refer to DOT Policy and Procedures Policy No. 500.03).

Office of Traffic and Safety will provide access control requirements.

❖ Requests for Internal Recommendations - Should contain enough information about the property that the person responding can make an informed response. We have included a brief list of necessary data.

- A plat, plan sheet or other illustration showing the land from which the land was originally acquired.
- A plat, plan sheet, or other drawing showing the area to be disposed.
- The type of ownership held by the State.
- Project and parcel numbers of the area.
- Name of the owner at the time of acquisition.
- Copy of request letter.
- Other pertinent information.
- Recommended sales conditions.

- ❖ Resolve Conflicts in Recommendations - Sometimes we receive conflicting recommendations from our internal resources. Those recommending not to dispose should provide their concerns, identify how the land should be used while we hold it and indicate when we should again review for disposal. Conflicts that cannot be resolved may be referred to the Highway Division Director for an ultimate decision.

## **SURVEY PLATS AND LEGAL DESCRIPTIONS**

We need a legal description and usually a survey plat to describe land to be sold or disposed. Iowa Code §354.4a, "Plats," and 355, "Standards for Land Surveying," <http://www.legis.state.ia.us/IowaLaw.html> provide the procedures necessary when parcels of land are divided solely by the conveyance of land for right of way purposes to the State, a City or a County. These types of subdividing do not need to meet the land survey platting or re-platting requirements set out in the Code of Iowa. Legal requirements for the development of right of way land acquisition descriptions is contained in Iowa Code §6A.20, "Description of Land Furnished."

Descriptions of land no longer needed for highway purposes must contain information sufficient to enable a competent land surveyor to locate the property on the ground and must be compatible with the description in the title abstract of the property from which it was acquired.

It is our policy to obtain a surveyor's description to adequately describe the parcel being disposed. A complete re-survey is not needed when the parcel can be described by referring to the description in the original abstract of the parent tract or by reference to the original title instruments of record. Property shall not be re-described when the entire originally acquired parcel is being disposed.

Descriptions for the abandonment of highway easements and the sale of parcels with only nominal market value shall be developed from original title instruments with only the necessary new survey to locate the right of way line. Easement abandonment and minor parcel descriptions shall be simplified when it is reasonable and practical. For example:

- ❖ Lot 15, except the west 10 feet thereof,
- ❖ the north 50 feet of the SE of SE, Section \_\_\_\_\_,
- ❖ all of the total property lying west of the westerly right of way line of Highway \_\_\_\_\_, as more particularly described from earlier title instrument of record.

### ➤ ***Exceptions***

A surveyor's plat may not be required to sell or transfer land. Plats assist county auditors, recorders and assessors; and make DOT land ownership records easier to understand by graphically illustrating the location and description of land we dispose. Usually DOT land surveyors furnish a certified plat when they produce a new legal description. When certified plats are available, they are attached to and recorded with the disposal conveyance.

### ➤ ***Information Property Management Furnishes to Surveyor***

Property Management furnishes the land surveyor with applicable information, documents, recommendations, proposals and data necessary to draft the descriptions. The Property Manager should notify the District Land Surveyor of high priority parcels and applicable time limitations.

➤ ***The Use of Private or Consultant Surveyors***

Sometimes we may find it necessary to hire a consultant surveyor. Consultants are only used with the agreement of the District Surveyor. If District Staff is unable to perform the work in the time required, we may need to consider the services of a Consultant Land Surveyor. Generally, we only consider using a consultant surveyor when the District Surveyor's workload will not allow for the work to be completed in-house or to expedite a low priority parcel.

The person(s) requesting the sale or disposal of land may be asked to incur the expense of hiring a private survey. In these cases, the prospective buyer voluntarily agrees to be responsible for the cost of the survey and description preparation. The following are examples of these types of situations:

- ❖ When the normal land disposal processing time is inadequate to meet the particular needs of the buyer.
- ❖ When the tract being considered for disposal is landlocked and has no potential for access to a public way.
- ❖ When it does not appear that any other party would have an interest in acquiring the property.
- ❖ When the tract does not have adequate value to warrant a publicly advertised sale.
- ❖ We can also have the prospective buyer hire the survey completed if the purchase agreement does not conflict with Iowa Code §306.23. Items that should be in such an agreement are as follows:
  - The sale price will be determined as a lump sum amount for the tract and not as a price per unit (square foot, acre, etc.) prior to Right of Way's acceptance of the agreement.
  - The potential buyer will contract with a Fee Land Surveyor, registered in the State of Iowa, to prepare a plat and description of the property to be disposed of on a form furnished by the District Land Surveyor.
  - The District Land Surveyor will review and approve the Fee Land Surveyor's work.
  - Upon receipt of the plat and description, Property Management will process and deliver the State Patent.

## OVERVIEW OF PROCESS

This chapter of your manual has provided you with the basis for starting the sale or other type of disposal process. This overview intends to provide a brief recap.

- ***Authority and Approvals Necessary to Sell / Dispose***
  - ❖ Federal approval to sell/dispose
  - ❖ State laws governing sales/disposals
  - ❖ DOT Policies and Procedures
  
- ***Determining the State's Ownership***
  - ❖ Fee Title, Permanent Easement, Temporary Easement
  - ❖ Determine appropriate type of conveyance based on State's ownership
  
- ***Determining Present and Future Needs (Internal Recommendations)***
  - ❖ Start with field staff and engineers
  - ❖ Secure the other necessary internal recommendations
  - ❖ Resolve differences of opinion
  
- ***Obtain Legal Description and Survey Plat***
  - ❖ From District Surveyor
  - ❖ Private or Fee Surveyor

The information in this chapter of your manual applies to sales and other types of disposals of land. The process now changes according to the type of sale or disposal to be accomplished.

# **CHAPTER SEVEN**

## **Sales Of Land**

Revised 5/2007

Land sales develop in two ways: either a request is received from a prospective buyer, or when we complete construction projects and determine what land can be disposed. While selling State-owned land may seem complicated, following the steps will provide a process for sales.

1. *Determine the State's Type of Ownership*
2. *Determine the Present and Future Land Needs (internal recommendations)*
3. *Obtain Survey or Adequate Legal Description for the Property*
4. *Establish Value and Terms for the Property*
5. *Satisfy Purchase Preference Requirements*
6. *Sale of the Property*
7. *Administration and Record Keeping*
8. *Overview of Process*

**Please note:** We have already discussed Items 1, 2 and 3 in Chapter 6, "Basics for Sales and Disposal of Land." You may refer to that chapter for any questions concerning those items. We will begin this chapter by discussing establishing value and terms.

### **ESTABLISH VALUE AND TERMS FOR THE PROPERTY**

We often think of price as the driving factor in sales, but in many cases the terms of the sale may be as important, if not more important than the price. We should remember that the land was originally acquired to enhance the highway system. If the sale of the land creates a negative impact on the highway, any price received may not compensate for the loss. For these reasons, our discussion will begin with the terms, or sales conditions.

#### ➤ ***Sale Conditions***

The internal recommendations we receive establish the conditions the DOT may want to place on the sale. The Property Manager should include any known special conditions in the request for recommendations. Likewise, the people returning the recommendation should include conditions they feel should be included in the disposal. A few of the conditions that might apply to a sale include:

#### ❖ Land Use Restrictions, Prohibitions or Conditions

- *When Applicable* - Sales should not be restricted unless the condition is necessary to avoid interference with the public's use of the highway, preserve scenic beautification areas, enhance public safety, or to avoid causing material damage, loss, or inconvenience to abutting property owners.
- *Integrity of the Highway* - We must also be concerned about the land under the highway. Subterranean interference needs to be prevented in those areas where



mining operations could undermine the highway. We can accomplish this by reserving to the State all mineral rights or the right to mine or remove material from the property.

- *Mineral Rights* - We should only consider retaining mineral rights in unique situations when we believe that failure to do so might jeopardize the highway system. Generally, we do not retain mineral rights. Should we need to retain mineral rights, sample language is as follows:

"Mining, drilling, or other mineral or other similar surface or subterranean uses of the land shall be prohibited. This is not intended to prevent the drilling for, or the drawing and the use of water in support of any other lawful use to which the tract of land might be put."

or

"The State shall retain all mineral rights to the tract of land."

- *Condition Sale to Avoid Damage to Adjacent Property Owners* - Sometimes a sale might deny an abutting property owner who has enjoyed free and convenient access to the highway through the land we wish to sell. Sales shall be conditioned so that the owners legally using the property for ingress and egress can continue to do so. The land should be sold subject to a right of access across the property to the abutting land. The location of such access rights or driveways shall be specified in the sale description. We have provided the following language as a drafting guide.

"It is specifically provided that the land, the subject of this Patent, is being conveyed subject to all existing rights (or to the right) of ingress and egress across said parcel from Sta. \_\_\_\_\_ (North, South, East, West) side along the existing farm drive to the lands adjacent to the east line of the parcel as shown on the attached plat."

❖ **Sale Subject to All Easements of Record** - These easements may involve:

- Utilities present at the time of sale
- Easements of record when the property was acquired and not extinguished
- Easements conveyed by the State

❖ **Access Restrictions** - Access must be controlled in a manner consistent with existing DOT rules and the type of access control regulating the highway where the property is located.

**The following language may be used when all access is to be prohibited:**

"Direct access to (relocated) Primary Road No. \_\_\_\_\_ is prohibited."

**The following language applies when access is to be by way of public frontage road only:**

"Direct access to (relocated) Primary Road No. \_\_\_\_\_ is prohibited. Access shall be via public local service road connection."

**When direct access is to be restricted, this language may be used:**

"Direct access to (relocated) Primary Road No. \_\_\_\_\_ is prohibited between Sta. \_\_\_\_\_ and Sta. \_\_\_\_\_ (here omit distance across, when no restriction is intended) and between Sta. \_\_\_\_\_ and Sta. \_\_\_\_\_," by Access Permit No. \_\_\_\_\_,"

**or**

"Direct access to (relocated) Primary Road No. \_\_\_\_\_ is prohibited except at Sta. \_\_\_\_\_ on the (North, South, East, West) side of the highway."

**When no access control is needed, the conveyance is silent on the subject.**

- ❖ Access Control Fencing Rights - Access control fencing clauses are to be inserted in bid proposals and State Patents to assure the DOT the continued right of entry to construct and maintain access control fence. These clauses shall be inserted immediately after the description and should be used on all excess land projects when an access control fence is constructed by the DOT. We have provided the following sample clause:

*The State retains the right of entry thereon for the purpose of constructing and maintaining the right of way fence. The fence shall be maintained for vehicle access control purposes only. The State will be held blameless and without liability for fencing private property or maintaining the same. The buyer may pasture against said fence at their own peril and the State will be held blameless and without liability for fencing private property or maintaining the same to restrain livestock.*

➤ **Establishing Value**

Sound and reasonable business decisions are based upon adequate information. Property Management activities are routinely audited to ensure that we are continuing to perform our jobs as stewards of the public's assets. We must have adequate written information to enable us to make reasonably informed decisions in accepting bids or offers. Therefore every sale file must contain written, documentation of value before being exposed to the market or offered for sale. Sometimes right of way acquisition appraisals and appraisal reviews may be helpful. When those resources are not sufficient, we need to either obtain an appraisal or an opinion of value.

Iowa Code §306.23 <http://www.legis.state.ia.us/IowaLaw.html> requires an independent fee appraiser to appraise parcels regardless of value. This Code sections pertain to any property that has been acquired for Highway Purposes. Fee appraisal contracts over \$10,000 must be approved through a Staff Action. A sample contract has been provided in Appendix "D", Exhibit 4. When Iowa Code §306.23 is not applicable, property

managers or staff appraisers may prepare the value opinions or appraisals for the land to be disposed.

A competent reviewer must review Land Appraisals. Appraisal reviews are usually handled through the Appraisal Section, the Chief Property Manager, or designee before land is offered for sale. The review appraiser ensures adequate appraisal documentation has been provided, and determines the DOT's approved market value. The Chief Property Manager or the Property Management Production Coordinator shall determine if advertisements will include the property's appraised value.

It is accepted practice for us to provide a copy of the appraisal to another governmental agency after the sale is final for the purpose of obtaining funding, grants, etc. , thus eliminating unnecessary public expenses of obtaining additional reports.

## **SATISFY PURCHASE PREFERENCE REQUIREMENTS**

Refer back to discussions in the Chapter on "Basics of Sales and Disposals," concerning Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>. This section mandates purchase preference to the owners at the time of acquisition and the present owners of the adjacent property from which the tract was acquired.

We will accept the highest offer at, or higher, than the approved value received within the 60-day time period.

If the land is not disposed of under the terms of Iowa Code §306.23, or no acceptable offers were received within the 60-day notice period, we may then provide a limited purchase preference to other governmental authorities who need the property for another permanent public use. This policy avoids spending of public funds for administrative acquisition costs through successive acquisitions of the same private property for different public purposes. Interested public entities shall submit all requests for a direct sale in writing. The request shall state the intended public purpose(s) for the property such as parks, city facilities, public works, fire stations, etc., and shall be signed by a responsible official of the authority.

The DOT reserves the right to provide a sale preference to another governmental agency provided that Agency requests such a preference, in writing, prior to notices of intent to sell being mailed to the public. As part of such a request, the requesting agency shall agree to retain the property for a permanent public use, state what the proposed use involves, and agree to pay the approved value or higher for the property. The DOT reserves the right to reject any and all requests for sale preference.

State agencies, cities, counties, school districts and other public authorities are afforded the opportunity to purchase property no longer needed for highway purposes at its appraised value, when they have a documented permanent public need for the property. When the intended use of the land by public agency is speculative, no preference will be shown. The agency must then bid as any other bidder from the general public. When the purchasing authority intends to use the property as a Transportation Corridor (highway, street, bike path), the land may be sold for \$1.00 and other valuable considerations. Purchase preference shall first be given to State agencies, then to local governmental authorities. If more than one public

authority requests a purchase preference, the DOT will decide which entity may purchase the property. If a city and county are involved, the city shall receive the preference for land located within the city limits and the county shall receive the preference for land located outside city limits.

No preference will be given to quasi-governmental authority or quasi-public agency (e.g. Community Development Corporations). A preference may be given to a city when the land is needed to implement an economic development urban renewal plan as authorized by Chapter 403, Iowa Code <http://www.legis.state.ia.us/lowaLaw.html>.

Public authorities may be given a reasonable opportunity to pay for land they need for public purposes. The public authority may, for a short-term usually not to exceed three years, make payments to purchase the property. Public authorities shall not construct any permanent structures or improvements until the full amount of the purchase price has been paid.

If no acceptable offer is received when the property is offered in compliance with Iowa Code §306.23, and no acceptable offer is received from another public agency, the property shall be offered for sale in writing directly to all abutting owner(s). The abutting property is considered as any property that is contiguous to the property to be sold. Direct sale offers shall be considered from abutting owner(s) provided:

- ❖ The written purchase offer is received by the DOT within thirty days of the date the offer for sale letter is mailed.
- ❖ All applicable terms and limitations of the sale are accepted by the buyer.
- ❖ The purchase offer price is at or higher than the approved value.

## **SALE OF THE PROPERTY**

We are now ready to actually sell the property. Sales are accomplished either through a direct or a competitive sale.

### ➤ ***Negotiated or Direct Sales***

When disposing under Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>, we will accept the highest offer at, or higher, than the approved value received within the 60-day time period.

There are limited circumstances when land may be offered for sale directly to an individual without the general public being notified. An "Offer to Buy" form is used (see Appendix "C", Exhibit 11). However, provisions of Iowa Code §306.23 take precedence and must be adhered to. Whether the provisions are applicable or not shall be determined by Right of Way Management and/or the Attorney General's staff. Examples of appropriate uses of direct sales (after compliance with Iowa Code §306.23) are as follows:

- ❖ Low Valued Property - A direct sale may be offered when the property has no independent utility or cannot be beneficially used by anyone who is not an abutting property owner. For example:

- When there is no reasonable likelihood that any parties other than the abutting property owners would submit an equal or higher offer for the property.
  - The property has no measurable market value or must be assembled with adjacent land in order to have value.
  - The property is landlocked or damaged and has a very minimal value.
  - The cost of advertising could exceed the current value of the property.
  - As defined by Iowa Code §306.23, the adjacent property owner shall be given the opportunity to submit an offer.
- ❖ Other Examples - The following are additional examples of direct sales. However, unless otherwise stated, these types of direct sales cannot be accomplished until the requirements of Iowa Code §306.23 is first satisfied.
- *To Original Owner* - A direct sale may be offered to the original owner of the property when right of way design changes and it is possible to significantly reduce the acquisition cost for the required right of way. A resale of property to the original owner shall be made either for what the DOT paid for the property (including damages which are reduced or eliminated) or its appraised market value, whichever is appropriate.
  - *Avoid Material Damage to Abutting Property Owner* - Iowa Code §306.24 states that property should not be sold in a manner that materially damages the abutting owner. A direct sale may be offered when a sale to anyone other than the adjacent property owner may cause material damage to the adjacent owner.
  - *When an Offer Lower than Approved Value is Received* - Sometimes parties with a purchase preference per Iowa Code §306.23 submit offers less than the approved value. These offers shall be considered. Property Management staff may recommend acceptance of these offers when the best interests of the public are served. For example in cases where there is little likelihood of receiving any higher offers through subsequent public sales. Or, when proceeding with further public sales does not warrant the time, expense, and commitment of resources.
  - *When No Reasonable Bid or Offer is Received at a Public Sale* - We may offer land for sale directly when a public sale fails to produce a reasonable bid. Authority to either negotiate a direct sale or re-advertise the parcel for public sale shall be requested as part of the Staff Action rejecting all offers or reporting that no offers were received. If, as a result of negotiations, it appears that there may be more than one person interested, both shall be given a reasonable opportunity to make an offer. If more than two persons appear to be genuinely interested, the property may be re-offered at a public sale with notice to all persons expressing an interest.

When a negotiated or direct sale is used, the sale process becomes very simple. The prospective buyer must sign and submit an offer to purchase (see Appendix "C", Exhibit 10). The Property Manager will ensure that the offer to purchase includes the applicable and necessary terms and conditions as well as the price to be paid. The buyer must also include full payment of the land with the offer to purchase.

The offer to purchase is then approved by Staff Action, if necessary, and the transaction is completed. (Please refer to the discussion pertaining to "Administration of Sale" later in this section.)

### ➤ **Competitive Public Sales**

This area will provide information on the most common type of sale we offer, a competitive public sale.

#### ❖ Notifications

Property Management maintains an electronic and a paper notification system. People are added to the mailing list as requests are received. There is no charge for the mailing list. People may request information based upon:

- Land and/or improvements
- By County
- By District
- Statewide

Whenever we offer land for public sale, notices of proposed public sale are sent to the parties on the mailing lists and any other known interested parties. The notice describes the land to be sold and informs those interested of how information and bid forms may be obtained.

We send sale notices by certified mail to abutting and adjacent property owner(s) to ensure they have received the notice. This certified mailing is done as a courtesy as abutting land owners have no statutory right to notice of a sale nor any purchase preference rights, and adjacent owners received their statutory preference in compliance with Iowa Code §306.23 (as previously discussed in this manual). The sale notices shall be in the standard bid form. (See Appendix "C", exhibit 12)

Property Management also sends a copy of the real estate listing for the public sale to others within the DOT (see Appendix "C", Exhibit 11). Care should be taken to assure that these notices include a notation of the appraised or other value of the property. Copies are sent to:

- Office of Right of Way Director
- Director's Staff Division
- Office of Finance

Field Offices receive the real estate listing (see Appendix "C", Exhibit 11) and a copy of the bid form (see Appendix "C", Exhibit 12). These forms are sent to the following:

- District Engineer
- District Maintenance Manager
- Resident Construction Engineer

❖ Advertising - Property Management shall advertise the sale of land to be sold. The advertising shall contain several items of information:

- A brief description of the land including the terms.
- Usually the approved value.
- Information concerning where and when the land will be sold.
- The time and date sealed bids are due.
- Who to contact for information concerning the conditions of the sale and to obtain bid proposals.

The ad shall be run in local newspapers and/or other appropriate local publications. The ad may also be run in area trade magazines or journals and other newspapers of broader circulation if the Property Manager feels such advertising is appropriate.

❖ Use of Realtors - Occasionally we may employ a real estate firm to sell excess land. This practice should be used only in instances when Property Management has been unsuccessful in marketing the excess land. The fee or service charge of the real estate firm shall be paid out of proceeds from the sale of the land.

❖ Sealed Bid Proposals - Forms that describe what is to be sold and the terms of the sale (see Appendix "C", Exhibit 12). Sealed bid proposals are prepared for the sale of buildings to be removed as well as for land with or without buildings. Bid proposals shall be sent to any person requesting a form. The proposals shall contain the list of items provided below (see Appendix "C", Exhibits 4 and 12):

- A general description of the personal property.
- Clearly identified applicable bid deposits.
- A statement of the terms, conditions, and restrictions of the sale.
- Provisions notifying the bidder the property is to be sold "as is," that the burden of inspection is upon them, and that the DOT makes no representation or warranties regarding the quality or habitability of the property.
- A survey plat describing the land.
- Return addressed envelopes clearly marked as a sealed bid.

We have a responsibility to inform all potential buyers that as buyers they are solely responsible for verifying information on zoning, land use, flood plain, etc. The DOT is selling the land "as is" with no warranty expressed or otherwise. This notice is to be contained in all bid proposals and offers to purchase forms.

- ❖ Security of Sealed Bids - When the DOT receives the sealed bids by mail, the bids are delivered unopened to Property Management. The bids remain unopened and secured in a designated locked place until the bid opening. We cannot provide to the public any information concerning bids received prior to the bid opening, for example, the number of bids we have received or the names of bidders.
- ❖ Opening the Bids - Bids are to be opened at the time and place designated per the sale notice. The bid openings are open to anyone who cares to attend. At a minimum, two Property Management staff shall be present. As the bids are read, all applicable information shall be put on the Bid Tabulation Form. An example has been provided in Appendix "C", Exhibit 5.

Consideration shall be given only to those bids that are received by Property Management on or before the time due and are accompanied by a bid deposit in the form of a cashier's check, certified check money order, or personal check drawn in not less than the required amount.

- ❖ Sealed Bid Acceptance Recommendation - Following the opening of bids Property Management will determine its recommendations. Typically the Property Manager and the Chief Property Manager prepare the recommendation together.

When reasonable bids are received, we recommend that the DOT accept the highest reasonable bid (see Appendix "C", Exhibit 13). When there is a tie for the high bid, and the high bid is considered reasonable, the tie bidders shall be given 24-48 hours to leave their bid as is or raise their bid.

Determining what is a "reasonable bid" may be difficult. A reasonable bid should reflect a value somewhere within a reasonable range of the approved value. There are times when we may decide a bid is reasonable when the offer is below the approved value. For example:

- When the property has been offered multiple times without success.
- When sales history of similar property or similar situations make us believe the bid is reasonable.
- When we believe that the cost of re-advertising and/or marketing the property again is not likely to provide a significantly higher offer.

If bids are recommended at a significantly lower value than the approved value, the sale file will provide an explanation as to why the lower offer was accepted.

There are several instances when bids should be rejected. A partial list of examples follows:

- When the bid is significantly lower than the approved value (except as earlier discussed).
- When conditions are placed on the bids by the bidder.
- When the bid is not made in accordance with the bid terms in the proposal.
- When the bid is not complete per the proposal terms.



A Real Estate Installment Sales Contract bid shall not be considered the highest bid unless the contract bid exceeds the highest cash bid by ten percent.

- ❖ Notification to Bidders - Property Management shall promptly inform the successful bidder that their bid has been recommended for approval and promptly inform the successful bidder again when the DOT has officially accepted the bid. The notice of official acceptance shall also request deposit of the balance due, if any. The bid deposit from the successful bidder shall be retained. Unsuccessful bids and bid deposits shall be returned as soon as possible.
- ❖ Waiving Technicalities - We reserve the right to waive technicalities and accept bids when in our judgement the public is best served by accepting the bid. We reserve the right to reject all bids and withdraw part or the entire sale. Failure to timely submit a written bid proposal with a bid deposit *is not* considered a technicality.
- ❖ Purchase Deposits - Purchase deposits are required as a condition of the acceptance of a sealed bid, a bid at an auction, and/or as a condition of acceptance of a negotiated sale. The deposit shall be in the form of check or money order drawn in an amount not less than 10% of the bid or negotiated purchase price of the land. Cash is **not** accepted. The purchase deposit shall be applied to the purchase price of the land when the DOT approves the sale and accepts the bid.

The purchase deposit shall be returned to the bidder or prospective purchaser if the DOT either fails to approve the sale, fails to accept the bid or approve the negotiated purchase price. The purchase deposit will be retained by the DOT when the bidder or prospective purchaser rejects his/her bid or negotiated offer of purchase or refuses or fails to complete the transaction in accord with its terms.

## **ADMINISTRATION AND RECORD KEEPING**

An old saying goes, "No job is finished until the paperwork is completed." This is a true statement throughout the Property Management process, including sales of land. When we reach this stage, four steps remain to complete the process.

1. Secure necessary approvals
2. Notify bidders/buyers
3. Finish State Land Patent process
4. Ensure records are complete

In order to provide quality services for our customers, these final steps need to be accomplished as soon as reasonably possible.

- ❖ Secure Necessary Approvals - Complete the approval process including Staff Actions if necessary.
- ❖ Notify Bidders / Buyers - After the sale is approved the successful buyer should be notified and instructed to provide all remaining payments.

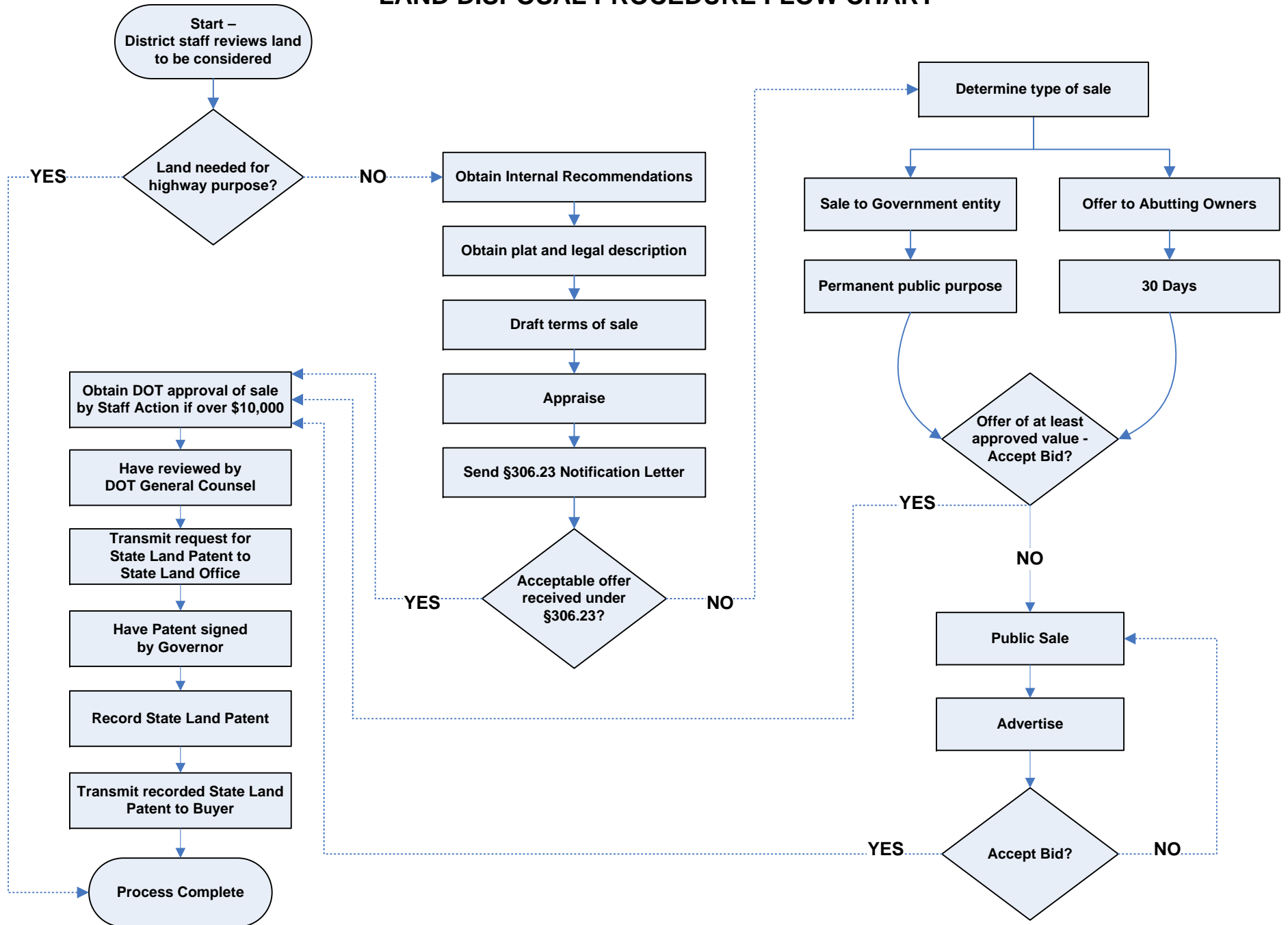
- ❖ Finish the State Land Patent Process - After all monies have been received, the land patent is requested (see section on land patents in this manual in Chapter 11).
- ❖ The Sale File - Should contain all applicable sales data and be placed in the Record Center of the Property Management Section.

## OVERVIEW OF PROCESS

We have provided an overview of the land sales process for your future reference.

- ***Determine the State's Type of Ownership*** - Make sure the State holds fee title before proceeding with a sale.
- ***Determine the Present and Future Land Needs (Internal Recommendations)*** - Obtain internal recommendations to ensure that we no longer need the land and what special conditions or terms may be required.
- ***Obtain Survey or Adequate Legal Description for the Property*** - We need to be able to describe the land we sell.
- ***Establish Value and Terms for the Property***
  - ❖ Establish value with appraisal and review
  - ❖ Establish the necessary terms and conditions for a sale
- ***Satisfy Purchase Preference Requirements***
  - ❖ Ensure compliance with Iowa Code §306.23.
  - ❖ Consider sale to other political subdivision(s) for continued public use, if requested in writing.
  - ❖ Offer in writing direct sales to all abutting owner(s).
- ***Sale of the Property***
  - ❖ Direct sale
  - ❖ Competitive public sale
- ***Complete Administrative and / or Record Keeping Activities***
  - ❖ Obtain full payment
  - ❖ Secure Land Patent
  - ❖ Complete record keeping

# LAND DISPOSAL PROCEDURE FLOW CHART



# **CHAPTER EIGHT**

## **Other Types of Land Disposals**

Revised 5/2007

### **MITIGATION OF DAMAGES**

The following examples are considered exceptions to the Iowa Code §306.23 rules. In these limited cases, disposals occur without notice to the owners at the time of acquisition or present owners of the adjacent land from which the tract was acquired.

Excess lands may be disposed of through a process of "Mitigation of Damages." The concept of mitigation of damages is to convey public lands to a private ownership in an effort to reduce the impact or damages to remaining private property being acquired for a public use. The Attorney General's staff believes this type of direct disposal is a continuing highway use, as the mitigation of damages allows the acquisition of required right of way and, therefore, is exempted from Iowa Code §306.23 <http://www.legis.state.ia.us/lowaLaw.html>. There currently is no Case Law available that covers this issue. In order to proceed with this type of disposal, several conditions and procedures apply.

➤ ***Conditions that Must be Present in Order to Utilize the Mitigation Process:***

- ❖ Excess land has been acquired as an uneconomic remnant for a highway project.
- ❖ The State must hold title and possession of the lands to be used for mitigation purposes prior to the agreement.
- ❖ The lands to be conveyed for mitigation purposes should be adjacent to or abutting the property affected by the proposed acquisition.
- ❖ The purpose of the mitigation is to reduce the impact to the affected property and the end result must be in the best public interest.

➤ ***Procedure for Mitigation of Damages:***

- ❖ Any agreement for mitigation of damages shall occur during negotiations and shall be handled by the Acquisition Agent as part of a negotiated settlement.
- ❖ The Acquisition Agent shall notify Property Management of the lands to be considered for mitigation. The Acquisition Agent shall request Property Management to obtain approvals for disposal of the public lands.
- ❖ Property Management shall distribute the requests for approval of disposal of lands in the manner customary in disposal of lands.
- ❖ Property Management shall notify Acquisition when all approvals have been received and there has been a decision whether or not to dispose of lands.

- ❖ The State shall receive full compensation per the approved value of the mitigation transaction.
- ❖ Patent application may be made without a second Staff Action order for all direct sales in lieu of payment of acquisition costs that comply with this policy. Those patent applications, which do not comply with this policy, shall be explained by the Chief Acquisition Agent in an approved administrative settlement. The Chief Property Manager shall bring deviations from this policy to the attention of the Right of Way Director.
- ❖ The letter to the State Land Office for a Patent for land to be sold directly in lieu of payment of acquisition costs, which deviate from this policy, shall note and explain the deviation.

➤ **Written Agreement for Mitigation of Damages:**

- ❖ Upon receiving approval from Property Management, Acquisition may enter into a contract for mitigation purposes.
- ❖ The agreement will normally be a part of the acquisition contract.
- ❖ Under an arrangement with the Department of Revenue, the Iowa Department of Transportation has agreed to list the actual consideration on the conveyance document, as opposed to the conventional \$1.00 and other consideration. The Department of Revenue agreed that declaration of values would not be necessary. The acquisition contract should contain language similar to the following:

Under arrangement with the Department of Revenue, the Iowa DOT has agreed to list the actual consideration on the conveyance document, as opposed to the conventional \$1.00 and other consideration. The Department of Revenue agreed that declaration of values would not be necessary.

➤ **Preparation** - Proposed method of preparation of acquisition contracts involving mitigation of damages:

Buyer agrees to pay and SELLER AGREES to grant the right of possession, convey title and to surrender physical possession of the premises as shown on or before the dates listed below:

<b>PAYMENT AMOUNT</b>	<b>AGREED</b>	<b>PERFORMANCE DATE</b>
\$ _____	on right of possession	_____
\$ <u>100,000.00</u>	on conveyance of title	<u>60 days after Buyer approval</u>
\$ <u>-0-</u>	on surrender of possession	<u>Immediate</u>
	on possession and conveyance	_____
\$ * <u>SEE ITEM 19</u>	<b>TOTAL LUMP SUM</b>	

As part of this acquisition, Buyer agrees to convey to Seller, by State Patent and at a later date, a tract of land as described on Page \_\_\_\_\_. Said conveyance is to mitigate damages to Seller's remaining property caused by the proposed partial acquisition

from Seller's property. Said lands are to be conveyed not later than one (1) year after the completion of this property and the opening to traffic thereby.

Example of Item 19 (or whatever item number it is) of said contract:

It is understood and agreed the total consideration of this agreement is \$200,000.00. All future conveyance documents shall indicate a total lump sum of \$200,000.00. The lands to be conveyed by Buyer to Seller, as described in Item \_\_\_\_\_, are considered to mitigate \$100,000.00 of consideration. Therefore, the monetary consideration to be paid by Buyer to Seller at the time of conveyance shall be \$100,000.00.

## **RIGHT OF WAY AGREEMENTS WITH LOCAL PUBLIC AUTHORITIES**

Project agreements can contain obligations that will require conveying land to cities and counties. Iowa Code §306.42 "Transfers of Rights of Way" <http://www.legis.state.ia.us/IowaLaw.html> requires title to right of way for local roads or streets not acquired in the name of the local authority, but rather in the name of the State, must be transferred to the local political authority who by law is responsible for its maintenance.

The Property Management and Fiscal & Title Sections share responsibility for transferring land to cities and counties for road or street purposes. Conveyances of major segments of former primary highways are the responsibility of the Fiscal & Title Section, whether or not the agreement to transfer the road is contained in a highway construction project agreement.

When the land is a single or a few parcels, Property Management shall usually handle the process. Property Management also conveys these transactions to local authorities for highway or street right of way when the need to do so arises out of normal Property Management land disposal work.

A central office record shall be kept by the Right of Way Records Center (in the Property Management Section) of all land transferred to cities and counties by Quit Claim Deed as authorized by Iowa Code §306.42. If it is necessary to obtain an original agreement with a city or county in order to transfer land under Iowa Code §306.42, the Fiscal and Title Section shall provide approval of the form of the agreement, the form of the Quit Claim Deed and the Commission Order to approve the agreement.

## **RIGHT OF WAY AGREEMENTS WITH OTHER STATE AGENCIES**

The instrument to transfer jurisdiction over land to another state agency is an Intergovernmental Transfer of Jurisdiction and Control (see Appendix "F", Exhibit 1). This is not a transfer of title, since title remains in the name of the State. This method of disposal cannot be used to dispose of land to counties, cities, drainage districts or other governmental authorities.

All agreements shall specify the duration of the transfer. If permanent, specify permanent. If not, specify the duration for which it will be effective. The agreement will indicate the monetary consideration, if any, and terms or conditions under which money or other consideration is to be paid.

Indicate the purpose for which the lands are being transferred and state who or what authority is to maintain the facility. The agreement is to be filed for record with the County Recorder.

## **DISPOSALS FOR ENVIRONMENTAL OR HISTORICAL MITIGATION**

General Counsel for the DOT has determined that in some cases the protection of certain environmental properties constitute "highway purposes." See Iowa Code §314.23 and 314.24 <http://www.legis.state.ia.us/IowaLaw.html>. Therefore, these properties may be conveyed directly to other governmental agencies without conflicting with Iowa Code §306.23, as long as the property continues to serve the intended public purpose. Property acquired for the mitigation of wetlands damaged or destroyed by a highway project may be transferred to another governmental entity, such as a county, provided the land continues to be used for wetland mitigation purposes. As the wetland mitigation is a highway purpose, the transfer is similar to the transfer of a roadway that is proposed to become a local road.

As the transfer is considered similar to the transfer of a roadway, the transfer is to be handled as a transfer of jurisdiction (see "Disposing of Land to other Governmental Authorities" in this manual and Iowa Code §306.42). The conveyance shall be by Quit Claim Deed and contain the following special provision:

*The property described within this conveyance was acquired for highway purposes as part of highway project \_\_\_\_\_. The specific highway purpose for these premises is the mitigation of wetland and/or other required environmental impacts created as a result of this highway project. As part of the process of securing necessary permits to proceed with the highway project, the Iowa Department of Transportation was required by the United States Army Corps of Engineers (Corps) and the Iowa Department of Natural Resources (DNR) to implement mitigation procedures. A copy of the Corps 404 permit is attached. The property remains subject to the requirement of said permit.*

*The Grantees, their heirs, assigns and successors in interest shall maintain the property as required by the Corps' 404 permit and shall not attempt to utilize the premises described in this conveyance contrary to the terms, goals and intentions of the permit conditions issued by the United States Corps of Engineers and the Iowa Department of Natural Resources without the expressed written consent of the agencies.*

*Should Grantee elect to dispose of these premises in the future, Grantee acknowledges that these premises were acquired for highway purposes and therefore any future disposal shall be in accordance with the Iowa Code in regard to the disposal of highway right of way.*



# **CHAPTER NINE**

## **Managing Easements**

Revised 5/2007

This portion of your manual will discuss the management of easements, detailing how, when and why we dispose and convey easements.

### **ABANDONMENT OR RELEASES OF EASEMENTS**

Abandonment of permanent easements is handled through the use of a Resolution of Abandonment (see Appendix "E", Exhibit 2). Temporary easements are released through a "Release of Temporary Easement." We need to obtain the same internal recommendations to abandon an easement as we do for the sale of property.

➤ ***Recommendations to Dispose of Easements (See Appendix "C," Exhibit 8) shall be sent to:***

- ❖ District Offices
- ❖ Office of Design
- ❖ Office of Location and Environment
- ❖ Office of Facilities and Support
- ❖ Systems Planning
- ❖ Office of Traffic and Safety
- ❖ FHWA (when applicable)

The Office of Design will forward parcels to Roadside Development for review of any sites that may contain wetland, wildlife habitat, scenic vistas, quality vegetation areas or any sites that could be developed to support such uses (refer to DOT Policy and Procedures Policy No. 500.03).

Recommendations to dispose of easements shall contain enough information about the property that the person responding can make an intelligent decision. We should include a plat or graphic illustration of the land from which the property was acquired. The plat should also describe the area proposed for disposal. If available, a legal description of the land to be disposed should be furnished. The request for recommendation needs to state the type of ownership the State holds. Project and parcel numbers and the name of the owner when acquired should be included.

- ❖ A plat, plan sheet or other illustration showing the land from which the land was originally acquired.
- ❖ A plat, plan sheet, or other drawing showing the area to be disposed.
- ❖ Project and parcel numbers of the area.
- ❖ Name of the owner at the time of acquisition.
- ❖ Copy of request letter.
- ❖ Other pertinent information.

➤ ***FHWA Approval***

Advance FHWA approval is only necessary when such approval would be necessary if the easement is within the Interstate System.

➤ **Content of Resolutions of Abandonment**

All resolutions of abandonment shall briefly state the circumstances leading to the request for abandonment. Property Management may initiate these requests at the request of an adjacent property owner, the District, Resident or Area Engineer, or as a result of land use review.

The resolution shall contain a description of the property and include a plat if it is available. When the total originally acquired area is to be abandoned, the description shall contain the original easement description. We have provided a few examples:

"All that part of the (\_\_\_¼ \_\_\_¼) of Sec. \_\_, T\_\_N, R\_\_W/E of the 5th P.M., \_\_\_\_\_ County, Iowa, more particularly described as...."

**or**

"In an easement \_\_\_\_\_ from \_\_\_\_\_ to the State of Iowa and recorded as Document No. \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the \_\_\_\_\_ County Recorder on \_\_\_\_\_."

**or**

"...in a certain land contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, from \_\_\_\_\_ to the State of Iowa, which easement is noted and thereby incorporated by reference in a (deed) or (easement) from \_\_\_\_\_ to the State of Iowa and recorded as Document No. \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the \_\_\_\_\_ County Recorder on \_\_\_\_\_."

**or**

"...in a certain land contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, from \_\_\_\_\_ to the State of Iowa and recorded as Document No. \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the \_\_\_\_\_ County Recorder on \_\_\_\_\_."

When only a portion of the originally acquired property is being abandoned, the normal criteria for a legal land description shall be followed.

The Resolution shall state that, in the opinion of the DOT, the described easement is no longer necessary or required for use by the public for highway purposes and will not hereafter be required for construction or maintenance purposes for any highway of the State of Iowa.

The Resolution shall resolve, "that the present right of way herein described, together with any and all rights of the State of Iowa in and to the same, are abandoned and that the DOT, for itself and on behalf of the State of Iowa, disclaims any right, title, or interest in and to said part of present right of way or to the use for any purposes whatsoever."

The Right of Way Director signs the resolution of abandonment on behalf of the DOT. The authority and the execution of the signature shall be acknowledged and notarized.

➤ ***Notice to Utilities in Possession***

Iowa Code §327G.77 and 478.17 <http://www.legis.state.ia.us/lowaLaw.html> discuss responsibilities when abandoning easements. Utilities in possession of highway right of way under authority of maintenance permits shall be notified when the DOT intends to abandon highway easements. All available copies of maintenance permits shall be provided by the District and maintained in the abandonment file. Property Management should notify utilities 60 days prior to the abandonment so the utility can consider what effect the abandonment might have on their utility facility.

Utilities will need to acquire an easement or right to occupy the former highway right of way from the underlying fee owner, or the utility will not have the right to remain. The utility permit expires when the highway easement is abandoned. The DOT has no obligation to relocate utilities in possession of abandoned highway easement right of way. Iowa Code §327G.77(3), allows utilities on abandoned railroad right of way to remain in place subject to their purchase or condemnation of an easement from the property owner. Iowa Code §478.17, gives utilities the right to enter and repair their existing power lines, but presupposes that the utility has an easement or right to remain in the first place.

➤ ***Recording of the Abandonment***

Property Management shall send the original Resolution of Abandonment to the appropriate county recorder with a request to record and return the document. The original recorded Resolution shall be kept in the Record Center in Property Management to be filed as the permanent record.

➤ ***Abandonment Distribution***

A copy of the recorded resolution of abandonment and plat shall be sent to the following people:

- ❖ The person making the original request for the abandonment
- ❖ The applicable District
- ❖ Resident Construction Engineer
- ❖ District Maintenance Manager
- ❖ Property Management abandonment file

## **SCENIC EASEMENTS**

Title III of Highway Beautification Act and Federal Law 23 USC 319 permit federal aid participation for landscaping and scenic enhancement projects. Iowa Code §313.67 <http://www.legis.state.ia.us/lowaLaw.html> gives the DOT authority to acquire land, rights or interest in land to preserve scenic areas along primary highways (see Appendix "E", Exhibit 3). Scenic easements have been acquired to preserve natural scenery, to preserve timber and native prairies, to protect historical locations, and to add to the enjoyment of the general traveling public.

➤ ***Monitoring Scenic Easement Areas***

Property Management is responsible for providing the Office of Maintenance with a record of scenic land holdings. Those records include a set of right of way plats, or suitable substitutes, and county location maps for all scenic projects within a specific District. The plats will have the basic and specific rights and/or restrictions acquired printed on or identified with the parcel, and accompanied by a copy of the Scenic Easement.

The Office of Maintenance and field maintenance staff are responsible to enforce the terms and conditions of scenic easements. A periodic field review of each scenic beautification area should be conducted by a representative of Property Management and of the Roadside Development Section of Design. This field review affords an opportunity to make a general inspection to evaluate the overall effectiveness of the program and to detect contract violations and encroachments.

In case of questionable interpretation of the restrictions or rights, Right of Way should be advised before legal action is undertaken to eliminate a violation.

➤ ***Amendments to Scenic Easements***

When a violation has occurred and the intent of the easement has been altered/broken, an amendment may be considered. All alternatives must be studied prior to any action. Roadside Development and Property Management must examine and inspect the site to determine what can be done to preserve what is left of the scenic easement and/or remedy the infraction. Every effort must be pursued that is physically and aesthetically possible to either correct the violation or pursue an amended easement agreement. The amendment must specifically set out that the original easement is in full force and effect except for the areas and restrictions that are addressed.

The monetary consideration may be arrived at by considering the original easement value or by obtaining an appraisal. All proceeds must be deposited into the Primary Road Fund.

➤ ***Disposal of Scenic Easements***

If the scenic easement is no longer necessary, we may dispose of the easement as long as we can demonstrate the disposal is in the best public interest or that retention of the interest is no longer necessary to carry out the purposes of the Highway Beautification Act. The person(s) requesting the disposal should provide market value for the disposal of the easement. The proceeds realized from the disposal or relinquishment, if for other than highway purposes, must be deposited into the Primary Road Fund.

## **FLOWAGE EASEMENTS**

Flowage easements (see Appendix "E", Exhibit 4) are conveyed by the DOT under the authority of Iowa Code §306.39 and 306.40 <http://www.legis.state.ia.us/IowaLaw.html>. Flowage easements are conveyed to the United States of America. They are submitted to the Governor and the Secretary of State for signature.

➤ ***Flowage Easement Request***

Requests shall be directed to the Executive Council under explanatory cover. Documents required include an original and one copy of an Application to the Executive Council, an Order directed to the Governor, the original prepared but unsigned Flowage Easement, and one county or city map showing the location of the land for which the Flowage Easement is required.

➤ ***Preparation of Application and Order***

The Application and Order shall be prepared in a form similar to the exhibits. They must contain a complete description of the land; the subject of the request (see Appendix "E", Exhibits 6 and 7). Care should be taken to assure that the authority by which the Flowage Easement is to be conveyed is set out. Any conditions as may be prescribed by the Executive Council shall be made a part of the Flowage Easement.

The easement shall grant the perpetual right, power and privilege to use the lands being conveyed for project purposes; including the right to overflow, flood and submerge the land and facilities located thereon lying at or below a given elevation. This elevation shall be based on sea level datum.

➤ ***Cover Letter***

The cover letter (see Appendix "E", Exhibit 5) shall contain:

- ❖ Reference to all attachments.
- ❖ The name and address of the agency to whom the Flowage Easement is to be granted.
- ❖ A request to place the matter before the State Executive Council for its consideration and direction concerning to whom the Flowage Easement is to be sent.

➤ ***Easement Distribution***

After receipt of the Flowage Easement, the following process will conclude the transaction:

- ❖ The signed original Flowage Easement shall be recorded and placed on record.
- ❖ The original executed Flowage Easement shall be sent to the agency to whom the Flowage Easement is being granted.
- ❖ A copy of the executed Flowage Easement shall be sent to the appropriate County Auditor.
- ❖ A copy of the executed Flowage Easement shall be sent to the appropriate District Engineer, Resident Construction Engineer, and District Maintenance Manager.
- ❖ Property Management will retain two copies:
  - 1) One for the Record Center to be microfilmed, indexed and become a permanent part of the Right of Way Land Title Records.
  - 2) Property Management shall retain a copy in the Flowage Easement File.

➤ ***Flowage Agreements other than with Federal Government***

Sometimes cities, counties or drainage/levy districts need to occupy and/or use portions of primary highway right of way for water control projects. We may be asked to grant a perpetual right so that the other governmental entity may complete their flood control projects, channel widening, dikes or levees projects. These types of activities may require an agreement (see Appendix "E", Exhibit 1). Statutory authority for such agreements include Iowa Code §28E.3, 28E.4, 306A.7, 306.24, 468.111, and 468.220. <http://www.legis.state.ia.us/lowaLaw.html>

All flowage agreements are between the DOT, acting for the State of Iowa, and the requesting authority. They must be approved as to form by the Attorney General staff and submitted for approval by Staff Action.

The distribution of Flowage Agreements completed under authority of these Iowa Code Sections is the same as that for Flowage Easements previously described in this manual.

## **GRANTING EASEMENTS ON STATE LANDS**

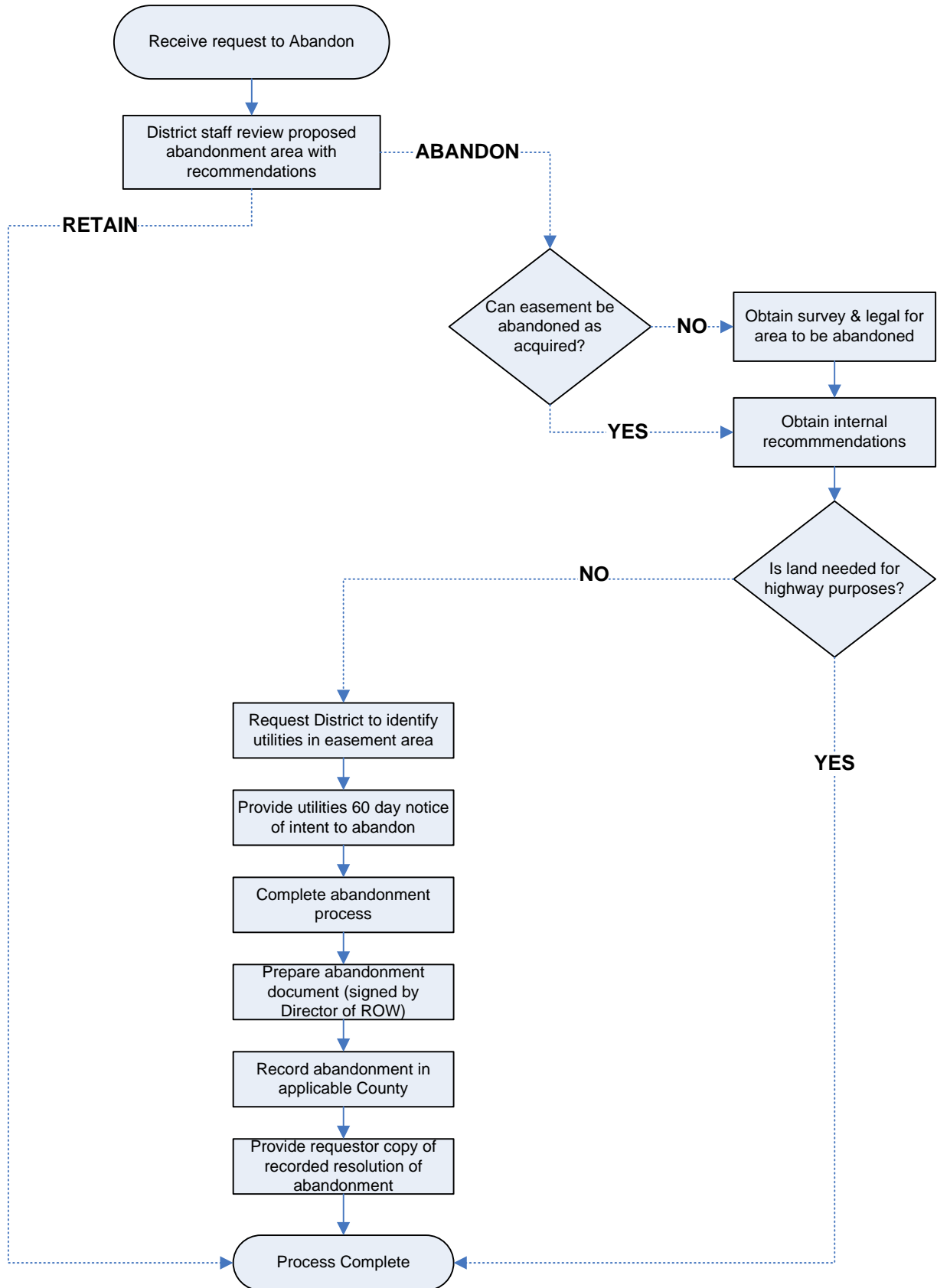
Section 306.45, Iowa Code allows the DOT to convey easements across State lands. This section allows the DOT to convey easements provided the easements "will not adversely affect the construction and maintenance of the highway system."

- Property Management shall be responsible for the processing of request for easements. Property Managers shall follow the following basic principles:
  - ❖ Easements shall not be considered involving lands necessary for the construction and maintenance of the existing highway facility (required right of way).
  - ❖ Internal recommendations shall be obtained from the same sources as any other disposal.
  - ❖ The Property Manager will order a survey plat.
  - ❖ The State shall receive fair compensation for the granting of easements.

Fair compensation for the easement rights to be conveyed is required. Fair compensation may be described as the reduction in value of the State's property as a result of the easement being granted. Staff or fee appraisers may determine a value opinion. Property Managers may also estimate fair compensation. The Chief Property Manager, or designee, will review value opinions. Other than cash considerations may be considered.

Staff Actions approving the conveying of easements is required for transactions in excess of \$10,000. The easement conveyance requires the signatures of the Governor and Secretary of State; similar to the process utilized in securing a State Patent.

# PROCEDURE TO ABANDON EASEMENT



# **CHAPTER TEN**

## **Land Contract Management**

Revised 5/2007

The DOT is authorized by Iowa Code §306.22 <http://www.legis.state.ia.us/IowaLaw.html> to sell land through a Real Estate Land Contract. When this type of sale is used, the State retains title to the land until the contract is paid. When the buyer finishes paying for the land, a State Patent conveys title to the new owner. The following sections of your manual, cover real estate installment contracts. Presently, we offer contract sales in only limited and unique situations, such as to other governmental entities. At this time, we do not offer Real Estate Contract sales to the public; but if the market changes, we may decide to again market land by contract and these sections of our manual are in place.

### **HISTORY**

From 1975 through 1984, the DOT entered into 156 land contract agreements, involving \$6.6 million worth of real estate. During this period, interest rates were high and land mortgages difficult to obtain. Marketing the land through the use of land contracts successfully accommodated the needs of our customers and protected the interests of the public's assets. Interest rates then improved and mortgages once again became available through the private sector. These factors eliminated the need to provide land contract sales at this time.

Land contracts can be the result of direct/negotiated sales or competitive public sales. Land contracts involve terms and conditions that may be unfamiliar to people that do not work with them regularly. A brief discussion of a few of these terms/conditions has been provided.

### **ADVERTISING REQUIREMENTS**

The advertising requirement of Iowa Code §306.22 does not require publication of newspaper notices. Instead, when land is offered for sale on contract, all advertisements are to request both cash bids and contract offers. The preferred sale is for cash. A sale by real estate contract is simply another tool to ensure a reasonable return on the public's assets if an acceptable cash bid cannot be obtained.

Property Managers should consider the value and the type of property that is being sold when determining the kind of advertising and cost of land sale advertisements. All usable land that could be of interest to the general public should be advertised through local publications. Land that could only be used by one or two neighbors may be advertised through a simple letter to those neighbors. Specialized equipment or machinery may warrant advertising through specialized trade journals as well as newspapers. When the land being sold is surrounded by a single property owner, landlocked, and with limited value, advertising and negotiations may be limited to that one property owner.

### **TERMS AND CONDITIONS**

Iowa Code §306.22 <http://www.legis.state.ia.us/IowaLaw.html> limits the available terms and conditions for the sale of property on contract. The term of the contract shall not exceed ten



years, but may be less. A shorter-term contract should be considered when similar property is being sold on a shorter term in the market. Our experience with commercial property has been that commercial property contracts are often paid off in less than ten years. If commercial property has a cash income, consider a term shorter than ten years. If the property is purchased on speculation with no interim income stream, a ten-year term may be necessary in order to reduce the cost of holding the property to a point necessary to attract a reasonable sale price.

Interest rates shall be set at prevailing market rates. When determining market rates, consider contracts with a similar down payment and terms to our sale. Down payment requirements may be less than ten percent, but no lower than five percent of the purchase price. Down payments may be increased to more than ten percent of the purchase price when larger down payments are being required for similar property being sold on the open market in the area with similar interest rates and terms. Down payments in excess of ten percent may be required to discourage the buyer from abandoning the contract, to protect against reductions in the resale value of the property by the construction of specialized improvements, or when necessary to protect the interests of the State.

## **PROPERTIES WE DO NOT OFFER FOR SALE BY LAND CONTRACTS**

It is our general policy not to offer small, irregular, damaged or marginally valuable property for sale on contract. As a rule of thumb, property in this category usually ranges in a value less than \$10,000. If the land has a size and value similar to land being sold on contract in the local area, we may offer the land for sale by cash or contract.

## **RESALE**

Sometimes we must re-claim land when contracts are forfeited. If we believe we can sell the property for the full payment of the unpaid balance due on the original forfeited land contract, only cash bids should be accepted. Land being resold after the forfeiture of a land contract may be offered for resale for cash or on contract if a contract offering is necessary to attract a reasonable sale price. When similar land is not being bought for cash in the local market, the land may be resold by offering it for sale by cash or contract.

## **ASSIGNMENTS**

An assignment is simply when the purchaser would like to transfer their interests to another buyer. DOT land sale contracts require the buyer to furnish us in writing a request to assign the contract to another buyer. We prefer not to allow assignments of contracts except in unusual and unique situations. In those unique situations, the buyer must provide us with a copy of all recorded buyer's assignments or transfers of any interest in the contract to any third party. This information is needed both to manage the land and also to make application for a State Patent upon completion of the contract. However, we shall not relieve or release the original buyer from any obligation under our contract. All land management correspondence shall be sent to all persons with any interest in the land.

## **INTEREST SUBORDINATION REQUESTS**

An interest subordination request is asking for the State to relinquish the first claim on the property and allow another party to become the first paid in case of default. Usually this kind of a request happens when the buyer would like to develop the property or to remodel improvements and the buyer is attempting to borrow money from a lender for these efforts. The DOT shall not subordinate the State's security to any third party, but Property Managers may explore and consider other options to accommodate the buyer's needs.

For example, it may be possible to subdivide the parcel being acquired and to issue a Patent for that portion needed for development in advance of final payment for the whole parcel. Before agreeing to a request to convey by two Patents, the proposed remaining parcel should be appraised to ensure there is sufficient value to protect the State's interest. The remaining tract must also have its own access in case of default. If the value of the land remaining is adequate security for the remainder of the debt on the original contract, we may modify the contract to allow the issuance of two Patents. Approval to do so shall be obtained by Staff Action. The buyer's only other alternative is to pay the original contract off.

## **PAYMENT ACCOMMODATION REQUESTS**

Sometimes the buyer may develop financial problems and changing or restructuring the payments may allow the buyer to continue paying for the property. We should attempt to accommodate reasonable requests to change remaining pay dates to accommodate the buyer as long as the public's interests are protected. Property Management will furnish revised payment schedules necessary to reflect changes in remaining pay dates.

Interest only payments may be accepted, when necessary, with the understanding that the buyer shall be current at the end of the year. Late payment agreements shall require an additional interest payment on the late principal payment. When our contract does not authorize us to collect a delinquency or deferral charge for a late payment after notice of default, the late payment charge must be negotiated. In the absence of an agreement, no delinquency or deferral charge may be collected and our remedy may be limited to forfeiture. The recommended negotiated charge for delinquency payments is five percent annual interest. Contracts may be forfeited for failure to make accommodation payments when and in the amounts due only if the original contract authorizes us to do so. Iowa Code §537.2502 and 537.2503 <http://www.legis.state.ia.us/IowaLaw.html> govern delinquency and deferral charges. The maximum allowable charge by the terms of the contract is one percent per month.

No accommodation agreement shall be made unless the buyer furnishes written proof of payment of real property taxes and, when appropriate, proof of fire and liability coverage for the property. Accommodation payments may be required to be paid monthly by certified check, bank money order, or other guaranteed form of payment and not by personal check. Financial statements shall be made on bank or other institutional lender forms. The buyer shall investigate and report the terms, conditions and availability of all alternate sources of funds to pay us off or to refinance his operation. The information shall demonstrate buyer's need for a payment accommodation and that the accommodation, if made, will help their situation.

It may be necessary to consider a request from a buyer for an extension of time to a balloon payment. When a request is made, we shall obtain a complete financial statement and determine the risks and our buyer's needs.

The property should be appraised, if necessary, to determine the difference between the remaining debt and the cash value of the property. The appraiser shall also be requested to report on the terms and interest rates being charged on similar property being sold on the open market in the local area.

Other accommodations may be considered and warranted. The following is a brief list of examples:

- ❖ An accommodation may be made to assure payment of as much of the original agreed contract principal as possible.
- ❖ An accommodation may be made to avoid or reduce losses that may be anticipated if property is forfeited and resold, including additional foreclosure and marketing costs and expenses.
- ❖ An accommodation may be made to avoid loss of income and possession of the property, which would be caused in the event our buyer exercises his right to file bankruptcy or to exercise rights under foreclosure moratorium, mandatory mediation, or similar law.

The interest rate charged for a balloon payment accommodation shall not be less than that being charged for a similar accommodation on the open market. The term for the extension shall not be longer than is reasonably necessary to allow the buyer to either pay the property off or to refinance the property. The interest and principal payment amount shall not be less than the property's fair market cash rental. Payments may be rescheduled when necessary to accomplish the purposes of this policy, but not beyond twelve months from the day the last payment is due on the contract without approval by DOT Staff Action.

Property Management shall provide assistance to the Attorney General Staff if necessary, to avoid threatened or probable litigation that may arise out of the administration of land contracts. Property Management or the Attorney General's Staff, to avoid litigation, may propose settlements. When a disagreement exists, the Highway Division Director will be consulted.

## **INSURANCE REQUIREMENTS**

Persons who buy improved excess land through land sales contract shall maintain fire insurance. Contract buyers shall be required to maintain proof of fire insurance and failure to do so shall be cause for forfeiture of the contract. Property Management shall notify the insurance company, and the State of Iowa shall be named as joint beneficiary of the policy. All insurance proceeds shall be made payable to the contract buyer and the DOT. Property Management may agree to deposit insurance payment checks in escrow with a local financial institution. Escrow agreements shall forbid disbursement without written authorization from Property Management to do so. Property Managers may endorse fire loss insurance checks

and thereby release funds only for damage, which has been repaired. This determination shall be made only after a personal inspection of the property.

## **PAYMENT OF REAL ESTATE TAXES**

The buyer is obligated to pay real property taxes on property purchased from the DOT on contract by Iowa Code §306.22(7). Property Management shall annually obtain and place proof that real estate taxes have been paid in the land contract sale file.

When taxes are not paid, the property can be sold by a tax sale. A Treasurer's Deed is ultimately issued conveying the property to whoever has paid the taxes, penalties, filing and certificate costs.

As the fee owner, the DOT is notified that land we sold on contract will be sold by taxing authorities for nonpayment of real estate taxes. In most cases, we will receive this notice of tax sale 30 days prior to the tax sale. If not promptly paid by our buyer, the DOT may pay the taxes, penalties and costs necessary to redeem the land so the property can then be resold free of all encumbrances. We can forfeit the contract and sue, or request the Attorney General to sue, to collect all tax payments and redemption costs.

## **TAX LIENS AGAINST THE STATE**

Iowa Code §626.109, provides that a judgement against a department, agency, division, or official of the state or a county, city, school district, or other political subdivision of the state does not create a lien against public property held by the state, county, city, school district, or political subdivision of the state and makes it retroactively applicable.

If necessary, Property Management, in accordance with Iowa Code §427.2 <http://www.legis.state.ia.us/lowaLaw.html>, can make payments for real estate taxes on forfeited contracts. Such payments shall be approved by Staff Action. Local taxing authorities shall be requested to abate taxes that become payable after the land is once again owned by the State in fee, free of the forfeited contract. No real estate tax is payable while the State owns the land. After we resell the property, our new buyer may be responsible to pay at least part of the taxes which were assessed when the State owned the property, but which were not due when the DOT forfeited its contract. These taxes are to be prorated on the month that the State surrenders possession of the property if sold on contract, or after the Patent is issued if sold for cash. Prospective buyers of land being resold after forfeiture shall be informed that real estate taxes will be prorated as required by Iowa Code §427.2. This understanding shall be confirmed with local taxing authorities to avoid misunderstandings after the property is resold.

## **RE-CONVEYANCE IN LIEU OF FORFEITURE**

By policy, land contract buyers are not requested to sign personal notes as additional security for the payment of their contract obligations. The land is the sole collateral for the contract and the State retains legal title to the property to assure that the buyer's debt is paid. The DOT hopefully receives the market value selling the property to the highest reasonable bidder at a public sale. There are times when land sells higher than the appraised value. Landlocked

property may sell to an abutting property owner for an amount higher than what would be paid for the property by a third party without direct access. Land values may decline below what the buyer has agreed to pay the DOT for the property.

Property Management shall work with our contract buyers who notify us that they intend to abandon their contract. Consideration shall be given to granting the buyer an opportunity to re-convey the property by Warranty Deed in lieu of forfeiture when there are no unreleased liens or encumbrances against their interest in the property.

This may provide an opportunity to collect an additional annual payment, a reasonable cash rental, to obtain the payment of unpaid taxes. This procedure can also be used as a means to negotiate and obtain access to otherwise landlocked property improving resale value.

Re-conveyances shall be made on the basis of an abstractor's Report of Record Ownership and Liens or its re-certification not older than seven days prior to the date the re-conveyance is received and accepted. Title to re-conveyed property shall be accepted by Staff Action, and the deed and all release forms, if any, shall be recorded.

## **FORFEITURE OF REAL ESTATE INSTALLMENT SALE CONTRACTS**

Property Management, through a notice of forfeiture, shall initiate forfeiture of real estate contracts. Notices of forfeiture (see Appendix "F", Exhibits 2 and 3) should contain basic criteria.

- ❖ Prepared on Iowa State Bar Association form.
- ❖ Identify the contract, accurately describe the property covered, and attach a copy of the contract to the notice.
- ❖ Specify the terms and conditions of said contract, which have not been complied with.
- ❖ Notify our buyer that the contract will stand forfeited and canceled unless they, within 30 days after the completed service of said notice, cure the default and thereby comply with the terms and conditions of the contract and also pays the costs of serving notice.
- ❖ Terms prepared on the basis of an abstractor's Report of Record Ownership and Liens or its re-certification not less current than seven days prior to the date notices are sent to the sheriff for service.
- ❖ Notices served by the sheriff or other local law enforcement agency shall complete the Return of Service and return the proof of service to Property Management. If our buyer or any other interest holder signs an acceptance of service on the Notice of Forfeiture, it is not necessary to also have the notice served by the sheriff. Serve all persons shown on the Report of Record Ownership and Liens who have any ownership or interest in our buyer's equitable ownership. Serve all of our buyer's assignees and all tenants. Serve all of our buyer's lenders and lien holders of record as well as the taxing authority. If the property is improved, do an ICC Lien Search as well, and serve all security interest holders with secured property on the land. Thirty days after the notice has been

served, Property Management shall prepare the Affidavit in Support of Forfeiture of Real Estate Contract Tax Sales.

- ❖ Record Documents - Property Management shall record all notices, acceptances of service, completed returns of service and the affidavit of forfeiture; and shall pay all service and recording costs.

## **LAND CONTRACT SALES TO OTHER PUBLIC AGENCIES**

In specific situations, the DOT will provide land contract sales to other governmental entities. Examples include improved and unimproved properties sold to cities, counties, school districts and other state agencies.

### ➤ Terms and Conditions

Government land contract sales are only offered when the property is to be used for public purposes. If the land use changes from a public use the entire balance should become due and payable. Government land contracts are only offered when the sale price is at least the amount of the approved value. Government land sale contracts are generally offered to other governmental entities for zero interest.

Generally the terms of the land contract shall be four payments spread over three years. 25% of the purchase price shall be due when the land contract is submitted for DOT approval. 25% of the purchase price shall then be due annually until the balance is paid in full.

### ➤ Resale or Assignments

The contract shall not allow the property to be resold or the buyer's interest assigned until the balance is paid in full.

### ➤ Improving the Property

The contract shall require written permission from the DOT prior to any improvements being made to the property until the balance is paid in full.

### ➤ Insurance Requirements

The contract shall indemnify the DOT from all claims and causes of action arising from the buyer's use of the property. The buyer shall be required to maintain insurance, unless they are a self insured agency.

### ➤ Conveying the Property

Upon receiving the entire purchase price we will request and process the application for a State Land Patent as in the case of any other sale of land.

### ➤ Exceptions and Unusual Situations

Occasionally unusual circumstances may create the need for broadening or expanding the terms listed in this section. Those instances will be considered on a case by case basis with recommendations made to the Director of the Office of Right of Way.

# **CHAPTER ELEVEN**

## **Administrative and / or**

### **Record Keeping Activities**

Revised 5/2007

This section of your manual will attempt to "wrap things up" and discuss how we finish the disposal process. This area will discuss the following items:

1. *Attorney General Review*
2. *Preparing the State Patent*
3. *Release of Patent Reservations and Restrictions*
4. *Correction of State Patents*
5. *Transfers of Jurisdiction Quit Claim Deeds*
6. *Transfers of Jurisdiction Intra-Departmental Land Transfers*
7. *Land Use Review Schedule*
8. *Income Vouchers and Long-Term Receivables*
9. *Property Maintenance and Expense Vouchers*
10. *Permanent Records Required*
11. *Statistical Reports*

#### **ATTORNEY GENERAL REVIEW**

Often we need paperwork and files reviewed by the Attorney General's staff to ensure compliance with the applicable requirements of law. The purpose of these types of reviews is to assure the DOT and the Secretary of State (State Land Office) that:

- The State actually owns the land, or interest in land, we propose to sell.
- The form of conveyance is adequate to convey the land or proposed interest.
- The disposal procedures we used comply with the land disposal requirements of the law as implemented by DOT policy. (Please note the meaning and application of the requirements of the law as implemented by DOT policy are the processes set forth in this manual.)

Attorney general review is required under the situations provided below:

- All requests for State Patents.
- All requests for easements conveyed on State lands.
- All requests for quit claim deeds as part of a transfer of jurisdiction.
- When non-standard or unusual circumstances that may effect the legality or validity of the disposal/transaction not authorized by these requirements occurs.

#### **PREPARING THE STATE PATENT**

Iowa Code §9G.6 <http://www.legis.state.ia.us/lowaLaw.html> discusses the patent process and we prepare patent requests in conformance with the requirements of that chapter. We cannot



issue patents to a deceased person or to the estate of a deceased person. The Grantee must be a named person. Title can be issued to John Doe "in trust" or "as executor for the estate of...."

➤ ***Items to be Included in the Request***

Requests are sent to the Secretary of State with an explanatory cover letter. Required documentation to be sent with the explanatory letter includes an original Certificate of Payment and Request for Patent, the original prepared but unsigned State Patent, and a copy of the original acquisition documents.

➤ ***Explanatory Cover Letter***

The letter shall contain (see Appendix "F", Exhibit 4):

- ❖ Reference to all attachments.
- ❖ A statement that the land is no longer needed for highway purposes.
- ❖ The name and address of the person to whom the Patent is to be granted.
- ❖ The appraised value and the amount paid for the land being sold.

➤ ***Certificate of Payment and Request for Patent***

The Certificate should include (see Appendix "F", Exhibit 5):

- ❖ A complete description of the land.
- ❖ All terms, conditions, prohibitions, or restrictions on the use of the land.
- ❖ A description the same as the description on the Patent. A Patent cannot be issued when any discrepancy or inconsistency exists between the two descriptions.
- ❖ The appraised value per acre.
- ❖ Name of person to whom sold. Date of sale.
- ❖ Price per acre, (amount paid).
- ❖ Name of person making final payment.
- ❖ Certification that the grantee has paid the full purchase price and that the purchase price is considered an equitable amount for the land.

When the buyer is not the same person who made the final payment or who is entitled to receive the Patent, the names and addresses of the buyer, the person who made the final payment, and the person who is entitled to receive the Patent must be shown. The person entitled to receive the Patent by assignment from the buyer shall furnish the assignment to Property Management. The assignment shall be indicated on the Certificate of Payment and Request for Patent. An original Certificate of Assignment must be attached and shall be filed and preserved in the State Land Office.

Iowa Code §306.22 <http://www.legis.state.ia.us/lowaLaw.html> requires that all Patents be subject to the rights of utilities in possession. Utilities in possession of right of way in use at the time of the sale have a right under law to remain.

➤ ***Required Original Acquisition Documents***

We need to furnish a copy of the original deed(s) when any part of the land was acquired by deed. If any part of the land was acquired by condemnation; a copy of the condemnation notice(s) and, if available, the report of the compensation commissioners should be furnished. The commissioners' report shall contain the signature of the commissioners. When the condemnation was appealed, state when and how the appeal was finally settled.

➤ **Conveyance of Wetlands**

Should environmentally protected lands be disposed (other than a transfer of jurisdiction to another governmental entity) the following language shall be incorporated into the State Land Patent:

*The property described within this conveyance was acquired for highway purposes as part of highway project \_\_\_\_\_. The specific highway purpose for these premises is the mitigation of wetland and/or other required environmental impacts created as a result of this highway project. As part of the process of securing necessary permits to proceed with the highway project, the Iowa Department of Transportation was required by the United States Army Corps of Engineers (Corps) and the Iowa Department of Natural Resources (DNR) to implement mitigation procedures. A copy of the Corps' 404 permit is attached. The property remains subject to the requirement of said permit.*

*The Grantees, their heirs, assigns and successors in interest shall maintain the property as required by the Corps' 404 permit and shall not attempt to utilize the premises described in this conveyance contrary to the terms, goals and intentions of the permit conditions issued by the United States Corps of Engineers and the Iowa Department of Natural Resources without the expressed written consent of the agencies.*

*Should Grantee elect to dispose of these premises in the future, Grantee acknowledges that these premises were acquired for highway purposes and therefore any future disposal shall be in accordance with the Iowa Code in regard to the disposal of highway right of way.*

➤ **Patent Distribution**

When we receive the signed Patent from the Secretary of State, the Patent shall be processed as follows:

- ❖ The signed original State Patent shall be recorded, placed on record, and sent to the new owner.
- ❖ A copy of the transmittal letter is sent to the Secretary of State.
- ❖ A copy of the recorded Patent shall be sent to the District and the Resident Construction Engineer.
- ❖ A copy shall be sent to be filed as the permanent Right of Way record in the office's permanent title record system.

- ❖ A copy of the plat shall be sent to the Appraisal Section with a note of the name and address of the purchaser, the amount paid for the land, the Patent number, the date of the Patent, and the State Land Office volume and page number.
- ❖ One copy shall be retained in the Property Management land sale file.

## **RELEASE OF PATENT RESERVATIONS AND RESTRICTIONS**

We may be asked to consider requests by property owners to release restrictions placed on patents issued in the past. The control of junkyards and outdoor advertising along primary highways is provided for in Chapters 306B and 306C, Iowa Code <http://www.legis.state.ia.us/IowaLaw.html> (see Appendix "F", Exhibits 6 and 7).

There is no public purpose served by maintaining a land-use restriction, stricter than that required by the Iowa Code. It was never our intention in establishing restrictions to circumvent the zoning powers of local authorities. Requests to remove junkyard or outdoor advertising control restrictions for patents shall be honored. These rights can be released at no charge to the property owner.

Requests to remove mineral rights restrictions shall be reviewed by field and design personnel in the same way that any land disposal recommendation would be reviewed. If the mineral reservation is no longer necessary to protect the highway, it may be released.

If the State has reserved a mineral right, it will be necessary to patent the mineral fee. Mineral rights may be appraised should this right have considerable value. The present owner of the surface rights shall be given the opportunity to acquire the mineral right through a direct purchase for its appraised market value.

Requests to release access restrictions or reservations shall be reviewed as if they were a request for an original sale of the property. When release of access rights will materially enhance the value of previously patented land, the land shall be appraised both with and without access rights to determine how much the land will be enhanced in value by their release. The present owner of the originally patented land will be given an opportunity to acquire the access rights by direct sale for their appraised fair market value.

Reservation releases for junkyards and outdoor advertising do not require approval by Staff Action. All other reservation releases in this chapter will require Staff Action approval. Requests for the release of patent restrictions shall be presented to the Secretary of State in a manner similar to the making of an application for the original patent. The release shall also be recorded in the same manner as the original patent and attached thereto. The cover letter to the Secretary of State shall explain the need for the release. The final document signed by the Governor and Secretary of State is on a Release Restrictive Covenants Form (see Appendix "F", Exhibit 7).

## **CORRECTION OF STATE PATENTS**

Clerical errors may be corrected by the Secretary of State in the name of the Grantee as authorized by Iowa Code §9G.7 <http://www.legis.state.ia.us/IowaLaw.html>. The form for patent

corrections depends upon the nature of the corrections. Use prior corrections as drafting guides.

Patent corrections are authorized by Iowa Code §9G.7. There are two established formats for correcting State Land Patents. The preferred alternative is by a Corrective Patent. The State Land Office will only accept the original Patent for this alternative. The Land Office will not accept a recorded copy. The Corrective Patent is completed and submitted with the original Patent to the State Land Office for processing and signatures. We will then record the Corrective Patent.

The second alternative is the use of a Correction Certificate. We prepare a certificate showing the error and give the reasons for the correction. In case of a major discrepancy in the legal description, consult the Attorney General's office. The Secretary of State is authorized and required to sign the certificate and make the necessary corrections in the tract and plat books of that office. The certificate is recorded and shall have the effect of the originally correct deed.

Iowa Code §354.24 is concerned with errors to plats. Should there be a surveyor's error in the plat, the original surveyor, or two surveyors confirming the error through independent surveys, shall record an Affidavit of Plat Correction confirming that the error or omission was made (see Appendix "F", Exhibit 8).

## **OTHER CORRECTIONS**

When property is erroneously conveyed by an owner in a deed, donation, or sale to the State, the error may be corrected as authorized by Iowa Code §9G.10. The procedure for accomplishing the correction is an exchange deed. The Governor quit claims land erroneously conveyed to the State in exchange for a deed from the property owner for the land originally intended to be conveyed to the State.

## **TRANSFERS OF JURISDICTION QUIT CLAIM DEEDS**

Quit Claim Deeds to transfer highway right of way to the authority responsible for its maintenance are prepared both by Property Management and by Closing Agents in the Fiscal & Title Section.

The Fiscal & Title Section is responsible for conveying State owned right of way to local authorities when such a transfer is required by the terms of a construction project agreement. In this context, the required deed to the city is considered another parcel to close on the project.

The Office of Local Systems also negotiates transfers of jurisdiction with local authorities to transfer State owned routes and stub roads. These agreements are submitted as a special item to the Commission. District personnel certify that work required by a transfer agreement has been completed and that any payment required has been made. This Quit Claim Deed is prepared by the Closing Agent on a time available basis.

In general, Property Management is responsible for preparing Quit Claim Deeds for transfers of jurisdiction when local authorities request the Department of Transportation to transfer title to what already is or planned to be part of a local street or road.

Several procedural Commission Orders set out Transfer of Jurisdiction agreement approval and Quit Claim Deed execution responsibilities. These Commission Orders are:

➤ Commission Order H-81-169, Dated September 16, 1980

Authorizes the DOT Director to execute Quit Claim Deeds in accordance with approved Transfer of Jurisdiction agreements without further Commission or Staff Action.

➤ Commission Order H-84-45, Dated July 19, 1983

Authorizes the DOT Director to execute Quit Claim Deeds in accordance with ratified and affirmed Transfer of Jurisdiction agreements and orders transferring roads or parts of roads to local highway authorities executed or ordered prior to July 1, 1980, without further Commission or Staff Action.

When there is no prior agreement, the Commission will be requested to approve agreements to authorize the DOT Director to execute Quit Claim Deeds in accordance with requests by local authorities to transfer title to local streets or roads. The Director shall execute a Quit Claim Deed when title to unused or excess right of way is needed for local road or street purposes, or a road or street is being maintained by the local jurisdiction as a local road or street. No further Commission action is required to document the Director's acceptance of the agreements.

The form for Quit Claim Deeds has been standardized with the assistance of General Counsel. Two sample Quit Claim Deeds may be found in Appendix "F", Exhibits 9 and 10. The Quit Claim Deeds shall be reviewed and approved as to form in advance of the Staff Action. This review shall be made before the final preparation of the Staff Action by the Chief Property Manager and by the Attorney General staff. The executed Quit Claim Deed shall be recorded in the county in which the land is located. Property Management shall provide a copy of each recorded Transfer of Jurisdiction Quit Claim Deed to the Fiscal and Title Section. Fiscal and Title will maintain an office record of transactions completed, and include the deed in the Permanent Title Records System.

## **TRANSFERS OF JURISDICTION INTRA-DEPARTMENTAL LAND TRANSFERS**

In any case, when another office or department has either a temporary or permanent need for the use of excess land or improvements or personal property in advance of construction, Property Management may transfer the use of it to the requesting office, provided the requirements of Iowa Code §306.23 <http://www.legis.state.ia.us/IowaLaw.html> are fulfilled prior to the transfer. Intra-departmental transfers shall describe the land or property transferred,

specify the purposes for which the transfer was made, and the duration for which it is effective. The DOT shall approve all permanent intra-departmental transfers of excess land.

## **LAND USE REVIEW SCHEDULE**

When lead-time and workload permits, Property Management shall conduct a land use review schedule with the District staff. The purpose of this schedule shall be to assure an orderly and timely review of the use of all excess land on current projects.

When possible, the review of all excess land on large complex rural/urban and/or federally aided right of way projects shall be completed within the first six-month period after the opening of the project to traffic. This schedule shall make allowance for those reviews necessary to promptly respond to inquiries from the public to purchase land.

When land is being held pending a possible future need, Property Management shall schedule a future land use review.

## **INCOME VOUCHERS AND LONG-TERM RECEIVABLES**

The Payment and Audit Unit of the Property Management Section uses income and expense data to maintain financial accounts for the Property Management programs. Income vouchers are prepared using forms found in Appendix "C", Exhibits 1,2 and 3. The Office of Finance will audit, post, credit, or adjust the appropriate federal aid account to reflect the income.

Long-term Receivables (LTR) will be prepared for rental income purposes. The LTRs are transmitted through the Office of Finance to make a cost account audit assuring proper credit will be given to the appropriate project. Property Management prepares and requests invoices from these LTRs for rental income on a monthly basis, and requests delinquent invoices based on the monthly rental invoices. Next, all rental income is posted to the Lease Accounting Reconciliation Ledger and the Lease Accounting System database is brought up-to-date.

Property Management shall forward all checks or monies not originally sent to the Office of Finance. Property Management shall prepare documentation and support data for miscellaneous income vouchers, including proceeds from bid deposits, performance and removal bonds, and sales tax. Income received from sales of miscellaneous items, buildings and property, the value of which is included in the excess land inventory, shall be vouchered. Proceeds of these sales shall be identified by project and parcel numbers. The Office of Finance will issue a receipt for all sale proceeds. The receipt shall be referenced on the income voucher or bill of sale. Copies of income vouchers and bills of sale shall be kept in the appropriate sale file.

## **PROPERTY MAINTENANCE AND EXPENSE VOUCHERS**

Expenses shall be processed through an Order Claim when appropriate and paid through the Order Claim or a Universal Payment Voucher. Expenses may include maintenance costs, surveillance costs, publication, advertising, report of lien cost and other normal and necessary property management expenses.

All such vouchers and accompanying payment support data will be audited for cost accounting purposes by the Payment and Audit Unit of Property Management and for reimbursement purposes by the Office of Finance. Copies of all Order Claims and Universal Payment Vouchers shall be kept in the appropriate sale or lease file.

Vouchers for payment will be reviewed and approved prior to payment being requested. The vouchers will be signed by the Chief Property Manager of the Property Management Production Coordinator. All requests for payment will include the minimal information with the request.

- County, Project and Parcel number
- Clear description of what bill is for
- Dates services provided
- Rates and basis used for determining bill
- Amount of bill

If required, a Staff Action will be obtained prior to processing for payment. All contracts for services over \$50,000 shall be competitively bid according to DOT policy and procedures.

## **PERMANENT RECORDS REQUIRED**

We maintain a permanent file for each parcel of land being managed. We also keep a permanent copy of all land sold and land or rights in land released, abandoned or disposed. A second copy of all title instruments shall be sent to the Property Management File Room Coordinator to be microfilmed and indexed in the office's Land Title Record System.

Property Management shall also maintain a permanent record of all Commission Orders and Staff Action approvals for ten years. All Property Management parcel files shall be retained in accordance with DOT policy.

## **STATISTICAL REPORTS**

We provide reports, information, or statistical data as requested. We receive requests from several areas within the DOT, FHWA other governmental entities and the private sector.

Each month we report work accomplished for that period. We report sales by item, parcel, area, appraised value and actual sale amount. This report includes whether offers were accepted or rejected. A monthly lease summary describes all types of leases in effect during the given month and identifies required or non-required right of way on both interstate and primary systems.

At the end of each fiscal year, we generate a report detailing income received and categorized as land sale payments, non-required right of way rent, required right of way rent, and sales of buildings, fixtures and other miscellaneous items.

We maintain an excess land inventory with a separate balance for parcels on interstate and primary systems described as committed land and uncommitted land.

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# APPENDIX

“A”

# GENERAL FORMS

RIGHT OF WAY OFFICE  
 MITIGATION/EXCESS  
 LAND DETERMINATION

Appendix A, Exhibit No. 1

ID NO. \_\_\_\_\_

PARCEL NO. \_\_\_\_\_

ACQUIRED FROM \_\_\_\_\_

SECTION: \_\_\_\_\_ T \_\_\_\_\_ N-R \_\_\_\_\_ W SCALE: 1" = \_\_\_\_\_

COUNTY: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

FORMULA EVALUATION	TOTAL ACQUISITION		ROW ACQUISITION		BORROW/MITIGATION		EXCESS LAND ACQUISITION	
	AREA	VALUE	AREA	VALUE	AREA	VALUE	AREA	VALUE
LAND		\$		\$		\$		\$
IMPROVEMENTS	■■■■■	\$	■■■■■	\$	■■■■■	\$	■■■■■	\$
TOTAL		\$		\$		\$		\$

FILLED IN BY \_\_\_\_\_ DATE \_\_\_\_\_, 20\_\_\_\_

C: PROPERTY MANAGEMENT  
 WETLANDS UNIT  
 T. GETTINGS  
 V. GOETHALS (ORIG.)

**IOWA DEPARTMENT OF TRANSPORTATION**

TO OFFICE: Contracts DATE: \_\_\_\_\_  
 ATTENTION \_\_\_\_\_ COUNTY: \_\_\_\_\_  
 FROM: \_\_\_\_\_ ROW PROJECT NO: \_\_\_\_\_  
 OFFICE: Property Management PARCEL NO: \_\_\_\_\_  
 SUBJECT: **PARCEL INSPECTION** POSSESSION DATE: \_\_\_\_\_  
**REMOVAL OF IMPROVEMENTS** FORMER OWNER: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

The above referenced property was inspected to determine the feasibility to demolish, sell, or rent such property. The inspection also addressed pest or rodent control, property maintenance requirements, and hazardous waste concerns. A pest and rodent inspection was completed on this date.

ITEM (approx. size)	FOUNDATION	PREVIOUS USE	DEMOLISH, SELL, RENT

Approximate location of parcel See address above

Comments \_\_\_\_\_

Location of well (if known)  N/A \_\_\_\_\_

Location of septic system (if known)  N/A \_\_\_\_\_

Utilities have been notified. Yes  No  N/A

There may be miscellaneous junk, debris, concrete and/or fencing located on this parcel.

Extermination of pest or rodent required? Yes  No

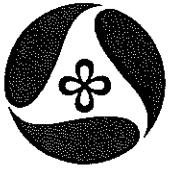
Buildings to be boarded or secured? Yes  No

Tanks were secure upon possession? Yes  No  N/A

By copy of this memo we are also requesting an asbestos inspection.

\_\_\_\_\_/lk  
 cc: \_\_\_\_\_, District \_\_\_\_\_ Engineer  
 \_\_\_\_\_, District \_\_\_\_\_ Construction Engr.  
 \_\_\_\_\_ RCE.

Dave Widick, ROW Design  
 Brad Azeltine, Office of Location and Environment  
 Judy McDonald, Office of Location and Environment  
 Parcel File



# Iowa Department of Transportation

Appendix A, Exhibit No. 3

Date \_\_\_\_\_

County \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Parcel No.: \_\_\_\_\_  
Sale No.: \_\_\_\_\_

## TYPE III ACTION PLAN

The disposal of this property has been handled in accordance with the current Property Management Manual. After completion of the internal review process, we have established that the disposal of this parcel is an action addressed in the Iowa Programmatic Categorical Exclusion Action and is a categorical exclusion (Type III Action Plan).

\_\_\_\_\_  
Property Manager Date

APPROVED:

\_\_\_\_\_  
Date  
Chief Property Manager

# APPENDIX

“B”

LEASE  
FORMS



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY
AMES, IOWA 50010
RESIDENTIAL LEASE

Parcel No.
Project No.

County
Lease No.

The Iowa Department of Transportation, acting for the State of Iowa, Lessor, in consideration of the agreements, below set forth, on the part of Lessee, hereby leases to said Lessee from the day of 20, to the day of 20, and on a month to month basis thereafter, the following described premises, to wit:

The above-described premise is leased to said Lessee in consideration of the following terms, provisions, and conditions:

1. Lessee agrees to pay Lessor rental for said term as follows: \$ on the day of 20, and \$ on the 1st day of each month thereafter during the term of this lease, plus seven percent (%) interest on delinquent rentals, computed from due date to the time of actual payment, to be mailed to the Cashier, Accounting Office, Iowa Department of Transportation, Ames, Iowa 50010.

Rent shall be paid in advance and no refund shall be made except as herein provided.

Payment shall be made in the form of a Check or Money Order made payable to the Iowa Department of Transportation. CASH WILL NOT BE ACCEPTED.

- 2. Lessee agrees to use said premises only for residential purposes.
3. Occupancy under this lease shall be limited to the following named persons except for the occasional visitors whose visits shall be no longer than 14 days in length.
4. Lessee has inspected the property and fixtures and acknowledges that they are in a reasonable and acceptable condition of habitability for their intended use, and that the rent agreed upon is fair and reasonable in this community for premises in their condition. In the event that the condition changes so that, in the Lessee's opinion, the habitability and rental value of the premises are affected, then Lessee shall promptly give reasonable notice to Lessor. The Lessor assumes no obligation to make changes, alterations or additions except as otherwise herein provided.
5. Lessee shall not sell, transfer or assign this lease or underlet said premises or any portion thereof without prior written consent of Lessor.
6. Lessee shall comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety and conduct oneself in a manner that will not disturb a neighbor's peaceful enjoyment of their premises. Keep premises including the plumbing fixtures as clean as their condition permits. Use in a reasonable manner all electrical, plumbing, heating, ventilating, air conditioning and other facilities and appliances. Not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit a person to do so. No additions, alterations, or improvements shall be made by the Lessee without the prior written consent of the Lessor. Dispose of all ashes, rubbish, garbage and other waste in a clean and safe manner except for multi-family units where receptacles and removal will be provided.
7. Lessee agrees to surrender possession of said premises at the expiration of this lease without further Notice to Quit and in as good repair and condition as the same are now in or may hereinafter be placed, unavoidable wear through careful use or damage by fire or the elements caused without any fault on Lessee's part excepted.
8. Any provisions contained within or attached to this agreement are, by this reference, made a part of this lease.

9. Lessee agrees to pay all public utility services used including city sewage and/or disposal service.
10. The Lessee shall be liable for any damage or injury to their person or any of their property caused by any negligence of Lessee or members of their family, employees, agents or associates which may arise out of or in connection with the use and occupancy of the premises.
11. Lessee represents that Lessee is of good character and is not engaged in any illegal business, the untruth of which shall be grounds for terminating this lease, as shall also be intoxication or engaging in or permitting any unlawful business whatsoever on said premises.
12. Lessee shall comply with all lawful regulations, restrictions, ordinances and laws applicable to the proper use and occupancy of said premises; and not to allow ashes or trash of any kind to accumulate on the premises and all alleys adjacent thereto and to remove the same from said premises, to remove snow and other obstructions from the sidewalks and to keep same, including ground, in as good condition as when received or thereafter put by Lessor.
13. If for any reason Lessor desires to terminate this lease, Lessee agrees to vacate and this lease shall terminate on Lessee receiving 30 days written Notice to Quit and Lessee to surrender possession of the premises on the day that Lessee is required to do so by the terms of the notice.
14. That Lessor, its agents, or workmen may temporarily enter premises to inspect the same, or to show the property to persons interested in leasing or purchasing the premises, or any part thereof.
15. Lessor or its agent may place "For Rent" or "For Sale" signs on the premises at any time or any place.
16. Should said Lessee hold over by permission of Lessor for three (3) days after expiration of this lease, it is agreed by all parties signing the same that it shall be a tenancy at will on a thirty (30) day terms.
17. In addition to Lessor's other remedies provided by law, and without prejudice thereto, if rent is unpaid when due, and Lessee fails to pay the rent within three (3) days after notice by Lessor of nonpayment and the Lessor's intention to terminate the lease if the rent is not paid within that period of time, the Lessor may terminate this lease by giving Lessee a three (3) day Notice to Quit.
18. If during the term of this lease, the dwelling or premises is damaged or destroyed by fire, the elements, or any natural causes, and the Lessor elects not to repair said damage or destruction, then this lease shall cease and become null and void from the date of said damage or destruction. The Lessee shall in that case immediately vacate and surrender said dwelling and premises to the Lessor.  
  
In that event the Lessor shall return to the Lessee all prepaid rent, apportioned as of the date of the casualty, and any damage deposit which is being held by the Lessor and which is recoverable by the Lessee under the terms of this lease.
19. Lessee shall have the right to install and remove television antenna on said premises and shall be liable for any and all damage occasioned thereby.
20. During the term this lease, Lessor may enter upon the premises for the purpose of drilling test holes or making surveys or to accommodate utility relocation.
21. This lease may be terminated by Lessee on thirty (30) days written Notice.
22. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof shall at no time or under any circumstances be used for, or devoted to political purposes or the conduct of political activities, including, but not limited to: meetings, rallies, caucuses, administration, distribution of literature which related to or bears upon the action of any political organization, unit or party.
23. Lessee warrants that Lessee is not employed either by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person, and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.



24. All expenses incurred by Lessee for moving Lessee, Lessee's family and Lessee's personal property from the premises, upon expiration of this lease, shall be Lessee's responsibility, EXCEPT those tenants that were in possession of the premises and eligible for Relocation Benefits at the time the State acquired title to property.
25. The undersigned property manager is authorized to manage the premises covered by this lease and to accept service of process and to receive notices and demands in connection herewith.
26. Damage Deposit of \$\_\_\_\_\_ will be held in escrow and will be returned upon final inspection and approval of the property when the lease is terminated. If, however, the Lessee has defaulted in the payment of any rent due or owes other funds to the Lessor pursuant to the rental agreement at the time of lease termination, that portion of the rental deposit that is needed to remedy said default or debt will be withheld by the Lessor.
27. Tenant shall not keep any animals on the premises.

BY: \_\_\_\_\_  
Lessee Date

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
(SSN) Social Security Number  
or Federal Tax ID

**APPROVAL RECOMMENDED:**

**APPROVED**  
**IOWA DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_  
Date

Property Manager  
Telephone No. 515-239-\_\_\_\_\_

BY: \_\_\_\_\_  
Douglas C. Bates, Chief Property Manager Date  
Right of Way Office

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee's personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.


**Iowa Department of Transportation**
**OFFICE OF RIGHT OF WAY  
 AMES, IOWA 50010  
 COMMERCIAL LEASE**

 Parcel No. \_\_\_\_\_  
 Project No. \_\_\_\_\_

 County \_\_\_\_\_  
 Lease No. \_\_\_\_\_

The Iowa Department of Transportation, acting for the State of Iowa, Lessor, hereby agrees to lease to \_\_\_\_\_, Lessee, from the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, to the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and on a month to month basis beginning on the \_\_\_\_ day of \_\_\_\_\_, the following described premises, to-wit:

**The above-described premise is leased to said Lessee in consideration of the following terms, provisions, and conditions:**

1. Lessee agrees to pay Lessor rental for said term as follows: \$\_\_\_\_\_ on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and \$\_\_\_\_\_ on the 1st day of each month thereafter during the term of this lease to be mailed to the **Cashier, Accounting Office, Iowa Department of Transportation, Ames, Iowa 50010.**

**Rent shall be paid in advance and no refund shall be made for any cause.**

**Payment shall be made in the form of a Check or Money Order made payable to the Iowa Department of Transportation. CASH WILL NOT BE ACCEPTED.**

2. Lessee agrees to use said premises only for \_\_\_\_\_.
3. It is understood and agreed that the Lessee will not allow the release or disposal of any fuel, oil, grease and any and all other petroleum products or other hazardous materials or substances within the leased area or on any adjacent lands. It is also agreed that the Lessee will not change oil, wash any vehicles or perform any automotive maintenance on these premises.

If any petroleum products and/or chemicals should accidentally be released upon the leased premises or adjacent land, the Lessee agrees to immediately clean up and remove said petroleum products or chemicals to the satisfaction of the Iowa Department of Transportation and the Department of Natural Resources.

4. Parking vehicles used for the storage of fuel, hazardous materials or substances is prohibited.
5. Lessee acknowledges that Lessee has inspected and knows the condition of the property and the same hereby leased without any representation or warranty by the Lessor whatsoever, and without obligation on the part of the Lessor to make any changes, alterations, repairs, or additions thereto, except as otherwise herein provided.
6. Lessee agrees not to sell, transfer or assign this lease or underlet said premises or any portion thereof without prior written consent of Lessor.
7. Any provisions contained within or attached to this agreement are, by this reference, made a part of this lease.
8. Lessee shall not to permit or allow the premises to be damaged, or depreciated in value by any act of negligence by Lessee or Lessee's employees, agents, associates or others under Lessee's control or direction; to at once repair or replace any part of the premises or fixtures or appliances therein broken, damaged, frozen, clogged or destroyed and to prevent the freezing of pipes. No alterations, additions or improvements shall be made by the Lessee in or upon said premises without the prior written consent of Lessor, and when made by the same shall not be made upon credit, and Lessor and said property shall in no manner be held liable for same. Lessee agrees to use due care and diligence in guarding said property and in using the same, as a reasonable and careful person does their own.
9. Lessee agrees to surrender possession of said premises at the expiration of this lease without further Notice to Quit and in as good repair and condition as the same are now in or may hereinafter be placed, unavoidable wear through careful use or damage by fire or the elements caused without any fault on Lessee's part.

Prepared by: , Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-

Form No. 636-019  
Revised 5/11/01

10. Lessee shall pay all public utility services used including city sewage and/or disposal service.
11. The Lessor shall not be liable for damages or injury to Lessee or Lessee's employees, agents or associates or any of their property from any cause whatsoever which may arise out of or in connection with the use and occupancy of the premises by any such persons or their property.
12. Lessee represents that Lessee is of good character and is not engaged in any illegal business, the untruth of which shall be grounds for terminating this lease, as shall also be intoxication or engaging in or permitting any unlawful business whatsoever on said premises.
13. Lessee shall comply with all lawful regulations, restrictions, ordinances and laws applicable to the proper use and occupancy of said premises; and not to allow ashes, trash, garbage or junk of any kind to accumulate on the premises or the alley in rear thereof and to remove the same from said premises, to remove snow and other obstructions from the sidewalks and to keep same, including ground, in as good condition as when received or thereafter put by Lessor.
14. If for any reason Lessor desires to terminate this lease, Lessee agrees to vacate and this lease shall terminate on Lessee receiving 30 days written Notice to Quit and Lessee to surrender possession of the premises on the day that Lessee is required to do so by the terms of the notice.
15. That Lessor, Lessor's agents, or workmen may temporarily enter premises to inspect the same, or to show the property to persons interested in leasing or purchasing the premises, or any part thereof.
16. Lessor or Lessor's agent may place "For Rent" or "For Sale" signs on the premises at any time or at any place.
17. Should Lessee hold over by permission of Lessor for three (3) days after expiration of this lease, it is agreed by all parties signing the same that it shall be a tenancy at will on a thirty (30) day term.
18. Any failure on Lessee's part to comply with any of the terms or conditions of this lease shall make the whole amount of rent for said term due, and Lessor may proceed to collect the same, or Lessor may elect to declare a forfeiture of this lease and all of Lessee's rights thereunder by issuing a written Notice of Forfeiture designating the date on which said lease shall be forfeited, canceled and terminated; and the acceptance of partial payments of rent due shall not constitute a waiver of the right of action for balance due, aided by attachment, garnishment, ejectment, or action for forcible entry and detainer for possession on account of the unpaid balance of rent for the month for which part payment was made, or on account of other legal causes.
19. If, during the term of this lease, the building or premises are destroyed by fire, the elements, or any natural cause, or become partially destroyed, so as to render the premises wholly or materially unfit for occupancy, then this lease shall cease and become null and void from the date of such damage or destruction, and then said Lessee shall immediately surrender said premises and/or interest therein to said Lessor. If said premises shall be so slightly damaged by fire, the elements or natural causes so as not to render the same unfit for occupancy in the opinion of the Lessor, then the rent accrued or accruing shall not cease, provided, however, that said Lessor will repair the damage and restore the premises with all reasonable dispatch.
20. Lessor may enter upon the premises for the purpose of drilling test holes or making surveys during the term of this lease, or to accommodate utility relocation.
21. This lease may be terminated by Lessee on 30 days written Notice.
22. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof shall at no time or under any circumstances be used for, or devoted to political purposes or the conduct of political activities, including, but not limited to: meetings, rallies, caucuses, administration, distribution of literature which related to or bears upon the action of any political organization, unit or party.
23. Lessee warrants that Lessee is not employed either by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person, and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.

Prepared by: \_\_\_\_\_, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-

Form No. 636-019  
Revised 5/11/01

24. All expenses incurred by Lessee for moving itself, Lessee's inventory and other personal property from the premises, upon expiration of this lease, shall be Lessee's responsibility, EXCEPT those tenants that were in possession of the premises at the time the State acquired title to property.
25. Damage Deposit of \$\_\_\_\_\_ will be held in escrow and will be returned upon inspection and approval of the property when the lease is terminated. If, however, the Lessee has defaulted in the payment of any rent due or owes other funds to the Lessor pursuant to the rental agreement at the time of lease termination, that portion of the rental deposit that is needed to remedy said default or debt will be withheld by the Lessor.
26. The Lessee will protect, indemnify and save harmless the Lessor from any and all claims, demands, judgement, loss, cost or expense for injury to or death of persons, damage to the property and improvements thereon and damage to the property of any person whomsoever (including employees and representatives of both parties hereto) in any manner arising from the use of the premises by the Lessee without regard to whether any acts or omissions of the Lessor or its agents or servants contributed to said damage.

The Lessee shall furnish the State with an appropriate certificate or copy of a current liability insurance policy in the minimum amount \$1,000,000.00 which must be in effect during the entire term of the lease as stated above. Said policy must specifically include the leased premises and must also include the Lessor as an additional insured party and must meet with the satisfaction of the Lessor. If the Lessee fails to furnish proof of insurance promptly after taking possession of the premises or fails to maintain such insurance during the entire term of this lease, such failure shall be cause for forfeiture, cancellation and termination of this lease.

BY: \_\_\_\_\_  
Lessee Date

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
(SSN) Social Security Number or  
Federal Tax I.D.

**APPROVAL RECOMMENDED:**

**APPROVED**  
**IOWA DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_  
Date

Property Manager  
Telephone No. 515-239-\_\_\_\_\_

BY: \_\_\_\_\_  
Douglas C. Bates, Chief Property Manager Date  
Right of Way Office

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee's personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY
AMBS, IOWA 50010
FARM LEASE

Parcel No.
Project No.

County
Lease No.

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_, 20\_\_\_, by and between the IOWA DEPARTMENT OF TRANSPORTATION, acting for the STATE OF IOWA (hereinafter called Lessor), and \_\_\_ of \_\_\_ (hereinafter called Lessee), WITNESSETH:

That the Lessor does hereby lease unto the Lessee the following described premises, to-wit:

together with all buildings and improvements on the same, from the 1st day of \_\_\_, 20\_\_\_, through 28th day of February, 2003, including both days, subject to the following terms, conditions and covenants:

- 1. Lessee's use of the above described premises under this lease shall be limited to \_\_\_ purposes only, and Lessee agrees to pay Lessor as rent therefor the sum of \$\_\_\_, in accordance with the following:
A. All leases for less than \$5,000 shall be paid in full in advance. Checks or Money Orders shall be made payable to the Iowa Department of Transportation, and must be received by Lessor prior to execution of the lease by the Lessor.
B. Leases for \$5,000 or more may be paid in two (2) equal installments: fifty percent (50%) in advance and prior to execution of the lease by Lessor, and fifty percent (50%) no later than the 1st day of November of the period covered in the lease.
2. Lessor shall notify Lessee, on or before the 1st day of September prior to the expiration of this lease, or any extension thereof, of the availability of an extension to the lease by issuing a "Lease Renewal Notice". Lessee shall notify the Lessor of Lessee's intent to renew said lease by returning the "Lease Renewal Notice" to Lessor together with Lessee's check or money order for the amount due in accordance with the terms provided thereon.
3. If for any reason Lessor desires to cancel this lease, a 30 day written notice will be given to the Lessee. Upon receipt by the Lessee of such notice, the right or option of the Lessee to renew or extend the lease pursuant to the terms of Paragraph 2 hereof shall be canceled and terminated. Lessor agrees to reimburse Lessee for the rent paid and for Lessee's preparation costs incurred prior to the maturity of the crop. If the crop is mature and still standing, at the time the lease is canceled, the Lessor will pay the Lessee the fair market value of the mature standing crop. In that case, rent will not be reimbursed.

If the land leased is used for pasture purposes only, the Lessor will prorate the rent and reimburse the Lessee for rent paid on the remainder of the lease term.

- 4. Any provisions contained within or attached to this agreement are, by this reference, made a part of this lease.

5. Lessee covenants and agrees that Lessee will, during the period of this lease, including all extensions thereof, occupy and use said premises as a farm and for no other purpose whatsoever, and that Lessee will not use said premises or permit the same to be used for any unlawful business or purpose; that Lessee will not sell, assign, sublet or relinquish the premises, without the prior written consent of the Lessor, and that Lessee will cultivate said land in good and husbandlike manner. Lessee further agrees to mow or spray the leased premises to prevent the spread of noxious weeds, and any seed bed preparation done by Lessee prior to receiving a "Lease Renewal Notice"; shall be at Lessee's own risk.
6. It is understood and agreed that the Lessee will, at the termination of this lease, restore the leased premises to a condition substantially similar to the condition which it was in at the beginning of this lease. The Lessee further agrees to reseed all disturbed areas of the leased premises. The Lessee agrees that all restoration and reseeded work will be done to the satisfaction of the Iowa Department of Transportation and all at Lessee's expense.  
  
In the event Lessee fails to leave the premises in the same or better condition that it was on \_\_\_\_\_, Lessee shall be responsible for all cost incurred by Lessor to recondition the parcel to its condition prior to leasing date.
7. The Lessee shall, at Lessee's own expense, construct and maintain any fencing necessary for utilization of the land, and if any livestock is grazed or pastured on the land being leased, the fence must be of a type and quality sufficient to restrain livestock. Lessee agrees to remove any fencing, erected by Lessee prior to the termination of this lease.
8. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof, shall at no time or under any circumstances be used for or devoted to, political purposes or the conduct of political activities, including, but not limited to: meetings, rallies, caucuses, distribution of literature, which relates to or bears upon the action of any political organization, unit, or party.
9. The Lessor reserves the right to enter upon that portion of the leased area for any reason. In the event growing crops are destroyed, as a result of this entry, the area disturbed within the leased area will be measured by the Resident Construction Engineer. Lessee shall be reimbursed for any growing crops that are damaged.
10. It is specifically understood that no access will be permitted between the leased premises and the abutting highway from Station \_\_\_\_\_ to Station \_\_\_\_\_.
11. The Lessee, upon failing to comply with the terms and conditions of this lease and any extensions thereof, shall, upon request from the Lessor, immediately vacate and surrender possession of the leased premises.
12. Lessee warrants that Lessee is not employed by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person; and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.

BY: \_\_\_\_\_  
Lessee Date

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
(SSN) Social Security Number or  
Federal Tax I.D.

**APPROVAL RECOMMENDED:**

**APPROVED**  
**IOWA DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_  
Date  
Property Manager  
Telephone No. 515-239-\_\_\_\_\_

BY: \_\_\_\_\_  
Douglas C. Bates, Chief Property Manager Date  
Right of Way Office



APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee's personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY
AMES, IOWA 50010
RIGHT OF WAY LEASE

Parcel No.
Project No.

County
Lease No.

THIS AGREEMENT made and entered into this \_\_\_ day of \_\_\_, 20\_\_\_, by and between the Iowa Department of Transportation, acting for the State of Iowa (hereinafter called "Lessor") and \_\_\_, of \_\_\_, County of \_\_\_, State of Iowa, (hereinafter called "Lessee"), WITNESSETH:

Section 1. The Lessor, for and in consideration of MUTUAL BENEFIT and the covenants and agreements herein contained, hereby leases to the Lessee for \_\_\_ PURPOSES ONLY, all that part of the present right of way along the \_\_\_ side of Primary Road No. U.S. \_\_\_, from Station \_\_\_ to Station \_\_\_, located \_\_\_ in Section \_\_\_, Township \_\_\_, Range \_\_\_, as shown in cross hatch on the plat hereto attached.

Section 2. If any livestock is grazed or pastured on the land being leased, the Lessee must construct and maintain at Lessee's own expense fencing of a type or quality sufficient to restrain the livestock. The Lessee agrees to remove any improvements, including fencing erected by Lessee upon the leased premises and to vacate and surrender quiet and peaceable possession of said premises upon thirty (30) days written notice.

Section 3. The Lessor reserves the right to enter upon that portion of the leased area for any reason (highway construction or maintenance, utility relocation, to erect and maintain snow fence, or any other highway related purpose). It is further agreed that Lessee shall not be entitled to any compensation as a result thereof.

Section 4. It is further agreed that the Lessee shall not assign or sublet any part of the leased premises except with the prior written consent of the Lessor and that, if in the opinion of the Iowa Department of Transportation, the Lessee abandons the property or fails to keep each and every condition of this lease, the rights of the Lessee shall cease and the Lessor may take immediate possession of the premises.

Section 5. If for any reason the Lessor desires to terminate this lease, Lessee agrees to vacate and this lease shall terminate on Lessee receiving \_\_\_ days Notice to Quit and Lessee agrees to surrender possession of the premises on the day that Lessee is required to do so by the terms of the notice.

Section 6. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof, shall at no time or under any circumstances be used for, or devoted to political purposes or the conduct of political activities, including but not limited to: meetings, rallies, caucuses, administration, distribution of literature which relates to or bears upon the action of any political organization, unit or party.

Section 7. Lessee warrants that Lessee is not employed by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person; and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.

Section 8. Any provisions contained within or attached to this lease are, by this referenced, made a part of this lease.

Prepared by: \_\_\_\_\_, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1300

Form No. 636-023  
Revised 8/1/98

**IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first herein written.**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_  
Lessee,

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
(SSN) Social Security Number or  
Federal Tax I.D.

STATE OF IOWA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the same as (his) (her) (their) voluntary act and deed.

(SEAL) \_\_\_\_\_ (Sign in Ink)  
\_\_\_\_\_  
(Type/Print Name)  
Notary Public in and for the State of Iowa

**APPROVAL RECOMMENDED:**

By \_\_\_\_\_  
Date

Property Manager  
Telephone No. 515-239-

**APPROVED  
IOWA DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
(Type/print name) Date  
(Type/print title)

STATE OF IOWA )  
 )SS:  
COUNTY OF STORY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, A Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being duly sworn did say that he/she is the \_\_\_\_\_, for the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department by its authority and the said person as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said Department, by it voluntarily executed.

(SEAL) \_\_\_\_\_ (Sign in Ink)  
\_\_\_\_\_  
(Type/Print Name)  
Notary Public in and for the State of Iowa

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.



Iowa Department of Transportation  
OFFICE OF RIGHT OF WAY  
AMES, IOWA 50010  
CONTRACTOR'S LEASE AGREEMENT

Parcel No. \_\_\_\_\_  
Project No. \_\_\_\_\_

County \_\_\_\_\_  
Lease No. \_\_\_\_\_

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Iowa Department of Transportation, acting for the State of Iowa (hereinafter called "Lessor") and \_\_\_\_\_ of \_\_\_\_\_, (hereinafter called "Lessee").

1. The Lessor, for and in consideration of \$\_\_\_\_\_/mo. and the covenants and agreements herein contained, hereby leases to the Lessee for the construction period beginning \_\_\_\_\_, through the completion of said project to be determined by the Resident Construction Engineer's Office, for \_\_\_\_\_ **PURPOSES ONLY**, all that part of the right of way located \_\_\_\_\_, in Sec. \_\_\_\_\_, Twp. \_\_\_\_\_, Range \_\_\_\_\_, in \_\_\_\_\_ County, Iowa, containing \_\_\_\_\_ **acres** as shown on the attached plat. Actual area to be staked and identified by the Resident Construction Engineer's Office.
2. Lessee acknowledges that Lessee has inspected and is aware of the condition of the property and the same is leased without any representation or warranty by the Lessor whatsoever.
3. Lessee will vacate and surrender quiet and peaceable possession of said premises upon thirty (30) days written notice from Lessor. It is further agreed Lessee shall notify the Resident Construction Engineer ten (10) days prior to Lessee vacating the premises. The Resident Engineer will inspect the premises. If the area is satisfactory, the Resident Engineer will notify Property Management to release the bond.
4. A \$\_\_\_\_\_ Damage Deposit (check or money order) shall be made payable to the Iowa Department of Transportation and mailed or delivered to the Property Management Section of the Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010, together with this signed agreement. Said bond shall be returned to Lessee upon the recommendation of the Resident Construction Engineer.
5. It is understood and agreed that the Lessee will not allow the release or disposal of any fuel, oil, grease and any and all other petroleum products or other hazardous materials or substances within the leased area or on any adjacent lands.

If any petroleum products and/or chemicals should accidentally be released upon the leased premises or adjacent land, the Lessee agrees to immediately clean up and remove said petroleum products or chemicals to the satisfaction of the Iowa Department of Transportation and the Department of Natural Resources. The Lessee agrees to indemnify and hold the Iowa Department of Transportation harmless from any damages or loss which may result therefrom.

6. Parking vehicles used for the storage of hazardous materials or substances is prohibited.
7. Prior to the termination of this lease, Lessee agrees to remove all unused materials, machinery, scrap iron, lumber and other trash or debris from the leased area.
8. It is understood and agreed that the Lessee will, at the termination of this lease, restore the leased premises to a condition substantially similar to the condition which it was in at the beginning of this lease. The Lessee further agrees to reseed all disturbed areas of the leased premises. The Lessee agrees that all restoration and reseeded work will be done to the satisfaction of the Iowa Department of Transportation and all at Lessee's expense.

Failure of the Lessee to leave the premises in the same or better condition that it was on \_\_\_\_\_, shall cause the Lessor to claim, from Lessee, all cost incurred to recondition the parcel as it was prior to leasing date.

9. Any provision contained within or attached to this agreement are, by this reference, made a part of this lease.

Prepared by: \_\_\_\_\_, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1300

Form No. 636-026  
Revised 5/11/01

10. It is especially agreed that the Lessor may enter upon and use so much of said premises at any time as it may deem necessary for highway construction or maintenance purposes.
11. The Lessee will be responsible for complying with all provisions of the Department of Natural Resources's storm water discharge program. It is understood and agreed that the Lessee will obtain the proper permit from the Iowa Department of Natural Resources.

**IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first herein written.**

BY: \_\_\_\_\_  
Lessee                      Date

Telephone No. \_\_\_\_\_

\_\_\_\_\_  
(SSN) Social Security Number or  
Federal Tax I.D.

APPROVAL RECOMMENDED:

APPROVED  
IOWA DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
Resident Construction Engineer                      Date

By \_\_\_\_\_  
Douglas C. Bates, Chief Property Manager      Date  
Right of Way Office

Telephone No. \_\_\_\_\_

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.

County

Parcel No.

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**Lead Warning Statement**

*Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.*

**Lessor's Disclosure**

Lessor's knowledge of lead-based paint and/or lead-based paint hazards present in the housing are as follows:

Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing except the following: None.

Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards present in the housing. These documents are as follows:

Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).  
None available.

**Lessee's Acknowledgment**

By the signing of this disclosure, lessee waives any further opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Lessee has received copies of all information listed above.

Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate. Upon signing, lessee(s) further waive any additional time for purposes of assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Lessor:

Lessee:

\_\_\_\_\_  
Property Manager  
Iowa Department of Transportation  
or Authorized Agent acting for the  
Iowa Department of Transportation

\_\_\_\_\_  
Lessee:





# Iowa Department of Transportation

Office of Right of Way

## NOTICE OF TERMINATION RIGHT OF WAY LEASE

TO \_\_\_\_\_ COUNTY \_\_\_\_\_  
 \_\_\_\_\_ PROJECT \_\_\_\_\_  
 \_\_\_\_\_ PARCEL \_\_\_\_\_  
*Lessee(s) in Possession* LEASE NO. \_\_\_\_\_

This is to inform you that in accordance with Section 2 of your lease dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, and recorded in Book \_\_\_\_, Page \_\_\_\_, as \_\_\_\_, \_\_\_\_, County, you and each of you are hereby notified that your tenancy of the right of way along the \_\_\_\_ side of Primary Road No. \_\_\_\_, from Station \_\_\_\_ to Station \_\_\_\_, in Section \_\_\_\_, Township \_\_\_\_N, Range \_\_\_\_, for \_\_\_\_ purposes only, is terminated as of midnight on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, as \_\_\_\_.

*Reason for Lease Being Terminated*

You and each of you are hereby requested to vacate and quit the said premises at the time above specified and surrender possession to the undersigned. Any improvement, including fencing located within the leased area is to be removed prior to the termination date. Should you fail to vacate said premises, legal action may be instituted to cause such possession as provided by law.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

IOWA DEPARTMENT OF TRANSPORTATION  
Lessor

By: \_\_\_\_\_  
\_\_\_\_\_, Property Manager

STATE OF IOWA  
                  ss  
STORY COUNTY

On this \_\_\_\_ day of \_\_\_\_, 20\_\_, before me \_\_\_\_, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_ to me personally known, who being by me duly sworn did say that he/she is the Property Manager for the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department. Said instrument to be voluntary act and deed of said Department and by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY
AMES, IOWA 50010
LEASE AGREEMENT

Parcel No.
Project No.

County
Lease No.

THIS AGREEMENT made and entered into this \_\_\_ day of \_\_\_, 20\_\_\_, by and between the Iowa Department of Transportation, acting for the State of Iowa (hereinafter called "Lessor") and \_\_\_, of \_\_\_, (hereinafter called "Lessee").

Section 1. The Lessor, for and in consideration of \_\_\_ and the covenants and agreements herein contained, hereby leases to the Lessee from the \_\_\_ day of \_\_\_, 20\_\_\_, to the \_\_\_ day of \_\_\_, 20\_\_\_, the following described premises, to-wit:

Section 2. The Lessee agrees to vacate and surrender quiet and peaceable possession of the leased premises at the expiration of the term thereof, unless this lease has previously been extended by written agreement between the parties hereto. It is especially agreed that the Lessor may enter upon and use so much of said premises, at any time, as it may deem necessary for the purpose of highway construction or maintenance.

Section 3. The Lessee shall use the leased premises for \_\_\_ ONLY. Any improvements shall be removed by Lessee upon termination of this lease. It is understood and agreed that such improvements shall be at the expense of the Lessee and approved by Lessor. Lessee agrees that no permanent structure(s) will be permitted on this tract unless approved by the Lessor.

Section 4. It is understood and agreed that the Lessee will not allow the release or disposal of any fuel, oil, grease and any and all other petroleum products or other hazardous materials or substances within the leased area or on any adjacent lands.

If any petroleum products and/or chemicals should accidentally be released upon the leased premises or adjacent land, the Lessee agrees to immediately clean up and remove said petroleum products or chemicals to the satisfaction of the Iowa Department of Transportation and the Department of Natural Resources. The Lessee agrees to indemnify and hold the Iowa Department of Transportation harmless from any damages or loss which may result therefrom.

Section 5. Parking vehicles used for the storage of hazardous materials or substances is prohibited.

Section 6. In the event the Lessee would abandon the property or fail to keep each and every condition of this lease, the rights of the Lessee shall cease and the Lessor may take immediate possession of the premises.

Section 7. Any provision contained within or attached to this agreement are, by this reference, made a part of this lease.

Section 8. It is understood and agreed that the Lessee shall maintain and preserve the desirable trees and shrubs and it is specifically understood that removal of any living tree shall be prohibited without the written permission of the Lessor.

**Section 9.** It is understood and agreed that the Lessee will, at the termination of this lease, restore the leased premises to a condition substantially similar to the condition which it was in at the beginning of this lease. The Lessee further agrees to reseed all disturbed areas of the leased premises. The Lessee agrees that all restoration and reseeded work will be done to the satisfaction of the Iowa Department of Transportation and all at Lessee's expense.

Failure of the Lessee to leave the premises in the same or better condition that it was on insert the date the lease begins, shall cause the Lessor to claim, from Lessee, all cost incurred to recondition the parcel as it was prior to leasing date.

**Section 10.** The Lessee will protect, indemnify and save harmless the Lessor from any and all claims, demands, judgement, loss, cost or expense for injury to or death of persons, damage to the property and improvements thereon and damage to the property of any person whomsoever (including employees and representatives of both parties hereto) in any manner arising from the use of the premises by the Lessee without regard to whether any acts or omission of the acts of the Lessor or its agents or servants contributed to said damage.

The Lessee shall furnish the State with an appropriate certificate or copy of a current liability insurance policy in the minimum amount \$1,000,000.00 which must be in effect during the entire term of the lease as stated above. Said policy must specifically include the leased premises and must also include the Lessor as an additional insured party and must meet with the satisfaction of the Lessor. If the Lessee fails to furnish proof of insurance promptly after taking possession of the premises or fails to maintain such insurance during the entire term of this lease, such failure shall be cause for forfeiture, cancellation and termination of this lease.

**Section 11.** It is further agreed that Lessee may request termination of this lease by notifying the Lessor in writing thirty (30) days prior to such intention to vacate the leased premises.

**Section 12.** Lessor may terminate this lease for any reason deemed to be in the best interest of the State upon written notice to the Lessee thirty (30) days prior to such termination of said lease.

**Section 13.** It is further agreed that the Lessee shall not assign or sublet any part of the leased premises.

**Section 14.** Lessee shall maintain area free of trash and debris. Lessee shall also be responsible for mowing and normal maintenance during lease period.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first herein written.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_  
Lessee,

Telephone No. \_\_\_\_\_

SSN or Federal Tax ID \_\_\_\_\_

STATE OF IOWA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the same as (his) (her) (their) voluntary act and deed.

(SEAL) \_\_\_\_\_ (Sign in Ink)  
\_\_\_\_\_ (Type/Print Name)  
Notary Public in and for the State of Iowa

**APPROVAL RECOMMENDED:**

By \_\_\_\_\_  
Property Manager Date  
Telephone No. 515-239- \_\_\_\_\_

**APPROVED  
IOWA DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_ (Type/print name)  
Date \_\_\_\_\_  
\_\_\_\_\_ (Type/print title)

STATE OF IOWA )  
 )SS:  
COUNTY OF STORY )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, A Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being duly sworn did say that he/she is the \_\_\_\_\_, for the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department by its authority and the said person as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said Department, by it voluntarily executed.

(SEAL) \_\_\_\_\_ (Sign in Ink)  
\_\_\_\_\_ (Type/Print Name)  
Notary Public in and for the State of Iowa

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee's personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.

**AGREEMENT**

Parcel No. \_\_\_\_\_ County \_\_\_\_\_  
Project No. \_\_\_\_\_

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ hereinafter designated as the "Owner" and the Iowa Department of Transportation, hereinafter designated as the "Department".

The Owner agrees not to lease to any tenant the following described property situated on the above project, to wit:

In consideration of the following terms, provisions, and conditions:

- 1. **TIME PERIOD:** The duration of this Agreement shall be from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, until the date title is to be conveyed per the terms of a signed contract or the date of condemnation, which ever is applicable. It is understood no extensions will be given.
- 2. **CONSIDERATION:** The Department shall pay an amount equal to the rental in the amount of \$\_\_\_\_\_ per month that the premises are vacant during the term of this agreement. Payment shall be paid every month, in arrears, by the 10th day of the succeeding month during the time period of this agreement. Should this agreement be terminated prior to the last day of the month, the rent will be prorated.
- 3. **TERMINATION:** This agreement will be terminated without further notice, on the date described in Item 1. The Department also reserves the right to terminate this agreement upon 30 days notice to the Owner in writing.

Nothing in this agreement shall be construed to create a landlord-tenant relationship between the Owner and the Department.

**OWNER:**

**IOWA DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
(Date)  
Name

By: \_\_\_\_\_ (Date)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone number

800 Lincoln Way, Ames, Iowa 50010

(TEL) 515-239-1300 ♦ (FAX) 515-233-7859

**CERTIFIED MAIL**

**When Communicating Refer To:**

\_\_\_\_\_ County

Project No.: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

Lease No.: \_\_\_\_\_

**3-DAY NOTICE OF NONPAYMENT OF RENT**

Dear \_\_\_\_\_:

We are hereby notifying you that you are being given three (3) days from the date you receive this notice to submit your delinquent rent. Your rent is delinquent in the total amount of \$\_\_\_\_\_ for the month of \_\_\_\_\_.

Please be reminded that your rent is due in our office on or before the due date.

If we do not receive the aforementioned rent from you within the above specified length of time, we will have no other choice than to terminate this lease immediately.

Sincerely,

\_\_\_\_\_  
Lease Inventory Manager  
Office of Right of Way

*This letter also sent by regular mail to the address listed above.*

800 Lincoln Way, Ames, Iowa 50010

(TEL) 515-239-1300  
(FAX) 515-233-7859

**CERTIFIED MAIL**

\_\_\_\_\_, 20\_\_

**When Communicating Refer To:**

\_\_\_\_\_ County  
Project No.: \_\_\_\_\_  
Parcel No.: \_\_\_\_\_  
Lease No.: \_\_\_\_\_

(NAME)  
(ADDRESS)

**NOTICE OF TERMINATION OF FARM TENANCY  
AND CANCELLATION OF RIGHT OF RENEWAL**

Dear Tenant:

This is to notify you that the above referenced lease between yourself and the Iowa Department of Transportation will be canceled effective \_\_\_\_\_, 20\_\_.

It has come to the attention of this office that this parcel of land will be \_\_\_\_\_  
\_\_\_\_\_.

Please discontinue your use of the referenced parcel of land.

If you have any questions, please contact this office at the above referenced address or telephone number.

Sincerely,

Property Management  
Project Development Division

bc: District Engineer  
District Maintenance Manager  
RCE  
Parcel File



800 Lincoln Way, Ames, Iowa 50010

15-239-1300 (TEL)  
15-233-7859 (FAX #)

**CERTIFIED LETTER**

\_\_\_\_\_, 20\_\_

**When Communicating Refer To:**

\_\_\_\_\_ County  
Project No.: \_\_\_\_\_  
Parcel No.: \_\_\_\_\_  
Lease No.: \_\_\_\_\_

(Name Of Tenant)  
(Address)

**NOTICE OF LEASE CANCELLATION**  
**NOTICE TO QUIT**

Dear Tenant:

We are hereby notifying you that the above referenced lease between you and the Iowa Department of Transportation will be canceled effective \_\_\_\_\_, 20\_\_ for (reason). *You are required to vacate the premises on or before the aforementioned date.*

Please be aware that you remain responsible for the payment of any and all unpaid rent and expenses through the day you vacate the premises. (IF delinquent, add Your payments are delinquent in the amount of \$\_\_\_\_\_ for \_\_\_\_\_ 20\_\_, through \_\_\_\_\_, 20\_\_. Please submit your payment immediately.

When you have vacated the premises, please contact this office so that the property can be inspected and the keys may be picked up.

If you have any questions, please contact this office at the above referenced address and telephone number.

Sincerely,

Property Management  
Project Development Division

*A copy of this letter was also sent by regular mail to the property address.*



# APPENDIX

“C”

# SALE FORMS



**Iowa Department of Transportation**  
OFFICE OF RIGHT OF WAY  
AGREEMENT AND BILL OF SALE  
IMPROVEMENTS, STRUCTURES AND MISCELLANEOUS ITEMS  
WAIVER OF SUIT  
SALE WITH NO WARRANTIES

Parcel No. \_\_\_\_\_  
Project No. \_\_\_\_\_

County \_\_\_\_\_

THIS AGREEMENT, by and between the IOWA DEPARTMENT OF TRANSPORTATION, Ames, Iowa, Seller and \_\_\_\_\_ (Name/Address), Buyer. The Seller hereby sells, transfers and conveys to the Buyer the \_\_\_\_\_ (List Items) situated at \_\_\_\_\_ (address/town), Iowa, formerly owned by \_\_\_\_\_ (Name) for the total sum of \$ \_\_\_\_\_ in full payment for the above described improvement. The total sum includes sales tax when required. Sales tax will be collected on the sale of all personal property. The Buyer agrees to remove said improvement from the premises on or before \_\_\_\_\_ (Month/Date), 20\_\_\_\_. A Performance Bond is required in the amount of \$ \_\_\_\_\_ (OR) NONE \_\_\_\_\_. This Bond shall be a Check or Money Order; PAYABLE TO, IOWA DEPARTMENT OF TRANSPORTATION; mail or deliver to the Iowa Department of Transportation, Office of ROW, Property Management Section, Ames, Iowa 50010, within five days from the date of this sale. It is understood and agreed that the removal of said improvement(s) is the essence of this agreement and that improvement(s) remaining on the premises after the above date, may, unless the removal date has been extended by written consent of the Seller, be removed, destroyed, or disposed of in any manner deemed feasible by the Seller, without further notice or obligation to the Buyer and the Buyer shall forfeit any Performance Bond posted in connection with the removal of said improvement. If this Bill of Sale is for a structure, it also understood and agreed that all improvements shall be removed, by the Buyer, to foundation or ground level. Buyer shall remove all debris resulting from moving operations and shall leave the building site reasonably clean. The Buyer is to cap the sewer and disconnect all existing utilities. The Buyer shall forfeit his/her Performance Bond upon failing to comply with these conditions.

The Buyer waives any and all claims against the State, this Department and their agents, officers, or employees for damages for personal injury or for property damage that may arise from Buyer's entry upon and removal of property and activities on the property, and from any subsequent use of the items listed, whether said injury or damage results from obvious or hidden defects. Buyer agrees to defend and indemnify the State, this Department and their agents, officers, or employees, from any claims brought against them by Buyer's principals, agents and employees or by a third party which arise out of Buyer's entry upon and removal of property and activities on the property and subsequent use of the items listed in this Agreement and Bill of Sale. It is further understood that the items listed in this Agreement and Bill of Sale are received in an "AS IS" condition with no warranties, express or implied, and no warranty of title.

Signed and acknowledged by:

IOWA DEPARTMENT OF TRANSPORTATION, Seller

Buyer: \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_  
(Agent Name), Property Manager Date \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_

**FOR IOWA DEPARTMENT OF TRANSPORTATION USE ONLY**

Required \_\_\_\_\_ Excess \_\_\_\_\_  
Sealed Bid \_\_\_\_\_ Auction \_\_\_\_\_ Negotiated \_\_\_\_\_  
Sale Date \_\_\_\_\_  
Date Performance Bond Received \_\_\_\_\_

Voucher No. \_\_\_\_\_  
Received by Iowa Department of Transportation  
Office of Accounting  
\_\_\_\_\_ day of \_\_\_\_\_, 2003  
Receipt Nos. \_\_\_\_\_  
Amount \$ \_\_\_\_\_ By \_\_\_\_\_

Cost Center (Circle one)      611000      601000      661000

System Number	County Number	Control Section Number	Parent Number	Parcel Number	Object Number	Function Number	Rural - 1 Urban - 2	Part 1 Non-Part-2 Suspense-3	Amount
									\$
TOTAL									\$

COST CENTER - 631000

COST CENTER NAME - PRIMARY ROAD FUND GENERAL

SALES TAX USE ONLY	OBJECT CODE	FUNCTION CODE	AMOUNT
			\$
TOTAL			\$

Douglas C. Bates \_\_\_\_\_ Date \_\_\_\_\_  
Chief Property Manager

DISTRIBUTION: Property Management Section  
Buyer  
Accounting Office, Temporary Record

Form 636-037  
Revised 8/16/01



**Iowa Department of Transportation**  
**OFFICE OF RIGHT OF WAY**  
**AMES, IOWA 50010**  
**UTILITY INCOME VOUCHER**

Parcel No. \_\_\_\_\_  
Project No. \_\_\_\_\_

County \_\_\_\_\_  
Date \_\_\_\_\_

**RECEIPT  
(RENTAL INCOME)**

Received From:	Amount of Account	\$
	Amount of Paid	\$
	Balance Due	\$

Received By \_\_\_\_\_

**AUCTION OR  
(MISCELLANEOUS INCOME)**

Received From:	Description:

Required   Excess   Office of Accounting Receipt No. \_\_\_\_\_ Voucher No. \_\_\_\_\_

Cost Center 611000 Cost Center Name Primary Road Fund - Primary Regular

System Number	County Number	Control Section	Parent Number	Parcel Number	Object Number	Function Number	Rural-1 Urban-2	Part-1 Non Part-2 Suspense-3	Amount
									\$
TOTAL									\$

**COST CENTER - 6310 COST CENTER NAME--PRIMARY ROAD FUND GENERAL**

SALES TAX USE ONLY	Object Number	Function Number	Amount
			\$
TOTAL			\$



Office of Right of Way  
**INCOME DEPOSIT**

Parcel No. \_\_\_\_\_  
Project No. \_\_\_\_\_

County \_\_\_\_\_  
Date \_\_\_\_\_

TO:

	Order No. _____
	Description _____

**NOTICE:** This is the Iowa Department of Transportation's official notice of its acceptance of your bid and its request for your remittance of the bid balance due. In order to assure proper credit please attach your check to this original deposit form and send to the Iowa Department Of Transportation, Office of Accounting, Ames, Iowa 50010, Attn: Cashier.

The Department acknowledges receipt of your bid deposit in the amount of \$ \_\_\_\_\_ and did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ approve the sale accepting your bid of \$ \_\_\_\_\_.

Per the terms of your bid, please attach a check or money order for the balance of your bid. The balance due is \$ \_\_\_\_\_.

This balance due must be deposited within 30 days from the Department's acceptance of your bid. If it is convenient, you may deposit the balance at an earlier date. Per the terms of the sale proposal, your bid may be rejected and retained by the State should you fail to make timely deposit of the balance due.

Application for Executive Council approval of the sale and issuance of State Patent will be made upon the Department's receipt of the full amount of your bid.

As you have requested, the Patent will be issued in the name of:

PROPERTY MANAGEMENT SECTION

By \_\_\_\_\_  
, Property Manager

**FOR IOWA DEPARTMENT OF TRANSPORTATION USE ONLY**

OFFICE OF ACCOUNTING: Receipt of monies in the form of certified \_\_\_\_\_, cashier \_\_\_\_\_, or others \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is hereby acknowledged.

Receipt No. \_\_\_\_\_

Office of Accounting \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_ Excess \_\_\_\_\_ Required \_\_\_\_\_ Facilities  
\_\_\_\_ Sealed Bid \_\_\_\_\_ Auction \_\_\_\_\_ Negotiated  
\_\_\_\_ 306.23 Purchase Preference

Voucher No. \_\_\_\_\_  
Approved By Order No. \_\_\_\_\_

Cost Center 611000 \_\_\_\_\_

System Number	County Number	Control Section Number	Parent Number	Parcel Number	Object Number	Function Number	Rural - 1 Urban - 2	Part 1 Non-Part-2 Suspense-3	Amount
									\$
TOTAL									\$

\_\_\_\_\_  
Douglas C. Bates \_\_\_\_\_ Date \_\_\_\_\_  
Property Management Supervisor

DISTRIBUTION: Original to Property Management  
Copy to Buyer  
Copy to Accounting  
Temporary Copy to Property Management

SALE OF IMPROVEMENTS	HIGHWAY DIVISION	COUNTY
	IOWA DEPARTMENT OF TRANSPORTATION	(Project No.)
SALE DATE:	OFFICE OF RIGHT OF WAY	PARCEL NO.
	BID PROPOSAL FORM	SALE NO.
	FOR SALE OF IMPROVEMENTS	

**INSTRUCTIONS:**

Bids must be sealed in special envelope and accompanied by a CHECK or MONEY ORDER (we will NOT accept CASH) in the full amount of the bid, and made payable to the Iowa Department of Transportation, Ames, Iowa, prior to 1:00 P.M., \_\_\_\_\_ (sale date) North Annex, lower level.

The bids will be opened in the Conference Center adjacent the North Annex located on the north side of Lincoln Way across from the Central Complex of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

**All persons bidding on Residential Properties must sign a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards and return it with the sealed bid. Bids received without signed disclosure forms may be rejected. Should any questions arise concerning the disclosure of information, including time for purchasers to inspect, please call the Property Management Office at (515) 239-1300. (Mobile homes are excluded from this requirement.)**

A Bill of Sale will be furnished to the successful bidders, and checks or money orders will be returned to the unsuccessful bidders.

**NOTE: The purchaser shall cap the sewers and disconnect all existing utilities.**

A \$ \_\_\_\_\_ Performance Deposit for Item 1 and a \$ \_\_\_\_\_ each item in the form of a CHECK or MONEY ORDER made payable to the Iowa Department of Transportation, shall be mailed or delivered to the Office of Right of Way, Property Management Section, Iowa Department of Transportation, Ames, Iowa 50010, within five (5) days from the date the successful bidder is notified. The removal of said improvements is the essence of this agreement. No extension of the removal date shall be valid unless consented to in writing by the Seller. Improvements remaining on the premises after the removal date may be destroyed or removed in any manner deemed feasible by the Seller without further notice or obligation to the Purchaser, and the Performance Bond shall be forfeited. If all the terms of this sale are complied with, the Bond will be returned.

Upon completion of all removal and clean up of debris operations, the purchaser agrees to install a fence around the work site. The fence will be made of 4 ft. tall wood slat and wire snow fence material attached to 5 2 ft. steel t-bar fence posts spaced no more than 10 ft. apart and shall meet with the approval of the Iowa Department of Transportation. Upon installation and the approval of the Iowa Department of Transportation, said fence will become the property of the Iowa Department of Transportation.

**The Buildings will be open for inspection on \_\_\_\_\_, 20\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_.**

These improvements are to be removed from the site intact and may not be demolished at the site for salvageable materials. All debris resulting from removal operations is to be removed by the Purchaser. The Purchaser will be allowed until \_\_\_\_\_, 20\_\_\_\_ to remove the improvements to foundation or ground level.

COUNTY  
(Project No.)  
PARCEL NO.  
SALE NO.

**IMPORTANT NOTE TO BIDDERS: PERMITS ARE REQUIRED TO MOVE SOME ITEMS ON CITY STREETS, AND IOWA HIGHWAYS. YOU ARE ADVISED TO CONTACT IOWA DEPARTMENT OF TRANSPORTATION PERMIT CENTER, DES MOINES, IOWA. TELEPHONE NO. 515-237-3264 FOR MOVING DISTANCE AND PERMIT INFORMATION PRIOR TO SUBMITTING YOUR BID.**

**THERE ARE LOCAL AND/OR STATE REQUIREMENTS WHICH MAY GOVERN REMOVAL OF THESE BUILDINGS. YOU ARE HEREBY ADVISED TO MAKE YOURSELF AWARE OF ANY SUCH REQUIREMENTS PRIOR TO SUBMITTING A BID.**

The Iowa Department of Transportation reserves the right to waive any technicalities and to reject any or all bids.

PROPOSAL TO: IOWA DEPARTMENT OF TRANSPORTATION  
HIGHWAY DIVISION  
PROPERTY MANAGEMENT SECTION  
800 LINCOLN WAY  
AMES, IOWA 50010-6993

I certify that I have inspected this property to my complete and total satisfaction and that I am fully aware of the terms and conditions under which the property is offered for sale. I understand that the property is being sold as is with no warranties of any nature expressed or implied. I submit a bid, as shown, on the following item:

**ALL CHECKS SUBMITTED MUST BE FOR THE ENTIRE AMOUNT OF THE BID FOR EACH ITEM**

Item 1 -

Performance Bond \$ \_\_\_\_\_

CHECK or MONEY ORDER in the amount of \$ \_\_\_\_\_

---

Item 2 -

Performance Bond \$ \_\_\_\_\_

CHECK or MONEY ORDER in the amount of \$ \_\_\_\_\_

---

The above items are located at \_\_\_\_\_

**A SEPARATE Check or Money Order in the bid amount for each item for which a bid is submitted is required.**

SALES TAX IS NOT COLLECTED ON BUILDINGS. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number





**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**Lead Warning Statement**

*Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based hazards is recommended prior to purchase.*

**Seller's Disclosure**

Seller's knowledge of lead-based paint and/or lead-based paint hazards present in the housing is as follows:

- Seller has no knowledge of lead-based paint and/or lead-based hazards in the housing except the following:  
None

Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards present in the housing. These documents are as follows:

- Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based hazards in the housing (list documents below). None Available

**Purchaser's Acknowledgment**

By the signing of this disclosure, purchaser waives any further opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

- Purchaser has received copies of all information listed above.
- Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- Purchaser has received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead based paint hazards.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate. Upon signing, purchaser(s) further waive any additional time for purposes of assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Seller:

X

Purchaser:

X

Property Management  
Iowa Department of Transportation  
800 Lincoln Way  
Ames, Iowa 50010

Purchaser:

X

800 Lincoln Way, Ames, Iowa 50010

515-239-1300 (TEL #)  
515-233-7859 (FAX #)

**CERTIFIED LETTER**

, 2007

**When Communicating, Refer To:**

County

Project No.:

Parcel No.:

Address

Dear :

This letter is sent to you to comply with the provisions of Section 306.23, Iowa Code. These provisions require the Iowa Department of Transportation to notify you as the present owner of the adjacent land from which certain lands were originally acquired, or as an owner of certain lands when originally purchased or condemned for highway purposes, that we are selling the tract of land described below:

insert Legal Description

You and all other persons qualified under these provisions are provided a period of 60 days from the date of this letter to be heard and make offers for this tract. The names and addresses of others receiving this notice, if any, are listed below. Offers received from persons qualified under these provisions that equal or exceed other offers, and equal or exceed fair market value, shall be given preference. Fair market value for the tract has been established at \$ . If you are interested in submitting an offer, please complete and return the enclosed *Offer to Buy* form, along with your payment, in the enclosed self-addressed envelope.

If no offers are received by , 20\_\_, or no offer equals or exceeds the fair market value, the property will be disposed of by the Iowa Department of Transportation by other means.

If you have any questions regarding this disposal, please contact me at 515-239- .

Sincerely,

Property Manager  
Office of Right of Way

:lk  
Enclosures

Others Receiving Notice:

bc: , District Engineer  
, District Construction Engineer  
, District Maintenance Manager

Iowa Department of Transportation  
Property Management

Land Sale Check Sheet

Acquired From: \_\_\_\_\_ County \_\_\_\_\_  
Project No. \_\_\_\_\_  
Parcel No. \_\_\_\_\_

DISPOSAL RECOMMENDATION:

- 1. Request to District Office \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_
- 2. Request to Design \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_
- 3. Request to Traffic & Safety \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_
- 4. Request to Systems Planning \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_
- 5. Request to Facilities Support \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_
- 6. Request to Location and Environment \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_

FHWA APPROVAL IF APPLICABLE:

\_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_

PRE-SALE PREPARATION:

- 1. Notify Lease Coordinator and address lease \_\_\_\_\_
- 2. Letter to tenants notifying of property to be sold and canceling lease \_\_\_\_\_
- 3. Description and plat received from District Land Surveyor \_\_\_\_\_
- 4. Request for Appraisal or Value opinion: \_\_\_\_\_ Received \_\_\_\_\_
- 5. Notice of sale to Present Owner of Adjacent Land (from which land was acquired) \_\_\_\_\_  
(Must be sent by Certified Mail to last known address) Reply Received \_\_\_\_\_
- 6. Notice to Owner at the time of acquisition \_\_\_\_\_  
(Must be sent by Certified Mail to last known address) Reply Received \_\_\_\_\_

COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Property Manager

**IOWA DEPARTMENT OF TRANSPORTATION**

TO: Design DATE: \_\_\_\_\_  
ATTENTION: \_\_\_\_\_ REF. NO.: \_\_\_\_\_ County  
FROM:  
OFFICE: Right of Way - Property Management  
SUBJECT: Proposed \_\_\_\_\_

This office has received a request from \_\_\_\_\_, to dispose of \_\_\_\_\_ located on/along \_\_\_\_\_, approximately \_\_\_\_\_ in the town of \_\_\_\_\_ Iowa (see attached plat).

Please give your recommendations if this may be disposed of at this time.

Property Management

Attach.

C: \_\_\_\_\_, Systems Planning  
\_\_\_\_\_, Traffic and Safety  
\_\_\_\_\_, Facilities Support  
\_\_\_\_\_, Location and Environment  
\_\_\_\_\_, Lease Coordinator, Property Management

HIGHWAY DIVISION  
IOWA DEPARTMENT OF TRANSPORTATION  
OFFICE OF RIGHT OF WAY

County  
(Project No.)

Parcel No.

**OFFER TO BUY**

I herewith submit an unconditional offer of \$ \_\_\_\_\_ to the Iowa Department of Transportation (hereinafter known as Department) for the purchase of the following land:

Legal Description

I herewith enclose a CHECK or MONEY ORDER (the Department will NOT accept CASH) for the full amount of the offer made payable to the Iowa Department of Transportation. Should the Department not accept the bid or offer, the amount will be returned by mail.

I accept title by State Patent. I agree to accept the State Patent without an Abstract of Title, and am aware that the land is being sold in accord with the provisions of and subject to the limitations of Section 306.22 through and including 306.25 of the Code of Iowa. "Any sale of land as authorized therein shall be upon the conditions that the tract, parcel or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway, or to the material damage of the adjacent owner, and shall be subject to the right of all utility associations, companies, or corporations to continue in possession of a right of way in use at the time of such sale."

I accept the following covenants and agree that they shall run with the land and be binding upon me and my heirs and assigns:

1. Direct access between the above-described parcel of land and \_\_\_\_\_ (HIGHWAY #) will be prohibited.
2. The State retains the right of entry thereon for the purpose of constructing and maintaining the right of way fence. The fence shall be maintained for vehicle access control purposes only. The State will be held blameless and without liability for fencing private property or maintaining the same. The buyer may pasture against said fence at their own peril and the State will be held blameless and without liability for fencing private property or maintaining the same to restrain livestock.

The Iowa Department of Transportation reserves the right to waive any technicalities and to reject any or all bids or offers.

I certify that I have inspected this property to my complete and total satisfaction and that I am fully aware of all conditions of the property and the terms and conditions under which it is being offered for sale. I understand that the property is being sold as is with no warranties of any nature either expressed or implied. I therefore submit a bid, as shown above, for the property.

If my offer is accepted by the Department, please issue the Patent to:

(PLEASE PRINT OR TYPE)

\_\_\_\_\_ \* The exact name or names the bidder wishes to appear on Patent

\_\_\_\_\_ Address

Signed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Telephone Number

\* Examples of types of names that will be accepted by the State Land Office:

- 1) John J. Doe
- 2) John J. Doe and Mary Ann Doe
- 3) John J. Doe and Mary Ann Doe as joint tenants with full rights of survivorship and not as tenants in common
- 4) Any business name

800 Lincoln Way, Ames, IA 50010

515-239-1300 (telephone)  
515-233-7859 (fax)

, 20\_\_

TO WHOM IT MAY CONCERN:

This is to inform you that the Iowa Department of Transportation will offer the following for sale on , 2007:

**NOTE:** This information is available on the web at: [www.iowadoflandsales.com](http://www.iowadoflandsales.com)

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239- Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

Appraised Value: \$  
Terms: Cash

Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239- Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

Appraised Value: \$  
Terms: Cash

Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239- Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

Appraised Value: \$  
Terms: Cash

Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Bids will not be considered unless they are made on an appropriate Property Management bid form. Requests for bid forms may be made by telephone. All bids must be received by 1:00 p.m. on the day of the specified bid opening. The bid form contains instructions for submitting bids, terms, conditions and restrictions of the sale.

IOWA DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY OFFICE  
PROPERTY MANAGEMENT SECTION

SALE OF LAND	HIGHWAY DIVISION	COUNTY
	IOWA DEPARTMENT OF TRANSPORTATION	(Project No.)
SALE DATE:	OFFICE OF RIGHT OF WAY	PARCEL NO.
	SEALED BID FORM	SALE NO.
	FOR SALE OF LAND	

**INSTRUCTIONS:**

- I. **Bid Form** - Bids must be submitted on the attached bid form, and all information called for thereon must be furnished. No alteration may be made and no condition or terms may be added to the bid form. Each bid must contain a full address and phone number, and must be signed. Bids submitted in any other manner or which fail to furnish all information required or which are altered or conditioned may be rejected at the sole option of the Iowa Department of Transportation.
- II. **Lead-Based Paint and/or Lead-Based Paint Hazards Disclosure** - All persons bidding on Residential Properties built prior to 1978 must sign a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. Bids received without signed disclosure forms may be rejected. Should any questions arise concerning the disclosure of information, including time for purchasers to inspect, please call the Iowa Department of Transportation Property Management Section at (515) 239-1300. (Mobile homes are excluded from this requirement.)
- III. **Bid Envelope** - Envelopes furnished with the bid form proposal must be sealed and mailed to the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. The name and address of the bidder must be shown in the upper left-hand corner of the bid envelope. Officers of the Iowa Department of Transportation will not be held responsible for premature opening of a bid not properly addressed or failure to open a bid which is not received by the specified deadline.
- IV. **Bid Deposit** - Bids must be accompanied by a bid deposit in the form of a CERTIFIED CHECK, CASHIER'S CHECK, BANK DRAFT, MONEY ORDER or WARRANT. Checks should be made payable to the Iowa Department of Transportation. A SEPARATE certified check or money order must be submitted for each item for which a bid is submitted. We will NOT accept PERSONAL CHECKS or CASH.
- The bid deposit must be in the full amount required. Bid deposits will be retained as liquidated damages should the successful bidder refuse to remit the balance of the amount bid, or refuse to sign and return required documents, within (30) days after being notified to do so.
- V. **Bid Categories** - All bids are for cash.
1. Bids less than \$500.00 must be submitted with a bid deposit in the full amount of the bid.
  2. Bids exceeding \$500.00 must be submitted with a bid deposit in the minimum amount of ten percent (10%) of the full amount of the bid.



- VI. **Bid Opening** -Bids will be opened in the Conference Center next to the North Annex located on the north side of Lincoln Way across from the Central Complex of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa. Bids must be received by the Office of Right of Way of the Iowa Department of Transportation, Ames, Iowa 50010, prior to 1:00 P.M. on the date specified on the cover of these instructions.
- VII. **Notice of Acceptance** - All bidders will receive written notice of acceptance or rejection of their bid within fifteen (15) business days after day of bid opening. Bid deposits will be returned to unsuccessful bidders within 15 business days after bid opening.
- VIII. **Delivery of Payment and Title Documents** - The successful cash bidder will have thirty days to remit balance due after notification of payment due.
- IX. **Title** - Title will be conveyed by State Patent. Abstract of Title will NOT be furnished to the purchaser. Patents will be recorded by the Iowa Department of Transportation in the county where the land is located. The recorded patent will be sent to the buyer.
- X. **Processing Time** - The time from date of bid opening to issuance of Patent will be approximately 60 business days.
- XI. **Right to Reject Bids** - The State of Iowa (Department of Transportation, Highway Division) expressly reserves to itself the right to reject and to refuse to accept any or all bids where, in the judgment of the Department, it is in the best public interest to do so. Bids may also be rejected where, in the judgment of the Department, their amount is less than the fair market value of the property or where the bid fails to meet the requirements of the bid proposal or these instructions.
- XII. **Technicalities** – The Iowa Department of Transportation reserves the right to waive all technicalities.
- XIII. **Statutory Conditions of Sale** - The land is being sold in accord with the provisions of and subject to the limitations of Sections 306.22 through and including 306.25 of the Code of Iowa. "Any sale of land as authorized therein will be upon the conditions that the tract, parcel or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner and shall be subject to the right of all utility associations, companies or corporations to continue in possession of a right of way in the use at the time of such sale."
- XIV. **Zoning and Land-Use Limitations** - The zoning and land-use information contained in the bid proposal form is based on data furnished to the Department from appropriate zoning authorities, and may be subject to change. It is the responsibility of the bidder to verify all zoning and land-use limitations.
- XV. **Bidders Are Bound by These Instructions** - Bidder warrants that all bids submitted are submitted with full knowledge of all the terms, conditions, and requirements contained herein and the bidder agrees to be bound thereby.

COUNTY  
(Project No.)  
PARCEL NO.  
SALE NO.

SEALED BID FORM  
BIDS DUE:  
, 20

PROPOSAL TO: IOWA DEPARTMENT OF TRANSPORTATION  
HIGHWAY DIVISION  
PROPERTY MANAGEMENT SECTION  
800 LINCOLN WAY  
AMES, IOWA 50010-6993

The land is being sold in accord with the provisions of and subject to the limitations of Sections 306.22 through and including 306.25 of the Code of Iowa. "Any sale of land as authorized therein shall be upon the conditions that the tract, parcel or piece of land so sold shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner and shall be subject to the right of all utility associations, companies or corporations to continue in possession of a right of way in the use at the time of such sale."

The land being sold is also subject to the following covenants and agreements:

1. Direct access between the following described parcel of land and                      will be prohibited.
2. The State retains the right of entry thereon for the purpose of constructing and maintaining the right of way fence. The fence shall be maintained for vehicle access control purposes only. The State will be held blameless and without liability for fencing private property or maintaining the same. The buyer may pasture against said fence at their own peril and the State will be held blameless and without liability for fencing private property or maintaining the same to restrain livestock.

**Abstract of Title will not be furnished.**

These covenants and agreements shall go with the title and be binding on the purchaser, his heirs, and assigns.

COUNTY  
(Project No.)  
PARCEL NO.  
SALE NO.

I certify that I have inspected this property to my complete and total satisfaction and that I am fully aware of the terms and conditions under which the property is offered for sale. I understand that the property is being sold as is with no warranties as to the quality or habitability expressed or implied. I submit a bid, as shown, on the following item:

Appraised value: \$

**TERMS:**

CASH BID

CERTIFIED CHECK, CASHIER'S CHECK, BANK DRAFT, MONEY ORDER or WARRANT.

Full Amount of Bid \$\_\_\_\_\_.

Cash Down Payment \$\_\_\_\_\_.

A CERTIFIED CHECK, CASHIER'S CHECK, BANK DRAFT, MONEY ORDER or WARRANT. must be submitted with this bid form.

For additional instructions see attachment - SEALED BID INFORMATION

I, if I am the successful bidder, wish to have the Patent issued to:

(PLEASE PRINT OR TYPE)

---

\*The exact name or names the bidder wishes to appear on Patent

---

Address

Signed: \_\_\_\_\_  
Date

Address

City, State, Zip

Telephone Number

\*Examples of types of names that will be accepted by the State Land Office:

- 1) John J. Doe
- 2) John J. Doe and Mary Ann Doe
- 3) John J. Doe and Mary Ann Doe as joint tenants with full rights of survivorship and not as tenants in common.
- 4) Any business name.

**RECOMMENDATION FOR STAFF ACTION**

County \_\_\_\_\_ Project No. \_\_\_\_\_ Parcel No. \_\_\_\_\_

***Brief Description of Land Being Sold:***

**APPRAISED VALUE:** \_\_\_\_\_

**HIGH BID RECEIVED:** \_\_\_\_\_

**NAME OF HIGH BIDDER:** \_\_\_\_\_

***COMMENTS:***

Signature \_\_\_\_\_  
Property Manager

Approved/Rejected \_\_\_\_\_  
Douglas C. Bates  
Chief Property Manager

**APPENDIX**

**“D”**

**CONTRACTS**



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY

AMES, IOWA 50010

AUCTIONEER'S AGREEMENT

(use for buildings only)

\_\_\_\_\_ agrees to conduct an auction sale of the buildings included on the attached list, all located \_\_\_\_\_, Iowa, at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Upon receiving approval of this Agreement, approval will be granted allowing the purchaser the right to remove the items upon making full payment to the sale clerk.

The sale of the items included on the attached list, plus any additional listings, will be arranged and conducted, including the following itemized services, for a service fee charge in the amount of \_\_\_\_\_% (percent) of the sale receipts.

- 1. The advertising of said buildings, including descriptive information and the terms and conditions of the sale, in area newspapers in the form of a block type display advertisement (minimum of three runs). Proof of publication to be furnished to the Iowa Department of Transportation, Office of Right of Way, Property Management Section, Ames, Iowa, 50010.
2. The selling, including furnishing a qualified and competent clerk, and collecting at the time of the sale.
3. The acquiring of purchasers' names, signatures, and mailing addresses on the Agreement and Bill of Sale form for each building at the time of the sale.
4. Transmitting the gross receipts of the sale directly to the Cashier, Iowa Department of Transportation, Ames, Iowa, 50010. The proceeds shall be in the form of the Auctioneer's business check and made payable to the Iowa Department of Transportation.
5. The auctioneer is to announce that the items are being sold with the understanding that the purchaser will be responsible for the removal of the buildings purchased and that the Iowa Department of Transportation will not be responsible for any building once it has been sold. Terms of the sale are cash. The buildings must be removed to foundation or ground level by \_\_\_\_\_.
6. The auctioneer shall familiarize himself with the laws and ordinances covering auction sales in \_\_\_\_\_ County and the City of \_\_\_\_\_, Iowa.
7. The auctioneer is to announce that the buildings are to be removed. A \$\_\_\_\_\_ performance bond in the forms of a cashier's check, certified check or money order, made payable to the Iowa Department of Transportation, shall be submitted by the purchaser to the Iowa Department of Transportation representative in attendance at the time of the sale, and must sign the Agreement and Bill of Sale form.
8. The auctioneer is to announce that any building remaining on the premises after \_\_\_\_\_ may, unless the removal date has been extended by written consent of the Iowa Department of Transportation be removed, destroyed, or disposed of in any manner deemed feasible by the Iowa Department of Transportation without further notice or obligation to the Buyer and that the Buyer shall forfeit the performance bond posted in connection with the removal of the building. Buyer shall removal all debris resulting from moving operations and shall leave the building site reasonably clean. The Buyer is to cap the sewer and disconnect all existing utilities. The Buyer shall forfeit his performance bond upon failure to comply with these conditions. If all the terms of the sale are complied with, the bond will be returned.

I hereby certify that neither I, any partner, employee, or relative have any direct or contemplated future interest in items to be sold other than the fee to which I am entitled under the terms of this contract.

Attached Equal Employment Opportunity Agreement which is by this reference made a part hereof.

\_\_\_\_\_ Date Signed BY \_\_\_\_\_ Auctioneer

IOWA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_ Date Signed BY \_\_\_\_\_ Douglas C. Bates Chief Property Manager



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY

AMES, IOWA 50010

AUCTIONEER'S AGREEMENT

(use for miscellaneous items only)

\_\_\_\_\_ agrees to conduct an auction sale of the items included on the attached list. The sale will be held at \_\_\_\_, \_\_\_\_, \_\_\_\_\_ at a suitable indoor location to be provided by the auctioneer.

Upon receiving approval of this Agreement, approval will be granted allowing the purchaser the right to remove the items upon making full payment to the sale clerk.

The sale of the items included on the attached list, plus any additional listings, will be arranged and conducted, including the following itemized services, for a service fee charge in the amount of \_\_\_\_% (percent) of the sale receipts (not including sales tax).

1. The advertising of said items, including descriptive information and the terms and conditions of the sale, in area newspapers in the form of a block type display advertisement (minimum of three runs). Proof of publication to be furnished to the Iowa Department of Transportation, Office of Right of Way, Property Management Section, Ames, Iowa, 50010.
2. The auctioneer will locate and provide a suitable indoor location in \_\_\_\_, Iowa, at which to conduct the sale.
3. The auctioneer will move and relocate the sale items to the sale site.
4. The selling, including furnishing a qualified and competent clerk, and collecting at the time of the sale.
5. The acquiring of purchasers' names, signatures, and mailing addresses on the Agreement and Bill of Sale form for each building at the time of the sale.
6. Transmitting the gross receipts of the sale directly to the Cashier, Iowa Department of Transportation, Ames, Iowa, 50010. The proceeds shall be in the form of the Auctioneer's business check and made payable to the Iowa Department of Transportation. Auctioneer must announce that State Sales Tax is to be collected on the items. The auctioneer is to collect and submit a separate check in full payment of State Sales Tax for the sale of the miscellaneous items.
7. The auctioneer is to announce that the all items being sold with the understanding that they are being sold in an "as is" condition. Terms of the sale are cash.
8. The auctioneer shall familiarize himself with the laws and ordinances covering auction sales in \_\_ County and the City of \_\_\_\_, Iowa.

I hereby certify that neither I, any partner, employee, or relative have any direct or contemplated future interest in items to be sold other than the fee to which I am entitled under the terms of this contract.

Attached Equal Employment Opportunity Agreement which is by this reference made a part hereof.

\_\_\_\_\_

BY \_\_\_\_\_

Date Signed

Auctioneer

IOWA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

BY \_\_\_\_\_

Date Signed

Douglas C. Bates  
Chief Property Manager



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY

AMES, IOWA 50010

AUCTIONEER'S AGREEMENT

(use when buildings and miscellaneous items are to be sold)

\_\_\_\_\_ agrees to conduct an auction sale of the buildings, equipment, and other items, included on the attached list, all located \_\_\_\_\_, Iowa, at \_\_\_\_\_.

Upon receiving approval of this Agreement, approval will be granted allowing the purchaser the right to remove the items upon making full payment to the sale clerk.

The sale of the items included on the attached list, plus any additional listings, will be arranged and conducted, including the following itemized services, for a service fee charge in the amount of \_\_\_\_% (percent) of the sale receipts.

- 1. The advertising of said buildings, including descriptive information and the terms and conditions of the sale, in area newspapers in the form of a block type display advertisement (minimum of three runs). Proof of publication to be furnished to the Iowa Department of Transportation, Office of Right of Way, Property Management Section, Ames, Iowa, 50010.
2. The selling, including furnishing a qualified and competent clerk, and collecting full payment at the time of the sale.
3. The acquiring of purchasers' names, signatures, and mailing addresses on the Agreement and Bill of Sale form for each building at the time of the sale. (Bills of sale are not used for miscellaneous items.)
4. Transmitting the gross receipts of the sale directly to the Cashier, Iowa Department of Transportation, 800 Lincolnway, Ames, Iowa, 50010. The proceeds shall be in the form of the Auctioneer's business check and made payable to the Iowa Department of Transportation. Auctioneer must announce that State Sales Tax is to be collected on miscellaneous items. The auctioneer is to collect and submit a separate check in full payment of State Sales Tax for the sale of miscellaneous items.
5. The auctioneer is to announce that the items are being sold with the understanding that the purchaser will be responsible for the removal of the items purchased and that the Iowa Department of Transportation will not be responsible for any item once it has been sold. The auctioneer is to announce that all items being sold are being sold in "as is" condition. Terms of the sale are cash. The buildings must be removed to foundation or ground level by \_\_\_\_\_. All miscellaneous items must be removed by \_\_\_\_\_.
6. The auctioneer shall familiarize himself with the laws and ordinances covering auction sales in \_\_\_\_ County and the City of \_\_\_\_\_, Iowa.
7. The auctioneer is to announce that the buildings are to be removed. A \$\_\_\_\_\_ performance bond in the forms of a check or money order, made payable to the Iowa Department of Transportation, for each building by the Buyer shall be submitted by the purchaser to the Iowa Department of Transportation representative in attendance at the time of the sale, and the Buyer must sign the Agreement and Bill of Sale form.
8. The auctioneer is to announce that any building remaining on the premises after \_\_\_\_\_ may, unless the removal date has been extended by written consent of the Iowa Department of Transportation be removed, destroyed, or disposed of in any manner deemed feasible by the Iowa Department of Transportation without further notice or obligation to the Buyer and that the Buyer shall forfeit the performance bond posted in connection with the removal of the building. Buyer shall removal all debris resulting from moving operations and shall leave the building site reasonably clean. The Buyer is to cap the sewer and disconnect all existing utilities. The Buyer shall forfeit his performance bond upon failure to comply with these conditions. If all the terms of the sale are complied with, the bond will be returned.

I hereby certify that neither I, any partner, employee, or relative have any direct or contemplated future interest in items to be sold other than the fee to which I am entitled under the terms of this contract.

Attached Equal Employment Opportunity Agreement which is by this reference made a part hereof.

\_\_\_\_\_  
Date Signed

BY \_\_\_\_\_  
Auctioneer

IOWA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Date Signed

BY \_\_\_\_\_  
Douglas C. Bates  
Chief Property Manager



**ENGINEERING BUREAU  
IOWA DEPARTMENT OF TRANSPORTATION  
OFFICE OF RIGHT OF WAY  
CONTRACT FOR VALUE OPINION**

Contract No. \_\_\_\_\_

Project No. \_\_\_\_\_ in \_\_\_\_\_ County, Iowa

Contracting Appraiser or Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State IA Zip \_\_\_\_\_

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the Iowa Department of Transportation, Ames, Iowa, (hereinafter referred to as Department) and \_\_\_\_\_(hereinafter referred to as Appraiser).

WHEREAS, the Department requires competent opinions as to the market value of certain tracts of land no longer needed in connection with the above identified highway project; and

WHEREAS, the Appraiser represents that he/she is knowledgeable of property values in the area and willing to render the value opinion in accordance with the standards contained in the UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE as promulgated by the Appraisal Standards Board of The Appraisal Foundation, and pursuant to the terms, provisions, and conditions hereof;

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. The Appraiser shall prepare, sign, and furnish to the Department a separate written opinion of value for each parcel listed in the following Schedule of Properties and Fees:

<u>Parcel Number</u>	<u>Type of Property*</u>	<u>Fee</u>
----------------------	--------------------------	------------

The Department shall pay the Appraiser \_\_\_\_\_ (as itemized above) for services rendered under the terms of this agreement. Payment shall be requested in writing by the Appraiser. Such payment or portions thereof shall be made provided that the opinion of value complies with the requirements set forth in the Department's Appraisal Manual, and that no fee or estimate thereof is based on a percentage of the value of any parcel involved.

2. The Appraiser shall begin work on the assignment only after the contract has been approved by the Department and a completely executed copy has been returned to him/her with notice to proceed.
3. The Appraiser shall deliver the written opinion of value for each assigned parcel directly to the Property Management Section of the Office of Right of Way located in the Department's Highway Division headquarters in Ames, Iowa, on or before \_\_\_\_\_.
4. The Appraiser will prepare all opinions of value made hereunder independent of any other appraiser employed by the Department on the same assignment, and will not sublet or transfer any of the work to other persons or firms, and the Appraiser will not furnish to any other person, corporation, company, or agency a copy of the opinion of value or any information relative to the value contained therein.

\*The actual highest and best use of the property shall be determined within the appraisal by the Appraiser.  
Value Opinion.doc

5. It is understood that the Appraiser assumes full and unqualified responsibility for all claims and liability due to his/her or its own activities, or those of his/her or its agents, representatives, or employees. The Appraiser hereby releases and agrees to save and hold the Department harmless for all loss and damage of whatsoever nature arising from or growing out of such activities.
6. It is understood and agreed that the Department may at any time, at its option, cancel or terminate this agreement for any good and reasonable cause, including failure of the Appraiser to fulfill or discharge his/her duties, obligations, and performance hereunder, with respect to any or all parcels by notifying the Appraiser by certified mail of such intention. In the event of such cancellation or termination, the sole claim or title to any work (either partially or fully completed) shall be vested in the Department, and payment for said work will be made in accordance with this agreement for completed valuation opinions and on a negotiated and mutually acceptable basis for those valuation opinions not completed, provided that the negotiated settlement does not exceed the fee specified in Paragraph 1 hereof.
7. There shall be no reimbursement for revision or correction of a valuation opinion as a result of the Appraiser's failure to comply with all contract specifications or failure to properly consider the assignment.
8. The Appraiser warrants that he/she has not employed any company or person, other than a bona fide employee working solely for the Appraiser, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Appraiser, any fee, commission, percentage, brokerage fee, gifts, or any consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the Department shall have the right to annul this agreement without liability.
9. The Appraiser further warrants that he/she will personally inspect the property and base the valuation opinion on personal knowledge of real estate values and all relevant factors contributing to value on the parcel or parcels under consideration and that he/she has no direct or indirect, present or contemplated future personal interest in the parcels being valued.
10. Any protest, appeal or dispute concerning selection or a question of fact in connection with or relative to this agreement or the performance of any contractual obligation by either party hereunder shall be referred to the Department's Right of Way Director who shall hear and consider all of the evidence and notify the Appraiser, in writing, of his/her decision, and that decision shall be final and conclusive unless, within thirty (30) days from receipt of notification of such decision by the Right of Way Director, the Appraiser shall appeal, in writing, to the Project Development Division Director, who will review and consider both the evidence and the decision by said Right of Way Director, whereupon said Project Development Division Director shall make a final, conclusive, and binding determination and furnish the Appraiser a written copy thereof.
11. **NONDISCRIMINATION** - During the performance of this contract, the Appraiser, for himself/herself or itself, any assignees, and successors in interest agree as follows:
  - (a) **Compliance with Regulations:** The Appraiser shall comply with the Regulations relative to nondiscrimination and Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Relations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
  - (b) **Nondiscrimination:** The Appraiser, with regard to the work performed by him/her or it during the contract, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Appraiser shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- (c) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Appraiser for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Appraiser of the Appraiser's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of sex, race, color, or national origin.
  - (d) **Information and Reports:** The Appraiser will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to his/her or its books, records, accounts, other sources of information, and facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of an Appraiser is in the exclusive possession of another who fails or refuses to furnish this information, the Appraiser shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
  - (e) **Sanctions for Noncompliance:** In the event of the Appraiser's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - (1) withholding of payments to the Appraiser under the contract until the Appraiser complies, and/or
    - (2) cancellation, termination, or suspension of the contract in whole or in part.
  - (f) **Incorporation of Provisions:** The Appraiser will include the provisions of Paragraph (a) through (f) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Appraiser will take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in the event an Appraiser becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Appraiser may request the State to enter into such litigation to protect the interest of the State, and, in addition, the Appraiser may request the United States to enter into such litigation to protect the interests of the United States.
12. The Appraiser shall be furnished a plat of the property to be valued, its legal description, area, dimensions where appropriate, access, title to be conveyed, and detailed restrictions attached to the sale.

Contracting Appraiser is a(n): (Check appropriate space)

- Individual       Firm
- Partnership     Corporation       Limited Liability Corporation

If a corporation, indicate state in which incorporated: \_\_\_\_\_ and date: \_\_\_\_\_

Company Name \_\_\_\_\_ IOWA DEPARTMENT OF TRANSPORTATION  
Approval Recommended:

By \_\_\_\_\_ By \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_ Property Manager

Address \_\_\_\_\_ Date \_\_\_\_\_

City \_\_\_\_\_ Approved:

State IA Zip \_\_\_\_\_

By \_\_\_\_\_

Douglas C. Bates  
Chief Property Manager

Date \_\_\_\_\_

**APPENDIX**

**“E”**

**EASEMENT  
FORMS**



Iowa Department of Transportation

State of Iowa
Floodway Easement Agreement - \_\_\_\_\_

County
Project No.
Parcel No.

THIS INSTRUMENT is made between the Iowa Department of Transportation, acting for the State of Iowa, and the CITY OF \_\_\_\_\_ in \_\_\_\_\_ County, Iowa:

WHEREAS, the City of \_\_\_\_\_ entered into an agreement with the \_\_\_\_\_ District of the U.S. Corps of Engineers under which the City agreed to furnish all necessary right of way for the contraction of "Unit B" of the proposed \_\_\_\_\_, Iowa, Local Flood Protection Project, identified as Project NCRRE-A, and

WHEREAS, the City now desires to acquire flowage easement rights for the purpose of construction and maintenance of a floodway for (waterway), and

WHEREAS, the City of \_\_\_\_\_, agrees to pay the Iowa Department of Transportation and the State of Iowa all costs to the Iowa Department of Transportation by reason of the construction of these floodway facilities. It is understood that the Department of Transportation is now planning a future road and bridge construction project on Primary Road No. \_\_\_\_\_ in the \_\_\_\_\_ area. Such construction may require the modification of flood walls now to be constructed by the City. The City agrees to reimburse the Iowa Department of Transportation in modifying and re-establishing the flood wall as may be required by the Department of Transportation future road and bridge construction project, and

WHEREAS, the Iowa Department of Transportation, acting for and on behalf of the State of Iowa has approved this floodway easement in accordance with the provisions of Sections 28E3, 28E4, 306A.7, 306.27, 455.118, and 455.218, Iowa Code, 1973

NOW KNOW YE, that the State of Iowa, in consideration of the agreements contained in said Floodway Easement Agreement and in conformity with the Acts of the General Assembly, in such cases made and provided, does hereby grant to the City of \_\_\_\_\_, the perpetual right, power, and privilege to occupy and use the following described parcels of land to construct and maintain a floodway including flood walls, channel widening, dikes, and levees for \_\_\_\_\_.

DESCRIPTION

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

IOWA DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_, Director Date \_\_\_\_\_
Highway Division

STATE OF IOWA )
)ss:
COUNTY OF STORY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me \_\_\_\_\_, A Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being duly sworn did say that he/she is the \_\_\_\_\_, for the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department by its authority and the said person as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said Department, by it voluntarily executed.

(SEAL)

\_\_\_\_\_(Sign in Ink)
\_\_\_\_\_(Type/Print Name)
Notary Public in and for the State of Iowa



# Iowa Department of Transportation

## RESOLUTION OF ABANDONMENT

WHEREAS, the District \_\_\_\_\_ Office has requested that part of the right of way located on/at \_\_\_\_\_ U. S. Primary Road No. \_\_\_\_ and U.S. Primary No. \_\_\_\_\_ in the City of \_\_\_\_\_, \_\_\_\_\_ County, Iowa, be abandoned. Said part to be abandoned is more particularly described as follows:

### LEGAL DESCRIPTION GOES HERE

Said land is a part of a tract acquired from \_\_\_\_\_ by \_\_\_\_\_ recorded on \_\_\_\_\_ Book \_\_\_\_\_, Page \_\_\_\_\_.

AND WHEREAS, in the opinion of the Iowa Department of Transportation, said part of present right of way is no longer necessary or required for use by the public for highway purposes and will not hereafter be required for construction or maintenance purposes for any highway of the State of Iowa;

NOW THEREFORE BE IT RESOLVED by the Iowa Department of Transportation that said part of present right of way herein described, together with any and all rights of the State of Iowa in and to the same are hereby abandoned, and the Iowa Department of Transportation, for itself and in behalf of the State of Iowa, hereby disclaims any right, title or interest in and to said part of present right of way or to the use thereof for any purpose whatsoever.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

IOWA DEPARTMENT OF TRANSPORTATION

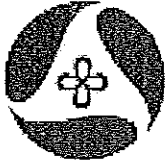
BY \_\_\_\_\_  
Martin J. Sankey  
Right of Way Director

STATE OF IOWA ) SS

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being duly sworn did say that this person is acting on behalf of the Iowa Department of Transportation, and that said instrument was signed on behalf of said Department and the said instrument to be the voluntary act and deed of said Department and by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

Project #



# Iowa Department of Transportation

800 Lincoln Way, Ames, Iowa 50010

Date

The Iowa Department of Transportation has been authorized to proceed with the acquisition of Scenic Easements in your area. As your property may be affected by this program, we wish to provide you with as much information as possible on the history, purpose and scope of the program so that you better understand the intention of the easement rights which you may be asked to convey to the State of Iowa.

It is our most earnest hope that all property owners will accept the program in the spirit in which it was originally conceived--the desire to preserve for all of us, and future generations, an area which lends so much not only to the history and beauty of our state, but to other states as well.

In all programs of this type it is conceivable that owners may suffer personal loss because of the conveyance of interests or rights in their property. Others may gain over the years because there are certain beneficial effects to the scenic easement. We sincerely hope that in all contacts with this department you feel your rights have been considered fairly and that you have been adequately compensated for any property loss you may sustain. One thing is certain, information supplied freely to appraisers and negotiators will be thoroughly considered, and we will make every attempt to fairly consider the effect of the proposed easement on your property.

We invite you to read the attached summary which attempts to clarify the purpose or intent of this program.

Sincerely,

Chief Property Manager  
Office of Right of Way

:  
Enclosure



## The Scenic Easement

As in most other instances of easement acquisition, some misunderstanding arises over the terms and conditions imposed by easements. Property owners who convey land in fee are certain of one thing, they have conveyed all their interest in the property and thereby they have little interest or concern over the future use of the land. Easements, however, usually concern themselves with the exercise of certain rights of ownership in property, such as the right to use it, to lease it, to sell it, to enter it, or even to give it away. The scenic easement concerns itself primarily with permitted or non-permitted property uses. It is hoped that the following will clarify the more important aspects of this easement.

**Purpose** - The purpose possibly is already clear; however, it might be stated as "to preserve insofar as is reasonably possible, the natural scenic beauty of the roadside, to prevent unsightly developments which may tend to mar or detract from such natural beauty, or which may result in danger to travel, and to that end to exercise such reasonable controls over the land within the restricted area as may be necessary to accomplish this objective". To this end property owners are being asked to convey easements which impose certain restrictions on the future use and development of land in easement area.

**"Restricted" or "Easement" Area** - Many affected property owners misunderstood the term "Restricted Area". At this time it may generally be stated that the area within which the restriction or use applies has been established as all that land which lies within a variable distance of the highway centerline, or in other words, a strip of land of variable width, one boundary or side of which is the centerline of the highway. Thus a variable acreage from various owners might be expected to be affected depending on the present width of the highway right of way. The terms of the easement do not apply beyond a distance acceptable to both parties.

**Compensation** - To some extent the easement may be considered as a zoning ordinance similar to those in effect today in many cities, towns, and counties. One primary difference, however, might be noted. Zoning ordinances are normally applied by proceedings, without compensation, whereas with the scenic easement the possible effect of the restriction or use on property value is considered prior to asking the owner to actually convey a scenic easement, and the owner is offered compensation for a possible loss or damage to his property. Thus, if the property exhibits a marked desirability for a use other than a permitted use the owner will receive the appraised value of this difference as compensation. In cases where differences of opinion exist as to the value, the owner may retain the right to contest the appraised value by offering evidence of additional value that may not have been previously considered.

**Easement Terms** - In general, the terms and conditions or use prescribed are as follows:

1. The area must be maintained free of advertising signs and billboards.
2. Dumps established for the disposal of ashes, trash, rubbish, sawdust, garbage or offal, or any unsightly or offensive material are not permitted.
3. Trees or shrubs should not be destroyed, cut, or removed except when cutting is necessary in performing a permitted use, the intention being to preserve the wooded areas as far as is reasonably possible.
4. Future sales of land within the restricted area for building lots will be restricted to use for residential purposes only, and the lot for each residence so constructed must have a frontage distance on the highway of not less than 300 feet. In other words, the front width of the lot as measured along the highway must be at least 300 feet; however, the depth might be only 100 feet. The purpose again being to restrict, for safety reasons, the number of entrances to the highway and to eliminate congested areas.
5. General crop or livestock farming may be expanded, including addition or expansion of building. However, new use for other than residential or agricultural purposes is not permissible, and where another use exists it may not be expanded. The purpose again being to preserve the land in its present state insofar as possible and retain the picturesque beauty of the area as well as the many points of historical interest. Again it should be remembered that this restriction in use does not apply to land beyond the agreed distance from the centerline of the highway.

Various other restrictions or permitted uses, dependent on conditions, may be included in the terms of the easement. Where this is true you will find them included on the actual conveyance. It should also be noted that the easement in no way grants the public the right to enter or use the area described.

It is hoped that the foregoing brief explanation will serve to answer a few of the many questions which arise about the new scenic enhancement program. We will welcome your cooperation in assisting in the preservation of one of the most beautiful areas of our state.



Iowa Department of Transportation

State of Iowa
Floodway Easement - \_\_\_\_\_

THIS INSTRUMENT is made between the State of Iowa and the UNITED STATES OF AMERICA, witnesseth:

WHEREAS, the United States of America, under authority of Public Law 298, 89th Congress, approved 27 October 1965, has undertaken the development of a flood control project along the \_\_\_\_\_ River in the State of Iowa known as the \_\_\_\_\_, hereinafter called the "Project," and

WHEREAS, the State of Iowa has acquired substantial portions of the right of way for proposed Highway \_\_\_\_\_, along an alignment within the Project limits, and construction of Highway \_\_\_\_\_ along said alignment within the Project limits will interfere with the development and use of the Project by the United States, and

WHEREAS, the United States Department of the Army, Corps of Engineers, the United States Department of Commerce, Federal Highway Administration, and the State of Iowa have, by instrument dated \_\_\_\_\_, designated Contract No. \_\_\_\_\_, entered into agreements providing inter alia, that Highway \_\_\_\_\_ shall be constructed by the State of Iowa along an alternate alignment compatible with the needs of the Project, and that the State shall convey to the United States a flowage easement over those portions of right of way acquired by the State along said alternate alignment, lying a/at or below elevation 979 m.s.l., based on sea level datum of 1929, granting the perpetual right, power, and privilege to sue said property for Project purposes, including the right to overflow, flood, and submerge the lands and facilities lying thereon, as required in connection with the operation and maintenance of the Project by the United States, and

WHEREAS, the Executive Council of the State of Iowa has approved this flowage easement in accordance with the provisions of Section 306.39 and 306.40, Iowa Code, 1971.

NOW KNOW YE, that the State of Iowa, in consideration of the premises and the agreements contained in said Contract No. \_\_\_\_\_, and in conformity with the Acts of the General Assembly, in such cases made and provided, does hereby grant and convey to the United States of America and its assigns, the perpetual right, power, privilege and easement to overflow, flood, and submerge in connection with the operation and maintenance of \_\_\_\_\_, that part of the following described real estate and facilities lying thereon, being portions of the right of way of Highway No. \_\_\_\_\_, lying at or below elevation 979 feet m.s.l., based on sea level datum of 1929, attached hereto and made a part hereof, more particularly described as follows:

DESCRIPTION

IN TESTIMONY WHEREOF, I \_\_\_\_\_, Governor of the State of Iowa have placed by signature hereon and have caused the Great Seal of Iowa to be hereunto affixed. Given under my hand at Des Moines, Iowa, the \_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, two thousand and \_\_\_\_\_.

By the Governor

\_\_\_\_\_

Secretary of State

Deputy

I hereby certify that the foregoing flowage easement is recorded in Vol. \_\_\_\_\_, Page \_\_\_\_\_.

Secretary of State

Deputy



# Iowa Department of Transportation

800 Lincoln Way, Ames, Iowa 50010

Date \_\_\_\_\_

When Communicating Refer To:

\_\_\_\_\_ County

Project No. \_\_\_\_\_

\_\_\_\_\_, Secretary  
Executive Council of Iowa  
State House  
Des Moines, IA 50319

Dear \_\_\_\_\_:

We are enclosing an Application to the Executive Council signed by \_\_\_\_\_, Right of Way Director of the Iowa Department of Transportation; together with plat, Order, and Agreement for the area. The proposed Flowage Easement to be granted to the United States of America.

The lands to be conveyed by Flowage Easement are \_\_\_\_\_, \_\_\_\_\_ County, Iowa, and are fully described in the documents enclosed herewith.

The Iowa Department of Transportation entered into an agreement with the U.S. Department of the Army Corps of Engineers and the Federal Highway Administration on \_\_\_\_\_, instrument designated Contract No. \_\_\_\_\_ (see attached Exhibit A). The aforementioned contract proposed that the State convey to the Corps a Flowage Easement over those portions of the highway right of way to be acquired by the State, lying at or below elevation 979.0 feet M.S.L., for the right to overflow, flood, and submerge the lands and facilities lying thereon in connection with the Corps' operation and maintenance of the project.

We have enclosed a portion of a strip map (Exhibit B) indicating the general location of the subject tracts.

It is respectfully requested that this Application be placed before the Executive Council for their consideration at the next meeting.

Please return the completed Flowage Easement executed by Governor \_\_\_\_\_ and the Secretary of State to this office.

Sincerely,

\_\_\_\_\_  
Chief Property Manager  
Highway Division

Enclosure

c: Executive Council of the State of Iowa



WHEREFORE, the Iowa Department of Transportation asks your Honorable Body to grant this flowage easement and authorize and direct the Governor of the State of Iowa and the Secretary of State of the State of Iowa, to make and execute a good and sufficient flowage easement conveying the real estate hereinbefore described to United States of America, under and by virtue of, and in accordance with the provisions of Sections 306A.3, 306A.7, 306.33, 306.34, and 313.1.

Dated at Ames, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

IOWA DEPARTMENT OF TRANSPORTATION

---

Right of Way Director  
Highway Division



# APPENDIX

“F”

# LAND TRANSFER FORMS



**INTERGOVERNMENTAL AGREEMENT AND  
TRANSFER OF JURISDICTION AND CONTROL OF CERTAIN LANDS  
TO THE IOWA DEPARTMENT OF \_\_\_\_\_**

**WHEREAS**, under the provisions of Chapters 306, 306A, and 313, Sections 28E.3, 28E.4, and Chapter 306.27 of the code of Iowa, and in accord with the purposes of Section 138 of the Federal-Aid Highway Acts of 1968, this agreement is made by and between the Iowa Department of Transportation and the Iowa Department of \_\_\_\_\_, both acting for the State of Iowa.

**WHEREAS**, the State of Iowa acquired certain land in connection with the construction of *(route number)*, and

**WHEREAS**, this tract is not presently needed nor is it necessary for the improvement or maintenance of *(route number)*, and

**WHEREAS**, the Iowa Department of *(name of office)* has requested that the jurisdiction and control over the tract be granted and transferred to said Iowa Department of *(name of office)* for *(mitigation)* concerning the permanent highway right of way acquisition,

**WHEREAS**, such a transfer of jurisdiction from the Iowa Department of Transportation to the Iowa Department of *(name of office)* will have the effect of preserving state owned land for a continued public use by another state agency, and

**WHEREAS**, it is understood and agreed that the Iowa Department of *(name of office)* shall maintain all drainage, drain tiles and erosion control and shall assume full future responsibility therefore, *(and agrees any construction on the property will tie into the natural ground line at the new right of way line, 30.5 meters west of centerline)*,

**WHEREAS**, it is understood and agreed that should the Iowa Department of *(name of office)* transfer or convey said tract of land for any use other than currently contemplated, the Iowa Department of *(name of office)* will construct, at its expense and the Iowa Department of Transportation's specifications and location, the remaining right of way access control fence. This covenant shall run with the land and is binding on the successors or assigns of the Iowa Department of Public Safety.)

**WHEREAS**, it is the recommendation of the District *(number)* Office, with the concurrence of the Office of Right of Way, that this land be transferred to the jurisdiction and control of the Iowa Department of *(office name)* for the aforementioned use.

**NOW, THEREFORE, BE IT RESOLVED**, that with the Iowa Department of *(office name)* assumption of jurisdiction and perpetual control, use and maintenance of the following described tract, the Iowa Department of Transportation hereby grants, transfers, and relinquishes to the Iowa Department of *(office name)* the jurisdiction, perpetual control, and use of the tract of land described as follows:

\*Insert Legal

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
N. J. Richardson, Director  
Iowa Department of Transportation

STATE OF IOWA, \_\_\_\_\_ COUNTY, §:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared N. J. Richardson, to me personally known, and who, being by me duly sworn, did say that she is the Director of the Iowa Department of Transportation; that she signed this deed on behalf of the State of Iowa.

(SEAL)

\_\_\_\_\_  
(Sign in Ink)  
Notary Public in and for said State of Iowa

Approved as to form:

By \_\_\_\_\_ Date \_\_\_\_\_  
Mark J. Schouten  
Special Assistant Attorney General

\*County  
\* Project No., \*Parcel No.



### NOTICE OF FORFEITURE OF REAL ESTATE CONTRACT

TO: \_\_\_\_\_  
\_\_\_\_\_

You and each of you are hereby notified:

(1) The written contract dated \_\_\_\_\_, \_\_\_\_\_, and executed by  
as Vendors, and \_\_\_\_\_, \_\_\_\_\_, as Vendees,  
for the sale of the following described real estate:

has not been complied with in the following particulars:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

Total

(2) The contract shall stand forfeited unless the parties in default, within 30 days after the completed service of this notice, shall perform the terms and conditions in default, and in addition pay the reasonable costs of serving this notice.

(3) The amount of attorney fees claimed by the Vendors pursuant to Section 656.7 of the Code of Iowa is \$ \_\_\_\_\_ (not to exceed \$50.00). Payment of the attorney fees is not required to comply with this notice in order to prevent forfeiture.

\_\_\_\_\_  
\_\_\_\_\_  
Vendors (or Successors in Interest)

By \_\_\_\_\_  
Their Attorney—

Address: \_\_\_\_\_  
\_\_\_\_\_

Chapter 656, The Code

#### ACKNOWLEDGEMENT OF SERVICE

The undersigned hereby acknowledge due, timely and legal service of this notice, and acknowledge receipt of a copy at the time and place set opposite their respective names.

	Date of Service	Place of Service
_____	_____	_____
_____	_____	_____
_____	_____	_____

MEMO AND AFFIDAVIT OF SERVICE

STATE OF IOWA,

County of \_\_\_\_\_

} ss.

The undersigned, first being duly sworn, upon oath deposes and states that ... he served the notice on the obverse side hereof on each of the persons to whom said notice is addressed, and named below, by delivering a copy of said notice to each of said persons at the time and place set opposite their respective names. to-wit:

Name	Month	Day	Year	City, Town or Township	County	State

Subscribed in my presence and sworn to before me by said affiant this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said County and State



### AFFIDAVIT IN SUPPORT OF FORFEITURE OF REAL ESTATE CONTRACT

TO WHOM IT MAY CONCERN:

STATE OF IOWA

COUNTY OF \_\_\_\_\_ } ss:

The undersigned, first being duly sworn upon oath [or upon affirmation] deposes and states:

That the relationship of the undersigned to this transaction appears from the Notice of Forfeiture of Real Estate Contract, hereto attached, together with return[s] of service thereof; which Notice and return[s] are by this reference made a part of this affidavit as fully as if set forth herein: that by reason of such relationship the facts herein stated are within the personal knowledge of such affiant.

That the parties served, as shown by said returns, included all parties in possession of said real estate at the time of service of said notice.

That, as shown by such returns, more than 30 days have passed since the service of such Notice.

That the default[s] mentioned in said Notice [has] [have] not been removed nor performed nor paid in any amount by said vendee[s] nor by anyone; and that therefore the terms and conditions as to which there is and has been a default have not been performed within the 30 days mentioned in said Notice, nor at any time by anyone; nor has any sum been offered or tendered by said vendees or anyone; that vendor[s] have [has] retained possession of said real estate following the expiration of said 30 day period.

That the Real Estate Contract mentioned in said Notice specifically provides for the forfeiture of the vendee[s] rights in such contract in accordance with Code Chapter 656.

That none of the parties upon whom such Notice of Forfeiture was so served, was at the time of the service of said Notice upon them or at the time of making this affidavit, in the military service or with the Armed Forces of the United States of America, or are they or any of them in any way entitled to any rights under the Soldiers' and Sailors' Civil Relief Act or similar act or acts amendatory thereof or supplementary thereto.

That this affidavit is made as supporting proof, record and notice, that the contract referred to in said Notice of Forfeiture is now null and void, stands forfeited and cancelled and is of no force and effect whatsoever.

\_\_\_\_\_  
Affiant

Subscribed in my presence and sworn to (or affirmed) before me by the said Affiant this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for The State of Iowa.

The space as indicated above, is reserved to conveniently "tailor" for special situations and to set forth facts to sustain notice by publication or for both of such purposes. See Sections 654.3; R.C.P., 10, 10.1 and 12. Suggested: That Personal Service could not and cannot be made upon \_\_\_\_\_ and \_\_\_\_\_ in the State of Iowa; that on the \_\_\_\_\_ day of \_\_\_\_\_, a copy of said Notice was sent by ordinary mail addressed to said (party) (parties) at their last known mailing address, to-wit: \_\_\_\_\_

Code Chapter 656

#### RECORDER'S CERTIFICATE

STATE OF IOWA, COUNTY OF \_\_\_\_\_, ss:

The undersigned Recorder in and for said County in the State aforesaid, hereby certifies that the foregoing affidavit together with Notice and returns thereto attached was filed in the said Recorder's Office by the party or parties causing said Notice to be served as shown by the Notice, on the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Recorder

800 Lincoln Way, Ames, IA 50010

515-239-1300 (telephone)  
515-233-7859 (fax)

, 20\_\_

**TO WHOM IT MAY CONCERN:**

This is to inform you that the Iowa Department of Transportation will offer the following for sale on , 2007:

**NOTE:** This information is available on the web at: [www.iowadotlandsales.com](http://www.iowadotlandsales.com)

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239-

Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

Appraised Value: \$  
Terms: Cash

Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239-

Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

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Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Sale No. COUNTY - (LAND, HOUSE TO BE REMOVED, ETC.)

Agent -  
515-239-

Bids are due by 1:00 p.m., , 20\_\_

For the sale of (paragraph) OR (the following items-----)

Item :

These items are located at . These items will be open for inspection on from until . These items must be removed from the site intact and may not be demolished for salvageable materials. The purchaser will have until to remove these items .

Appraised Value: \$  
Terms: Cash

Bid forms may be obtained at the inspection or by contacting , Property Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010 or 515-239-1300.

Bids will not be considered unless they are made on an appropriate Property Management bid form. Requests for bid forms may be made by telephone. All bids must be received by 1:00 p.m. on the day of the specified bid opening. The bid form contains instructions for submitting bids, terms, conditions and restrictions of the sale.

IOWA DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY OFFICE  
PROPERTY MANAGEMENT SECTION

\* County

\*

Parcel No. \*

IN THE MATTER OF THE )  
SALE OF CERTAIN LAND ) CERTIFICATE OF PAYMENT AND REQUEST FOR PATENT

TO: THE GOVERNOR AND SECRETARY OF STATE OF THE STATE OF IOWA:

COMES NOW THE IOWA DEPARTMENT OF TRANSPORTATION AND RESPECTFULLY STATES:

That heretofore the State acquired title to real estate in \* County, as fully described below.

\*Legal Description indented from both sides

That in the judgment of the Iowa Department of Transportation, the said real estate is not now, nor will hereafter be needed or required in connection with, or for the improvement, maintenance or use of any Primary Highway of the State of Iowa.

That the said Iowa Department of Transportation, after fully examining the proposed sale and being advised in the premises did on the \_\_\_ day of \_\_\_\_\_, \_\_\_, approve a sale of said real estate to (Names only/Address/City/State) for the sum of \$\_\_\_, all of which has been paid.

This \_\_\_ acre tract of land, appraised on \_\_\_, has an appraised fair market value of \$\_\_\_ or \$\_\_\_ per acre. The name of the person(s)/entity making the final payment is/are \*(Names only). The person(s)/entity entitled to the Patent is/are \*(name & how they want it on Patent/address/City/State/Zip), \*by virtue of an assignment from the original purchaser \* \_\_\_ a (copy/copies) of which assignment (is/are) attached and made a part hereof.

That the statements made and contained in this Certificate of Payment and Request for Patent are true and correct, that a Patent has not been issued to the purchaser, and that all of the provisions of Sections 10.6, 306.22, 306.23, 306.24, and 306.25, Iowa Code, have been fully complied with.

That the Governor of the State of Iowa and the Secretary of State of the State of Iowa are hereby requested to execute a good and sufficient deed of conveyance conveying said real estate hereinbefore described

to \*

under and in accordance with the aforesaid statutory provisions and form of deed presented with this Certificate of Payment and Request for Patent is hereby approved.

Dated at Ames, Iowa, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

IOWA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Martin J. Sankey  
Right of Way Director  
Highway Division

800 Lincoln Way, Ames, IA 50010

515-239-1300 (PHONE)

515-239-7859 (FAX)

(DATE)

**When Communicating Refer To:**

(COUNTY)

(PROJECT)

Parcel No.

State Land Patent

State Land Office  
Office of the Secretary of State  
State House  
Des Moines, IA 50319

Attention: \_\_\_\_\_

**RE: Release of Restrictive Covenants**

I am enclosing a Release of Restrictive Covenant and a copy of the plat to release mineral rights on a tract of land conveyed to \_\_\_\_\_ by patent no. \_\_\_\_\_.

Please have the Secretary of State sign and seal the Certificate and return the Patent to this office.

Sincerely,

\_\_\_\_\_  
Property Management

Enc.

\* County  
Project #  
Parcel No. \*  
State Patent No.

IN THE MATTER OF THE )  
USE OF PROPERTY CONVEYED ) RELEASE OF RESTRICTIVE COVENANTS  
BY STATE PATENT NO. \*\*\* )

TO: THE GOVERNOR AND SECRETARY OF STATE OF THE STATE OF IOWA:

COMES NOW THE IOWA DEPARTMENT OF TRANSPORTATION AND RESPECTFULLY STATES:  
That the State Land Office did on (DATE), issue State Patent No.\*\*\*, conveying land adjacent to  
(LOCATION), to (Owner).

That the land conveyed by said State Patent contained the following covenant:

*(EXAMPLE: "The State shall retain all mineral rights on the tract of land.")*

That the Governor and the Secretary of State of the State of Iowa by their signatures hereon, shall  
release this restriction from the aforementioned State Patent, declaring it to be null and void in this  
respect only, and that this release shall be attached to the original conveyance, and be made a matter  
of public record, and shall have the force and effect of relinquishing and releasing said restriction,  
contained in the State Patent No. \*\*\* filed for record on the \_\_\_ day of \_\_\_, 20\_\_\_, Book\*\*\*\*, Page  
\*\*\*\*.

"Release of the aforesaid restriction shall not waive any other lawful restriction upon the use of the  
premises otherwise prohibited by the laws of the state, local zoning ordinances, rules or regulation, or  
any other laws which shall remain in full force and effect."

The following covenants and agreements shall remain with the title and be binding on the purchaser,  
his heirs and assigns:

(The following language should be used if the Patent conveying title contained other restrictions)

*(EXAMPLE:*

*"Direct access between the above described parcel and Interstate Route No. 35 is prohibited.*

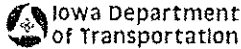
*Commercial billboards, advertising signs, and signs advertising enterprises located on the  
premises, will not be erected except as provided in existing Federal legislation. Such billboards  
and signs will be erected with the strict understanding that if and when any legislation is enacted  
by the State legislature pertaining to such advertising, any existing billboards, signs or other  
advertising will be brought into compliance with such legislation on or before the expiration of  
the two year period immediately following the effective date thereof.")*

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Chester J. Culver, Governor

\_\_\_\_\_  
Michael A. Mauro, Secretary of State





FIELD(Agent), Office of Right of Way, 600 Lincoln Way, Ames, IA 5001 515-239-FIELD(Phone)

AFFIDAVIT CONFIRMING ERROR ON PLAT

STATE OF IOWA )
) ss.
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, an employee of the Department of Transportation, State of Iowa state as follows:

That I am a duly Registered Land Surveyor under the laws of the State of Iowa and prepared an original plat known as Right of Way, Exhibit "A" Plat \_\_\_ of \_\_\_ and recorded in the records of the FIELD( County) County Recorder, as/in \_\_\_\_\_.

That an error in the data shown on said plat has been detected by subsequent examination.

That the error is as follows:

(INSERT DESCRIPTION)

That said error should be corrected as follows:

(INSERT DESRCRIPTION)

That I make this affidavit in order that the same may be filed for record under the provision of Section 409.32 of the Code of Iowa, as amended.

Dated this \_\_\_ day of \_\_\_\_\_, 1\_\_.

\_\_\_\_\_  
Signed Registration No.

STATE OF IOWA, COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_ day of \_\_\_\_\_, 1\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

(SEAL)

\_\_\_\_\_  
(Sign in Ink)  
\_\_\_\_\_  
(Print/Type Name)  
Notary Public in and for said State of Iowa

FIELD(County) County Project No. FIELD(Project)  
FIELD(Name) /FIELD(Name1) (Parcel FIELD(Parcel))



Preparer Information: \_\_\_\_\_, Office of Right of Way, 800 Lincoln Way, Ames, IA 50010, 515-239-

**STATE OF IOWA  
IOWA DEPARTMENT OF TRANSPORTATION  
QUITCLAIM DEED  
TO \_\_\_\_\_, IOWA**

The Iowa Department of Transportation, by \_\_\_\_\_, Director, acting for the State of Iowa by authority of Iowa Code Section 306.42, hereby quitclaims, grants and conveys unto \_\_\_\_\_, IOWA, all rights, easements, title and interest in all land used as street and highway right of way, all roadway, and all right of way and roadway appurtenances thereto, together with any other lands and interests in land which may have been acquired by prescription and by adverse possession and by any other title instrument and by the public's use thereof as a public roadway, and any bridges, culverts or structures that may be situated thereon, to the following described roadway situated in \_\_\_\_\_ County, Iowa, to-wit:

That portion of former Primary Road No. \_\_\_\_\_, which is now a part of the local (municipal street) (secondary road) system,

**INSERT DESCRIPTION**

Title and interest to part of the above described roadway was acquired by the State of Iowa through the following title instrument(s) filed and recorded in the records of \_\_\_\_\_ County, Iowa.

**GENERAL LOCATION**

<u>Grantor</u>	<u>1/4 1/4, Sections, Lots, Blocks</u>	<u>Section Township Range</u>	<u>Type Instrument</u>	<u>Date Filed</u>	<u>Book</u>	<u>Page</u>
----------------	--	---------------------------------------	----------------------------	-------------------	-------------	-------------

Title and interest to any remainder of the above described roadway has never been conveyed by title instruments to the State of Iowa. All available descriptions, plats, maps, or engineering drawings will be transmitted in accord with Iowa Code Section 306.42(1).

This transfer is subject to the rights of all utilities in possession of any right of way and all rights of ingress and egress whether excepted, reserved, or granted by the transferring authority to land or to owners of land adjacent to the above described roadway.

This transaction is exempt from transfer tax and a declaration of value because the State of Iowa is the grantor, pursuant to Iowa Code Section 428A.2(6).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Director  
Iowa Department of Transportation

STATE OF IOWA, STORY COUNTY, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, and who, being by me duly sworn, did say that he is the Director of the Iowa Department of Transportation; that he signed this deed on behalf of the State of Iowa by authority of Order No. \_\_\_\_\_ of the State Transportation Commission dated \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Sign in Ink)  
\_\_\_\_\_  
(Print/Type Name)  
Notary Public in and for said State of Iowa.  
My Commission expires: \_\_\_\_\_.

(NOTARIAL SEAL)

Approved as to form:

\_\_\_\_\_  
Special Assistant Attorney General

By \_\_\_\_\_  
(Date)  
Assistant Attorney General



Iowa Department of Transportation

STATE OF IOWA
IOWA DEPARTMENT OF TRANSPORTATION
QUITCLAIM DEED

TO \_\_\_\_\_, IOWA

The Iowa Department of Transportation, by N. J. Richardson, Director, acting for the State of Iowa by authority of Iowa Code Section 306.42, hereby quitclaims, grants and conveys unto \_\_\_\_\_, Iowa, all rights, easements, title, and interest in all land used as streets and highway right of way, all roadway, and all right of way and roadway appurtenances thereto, together with any other lands and interests in land which may have been acquired by prescription and by adverse possession and by any other title instrument and by the public's use thereof as a public roadway, and any bridges, culverts, or structures that may be situated thereon, to the following described roadway situated in \_\_\_\_\_ County, Iowa, to-wit:

That portion of former Primary Road No. \_\_\_\_\_, which is now a part of the local (municipal street) (secondary road) system,

(Legal description goes here)

Title and interest to part of the above described roadway was acquired by the State of Iowa through the following title instrument(s) filed and recorded in the records of \_\_\_\_\_ County, Iowa.

Title and interest to any remainder of the above described roadway has never been conveyed by title instruments to the State of Iowa. All available descriptions, plats, maps, or engineering drawings will be transmitted in accord with Iowa Code Section 306.42(1).

This transfer is subject to the rights of all utilities in possession of any right of way and all rights of ingress and egress whether excepted, reserved, or granted by the transferring authority to land or to owners of land adjacent to the above described roadway.

This transaction is exempt from transfer tax and a declaration of value because the State of Iowa is the grantor, pursuant to Iowa Code Section 428A.2(6).

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

N. J. Richardson, Director
Iowa Department of Transportation

STATE OF IOWA, STORY COUNTY, §:

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared N. J. Richardson, to me personally known, and who, being by me duly sworn, did say that she is the Director of the Iowa Department of Transportation; that she signed this deed on behalf of the State of Iowa.

(SEAL)

(Sign in Ink)

(Print or Type Name)

Notary Public in and for said State of Iowa

Approved as to form:

By: \_\_\_\_\_ (Date) \_\_\_\_\_
Mark J. Schouten
Special Assistant Attorney General