
**REQUIRED FORMS AND PROCEDURES FOR ACQUISITION OF RIGHT OF WAY
FOR FEDERALLY ASSISTED PROJECTS**

**INFORMATION AND INSTRUCTIONS FOR LOCAL GOVERNMENTS
PROVIDED BY THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF LOCAL GOVERNMENT ASSISTANCE**

**FOR ADVICE AND/OR ASSISTANCE ON ANY PHASE OF RIGHT OF WAY ACQUISITION AS WELL AS TO
REQUEST THE FORMS, PLEASE CALL US AT 773-8148**

All projects funded with federal funds must have right-of-way (ROW) acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (The Uniform Act). The Uniform Act protects individuals by insuring that they are provided just compensation when their private property is given up for public projects. The Uniform Act also provides moving expense payments, and relocation assistance and payments to individuals who must move from or move personal property from acquired land. The Uniform Act provisions must be followed whenever federal funds are used on any phase (e.g., Preliminary Engineering, Right-of-Way, or Construction) of a highway construction project, even if there are no federal funds in the Right-of-Way phase.

Local government federal aid projects usually have ROW acquisition handled by the local government without federal funds. This is done as a matter of practice on bridge replacements and for cost effectiveness on grading projects. When the local government acquires ROW, Uniform Act requirements must be followed. Documentation must be provided before the project can be advertised for bids.

The local government may ask the landowner for donations. However, the property owner must be made aware that he/she is entitled to full compensation for the property acquired for a Federal-aid project. If the owner will be asked to donate, the following form must be used.

LGA-ROW-1, AGREEMENT FOR VOLUNTARY RIGHT-OF-WAY DONATION AND RECORD OF CALLS/VISITS AND DISCUSSION RECORD:

When a landowner signs this form, the right to an appraisal and an offer of just compensation is waived. If there are conditions to the donation, they should be documented on the form in the space provided for "Stipulations of conditional donations". Conditions might relate to the location of an entrance or some special construction feature. When signed, the local government shall maintain the original and the landowner and Local Government Assistance Office shall each receive a copy of this form. When asking for donations, no attempts may be made to coerce the landowner. Donations are strictly voluntary. The second page of this document is a record of calls/visits which must also be filled out to record who contacted the landowner and what was discussed during each call and/or meeting. A copy of this form must be returned to this office with each copy of the signed donation form.

The local government may also ask for acquisition of the property from the landowner by established payment. However, the property owner must be made aware that he/she is entitled to full compensation for the property acquired for a Federal-aid project. If the owner will be asked for the acquisition by established payment, the following form must be used.

LGA-ROW-2, AGREEMENT FOR VOLUNTARY RIGHT OF WAY ACQUISITION BY ESTABLISHED PAYMENT AND RECORD OF CALLS/VISITS AND DISCUSSION RECORD:

When a landowner signs this form, the right to an appraisal and an offer of just compensation is waived. The established payment is determined by the County and can be the same amount or different amounts for the two types of easements. When signed, the local government shall

maintain the original and the landowner and Local Government Assistance Office shall each receive a copy of this form. When asking for acquisition by established payment, no attempts may be made to coerce the landowner. Acquisitions by established payment are strictly voluntary. The second page of this document is a record of calls/visits which must also be filled out to record who contacted the landowner and what was discussed during each call and/or meeting. A copy of this form must be returned to this office with each copy of the signed acquisition by established payment form.

If donations or acquisitions by established payment are not obtained, an estimate of value must be made and the land purchased. Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to imply that the negotiation, and in particular the offer, is a "take it or leave it" proposition. Similarly, the use of condemnation as a threat must be avoided. Other examples of actions the acquiring agency must avoid include: advancing the time of condemnation; deferring negotiations; or delaying the deposit of funds with the courts to coerce an agreement with the property owner. The following forms and procedures are for uncomplicated purchases involving parcels valued below \$25,000. Use of these forms and procedures are mandatory and are intended to ensure that the property is being acquired in accordance with the Uniform Act. They are also intended to ensure that landowners are treated equally and fairly.

LGA-ROW-3, ESTIMATE OF VALUE: An Estimate of Value has to be completed for each parcel. The Director of Equalization is probably best qualified to complete the form. The usual basis of valuation for permanent easements is the 'per acre', or 'per square foot', value of recent sales of similar properties. The value of any improvements in the acquisition must also be included in the estimate. The usual basis of the valuation for temporary easement is the prevailing cash rental rates of similar properties. This is normally for one year for cultivated land but could be for more years for pasture land that may require several years for re-establishment of grass. There is a separate line item for fence in the acquisition. Federal funds may be used to construct new fence as part of the contract providing the landowner is first given the option of being paid for the fence in the acquisition. If the landowner elects to be paid for the fence in the acquisition, the landowner is then responsible for any construction of any replacement fence. The Administrative Approval block on the form is for the signature of the County Highway Superintendent / City Engineer. When signed, the local government shall maintain the original and the Local Government Assistance Office shall receive a copy of this form.

LGA-ROW-4, WRITTEN OFFER(S) AND NEGOTIATIONS RECORD: This form documents the offer(s) to the landowner and serves as a record of negotiations. Usually the County Highway Superintendent / City Engineer acts as the Negotiator. This form is also the record for a settlement at a figure other than the estimated value. Authorization and detailed justification of any additional compensation must be provided by the County Commission Chairperson / City Mayor. A separate form must be completed for each parcel. When signed, the local government shall maintain the original and the Local Government Assistance Office shall receive a copy of this form.

LGA-ROW-5, RIGHT-OF-WAY AGREEMENT: This form is an agreement with the owner for the purchase. There is space on the agreement to document any special agreements such as fence, approaches, crop damage, etc. When signed, the local government shall maintain the original and the landowner and Local Government Assistance Office shall each receive a copy of this form.

The foregoing forms and procedures cover donations, uncomplicated valuations, negotiations and ROW agreements. The actual conveyance of the property from the landowner to the local government is accomplished by the deed. The standard Highway Use Deed is useful for this purpose. Any other approved deed that the local government is now using may also be used. The deed must be signed, notarized and filed

with the Register of Deeds. Consult with your States Attorney in drawing the deed or in making any changes to this proposed form.

There may at times be moving expense and relocation assistance and payments required. This could involve haystacks, machinery, signs, etc. Any relocation assistance and payments required for a project will be handled by State forces due to the detailed regulations that are involved. Where relocation assistance and payments are required, contact the Local Government Assistance Office.

If there are parcels to be acquired involving values greater than \$25,000 or having complications, different procedures and forms are involved. This activity will usually be handled by State forces due to the detailed regulations that are involved. Where the situation arises, contact the Local Government Assistance Office.

Before the project can be advertised for bids, copies of all the foregoing forms are to be provided to the Local Government Assistance Office in sufficient time to allow for a detailed review, as well as an original of the following:

LGA-ROW-6, RIGHT-OF-WAY CERTIFICATE: This document is the local government statement that ROW acquisition has been accomplished in accordance with the Uniform Act. To be valid, this form must be dated after the last date of the other forms noted above. The State must provide Right-of-Way Certification to the Federal Highway Administration before authorization to advertise the bids is given.

Each of the forms lists a specific title of person to sign on behalf of the local government. If someone else has been given administrative authority by the commission to sign on behalf of the local government, that person can sign the forms as long as a copy of the documentation designating that individual, by name, with signature authority is provided to this office along with the forms. The individual can simply cross off the title shown on the form and write in their own.

A version of each applicable form is available upon request for the following categories of donors or grantors:

- individuals (which includes partnerships, and sole proprietorships)
- corporations
- limited liability companies (LLC's)
- local governments

Useful links:

- FHWA Publication - "Real Estate Acquisition Guide for Local Public Agencies"
<http://www.fhwa.dot.gov/realestate/lpaguide/index.htm>
- FHWA Publication - "Acquiring Real Property for Federal and Federal-aid Programs for Projects"
<http://www.fhwa.dot.gov/realestate/realprop/index.html>

The LGA-ROW forms were reviewed and approved February 5, 2009, by the SDDOT offices of Right of Way, Legal Counsel, Local Government Assistance, and the South Dakota Division of the Federal Highway Administration.