# Application: This template is used when the Certified LPA owns the contract on a federal funded project.

**Version Date 6/6/22**

**GENERAL INSTRUCTIONS:**

* Yellow highlighted areas include instructions that should be deleted prior to release.
* Blue highlighted areas indicate text or fields that need information provided or revised.
* “Agency” means the Certified LPA as defined in the CLPA Contract.
* **Delete instructions throughout the document before executing Contract or amendment. Deletions can be automated as follows:**
	+ From the “Edit” menu (or “Editing” menu on the “Home” ribbon) select “Replace”;
	+ With cursor in the “Find what” field, click “More” button, then “Format”, then “Font”, then in the font field select “Times New Roman” text;
	+ Leave the “Replace with” field blank;
	+ Click “Replace All”. This will delete all yellow highlighted text.

**PROJECT-SPECFIC INSTRUCTIONS:**

* **Agency should reference the Right of Way Services Agreement between ODOT and the Agency prior to identification of consultant tasks. The references to Consultant, Agency and ODOT throughout scope and process will need revision on a case by case basis.**
* The template language must be revised if needed for specifics applicable to the current project (including deletion of requirements that don’t apply to the current project).
* Not all subtasks are needed for each project.  If an entire subtask is not needed, leave the task number, add “RESERVED” after the subtask title, and delete all subtask text**.**

**TASK 14 RIGHT OF WAY (“R/W”)**

Consultant shall conduct the R/W activities for all properties in accordance with the most current version of the following:

* Right of Way Services Agreement specific to the Project
* *“ODOT* *Right of Way Manual”*
* “*ODOT Guide to Appraising Real Property”*
* *“ODOT* [*Local Agency Guidelines (LAG), Section C, Chapter 7*](https://www.oregon.gov/odot/LocalGov/Documents/Section-C-Chapter-7.pdf)*”*
* *ORS 35, with reference to the “Uniform Appraisal Standards for Federal Land Acquisitions”*
* *Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Uniform Act), as amended*
* *All other applicable laws, rules, and regulations*

Consultant shall utilize all forms, spreadsheets, brochures and pamphlets referenced in the *“ODOT Right of Way Manual”* or as provided by Agency. Consultant shall use Agency letterhead and contact information to all the documents that are sent out.

Consultant shall track status for all parcel files to be acquired for R/W purposes in the format provided by Agency. Consultant shall coordinate the details of this process with the APM or Designee at the Project kickoff meeting.

### For estimating purposes, up to # files are anticipated for this Project.

### 14.1 Obtain Right-of-Entry Agreements

Consultant shall prepare, negotiate, and obtain property owner signatures for temporary right-of-entry documents for the purposes of preliminary engineering, and environmental investigations for up to # parcels. Consultant shall use templates provided by Agency. Consultant shall document conversations with property owners in the Report of Personal Interview form

**14.1 Consultant Deliverables and Schedule**

Consultant shall provide:

* Right-of-entry documents for signature to APM within # weeks of NTP.
* Signed right-of-entry documents to APM prior to onsite work occurring.

[The following subtask can also be alternatively included in Task 2 Survey and Mapping. Include only once.]

## 14.2 Title Reports and Document Requests

Consultant shall prepare and assemble all title documents, including vesting deeds, necessary to accomplish acquisition of R/W for each impacted property.

[Typically, preliminary title reports are required for Appraisals and closing. Temporary easements may not need title work and you can go with vesting deeds. Depending on the risk factor you may be able to go with vesting deeds for low value permanent takings.]

Consultant shall obtain preliminary title reports for all permanent takes. Consultant shall review preliminary title reports for complete documentation of title vesting and notify APM of any major title encumbrances. Consultant shall notify Agency if any acquisitions fall outside of Agency jurisdiction.

**14.2 Consultant Deliverables and Schedule**

Consultant shall provide:

* Preliminary Title Reports and Title Documents per the schedule developed in Task 1 Project Management.
* Clearance Documents from Lenders and/or Lessees per the schedule developed in Task 1 Project Management. [These documents cannot be obtained until after negotiations are substantially complete.]

[The following subtask can also be alternatively included in Task 2 Survey and Mapping. Include only once.]

**14.3 Right of Way Engineering, Maps & Descriptions (RESERVED see Task 2.7)**

Consultant shall perform R/W data research as necessary to prepare for and support all Project activities, and to produce Project maps and reports as called for in subsequent tasks. Consultant shall complete a thorough search for all recorded survey monuments and features pertaining to the establishment of property lines and R/W boundaries and shall perform a survey to locate, identify, measure and document all such monuments and features that are found. Consultant shall collect and review general Project background documentation, recorded surveys and conveyance documents, and shall follow all statutes.

For each file, Consultant shall prepare R/W Maps and Descriptions according to the guidelines shown in the *“ODOT Right of Way Manual”*.

**14.3 Consultant Deliverables and Schedule**

Consultant shall provide:

* R/W Map(s) in PDF format to APM per the schedule developed in Task 1 Project Management.
* R/W real property description(s) in PDF format to APM per the schedule developed in Task 1 Project Management.
* A copy of the vesting documents for each property owner and R/W file in PDF format to APM per the schedule developed in Task 1 Project Management.

## 14.4 Right of Way Programming Estimate

Consultant shall prepare a R/W programming estimate for use by Agency to program funds for property acquisition. Consultant shall obtain the most current version of the Programming Estimate form to be used on all State and federally funded projects from Agency. The programming estimate must include the Project name and county in which the Project is located and all Project R/W costs, including separate Consultant, Agency, and ODOT R/W costs as provided by Agency. [Agency will need to request that ODOT provide an estimate of its costs for providing R/W oversight or other services agreed to in the Right of Way Services Agreement between Agency and ODOT.] The R/W programming estimate must include dollar amounts for the following items: Land & Improvements; Damages/Cost to Cure; Relocation; Demolition; Personnel & Administration; Legal & Contingencies and totals for all Items. The programming estimate must be submitted to the APM for review. Consultant shall alert Agency if the estimate exceeds the Project budget and evaluate impacts to the R/W schedule.

Consultant shall revise and re-submit programming estimate, incorporating comments received from Agency and ODOT.

**14.4 Consultant Deliverables and Schedule**

Consultant shall provide:

* 1 draft Programming Estimate for delivery electronically APM per the schedule developed in Task 1 Project Management.
* 1 final Programming Estimate for delivery electronically to APM per the schedule developed in Task 1 Project Management.

### PLEASE NOTE: Consultant shall not perform any Services described in Tasks 14.5 through 14.10 below until Agency issues NTP for the R/W phase of the Project.

[Based on a review of the Right of Way Services Agreement between ODOT and the Agency, determine which agency is responsible for securing and paying for title reports, creating conveyance documents, county recording of executed documents and payment to property owners.]

**14.5 Preliminary Activities**

Upon receipt of authorization to proceed with R/W Acquisition, Consultant shall set up R/W parcel files and deliver a General Information Notice (“GIN”), acquisition and relocation brochures, and a copy of the applicable portion of the R/W Acquisition map {marked Preliminary and showing the parcel(s) to be purchased} to all owners and occupant(s) of affected properties. Consultant shall send GIN by certified mail with proof of delivery kept in the parcel file. Mailing and delivery of GIN must be included in the Report of Personal Interview.

Consultant shall prepare and maintain a Report of Personal Interview for each file. The Report of Personal Interview must include proof of delivery of all notices, date and place of contact, parties of interest contacted, a statement that brochures were delivered and explained, and record of other activities conducted during the Personal Interview.

**14.5 Consultant Deliverables and Schedule**

Consultant shall provide:

* GINs, 1 hard copy to each property owner and affected occupant(s) and 1 electronic copy each to City/County within 20 business days following NTP for the R/W acquisition phase.
* Proof of receipt for each notice sent to each property owner and occupant(s) by sending Agency the return receipt card(s) or USPS tracking printout(s), and documenting delivery information in the Report of Personal Interview. NOTE: If proof of delivery is not received from USPS, verbal confirmation of receipt by the owner/tenant must be documented in the Report of Personal Interview.

[Generally, do not support doing donations in all cases but only in very specific cases where there is an obvious benefit to the owner or the owner is a public agency. \*\*Note: CLPA to clear early contact with ODOT Right of Way prior to seeking a property donation from or negotiating an offered donation with property owners.\*\*]

**14.5.1 Donation Agreements – CONTINGENCY TASK (Requires separate NTP from APM)**

Prior to commencing discussions with a property owner regarding a potential property donation, Consultant shall confirm Agency has received ODOT clearance to make early contact with the property owner. For each property that is donated Consultant shall prepare a closing packet to include written documentation informing the property owner of their right to just compensation, the executed Donation Agreement and Conveyance Document, original recorded documents and title insurance policy.

**14.5.1 Consultant Deliverables and Schedule**

Consultant shall provide:

* Closing Packet (Executed Donation Agreement and Conveyance Documents), Original Recorded Documents and title insurance policy for any permanent R/W acquired through donation, 1 hard copy to Agency no later than 14 weeks prior to bid date.

[Appraisals maybe required for all R/W acquisitions including Fee, Permanent Easement, Temporary Easements, and donations for all project purposes including construction. Coordinate with the Agency for needs. Appraisal Review is a separate function required on all State and federally funded projects. Please refer to the Right of Way Services Agreement to determine whether the Review function will be performed by ODOT, Agency, or Approved Consultant Fee Appraiser. ODOT has the most up to date Qualified Appraiser’s list. On files with a high market value or involving complex or controversial issues, more than one appraisal may be secured. Coordinate with the Agency and ODOT to determine if any additional appraisals will be required.]

## 14.6 Appraisal and Appraisal Review

Consultant shall use appraisers who are licensed or certified in the State of Oregon, competent in eminent domain appraising, and on ODOT’s Qualified Appraisers List. Consultant shall provide the name(s) of the appraiser(s) to Agency prior to beginning work on this Task.

Consultant shall provide one real estate appraisal for each property (orproperties that constitute the “larger parcel”as described in the *ODOT Right of Way Manual*)from which an interest is to be acquired. If identification of the larger parcel isproblematic, Consultant shall resolve the issue in consultation with the Agency and ODOT. [Some CLPAs are approved to complete Administrative Determinations of Just Compensation (ADJCs), so consultant may only provide appraisals for properties that do not qualify for ADJCs.]

All real estate appraisals provided by Consultant shall be prepared using forms or formats of, or approved by, Agency. The types of appraisal reports must fall into the following categories:

* Abbreviated or short form (Taking & Damages) appraisals for simple takings.
* Detailed (Before & After) appraisals for complex takings.

Consultant shall require appraisers to provide no less than fifteen calendar day’s written notice to owners of a planned appraisal inspection and shall provide the property owner or designated representative, if any, an invitation to accompany the appraiser on inspection of the property for appraisal purposes. This notice must be sent as specified by the *ODOT Right of Way Manual*.

Special Benefits, if any, must be quantified by the appraiser whether or not there are any compensable damages to the property.

Specialty reports, if necessary, must be provided to review appraiser for review and approval prior to incorporation in appraisal reports.

[Use this Option if Consultant performing appraisal review services:]

Consultant shall perform independent reviews of appraisals. Consultant shall ensure that the same firm does not perform both the appraisals and the appraisal reviews. Consultant shall forward both appraisal and review to Agency for final approval.

Agency will establish just compensation for each property owner and will notify the Consultant.

[OR - Use this Option if ODOT performing appraisal review services, next two paragraphs:]

Consultant shall provide all appraisals (including any appraisal specifications) to the ODOT Region Right of Way Manager or Designee for review. Consultant shall include a Report of Personal Interview indicating activities conducted through the appraisal phase of the file.

ODOT will prepare the appraisal reviews, which will be used to establish the amount of just compensation to be offered to property owners. Reviews are anticipated to be completed within 21 calendar days after receipt of the appraisal report from the Consultant. A copy of the appraisal review will be provided to Consultant, although the appraisal review will not be provided to the owner, contract purchaser, or any other interest holder in the property. Consultant shall provide clarification or additional documentation upon request by Agency in order to establish just compensation. The 21 calendar day completion time will stop if the appraisal is not reviewable, and the entire 21 calendar day appraisal review time will begin again only upon receipt of additional information and/or materials needed for a reviewable appraisal product. In the event of extremely complex appraisals, additional time may be required by Agency or ODOT. Agency will notify Consultant when additional data is needed or complex issues require additional review time, which will extend the 21 calendar day appraisal review timeline.

Consultant shall continue documentation in the Report of Personal Interview for each file.

**14.6 Consultant Deliverables and Schedule**

Consultant shall provide:

* 15 Day Notice of Appraisal Inspection to each property owner within xx weeks of NTP for the R/W acquisition phase.
* Report of Personal Interview, including date and place of contact, parties of interest contacted, a statement that a 15-Day Notice of Appraisal Inspection was mailed and delivered, and record of other activities conducted during the Appraisal to APM within 3 business days of request.

[If Agency or ODOT performs appraisal review. Paper copies not necessary for an ODOT review.]

* 1 electronic file of the Real Estate Appraisal of each of the properties in an Agency approved format to APM within xx weeks of NTP for the R/W acquisition phase.

[If Consultant performing appraisal review services:]

* The following Appraisal and Appraisal Review documentation, as applicable, in electronic format for each file to APM within xx weeks of NTP for the R/W acquisition phase:
* Value Finding/Taking and Damages Appraisal (for simple takings),
* Detailed Before & After Appraisal (for complex takings),
* Specialty reports, if necessary, prior to incorporation in appraisal reports.

**14.7 Acquisition Services**

All R/W must be acquired in the name of Agency. Consultant shall conduct negotiations, on behalf of Agency, in good faith and in compliance with all federal and state laws and regulations. Consultant shall conduct negotiations for acquisition of real property based on Appraisal Review and in accordance with the *ODOT Right of Way Manual* and all applicable state and federal laws and regulations.

Consultant is responsible for clearing title encumbrances identified on the Preliminary Title Report or making the offer subject to clearing title encumbrances. Consultant shall present any requests for taking title subject to one or more outstanding interests to Agency for approval. Fee owners’ and contract purchasers’ ownership interests must be cleared. When impacted by the taking, lessees’ interests must also be cleared.

 Offer Packets must include, but are not limited to, acquisition and relocation brochures, offer-benefit letter, acquisition and relocation summary statements, copy of appraisal, map of acquisition, instruments of conveyance, and W-9 form. Each Offer Packet must contain all components necessary to fully compensate the property owner for rights taken and to convey adequate rights to Agency in order to clear the R/W for the Project.

If possible, Consultant shall make offers in person, especially where the acquisition involves either a major impact to the property or the displacement of persons occupying the property. If this is deemed not possible, Consultant shall send offer(s) by certified mail. Proof of delivery must be documented in the Report of Personal Interview and file.

Consultant shall make every reasonable effort to acquire the R/W expeditiously by negotiation. Consultant shall give property owners reasonable opportunity to consider the offer (statutorily 40 calendar days) and to present material the owner believes is relevant to determining the value of the property. Consultant shall attempt to negotiate an approved administrative settlement, but shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court or take any other coercive action in order to induce an agreement on the price to be paid for the property (49 CFR 24.102(h)).

* IF the OFFER is ACCEPTED, Consultant shall present a Final Report Packet covering the acquisition of R/W to Agency for final approval, payment, conveyance of title and recording.
* IF a COUNTEROFFER is received, Consultant shall contact Agency for discussion and approval or rejection. If accepted, Consultant shall generate a Final Report Packet for Agency final approval, payment, conveyance of title, and recording and a justification letter justifying the amount over just compensation.
* IF an acceptable agreement is not reached, Consultant shall prepare and submit a Recommendation for Condemnation.

Consultant shall maintain written Report of Personal Interview with property owners and tenants to document all verbal and written communication and events, such as: delivery of required notices, efforts to achieve amicable settlements, owner’s suggestions for changes in plans, and responses to owner’s counterproposals.

**14.7 Consultant Deliverables and Schedule:**

Consultant shall provide the following to APM within xx weeks of NTP for the R/W acquisition phase:

* Draft Offer Packet for review for each file to APM.
* Final Offer Packet for review and signature to APM.
* Final Offer Packet sent certified mail or delivered in person for each file.
* Final Report Packet for each file for payment, conveyance of title and recording to APM.
* If applicable, proposed counter offers with justification information for review and approval to APM.
* If applicable, Recommendation for Condemnation to APM.
* Report of Personal Interview to APM with 3 business days of request.

[Relocation is a required task if there are people, businesses or personal property within the acquisition area.]

## 14.8 Relocation

Consultant shall use the forms, formats and brochures in relocation advisory assistance and the preparation of relocation studies, reports and claims available on ODOT’s R/W Guidance webpage (https://www.oregon.gov/ODOT/ROW/Pages/ROW.aspx).

Consultant shall ensure that relocations take place in accordance with regulatory notification time frames and terms. Consultant shall inform Agency as soon as schedule issues are known, if applicable.

[The list below is a complete list for residential and business relocations. If only personal property relocations are required, this list should be modified.]

Consultant shall, at a minimum, conduct the following relocation activities:

* Conduct occupant interviews to determine relocation eligibility and needs including: names, number of occupants, and certification of legal residency in the United States. If the relocation involves a tenant, the displacee’s income may need to be considered. Occupant interview documentation shall include but is not limited to any contacts, discussions, e-mails, letters & phone calls with the relocatee or anyone regarding the relocation file.
* Provide relocation advisory assistance and information regarding available benefits, available replacement housing and non-residential benefits.
* Establish initial determination of relocation benefits.
* Advise displaced persons of procedures for applying for benefits.
* Provide Move Plan to Agency Reviewer for approval.
* Complete Move Agreement in conjunction with displaced persons and submit to Relocation Reviewer for approval prior to obtaining signatures from displaced persons.
* Compute replacement-housing payments for owners and tenants and submit them to Agency for review. Agency will submit to the Relocation Reviewer for approval before presenting the benefits to the displaced persons.
* Determine type and amount of move payments according to current procedures.
* Obtain move estimates, as needed, and advise displaced persons in choosing the most appropriate moving method. Any moving estimates need to be approved by ODOT and Agency prior to offers being made.
* Offer transportation, as needed, to all displaced persons to inspect potential replacement housing.
* Monitor move of personal property as required.
* Inspect and certify that all replacement dwellings meet Decent, Safe and Sanitary criteria.
* Verify displaced persons have relocated to replacement dwelling prior to submittal of any tenants housing payment claims.

[Suggest paragraph below only for larger scale relocations and not for miscellaneous personal property.]

Consultant shall assemble Relocation Closing report to include appropriate claim forms and documentation, obtain signatures and submit all relocation claims to Agency for review, approval and payment. The Agency Relocation Reviewer will review all relocation studies and approve all relocation claims.

**14.8 Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables to the APM within xx weeks of NTP for the R/W acquisition phase:

* Project Relocation Plan
* Relocation Move Plan and Move Agreement for individual displacees
* Occupant Interview Documentation
* Relocation Studies, Reports and Claims
* Replacement Housing Study and Calculation
* Type and amount of Move Claims including Move Estimates
* Income Verification
* Mortgage Interest Differential calculation
* Move Monitor Report
* Inventory of Personal Property to be moved
* Replacement Dwelling Decent, Safe and Sanitary inspection report
* Relocation Appeals Documentation (if requested by Agency)
* Attendance at pre-hearing appeal and/or appeal conference (if requested by Agency)

## 14.8.1 Relocation Appeals Process – CONTINGENCY TASK (Requires separate NTP from APM)

Consultant shall assist in the relocation appeals process as follows:

* **Respond to Relocation appeals within one week of receipt, notifying displacee that appeal has been received and next steps.**
* Submit a chronological history of relocation meetings with displaced persons, an outline of disputed issues, appropriate sections of [Relocation Chapter 6](http://www.oregon.gov/ODOT/HWY/ROW/docs/chapter_six_2015.pdf) supporting Agency’s position (and CFRs/non-regulatory supplements, if applicable), and options presented to resolve the issues.
* Attend a pre-hearing appeal and/or appeal conference with the individual requesting the appeal and representatives of Agency and ODOT.

**14.8.1 Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables to the APM within xx weeks of NTP for the R/W acquisition phase:

* + Relocation Appeals Documentation (if requested by Agency)
	+ Attendance at pre-hearing appeal and/or appeal conference (if requested by Agency)

[Resolution to Condemn must be obtained]

## 14.9 Condemnation Process Assistance – CONTINGENCY TASK (Requires separate NTP from APM)

After good faith effort has been made to acquire R/W at Agency’s determination of just compensation, if settlement with the property owner(s) is NOT reached, Consultant shall:

* With Agency authorization, send Final Offer letter to the property owner in accordance with the *ODOT Right of Way Manual*.
* Provide information and clarification to Agency in support of mediation and condemnation proceedings and assist property owner with any relocation according to the Consultant Services Guide.

*Note: Agency will initiate Condemnation proceedings.*

**14.9 Consultant Deliverables and Schedule:**

Consultant shall provide:

* Final Offer letter to property owner (s), with a copy to Agency per the schedule stated in the NTP for this contingency task.
* Support and assist Agency with mediation and condemnation proceedings and assist property owner with necessary relocation.

[Certification is required on all State and federally funded projects.]

## 14.10 R/W Certification

Consultant shall certify to Agency on the most current approved Certification form from ODOT that;

* Agency has legal and physical possession of needed R/W.
* Relocation assistance has been completed for all displaced persons and businesses, all personal property relocations are complete or will be complete by bid let date and that all displaced residential occupants have relocated and have been offered decent, safe and sanitary housing.
* All acquisition of R/W and relocation activities have been completed in full compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 as currently amended as well as Oregon state laws, civil rights laws, and other applicable federal and state regulations and policies.

Consultant, in cooperation with Agency, shall submit the draft R/W Certification form to ODOT for review prior to Agency signature. Final R/W Certification will be signed by Agency and sent to ODOT for co-certification and processing.

**14.10 Consultant Deliverables and Schedule:**

 Consultant shall provide:

* Draft R/W Certification form, 1 electronic copy (email acceptable) to APM no later than 10 weeks prior to Project PS&E date.
* R/W Certification form, 1 electronic copy (email acceptable) to APM no later than 8 weeks prior to Project PS&E date.
* Access to completed files for ODOT review. The nature and depth of the review is determined by ODOT. All files must be well organized and in auditable condition. Access to files shall be given at least two weeks prior to expected certification date.