

Section 5.4
FEEES AND COSTS

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Section 5.4

FEES AND COSTS

PURPOSE

To establish the procedures, requirements and standards for reimbursement of property owner and business owner fees and costs for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

49 CFR 24.107
21 GCA §15112 Attorneys Fees and Cost

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

REFERENCES

Section 5.2, Negotiation Process

FORMS

5.2-2 Offer and Purchase Agreement

5.4.1 Reimbursement of Fees and Costs

5.4.1.1 The Department shall reimburse property owners and business owner's reasonable attorney's fees and expert costs incurred as a result of the Department's acquisition of their property and/or settlement of their eligible business damage claims. For parcels and business damage claims settled prior to a jury verdict, reasonable fees and costs typically include costs for one real estate appraisal per parent tract, one business damage estimate per eligible business, attorney's fees, and other necessary expert costs. For parcels where final compensation for land and/or business damages is determined by jury verdict, fees and cost shall be reimbursed.

5.4.1.2 The Department shall pay fees and costs for parcels acquired through negotiated settlement at closing. For parcels acquired by eminent domain, fees and costs shall be paid at the time the final judgment for land and/or business damages is entered. The Department will pay fees and costs directly to the property or business owner unless the owner requests in writing to the Department that fees and cost be paid directly to the owner's attorney and/or other experts.

5.4.1.3 Where a binding offer is withdrawn pursuant to **Section 5.2, Negotiation Process**, and no new offer will be delivered or a new offer will not be delivered for an extended period of time, the Department shall pay reasonable attorney's fees and costs, as described in **Section 5.4.1.1**, incurred by the landowner resulting from the previously delivered binding offer and its withdrawal.

5.4.1.4 In determining reasonable amounts for fees and costs, the department shall be guided by the fees and costs the owner would normally be expected to pay if the Department were not responsible for reimbursement. The DPWRS will

make the determination and recommendation to the Director of the Department of Public Works (DDPW) as to reasonable fees and costs.

5.4.2 Expert Costs

5.4.2.1 For parcels and business damage claims settled prior to a jury verdict, reimbursement of appraisal, certified public accountant, business damage expert, and other expert costs should be based on an invoice which includes:

- (A) The nature of services performed listed by date;
- (B) The time expended for each date of service identified in (A) above;
- (C) The total fee, and
- (D) The hourly rate for services.

5.4.2.2 All work produced must be received by the Department before reimbursement. The quality and completeness of the work received by the Department must be considered by the DPWRS or designee in determining a reasonable amount to be reimbursed.

5.4.2.3 For parcels where final compensation for land and/or business damages is determined by jury verdict, expert costs shall be reimbursed.

5.4.3 Attorney Fees

5.4.3.1 Property owner and business owner attorney's fees for parcels and business damage claims settled prior to a jury verdict should be negotiated considering:

- (A) The benefit and fee schedule as described in **Section 5.4.3.3** and **5.4.3.4**;
- (B) Reasonable hours and hourly rates;
- (C) The complexity of the parcel/business damage claim;
- (D) The level of effort put forth by the attorney in negotiating settlement of the parcel/business damage claim; and
- (E) Other issues the Department deems pertinent to the negotiations.

5.4.3.2 For parcels where final compensation for land and/or business damages is determined by jury verdict, attorney's fees shall be reimbursed.

5.4.3.3 Attorney fees based on benefit, shall be calculated as follows:

- (A) Thirty-three percent (33%) of any benefit up to \$250,000, plus
- (B) Twenty-five percent (25%) of any benefit between \$250,000 and \$1,000,000, plus
- (C) Twenty percent (20%) of any portion of the benefit exceeding \$1,000,000.

5.4.3.4 For real estate acquisition, the term benefit means the difference between the settlement and the last written offer made by the Department before the owner hires an attorney. If a written offer is not made before the owner hires an attorney, the benefit will be measured from the first written offer after the attorney is hired. A non-monetary benefit obtained by the property owner's attorney for his or her client may also be considered to the extent such non-monetary benefit can be quantified with a reasonable degree of certainty. For business damages, benefit will be calculated as the difference between the final judgment or business damage settlement amount and the amount of the Department's initial or counteroffer to the business owner's offer.

5.4.3.5 Documentation explaining the amount to be reimbursed for attorney's fees shall be maintained in the Department's official parcel file.

5.4.4 Supplemental Purchase Agreements

If the real estate/business damage closing must take place prior to agreement on the amount of reasonable fees and costs, payment of fees and costs may be processed separately by means of a Supplemental Purchase Agreement. Supplemental Purchase Agreements must be prepared using **Form No. 5.2-2, Offer and Purchase Agreement**. Final agency acceptance is not required for supplemental purchase agreements for payment of fees and costs.

HISTORY

Original Issue Date: 2009