

JACKSONVILLE TRANSPORTATION AUTHORITY

REAL PROPERTY ACQUISITION RULE

(RULE NO. 011)

DATE OF ADOPTION: February 23, 2017

I. GENERAL

A. Purpose

The purpose of this rule is to set forth procedures by which the Jacksonville Transportation Authority (hereinafter, the "Authority" or "JTA") acquires interests in real property, including necessary rights of way, easements and other property rights for roadway improvement projects and other projects for which the Authority may be authorized to acquire such property rights. The rule is intended for use in all projects for which the Authority is the acquiring agency, unless the project is required by applicable federal or state law or contract to be governed by other procedures. Notwithstanding the foregoing, where deemed in the best interest of the Authority and the public, upon a specific approval by the JTA Board, the Authority may waive the procedures set forth herein in a particular circumstance; provided that such waiver shall not be in conflict with state or federal law.

B. Authority

These rules have been adopted by resolution of the Authority pursuant to its authority as provided in §349.04(2)(c), §349.04(2)(i) and §349.04(2)(m), *Florida Statutes*.

C. Effective Date; Applicability

The effective date of these rules shall be the date of their adoption by the Authority and shall be binding on all Authority action, except as otherwise expressly pre-empted by applicable state or federal law. In the event that federal funds are used in any purchase of real properties, JTA shall comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act. In the event there are conflicts between these rules and any applicable state or federal law, as they currently exist or as they may be amended from time to time, such state or federal law shall take precedence.

D. Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the rules which can be given effect without the invalid provision or application and, to this end, the provisions of these rules are severable.

E. Recordkeeping and reports

The Authority shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with all applicable laws. All documents should be kept by the Project Manager and transferred to Records Retention upon completion of each transaction.

II. ORGANIZATION AND BOARD OVERSIGHT

a. **Board Oversight.** The JTA Board has sole and final responsibility for all decisions related to project approval and authorization, expenditure of funds, property purchases, settlements, and authorization of eminent domain proceedings. JTA delegates certain authorities and responsibilities to the Chief Executive Officer ("CEO") who in turn authorizes various JTA staff or consultants to conduct the day-to-day operations, including real property acquisition. Subject to specific exceptions set forth in this rule, in any real property acquisitions, the JTA Board shall approve the following actions:

1. Approval of JTA project plans, design, construction and project cost estimates.
2. Authorization to initiate real property acquisition activities.
3. Authorization of real property acquisition services including appraisals, review appraisals, acquisition consultants, and other contractors.
4. Authorization to initiate eminent domain proceedings.

b. **Real Estate Committee.** Subject to the exceptions set forth in Section II(d) below, the Real Estate Committee created by the Chairman of the Authority's Board of Directors, or created by the Authority's Board of Directors, pursuant to the Authority's Bylaws, shall oversee, review and approve real property acquisition negotiations, proposed purchases and settlements, review of condemnation proceedings and mediations, and other matters related to real property acquisition, negotiations, purchases and settlements and shall make recommendations to the full Board for final action. The Real Estate Committee shall also undertake reasonable efforts to ensure that any purchase of real property by JTA will not constitute an improper conflict of interest, such as the purchase of property from a JTA Board Member or JTA employee, without proper disclosure and review.

c. **Delegation of Authority to CEO.** Subject to review by Real Estate Committee, and final approval by the Board, except as provided in Section II(d) below, JTA delegates authority to the CEO, or the CEO's designee(s), to make purchase offers, negotiate settlements, approve mediation and condemnation settlements, execute purchase agreements and decide other matters pertaining to property acquisition and settlements for projects approved by the JTA Board, provided, that the property acquisition process is conducted in accordance with the policies and procedures set forth in this rule and/or any other applicable federal or state laws. The signing of transaction closing documents is an executive function. Only the CEO may sign closing documents unless a member of the Executive Leadership Team has been given such authorization by the CEO or the JTA Board for a specified transaction. Any such delegation shall be in writing and kept in the project and parcel file.

d. **Property with Estimated Value Under \$100,000.00.**

When the real property interest to be acquired for any JTA project previously approved by the Board has an estimated value of less than \$100,000.00, excluding closing costs, (as set

forth in an appraisal or set forth in a written good-faith estimate of value by a licensed Authority real estate broker, land agent and/or an appraisal consultant), the property may be purchased by negotiation by the CEO, or his or her designee(s), without approval by the Real Estate Committee or the Board. However, any such interest in real property with an estimated value of under \$100,000.00 which is to be purchased for more than 120% of JTA's appraised or estimated value, must be approved by the Board. The CEO shall provide a summary report to the Real Estate Committee and Board regarding any interest in real property purchased pursuant to this section.

JTA's delegation of authority for real property acquisition activities recognizes the practical need to conduct negotiations for property acquisition, business damage claims and other matters pertinent to real property transactions in confidence until such time as a settlement is reached. This need is recognized in Section 119.0711, Florida Statutes which exempts "...all appraisals, other reports relating to value, offers, and counteroffers..." from public disclosure until execution of a valid option contract or conditional acceptance of a written offer to sell by JTA, subject to final JTA Board approval.

III. COORDINATION WITH COUNSEL AND CONSULTANTS

a. The CEO shall coordinate real property acquisitions with JTA General Counsel or Right of Way Counsel, who is responsible for, among other things, advising the JTA Board on legal matters, supervising other approved JTA counsel and consultants in the acquisition process, coordinating with legal counsel of landowners and other third parties, and coordinating real estate purchase contracts, title and closing matters either directly or through outside counsel and/or consultants. Specific responsibilities and authority of JTA General Counsel or Right of Way Counsel include the following, without limitation.

1. Obtaining and processing title search, ownership and encumbrance reports, surveys and other due diligence information as required for both engineering and property acquisition purposes.
2. Preparing of all legal instruments and documents required for right of way acquisition, including, without limitation, purchase and settlement agreements, option agreements, satisfactions of mortgages, release instruments, deeds, easements, and other documents deemed necessary and proper for each transaction.
3. Closing property purchases and obtaining title insurance.
4. Preparing, filing and prosecuting eminent domain proceedings, upon approval by the JTA Board and coordinating with eminent domain appraisers and other consultants.
5. Negotiating property acquisitions as directed by the CEO or the CEO's designee(s).

b. JTA may elect to utilize the services of qualified technical consultants during the property acquisition process. Technical consultant services required for an acquisition program may include, without limitation, the following.

1. Property appraisal and appraisal review.
2. Eminent domain business damage assessment and report preparation and eminent domain support services.
3. Land Use and Planning Consulting.
4. Relocation and advisory services as JTA may elect from time to time.
5. Property acquisition and negotiation services.
6. Survey, environmental consulting and other due diligence services.
7. Title or closing services.

Consultants engaged in real property acquisition services shall be selected by the CEO and contracted in accordance with JTA policies and procedures and all applicable state and federal laws.

IV. APPRAISALS

a. Except when an interest in real property to be acquired has an estimated value of less than \$100,000.00 as set forth in a written good-faith estimate of value by a licensed Authority real estate broker, land agent and/or an appraisal consultant, JTA shall obtain an appraisal of the interest in real property to be acquired.

b. Appraisals shall be prepared by qualified appraisers and shall conform to the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All appraisers will be selected on the basis of their experience, demonstrated quality of work, licensing and reputation. Appraisers must be qualified to give expert testimony in support of their value estimates in the event of eminent domain proceedings. JTA may, but is not obligated to, create a list of pre-approved appraisers to select from on any given appraisal or review appraisal assignment. JTA may also select an appraiser from any FDOT approved appraiser list, or may select an appraiser recommended by General Counsel or Right of Way Counsel. Appraisals shall be certified to JTA. Where deemed appropriate by the General Counsel's or Right of Way Counsel's office, JTA may agree upon a single JTA/landowner appraiser to perform an appraisal certified to both parties, may accept an appraisal prepared for a landowner by an JTA-approved appraiser meeting the standards set forth herein or may accept an appraisal prepared by any appraiser deemed acceptable to General Counsel and the JTA based on the appraiser's experience, quality of work and reputation. JTA may also negotiate a proposed settlement or purchase price subject to confirmation by an appraisal performed in accordance with these policies.

c. The appraisal report(s) prepared on behalf of JTA will be reviewed by a qualified review appraiser for conformance with the Uniform Standards of Professional Appraisal Practice and to further assure that all compensable items have been included in the appraisal report. The review shall include a thorough check of all mathematical calculations, a review of the completeness of the appraisal, and a review of the reasonableness of the appraiser's conclusions. The review appraiser's written report will certify that the appraisal report conforms to the Uniform Standards of Appraisal Practice and that the value estimate is either reasonable or unreasonable. The review appraiser shall document in writing that he or she has reviewed each appraisal report prepared on behalf of JTA.

V. NEGOTIATION OF ACQUISITIONS

a. JTA may authorize obtaining interests in real property through a negotiated purchase, provided that any negotiated purchase price of the property obtained is based on a reasonable determination of the fair market value of the property as established by an appraisal, or if the interest in real property to be acquired has an estimated value of less than \$100,000.00, in a written good-faith estimate of value by a licensed Authority real estate broker, land agent and/or an appraisal consultant.

b. In accordance with 73.015, *Florida Statutes*, each property owner should be given full information as to the acquisition, the necessity of the proposed improvement and the potential impact of the improvement on the subject parcel. JTA may seek donation of rights of way where appropriate or may negotiate property exchanges or non-monetary consideration for acquisition of property interests.

c. Property acquisition negotiations are conducted under the supervision of CEO, or CEO's designee(s), in coordination with the General Counsel's or Right of Way Counsel's office. Staff or consultant negotiators may be assigned to specific parcels, depending on the perceived difficulty of the negotiations, number of parcels involved in the assignment, and other factors as appropriate.

d. Unless exempted under this rule, the CEO, and General Counsel or Right of Way Counsel may present counteroffers to the Real Estate Committee and shall present the proposed negotiated purchase or settlement agreements for consideration by the Real Estate Committee for recommendation to the JTA Board for final approval. Summary memoranda shall be prepared for all recommended acquisition settlements. The memoranda will document the purchase price, the basis for the purchase price, the relevant facts and circumstances surrounding the proposed purchase and the justification for the purchase.

e. The negotiator shall maintain accurate, written records of all negotiations, including:

1. Persons contacted.
2. Potential settlement terms discussed with landowners before and after any first written offer.

3. Written offers and counteroffers.
4. Results of the discussions.
5. Any other data pertinent to the negotiation and settlement of the parcel.
6. Copies of written contact records shall be maintained in the negotiators working file, in chronological order, so that the negotiation process can be readily reviewed throughout the acquisition program.

f. Closing services shall be performed or coordinated with outside consultants or title companies by General Counsel or Right of Way Counsel who shall be responsible for causing recording of the executed deed and/or other any other documents required to vest title to the real property interest to be acquired in JTA. General Counsel or Right of Way Counsel shall attend all closings as a representative of the Authority.

g. Prior to closing of the purchase of any interest in real property, General Counsel or Right of Way Counsel shall obtain and provide a closing package, including copies of all the proposed closing documents and a closing statement with a good-faith Estimate of closing costs to the CEO, JTA's Chief Financial Officer and Vice President of Planning, Develop and Innovation for review and approval prior to JTA's authorization and payment of any funds to pay the purchase price and all costs or closing. Following closings, JTA's Treasury Department will confirm all cash disbursements in connection with closing.

h. General Counsel or Right of Way Counsel or the outside consultant shall provide copies of all the transaction and closing documents, including the purchase agreement, closing statement, deed, title insurance policy, the documents in paragraph e above and other pertinent closing documents to the JTA's designated custodian of records for retention in JTA's records in accordance with JTA record retention policies and procedures.

VI. EMINENT DOMAIN ACQUISITIONS

a. Before initiating a condemnation action as to any property interest, the CEO or the CEO's designee(s) and General Counsel or Right of Way Counsel shall consult with the Real Estate Committee and the JTA Board shall act in accordance with all applicable federal and state laws, including, without limitation, Chapters 73, 74 and 349, *Florida Statutes*.

b. The Real Estate Committee shall have the authority to approve initial offers of compensation in any amount deemed to be in the best interest of the Authority and shall have the authority to approve any terms deemed necessary to obtain a Stipulated Order of Taking of the property to be acquired.

c. Notwithstanding anything provided herein, for any property acquired through eminent domain after May 11, 2006, any disposition or conveyance of such land shall be made in accordance with the provisions of Section 73.013, Florida Statutes.

VII. TREASURY INSTRUCTIONS FOR INITIATING AN ACQUISITION OF PROPERTY

- a. JTA's Real Estate Project Officer will contact the JTA Controller and Treasury Manager to identify the appropriate bank and/or wiring instructions for the acquisition of real property.
- b. JTA's Real Estate Project Officer shall provide the JTA Controller and Treasury Manager with a copy of the closing statement and title documentation (either abstract, title commitment or title policy) for the acquisition of real property.
- c. The appropriate JTA Finance department will attach a copy of the closing documents to the transaction activity, disbursement or receipt, to be recorded in the accounting system per GASB Statement No. 72 – Fair Value Measurement and Application.
- d. The JTA Finance department will maintain a record of the yearly real estate purchases, and report completed transactions to auditors on an annual basis.