

# ADMINISTRATIVE SETTLEMENT JUSTIFICATION TEMPLATE

[Guide Form – Place on Agency Letterhead]

## Background

**\*\*It is important to note that the Uniform Act [49 CFR §24.102(i)] requires any settlement exceeding the amount offered as just compensation to be supported by a written justification that the settlement is reasonable, prudent, and in the public interest. This is a requirement regardless of whether the amount of the settlement exceeds FTA's threshold requiring FTA's prior-concurrence\*\*** [This section should assume that the reader knows nothing about the project or the subject property acquisition. Explain the entire background and history of the parcel acquisition including owners, location, interests to be acquired, areas of acquisition, appraisal history, date when just compensation was established, date of offer, status of eminent domain proceedings, etc.]

## History of Negotiations

[This section should describe the entire history of negotiations starting with the initial offer to purchase. Assume the reader knows nothing. Include a thorough history of negotiations, a description of areas of disagreement, appraisal or other data that might be in conflict, describe the property owners' position and any data they may have submitted to support their position, describe any research or data that supports the position of the acquiring Agency, and explain how the acquiring Agency views all areas of disagreement, etc.]

## Analysis

[This section should include and describe a complete and thorough analysis of all areas of disagreement and how they are proposed to be resolved through an administrative settlement. What actions have the Acquiring Agency and property owner taken to analyze, verify, and/or arrive at a particular settlement dollar amount and what conclusions has the Agency arrived at because of this analysis. Describe any non-monetary concessions, such as design changes, that are proposed as part of the settlement. A thorough examination of risks and costs associated with settling or not settling the parcel acquisition is important to include in this section.]

## Conclusion

[Overall, the above background, history, and analysis should lead the reader to a full understanding of the administrative settlement, and the entire justification should be sufficient to withstand the scrutiny of independent review. This section should thoroughly describe the conclusions and recommendations for settlement of the acquiring Agency and how the administrative settlement is reasonable, prudent, and in the public interest.] **\*NOTE: If the parcel has advanced to eminent domain proceedings or trial risks are a cited factor in the settlement justification, the Agency shall obtain and attach to this justification a letter of concurrence from legal counsel representing the Agency in any legal proceedings related to the parcel acquisition\***

**Disclaimer:** The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

**EXAMPLE**

**JUSTIFICATION**

December 11, 2020

Regional Administrator  
Federal Transit Administration, Region  
Second Avenue, Suite  
City, State 98174

**REQUEST FOR FTA CONCURRENCE  
Administrative Settlement**

**RE:** Owner's Name

**Property Address:** Street Name City

**Recipient Transit ROW No.:** or project identifier

Dear Ms Mr Jones,

TRANSIT NAME hereby requests FTA Concurrence of an Administrative Settlement for the acquisition of the property captioned above in order to locate, construct, operate and maintain TRANSIT PROJECT NAME and related facilities.

The settlement amount of \$260,000 exceeded the threshold amount of \$251,600, thus FTA Concurrence is required.

Based on the information below, we are requesting FTA Concurrence for the settlement.

**Property**

The subject property (the "Property") consists of three adjacent and interconnected parcels that collectively total 46,609 SF. The site has frontage exposure along ROAD, is improved with fencing, gravel surfacing, and a concrete slab that formerly supported an approximately 3,200 SF pre-fabricated steel frame building fully used by the owner for multiple purposes associated with the owner's contracting business. The Property is owned by COMPANY (the "Owner").

### Acquisition Description

With this condemnation, RECIPIENT is acquiring a permanent easement and several temporary easements. The acquisitions are as follows:

- A wall footing and maintenance easement of 359 SF;
- A short-term temporary construction easement (TCE1) of 5,290 SF; and
- A long-term temporary construction easement (TCE2) of 4,539 SF.

While relatively little property is being acquired, RECIPIENT's work created the need to demolish a building on the Property for removal from the construction area. The cost to replace the building is the largest element of dispute in this matter.

### Summary of Negotiations

RECIPIENT met with the Owner on September 14, 2018 and made its initial offer of just compensation in the amount of \$151,700. A final offer letter was later sent to the Owner in the same amount. On February 7, 2019, the Owner provided a letter with a bid for building replacement costs in the amount of \$272,058.

Due to the project schedule, the file was sent to outside counsel for condemnation. On March 13, 2019, outside counsel filed condemnation on behalf of RECIPIENT and the Owner granted possession and use on June 28, 2019. The trial was initially set for July 6, 2020, however, the trial date was reset to October 12, 2020 due to concerns with Covid-19. On August 18, 2020, the Owner provided Sound Transit with an appraisal which had an opinion of value in the amount of \$282,000.

On Sept. 17, 2020, RECIPIENT and the Owner agreed to settle the case for \$260,000.

### Valuation Summary

RECIPIENT'S's appraisal dated August 1, 2018	\$151,600
Owner's Request/Bid for Building Replacement Value (February 7, 2019)	\$272,058
Owner's appraisal dated February 28, 2020	\$282,000

### Valuation Dispute

The property rights being acquired by RECIPIENT are limited and the differences in the opinion of value between the two appraisers is narrow. The crux of the dispute is the cost to replace an older building located on the Property. The building is a Quonset hut structure placed on the property in the 1950s. It was admittedly an older structure; however, it was still fit for its purpose at the time Sound Transit made its offer.

Both appraisers used a cost approach to value the property in the "before" condition, but it is helpful to view the appraisals by their component parts.

RECIPIENT's appraiser, JOE SMITH, used a sales comparison approach to value the underlying land for the permanent easement while a lease comparison was used for the "yard" rents to value the TCEs. The replacement value of the Quonset hut was calculated by using the Marshall & Swift Valuation Service cost manual (the

"Marshall Manual"). Mr. xxxx's conclusions were as follows:

Land Value:	\$22 per square foot (\$1,025,402 for the entire parcel);
Permanent Easements:	\$1,000 (value of the portion acquired / loss to parcel);
TCEs (Rental Rate):	\$0.16 per square foot (\$41,776 for the total period);
<u>Restoration (cost to cure):</u>	<u>\$107,925 (depreciated Quonset hut + concrete slab);</u>

**Total Just Compensation: \$151,600**

The Owner hired [redacted] as their appraiser who used a nearly identical methodology, but with slightly different values for this conclusions. Mr. [redacted] breakdown is as follows:

- Land Value: \$25 per square foot (\$1,165,225 for the entire parcel);
- Permanent Easements: \$1,000 (value of the portion acquired / loss to parcel);
- TCEs (Rental Rate): \$0.19 per square foot (\$57,400 for the total period);
- Restoration (cost to cure): \$223,000 (depreciated Quonset hut + concrete slab);

**Total Just Compensation: \$282,000**

While the difference in the values may appear to be somewhat drastic, the values are closer than they appear. When accounting for the date of value for each appraiser, it is clear there an increase in value between Mr. [redacted] appraisal with a date of value of August 2018 and Mr. [redacted] 's appraisal with a date of value of June 2019. Mr. [redacted] confirmed that if he were to update his report as of the date of value, his property value would likely be \$25 per square foot and his yard lease rate would be \$0.18 per square foot per month.

The yard lease rate shared these similarities; however, we note that Mr. [redacted] used a slightly lower percentage to reduce the total payment to present value. Both appraisers used nearly an identical formula — a 7% rate of return on land value with a 3% inflation. Regarding the TCE term, Mr. [redacted] charged the full rental rate for a 12-month option to extend, even though the 12-month option to extend had not been exercised.

All that aside, the most significant difference between the two appraisers related to the cost to replace the Quonset hut and concrete slab. The Owner provided RECIPIENT with a replacement bid of \$272,058 in early 2019. Mr. [redacted] and Mr. [redacted] both used the Marshall Manual for the cost approach, but Mr. [redacted] used a higher class building for his analysis. This resulted in a \$115,000 higher cost to cure than Mr. [redacted] \$107,925.

**Rationale for Settlement**

As mentioned above, Mr. [redacted] indicated were he to update his appraisal as of the valuation date, there would be a corresponding increase in land value. Mr. [redacted] 'S land value and rental rate would essentially be on par with Mr. [redacted] 'S opinion of value.

As for the cost to replace the Quonset hut, outside counsel engaged [redacted] LLC as a consultant on this sole issue. [redacted] provided a cost estimate that was much closer to [redacted] number than Mr. [redacted] . Thus, [redacted] number lent credibility to the cost estimate contained in Mr. [redacted] report. That said, [redacted] estimate was not a depreciated number. If [redacted] were to adopt the [redacted] estimate in his updated appraisal, including appropriate depreciation, RECIPIENT's value would be very close to \$260,000.

Outside counsel has advised RECIPIENT should this matter proceed to trial, our own evidence would likely result in compensation of \$260,000 or very near. As detailed in the accompanying litigation counsel concurrence letter, for trial purposes, not only does our valuation put us very close to a compensation of \$260,000, the Owner's appraisal suggests the same. Moreover, there is a possibility a fact finder would agree with the Owner's number. Thus, there is no need to proceed to a trial setting when both parties are willing to settle now.

In closing, a settlement of \$260,000 is reasonable, prudent, and in the public interest given the likely evidence presented at trial from both RECIPIENT and the Owner. In making the decision to settle now, RECIPIENT avoids the expense of attorney fees and expert testimony fees which would be incurred.

**Conclusion**

The proposed settlement offer is a prudent and reasonable compromise and resolves the reasonable differences of opinion in the impact of RECIPIENT's use of the Property. Because the settlement is based in whole or in part on trial risk, we have attached a separate concurrence letter from our outside counsel. By signing below, RECIPIENT's legal counsel concurs that trial risk was a factor in the settlement.

We ask that the FTA concur with the settlement of \$260,000 at its earliest convenience.

If you have any questions, please contact me at \_\_\_\_\_ .

Sincerely,



By: \_\_\_\_\_

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

EXAMPLE