

## Section 10.6

# RIGHT OF WAY PROPERTY LEASES

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## **Section 10.6**

# **RIGHT OF WAY PROPERTY LEASES**

### **PURPOSE**

To establish uniform procedures for the leasing of Florida Department of Transportation (FDOT) owned properties, or any part thereof, not presently needed for the construction, operation, maintenance, or mitigation of a transportation facility.

### **AUTHORITY**

Section 20.23(3)(a), Section 334.048(3), Florida Statutes (F.S.)

### **REFERENCES**

23 Code of Federal Regulations (CFR) § Part 710, Subpart D

23 CFR § Part 771

23 CFR § Part 810, Subpart C

40 CFR § Part 745

Chapter 479, F.S.

Sections 83.20, 83.56(3), 163.340(7), 163.340(8), 260.0161, 287.055, 334,187, 337.25, 404.056(5), and 479.11(8), F.S.

Rule Chapter 14-116.002, Florida Administrative Code (F.A.C.)

Rule Chapter 18-2, F.A.C.

Rules of the Board of Trustees of the Internal Improvement Trust Fund

Environmental Protection Agency (EPA) Pamphlet, "Protect Your Family from Lead in Your Home"

FDOT Funds Management Handbook

Right of Way Management System User's Manual, Chapter 9

Right of Way Manual, Section 10.5, Disposal of Surplus Property

Right of Way Manual, Section 10.5.9, Concurrence By Federal Highway Administration (FHWA) and the Director, Office of Right of Way

Right of Way Manual, Section 6.1, Appraisal and Appraisal Review

Right of Way Manual, Section 9.2, General Relocation Requirements

Right of Way Manual, Section 11.1, Funds Management

Right of Way Manual, Section 11.1.4, Revenues To Be Returned To Districts

Topic No. 000-010-004, Interests In Real Estate

Topic No. 350-080-300, Section 2, Transmitting Receipts  
Topic No. 350-080-300, Section 11, Items Returned by the Department of Financial  
Services for Collection  
Topic No. 550-030-015, Right of Way Mapping  
Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2  
Type 1 CE Checklist

## DEFINITIONS

**Agent's Estimate of Market Rent:** The estimate of rent on a leaseback that is determined by a Right of Way Agent, at the direction of the District Right of Way Manager (DRWM), on non-complex and relatively low value rental estimates. The estimate is determined, as applicable, by considering prevailing market conditions, the terms of the proposed lease, the level of service and maintenance required by the lease, the amount of rent currently being paid by a tenant on the subject property or for a leaseback to a fee owner, the market rent estimated in the approved appraisal, and any other support that may be available.

**Use and Occupancy Agreement, Form 575-060-32:** The instrument that shall be used, in lieu of a standard Lease Agreement when conveying a leasehold interest of any property within the right of way after final acceptance of the project by the Federal Highway Administration (FHWA). This includes the lease of any FDOT-owned properties that are located on federal aid projects.

**Appraisal:** The report of a value estimate prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and found to be a report that can be used to make a prudent business decision. This can include a Value Finding for non-complex, vacant land appraisals in accordance with **Section 6.1, Appraisal and Appraisal Review**.

**Federal Aid Project:** A FDOT construction project funded in whole or in part with federal funds.

**Governmental Entity:** A federal, state, county, or any other entity that independently exercises any type of federal, state, or local governmental function. This term does not include non-profit organizations.

**Inequitable:** Unfairly or unjustly affecting an abutting property owner's ultimate or present use of real property to the extent it will hinder or prevent its use for such purposes.

**Leaseback:** A lease of property owned by FDOT to a former owner or tenant.

**Negotiated Lease:** The direct leasing to the public of property owned by FDOT, where the rental amount is reached by agreement between FDOT (lessor) and the lessee.

**Public Purpose Lease:** A lease by FDOT to another governmental entity for a use which will benefit the community as a whole.

**Temporarily Surplus Property:** Property owned by FDOT as determined by the District Secretary or authorized designee, in writing, to be available for lease.

## SCOPE

This section will be utilized by appropriate district and Central Office Right of Way staff. **NOTE:** Throughout this section, the use of the term “district(s)” and “District Secretary” includes the Turnpike and Rail Enterprises and Director, Turnpike and Rail Enterprises, unless otherwise stated.

### 10.6.1 General Leasing Provisions

**10.6.1.1** Upon approval by the District Secretary, or authorized designee, FDOT may convey a leasehold interest in any land, building or other property owned by FDOT that is not presently needed for proposed or anticipated transportation facilities. FDOT may not lease property for less than the current estimate of value for market rent as determined by a qualified estimator. If there is a fee for the qualified estimator, it shall be paid by the person awarded the lease.

**10.6.1.2** Leases with entities to place non-FDOT owned fixtures within FDOT right of way shall require an annual renewable bond, an irrevocable letter of credit, or another form of security (monies deposited in escrow) as approved by the FDOT’s comptroller, for the purpose of securing the cost of removal or maintenance of the fixture(s) should FDOT determine it necessary to remove, relocate, or maintain the fixture(s). The amount shall be estimated as the cost of removal and potential maintenance of the fixture(s). The amount of the security may be revisited periodically. This provision will be in accordance with Section 334.187, F.S., and Rule 14-116.002, F.A.C.

The lessee shall provide the security prior to execution of the lease agreement with FDOT. The Office of Comptroller-General Accounting Office, must approve the sufficiency of the letter of credit or cash deposit prior to execution of the lease agreement. Such securities are to be held by the General Accounting Office (GAO).

The security instrument and/or monies will be returned to the lessee when final inspection by FDOT confirms that all provisions of the lease agreement have been met.

**10.6.1.3** Before leasing property acquired through the eminent domain process on or after May 11, 2006, the previous property owner must be given the opportunity to repurchase the property at the same price received from FDOT during the eminent domain acquisition process. This requirement is applicable if less than ten (10) years have elapsed since the property's acquisition date. Properties other than those described in a filed petition of condemnation are exempt from the ten (10) year ownership requirement. Other exceptions to the ten (10) year requirement may be granted when the purchaser is providing:

- (A) Common carrier services;
- (B) Roads or other rights of way open to the public for transportation, at no charge or for a toll;
- (C) Transportation related services, business opportunities and Turnpike concessions on a toll road;
- (D) Public or private utilities;
- (E) Public infrastructure; or
- (F) Uses that occupy, pursuant to a lease, an incidental part of a public property or public facility for the purpose of providing goods and services to the public.

**10.6.1.4** Property owned by FDOT may be leased by negotiation (including leasebacks), sealed competitive bids, auctions, or any other means FDOT deems appropriate. Except in the case of a leaseback, the property shall be declared temporarily surplus by the District Secretary or authorized designee prior to execution of the lease following the process outlined in **Section 10.5.1.5**.

**10.6.1.5** To assist in the marketing and leasing of temporarily surplus properties, the district may:

- (A) Contract with a real estate broker. If a real estate broker is used, payment terms shall be established in advance. The district may choose to pay on a flat fee basis or a commission basis.

- (B) Contract with an auction company, pursuant to **Section 287.055, F. S.** When utilizing auction services, FDOT must consider the following provisions for inclusion in the contract:
- (1) There is a reserve of funds that is, at a minimum, equivalent to the property's estimate of market rent;
  - (2) The contractor's percentage of payment appropriately reflects any responsibilities FDOT will assume;
  - (3) The frequency of status reports;
  - (4) Who will collect the rental payments;
  - (5) The manner in which the contractor will receive compensation for services (i.e. will FDOT pay the contractor directly or will the contractor retain a portion of the proceeds from the collected lease amount?); and
  - (6) The percent of retainage FDOT will receive for the contractor's non-performance or deliverable deficiencies.

**10.6.1.6** With the exception of leasebacks, if the property was acquired as part of the Interstate System or is non-Interstate property on federal aid projects, concurrence from FHWA or Central Office must be obtained prior to negotiating or advertising for a lease as outlined in the **Right of Way Manual, Section 10.5.9, Concurrence By Federal Highway Administration (FHWA) and the Director, Office of Right of Way**. All leases of property on federal aid projects shall comply with the provisions of **23 CFR, Part 710, Subpart D**.

**10.6.1.7** FDOT may convey a leasehold interest in property owned by FDOT to:

- (A) The owner from whom the property was acquired (leasebacks);
- (B) The holders of leasehold estates (i.e., tenants) existing at the time of FDOT's acquisition (leasebacks);
- (C) The general public; and
- (D) Governmental entities.

**10.6.1.8** FDOT shall not lease any acquired building where an asbestos survey has identified the presence of friable asbestos containing materials (ACM) unless action has been taken to remove, encapsulate, or enclose the materials or, in the case of a leaseback, the occupant(s) has signed [Form No. 575-060-19, Release and Notice of Friable Asbestos Hazard](#). If FDOT grants the lessee the right to construct improvements, the lease agreement shall state that ACM shall not be used. A certification by the contractor attesting to this shall be submitted to FDOT.

**10.6.1.9** No lease, unless for a public purpose or as described in **Section 10.6.1.10**, shall be for a period of more than five (5) years. FDOT may extend the lease for an additional five (5) year term. At the conclusion of two five-year terms, the lease process may commence again.

**10.6.1.10** Pursuant to **Section 260.0161, F.S.**, leases of FDOT rail corridor property to public agencies or private organizations to provide public recreational trails are exempt from the five-year term limit and **Article 4** of [Form No. 575-060-33, Lease Agreement](#), except as provided in the agreement.

**10.6.1.11** [Form No. 575-060-33, Lease Agreement](#), shall be used for all leases. (**NOTE:** The public liability insurance requirement outlined in **Article 7** of [Form No. 575-060-33, Lease Agreement](#), applies only to non-residential leases). [Form No. 575-060-32, Use and Occupancy Agreement](#), shall be used for all leases of property located within the right of way on federal aid projects.

**10.6.1.12** All lease agreements shall be executed by an authorized representative of the lessee, under attestation, and approved by the Office of the General Counsel, prior to execution by the District Secretary.

**10.6.1.13** The following information shall be compiled prior to execution of the lease agreement:

- (A) Complete name and address of lease applicant(s) and if possible, an email address and telephone number;
- (B) A written declaration by the District Secretary or authorized designee that the property is temporarily surplus and therefore available for lease. Leasebacks are excluded from this requirement;
- (C) A right of way map that identifies the proposed lease area;
- (D) A legal description of the proposed lease area as required by **Topic No.**



**550-030-015, Right of Way Mapping; and**

- (E) An estimate of value of the proposed lease area in accordance with the requirements in **Right of Way Manual, Section 10.5, Disposal of Surplus Real Property** or, at the discretion of the DRWM on leasebacks, an agent's estimate of market rent.

**10.6.1.14** If the property to be leased includes one (1) or more buildings, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of [Form No. 575-060-22, Radon Gas Notification](#). This notification is required per **Section 404.056(5), F.S.**

**10.6.1.15** If the property to be leased is a residential structure and includes one (1) or more buildings constructed prior to 1978, prior to signing the lease, the lessee shall be provided with and acknowledge receipt of [Form No. 575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint Hazards Warning](#), and a copy of the **E.P.A. Pamphlet, "Protect Your Family from Lead in Your Home"**, in accordance with **40 Code of Federal Regulation (CFR) Part 745.**

**10.6.1.16** On properties acquired with federal participation, the environmental consequences of leasing must be considered in accordance with **23 CFR, Part 771.** Leasing of excess real property is listed in **Topic No. 650-000-001, PD&E Manual, Part 1, Chapter 2**, and must be addressed and documented by the District Environmental Management Office. A copy of the completed **"Type 1 CE Checklist"**, or any other level of National Environmental Policy Act (NEPA) documentation acceptable to the Office of Environmental Management (OEM), shall be included in the district R/W leasing file for the property.

## **10.6.2 Collection of Rental Funds and Evictions**

**10.6.2.1** The district shall develop and implement a billing system for tracking all rental funds owed to FDOT.

**10.6.2.2** All rental funds are due on or before the date(s) specified in [Form No. 575-060-33, Lease Agreement](#), or [Form No. 575-060-32, Use and Occupancy Agreement](#) and must include the state sales tax and the appropriate discretionary (county) sales surtax.

**NOTE:** The above tax and surtax will apply only to non-residential leases.

**10.6.2.3** Rental funds not received within ten (10) days of the date due, as described in the lease or Use and Occupancy Agreement, are considered past due.

**10.6.2.4** If rental funds are not received within 20 working days of the date due, the lessee shall be notified by hand delivery of the notice, posting of the notice if the lessee is absent, or certified mail, return receipt requested, using [Form No. 575-060-12, Collection Form](#), that rental payments are past due and must be remitted within three (3) working days following receipt of notice. The notice shall include the dollar amount of any penalties, as outlined in the [Lease Agreement, Form No. 575-060-33](#) or [Use and Occupancy Agreement, Form No. 575-060-32](#), which have accrued due to late payment.

**10.6.2.5** If rental funds are not received within 25 working days of the date due, all outstanding rental amounts, including penalties, shall be turned over to the Office of the General Counsel for collection and possible eviction. The Office of the General Counsel shall be furnished with copies of all correspondence and receipts evidencing attempts made by the district to contact the lessee for payment.

**10.6.2.6** If rental funds are not received within 45 working days of the date due and eviction proceedings have not been initiated, the DRWM or designee shall notify the Office of the General Counsel to begin the eviction process as set forth in **Section 83.20, F.S.**, for non-residential tenancies and **Section 83.56(3), F.S.**, for residential tenancies.

**10.6.2.7** If the district is unable to collect delinquent rental payments, the account shall be submitted to the Florida Department of Transportation, Office of the Comptroller, Accounts Receivable Section, Mail Station 42B. The Accounts Receivable Section will forward the account to the State's contracted collection agency. Accounts will be submitted to the Department of Financial Services requesting write-off approval if and when the account is deemed uncollectible by the contracted collection agency.

**NOTE:** The DRWM or designee may elect to waive the late fee. If this option is selected, a justification for this waiver must be maintained in the file.

### **10.6.3 Payment on Leases**

**10.6.3.1** Cashier's, personal, or business checks are acceptable and shall be made payable to FDOT. The district shall ensure that all applicable state and local sales taxes are collected and properly entered in RWMS, per **Chapter 9, of the Right of Way Management System User's Manual**.

**10.6.3.2** If a check paid to FDOT is stopped by the lessee or returned due to insufficient funds, a cashier's check or other non-cancellable instrument shall be required for the current payment and all future payments. Checks or other forms of payment returned to FDOT for collection shall be handled by the district in accordance with **Topic No. 350-**

**080-300, Section 11, Items Returned by the Department of Financial Services for Collection.**

**10.6.3.3** The District Right of Way Office shall process the payment and prepare the following documents in accordance with **Topic No. 350-080-300, Section 2, Transmitting Receipts; Right of Way Manual, Section 11.1, Funds Management** and the **FDOT Funds Management Handbook**, which is available on the FDOT Infonet on the Office of Right of Way website:

- (A) Lease payment, if applicable;
- (B) [Form No. 575-060-02, Cash Receipt.](#)

**10.6.3.4** All items required by **Section 10.6.1.12** shall be forwarded to the District Records and Funds Management Office.

**10.6.3.5** Credit to federal funds is not required.

**10.6.3.6** All revenue collected shall be deposited in the State Transportation Trust Fund, except Turnpike Enterprise lease revenues, which shall be deposited into the Turnpike General Reserve Trust Fund. Revenues will be reallocated to the districts in accordance with **Right of Way Manual, Section, 11.1.4, Revenues To Be Returned To Districts.**

## **10.6.4 Advertising and Bidding Process**

**10.6.4.1** When utilizing one of the bidding processes, FDOT may lease after duly advertising. All advertisements and bid documents shall reserve FDOT's right to reject any and all bids. The following shall apply to the bid process:

- (A) The advertisement shall run at least fourteen (14) calendar days prior to the last day of the auction or the date of the bid opening. This time period is a minimum requirement. More notice may be afforded. The advertisement shall run in a newspaper of general circulation in the area in which the property is located and shall state the date, time, and place of the auction's ending or bid opening, a brief property description, the property's current permissible access, and where to obtain additional information. Every bidder shall have the opportunity to inspect the property prior to the day of the bid opening.
- (B) The auction or bid opening shall be conducted by the district or an authorized representative.

**10.6.4.2** A minimum bid may be specified in the advertisement. If specified, it shall not be less than the property's estimated value for market rent as determined by a qualified estimator. If specified, the minimum bid amount shall appear in the advertisement with a statement that FDOT reserves the right to withdraw the property if the minimum bid is not received. If the minimum bid is not obtained at the auction or bid opening, the District Secretary or authorized designee may approve the highest bid received, which will be considered the property's estimate of value for market rent.

**10.6.4.3** Alternatively, if the minimum bid is not obtained at the first auction or bid opening, the district may advertise a second time and hold a second auction or bid opening. A second advertisement and auction/bid opening is optional. If a specified minimum bid is not obtained at the second auction or bid opening, the District Secretary or authorized designee may approve the highest bid received, which will be considered the property's estimate of value for market rent.

**10.6.4.4** The estimate of value for market rent may be determined by using an agent's estimate of market rent or an appraisal. If a fee appraiser is used, the person awarded the bid must pay for the cost of the appraisal as outlined in **Section 10.5**.

**10.6.4.5** When the district receives the advertisement invoice from the newspaper, the following shall be sent to the District Records and Funds Management Office for processing in accordance with **Right of Way Manual, Section 11.1, Funds Management** and the **FDOT Funds Management Handbook**, which is available on the FDOT Infonet on the Office of Right of Way website:

- (A) The invoice;
- (B) The proof of publication; and
- (C) The FDOT Purchasing Card may be used for this service.

## **10.6.5 Inequitable Leases**

**10.6.5.1** When public bidding would be inequitable, as determined by the District Secretary or, FDOT may enter into a lease with an abutting owner or tenant.

**10.6.5.2** The abutting property owner shall provide evidence of ownership at his or her own cost. This evidence shall be in the form of the last deed of record and an affidavit signed by the owner attesting to the fact he or she is the owner of the abutting property. The affidavit shall be dated no more than six (6) months prior to the date of execution of

the lease agreement. This evidence of ownership requirement does not apply for leasebacks to owners from whom the property was acquired.

**10.6.5.3** An abutting tenant shall provide evidence of tenancy. This evidence shall be in the form of a copy of the current lease and an affidavit signed by the lessee attesting to the fact he or she is the tenant on the abutting property. The affidavit shall be dated no more than three (3) months prior to the date of the execution of the FDOT lease agreement. This evidence of tenancy requirement does not apply to leasebacks for holders of leasehold estates existing at the time of FDOT's acquisition.

**10.6.5.4** If negotiating directly with an abutter, the district may:

- (A) Notify all other abutting property owners by certified mail, of FDOT's intent to lease the property. The notice may be made using [Form No. 575-060-31, Proposed Lease Notification](#).
- (B) For the purpose of notifying all other abutting owners of FDOT's intent to lease, the county tax rolls may be used to determine ownership(s).

## **10.6.6 Leasebacks**

**10.6.6.1** FDOT may enter into a leaseback with the owner from whom the property was acquired or the holders of leasehold estates (i.e. tenants) existing at the time of the acquisition. The evidence of ownership or tenancy requirement does not apply to leasebacks. All leasebacks shall be approved by the District Secretary or authorized designee.

**10.6.6.2** A written lease agreement shall be required when the lease period extends beyond the expiration of **Form No. 575-040-11, 30 Day Notice to Vacate**, or beyond the expiration of **Form No. 575-040-09, 90 Day Letter of Assurance**, whichever is later. After expiration of the **30 Day Notice to Vacate** or the **90 Day Letter of Assurance**, the written lease agreement is required to ensure FDOT's control of the property, including the ability to terminate occupancy by the tenant.

**10.6.6.3** The lease agreement shall include the lessee's name and address (if possible, an email address and telephone number) and any special stipulations agreed to by the parties (e.g., late payments, provisions for utility and sewer charges, etc.).

**10.6.6.4** When FDOT acquires property and the occupant desires to continue occupancy of such property beyond the expiration of the established date to vacate, the occupant(s)

shall sign [Form No. 575-060-17, Release and Right of Entry Agreement for Asbestos Survey](#). This agreement releases FDOT of any liability regarding the possible presence of asbestos in the building and also provides written notice that an asbestos survey may be performed and the occupant(s) will permit entry to FDOT and its authorized agents for this purpose. This agreement shall be signed and submitted no later than the day of closing. If the occupant(s) refuse(s) to sign, occupancy beyond the established date to vacate will be denied.

**10.6.6.5** If an asbestos survey indicates that ACM are located in the building, the occupant shall receive notice that ACM have been identified. The notice shall set forth any special treatment or handling instructions regarding the materials. The occupant(s) will be required to sign a release of liability, either [Form No. 575-060-18, Release and Notification of Non-Friable Asbestos Containing Materials \(ACM\)](#) or [Form No. 575-060-19, Release and Notification of Friable Asbestos Hazard](#) depending on whether the ACM is friable or not, if the occupant(s) intend(s) to remain in occupancy after notification that asbestos is present in the building. If the occupant(s) refuse(s) to sign, further occupancy shall be denied.

**10.6.6.6** The timeframe for vacancy specified in notices to terminate the lease, shall not precede the time periods allowed by the ***Relocation Assistance 90-day Letter of Assurance*** and the ***30-day Notice to Vacate***, as applicable, as required in the ***Right of Way Manual, Section 9.2, General Relocation Requirements***.

**10.6.6.7** On leasebacks, the District Right of Way Manager has the discretion to decide the method of determining the estimate of value for market rent. However, the amount the tenant was paying to the previous owner from whom FDOT acquired the property should be considered in determining the estimate of value for market rent.

The rental rate charged shall be the estimate of value for market rent as determined by a qualified estimator. The estimate of value for market rent shall consider the terms of the proposed lease agreement, the level of service and maintenance to be provided, and the rental amount paid by the occupant to the previous owner (if applicable).

**10.6.6.8** Leasebacks may extend until such time as the district determines the property is needed for a transportation use. Any extension of leasebacks shall require the approval of the District Secretary.

## **10.6.7 Leaseback of Outdoor Advertising (ODA) Signs and /or Sign Sites**

**10.6.7.1** The district shall ensure, at the time of acquisition, that all interests of lessees

under outstanding leases are acquired.

**10.6.7.2** A temporary leaseback of ODA signs and/or sign sites may continue until such time as the district determines the property is needed for transportation use.

**10.6.7.3** ODA signs and/or sign sites leased back on FDOT right of way must comply with applicable requirements of **Chapter 479, F.S.** A nonconforming sign shall be permitted to retain its nonconforming status until the sign is removed.

**10.6.7.4** If the ODA sign does not have a valid permit, it shall be removed from the right of way pursuant to **Chapter 479, F.S.**

**10.6.7.5** The ODA sign and/or sign site shall be subject to an executed lease between FDOT and the sign owner or lessee. The lease shall contain a cancellation provision which provides that in the event FDOT should require the use of the subject property prior to the expiration of the lease, all abandoned sign structures become the property of FDOT and may be removed by FDOT without further notice if not removed by the lessee within 30 days of receipt of the notice of cancellation.

**10.6.7.6** On leasebacks of ODA signs and/or sign sites, the DRWM has the discretion to decide the method of determining the estimate of value for market rent. The lease amount for the ODA sign and /or sign site shall not be less than the estimate of value for market rent as determined by a qualified estimator.

**10.6.7.7** In order to avoid the conflict of being both landlord and regulatory agency for an ODA sign, FDOT prefers not to allow the moving of an ODA sign from property owned by FDOT to other property owned by FDOT. However, if this becomes necessary, prior to entering into any lease with an ODA sign owner, and/or allowing an ODA sign to be moved onto FDOT owned property, the district must request, in writing, approval from the Director, Office of Right of Way.

**10.6.7.8** At the end of the lease term the district shall provide the permit number or the tag number for the ODA sign to the State Outdoor Advertising Control (OAC) Administrator. The State OAC Administrator will cancel the permit.

## **10.6.8 Leases for ODA Structures**

**10.6.8.1** FDOT may enter into property leases for ODA structures where the structure has an active ODA permit and the location has been determined to not create hazards to motorists or other safety concerns.

**10.6.8.2** Pursuant to **Section 479.11(8), F.S.**, FDOT shall deny any request to erect, use, operate, or maintain a sign located upon the right of way of any highway on the State Highway System, Interstate Highway System, or federal-aid primary highway system. No leases for ODA structures on properties owned by FDOT are allowed except as outlined in **Section 10.6.8.1**.

## **10.6.9 General Public Purpose Leases**

**10.6.9.1** Upon request, FDOT may convey a leasehold interest in property to a governmental entity or a publicly-owned mass transit authority for a public purpose without monetary consideration, unless legislation or bond provisions provide otherwise. If the governmental use is a business-like venture producing income and profit, the estimate of value for market rental requirements shall apply, except as provided in **Section 10.6.10**.

**10.6.9.2** Public purpose leases may be for any specified length of time (the five-year term limitation does not apply). In the event the FDOT needs the leased property for a transportation use, lessor shall provide a minimum 180 day advance notice to lessee.

**10.6.9.3** If the leasehold interest is to be conveyed for no monetary consideration, an appraisal is not required. The following are requirements for public purpose leases at less than the estimate of value for market rent on property with federal participation:

- (A) The district must clearly show that leasing for less than the estimate of value for market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public; and
- (B) If the property ceases to be used for the public purpose, then the lease must be terminated or the lessee must pay the estimate of value for market rent to continue leasing the property.

**10.6.9.4** FDOT shall obtain an adopted resolution from the governmental entity or a written request from the agency head of a state agency, stating the public purpose. If the governmental entity cannot adopt the resolution prior to FDOT's Declaration of Temporarily Surplus, the district may accept the documentation of the adopted resolution any time prior to the execution of the lease.

## **10.6.10 Public Purpose Leases with Commercial End-Use**

**10.6.10.1** A leasehold interest may also be requested by a local governmental entity



when the proposed public purpose involves a private commercial end-use. When such a request is made, FDOT will provide a written notice stating that the request is under review and that FDOT reserves the right to deny the use of its premises to any permittee/licensee.

**10.6.10.2** In determining the validity of the local governmental entity's lease request, FDOT must assess that the identified use will benefit the community as a whole. The following factors must be considered when making this assessment:

- (A) The general public has an interest in and the ability to utilize the facility;
- (B) The public purpose may be accomplished as outlined in the local governmental entity's proposal;
- (C) The proposed use does not interfere with the safe and efficient movement of traffic and that the use will not create a safety hazard;
- (D) The private commercial use is supportive of and only a minor part of the public purpose;
- (E) The lease use is not being utilized to eliminate nuisance, slum or blight conditions as defined in **Sections 163.340(7) and (8), F.S.**; and
- (F) The local government has a process in place to ensure each individual business participating meets the following:
  - (1) Business holds all necessary licenses and permits to provide the services contemplated for the location;
  - (2) Business is complying with laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin; and
  - (3) Business has, as its principal focus, family-oriented entertainment/activities or cultural, social, educational, recreational, scientific, or historical activities.

**10.6.10.3** Once it is determined that the local governmental entity has a valid public purpose, FDOT must ensure that the factors below have also been addressed in the submitted proposal:

- (A) An ordinance to establish the local governmental entity's plan to permit/license and regulate the ultimate public purpose use of the property;
- (B) Specific language inserted into the permit/license to mandate that the use of the premises will not compromise the health, safety, and moral welfare of the traveling public;
- (C) Zoning restrictions that will regulate the public purpose use of the property and the type of business that will be allowed as an end-user;
- (D) A requirement to notify FDOT within ten (10) working days when there is a zoning change that will impact the types of businesses being permitted as end-users; and
- (E) A mandate that all contractors have the required binders (including bonds, liability insurance and/or construction insurance) naming FDOT as an additional insured.

**10.6.10.4** The addendum to the public purpose lease must include the following:

- (A) Language that the lessee shall provide an annual report that contains the following:
  - (1) That the premises have been inspected by the local government and meet all governmental requirements and necessary clearance and setback requirements (e.g., site design standards, landscaping, maintenance, ADA compliance);
  - (2) That all insurance certificates are current and in place;
  - (3) A list of current permittees/licensees; and
  - (4) That the public purpose stated in the resolution continues to exist and justify the commercial end use;
- (B) Language that FDOT must approve the annual report and that the lessee must correct any deficiencies identified by FDOT;
- (C) Language that any requested changes during the term of the lease must be approved by FDOT. **NOTE:** The applicable factors outlined in **Section 10.6.10.6** must be used when assessing proposed changes; and

- (D) Language that there is no inherent right of extension or renewal as consistent with **Section 10.6.9.2**. Therefore, any termination or expiration of the lease will automatically terminate the permit or sublease.

**10.6.10.5** When the public purpose lease is for a commercial end-use, it must be leased for not less than the property's current estimate of value for market rent as determined by a qualified estimator.

**10.6.10.6** FDOT shall monitor and control the lease by entering into a short-term period, not more than five (5) years. One (1) optional five (5) year renewal may be granted at FDOT's discretion. At the conclusion of two (2) five (5) year terms, the lease process may commence again.

**10.6.10.7** If the governmental entity requests an extension of the leasing term, FDOT must perform the following before making a determination:

- (A) Assess any proposed changes to the previously approved leasing terms or conditions:
  - (1) If minor revisions are requested, the proposal should be routed to all appropriate office(s) for review;
  - (2) If major changes are requested, the proposal must go through the initial consideration process;
  - (3) Determine if/how the proposed changes will affect FDOT and the commercial end-user's responsibilities; and
  - (4) Ensure that the revised proposal meets the applicable criteria outlined in **Sections 10.6.10.2 through 10.6.10.4**;
- (B) Determine the feasibility of the lease extension and/or proposed changes;
- (C) Determine if the lease extension and/or proposed changes will require the adoption of a new resolution; and
- (D) Ensure that the extended leasing term does not exceed an additional five (5) years.

## **10.6.11 Leases of Right of Way for Parking/Parking Time Limit Devices**

**10.6.11.1** FDOT may convey a leasehold interest to any governmental entity for parking spaces including parking meters or such other parking time limit devices regulating parking of vehicles in areas located under roadways and bridges. For on-street parking, the local government must request a permit from the local District Permit Office as on-street parking is permitted, not leased.

**10.6.11.2** The requirements for the management of the lease are as follows:

- (A) The governmental entity's parking spaces and parking meter location design plan will be reviewed and approved by FDOT prior to the execution of the lease;
- (B) The appropriate FDOT form must be utilized, per **Section 10.6.1.10**;
- (C) The rental rate charged may be based upon either the market value of the leased area or an agreed percentage of the parking revenues, including revenues from fines (parking tickets) for non-payment of the parking meters, Official certification of the parking revenues shall be confirmed by an annual audit of the collected funds;
- (D) The collection of the rental payments shall be handled in accordance with **Section 10.6.2**;
- (E) If the governmental entity does not pay the annual rental fee, FDOT will notify the governmental entity of its responsibility to remove the parking spaces and parking meters or time limit devices by FDOT's established deadline date. If the governmental entity does not remove the parking meters or time limit devices by the deadline date, FDOT will cause the removal of the striping, parking meters or time limit devices and charge the governmental entity for the removal; and
- (F) The local government shall comply with specified safety and ADA criteria.

**10.6.11.3** This Section applies to all leases executed for parking spaces, parking meters, or time limit devices after October 2012.

## **10.6.12 Concurrence by the Federal Highway Administration (FHWA) and the Director, Office of Right of Way**

**10.6.12.1** With the exception of leasebacks, all FDOT property acquired for the Interstate System and located within the right of way line on the approved right of way map, requires written FHWA concurrence for its leasing. Written concurrence is also required for a request to change the access control line for leasing purposes. This concurrence must be obtained prior to negotiating, advertising, and executing the lease.

**10.6.12.2** The leasing of all FDOT property located on the Interstate System outside the right of way lines on the approved right of way maps or non-Interstate system property on federal aid projects must be approved by the Director, Office of Right of Way, prior to negotiating, advertising, and executing the lease. Requests, including complete supporting documentation, shall be submitted to the State Right of Way Administrator, Property Management, for the Director's approval.

**10.6.12.3** Requests for FHWA or the Director, Office of Right of Way, concurrence shall be submitted for review to the State R/W Administrator, Property Management, and shall include the following documentation:

- (A) Federal aid number;
- (B) An explanation as to why the land is not presently needed;
- (C) A right of way map marked to show the location of the property to be leased.

**NOTE:** The map must provide enough detail to allow the property to be physically located, or additional maps may be submitted to help locate the property;

- (D) When available, marked construction plans which show the property in relation to construction features and remaining right of way (photographs and other methods of depicting or explaining the construction features in relation to the subject property may be used if construction plans are not available);
- (E) Completed routing sheets from department heads as applicable and the Declaration of Temporarily Surplus by the District Secretary, or authorized designee;

- (F) Documentation of determination and amount of the estimate of value for market rent, except for public purpose leases for no consideration;
- (G) If the lease is for a public purpose for no consideration, a copy of the resolution from the governing body or letter signed by the head of the agency requesting the public purpose lease. If the resolution has not been executed, submit a copy of the language of the resolution;
- (H) The district must clearly show that leasing for less than the estimate of value for market rent is in the public interest for a social, environmental, or economic purpose. This can be accomplished by a statement of the public use of the property and the expected resulting benefit to the public;
- (I) A copy of the proposed [Use and Occupancy Agreement, Form 575-060-32](#), along with verification of its review by the Office of General Counsel, per **Topic No. 000-010-004, *Interests in Real Estate***; and
- (J) A copy of the **Type 1 CE Checklist** or other level of NEPA documentation acceptable to OEM.

**10.6.12.4** Concurrence is not required when the property to be leased is an uneconomic remnant that has not been incorporated within the approved right of way limits.

**10.6.12.5** Refer to **23 CFR Part 710, Subpart D** if the lease involves a change in the access control line.

**10.6.12.6** If FHWA or the Director, Office of Right of Way does not concur, the district shall not negotiate, advertise, or execute the lease.

### **10.6.13 Oil, Gas, or Mineral Leases**

**10.6.13.1** FDOT shall conduct all leasing activities for oil, gas, or mineral interests owned by FDOT through the Florida Department of Environmental Protection (FDEP), Board of Trustees of the Internal Improvement Trust Fund (TIITF), pursuant to **Chapter 18-2, F.A.C.**, and **Rules of the Board of Trustees of the Internal Improvement Trust Fund**.

**10.6.13.2** FDEP will notify the Central Office of Right of Way that a bid application for an oil, gas, or mineral lease has identified FDOT as being vested with an ownership interest in the interest sought. This notification will identify the bid application nominee.

**10.6.13.3** Upon receipt of the notice of bid application from FDEP the State Administrator,

Property Management shall:

- (A) Forward the notice of bid application to the appropriate district; and
- (B) Advise FDEP to suspend the bid award process until FDOT has determined the extent of its interest, if any, in the proposed lease area.

**10.6.13.4** Upon receipt of the notice of bid application, the district shall:

- (A) Determine the nature and extent, if any, of FDOT's ownership interest in the interests sought; and
- (B) If it is determined that FDOT is vested with an ownership interest in the interests sought, calculate the approximate surface of the proposed lease area and provide a general description of the proposed lease area.

**10.6.13.5** If the district determines that FDOT has no ownership interest in the interests sought, or if ownership of the interests has been transferred to a governmental entity, the district shall notify the State Administrator, Property Management, in writing, of this determination. The State Administrator, Property Management, shall forward this information to FDEP.

**10.6.13.6** If the district determines that FDOT is vested with an ownership interest in the interests sought, and that leasing such interests is in the best interest of FDOT, a memorandum shall be prepared for approval of the proposed lease by the District Secretary or authorized designee. This memo shall set forth the nature and extent of FDOT's ownership interest in the interests sought, a general description of the proposed lease area, and the approximate surface acreage of the proposed lease area.

**10.6.13.7** The district shall provide a copy of the proposed lease approval memo to the State Administrator, Property Management, within two weeks of such approval by the District Secretary or authorized designee. The State Administrator, Property Management, shall forward this information to the FDEP.

**10.6.13.8** Upon approval by FDOT, FDEP may accept bids and award the lease. The lease agreement shall be prepared by FDEP and delivered to the State Administrator, Property Management, who shall forward it to the district.

**10.6.13.9** The district shall have the lease executed by the District Secretary. The original and one copy of the lease shall be forwarded to the State Administrator, Property Management, who shall forward the documents to FDEP, by letter, for handling. A copy

of the executed lease shall be retained by the district in the official file. A second copy shall be forwarded by the district to the Records and Funds Management Office.

**10.6.13.10** Payment of oil, gas, or mineral interest revenue is made by journal transfer (EFT) by the FDEP to the State Transportation Trust Fund.

## **10.6.14 Reporting Requirements**

**Lease Aging Report:** The District Property Management Administrator shall ensure that all entered lease information is accurate, current, complete and entered in accordance with current business practices.

## **TRAINING**

Right of Way Training Program participants will be trained in the activities required by this procedure during the Property Management segment of the FDOT Fundamentals of Right of Way Course.

## **FORMS**

The following forms are available through the FDOT Infonet and Internet:

[575-060-02, Cash Receipt Form](#)

[575-060-12, Collection Form](#)

[575-060-17, Release and Right of Entry Agreement for Asbestos Survey](#)

[575-060-18, Release and Notice of Non-Friable Asbestos Containing Materials \(ACM\)](#)

[575-060-19, Release and Notice of Friable Asbestos Hazard](#)

[575-060-22, Radon Gas Notification](#)

[575-060-31, Proposed Lease Notification](#)

[575-060-32, Use and Occupancy Agreement](#)

[575-060-33, Lease Agreement](#)

[575-060-37, Radon Gas Notification and Disclosure of Lead-Based Paint and Paint Hazards Warning For Leasing of State Owned Real Property](#)

The following forms are available in the Right of Way Management System (RWMS):

575-040-09, 90 Day Letter of Assurance

575-040-11, 30 Day Notice to Vacate