Section 10.9

JOINT PUBLIC/PRIVATE DEVELOPMENT OF RIGHT OF WAY

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Section 10.9

JOINT PUBLIC/PRIVATE DEVELOPMENT OF RIGHT OF WAY

PURPOSE

To set forth the requirements for joint public/private development and the leasing of such properties owned by the Florida Department of Transportation (FDOT).

AUTHORITY

Section 20.23(4)(a), Florida Statutes (F.S.)
Section 73.013, Florida Statutes (F.S.)
Section 334.048(3), Florida Statutes (F.S.)
Section 337.251, Florida Statutes (F.S.)
Section 337.26, Florida Statutes (F.S.)
Title 23 Code of Federal Regulations (CFR), 710 Subpart D

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” includes the “Turnpike Enterprise”, unless otherwise stated.

REFERENCES

Right of Way Manual, Section 10.6, Right of Way Property Leases
Right of Way Manual, Section 11.1, Funds Management
Section 337.251, Florida Statutes (F.S.)

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 form is available through the DOT Infonet and Internet at:

http://infonet.dot.state.fl.su/tlofp/forms.asp

http://www.dot.state.fl.us/rightofway/document.htm

350-080-14, Application for Refund from State of Florida

DEFINITIONS

Application Fee: The monies due from a proposer applicant to cover the costs associated with evaluation of the joint public/private right of way development proposal.

Board of Advisors: A group of three or five members of the public, appointed by FDOT, which may be composed of accountants, real estate appraisers, design engineers or other experts experienced in the type of development proposed. The Board of Advisors shall review the feasibility of proposals, recommend acceptance or rejection and rank each feasible proposal for technical feasibility and benefit provided to FDOT.

Joint Public/Private Development: The leasing of FDOT-owned property, including airspace, on which extensive capital improvements will be constructed by the lessee to further economic development and generate revenue for transportation. The lease may be with public agencies or private entities, for a term not to exceed 99 years for joint public-private transportation purposes.

Lease: In this section, this term refers to a joint public/private development lease executed pursuant to ***Section 337.251, Florida Statutes (F.S.)***.

10.9.1 General Information

10.9.1.1 Compliance with ***Chapter 337.251, F.S.*** is required for joint public/private development activities. The following requirements of ***Right of Way Manual, Section 10.6, Right of Way Property Leases*** shall be used, as applicable:

(A) Declaration of temporarily surplus;

(B) Concurrence by the Federal Highway Administration;

(C) Inclusion on the Lease Aging Report for leases managed by the District Right of Way Office;

(D) Asbestos release and notification requirements; and

(E) Radon gas notification and disclosure of lead-based paint hazards warning.

10.9.1.2 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.

10.9.1.3 Consideration of any proposed lease involving rail, aviation, or mass transit shall be coordinated with FDOT's State Freight & Logistics Administrator prior to advertisement soliciting additional joint use proposals.

10.9.1.4 In accordance with ***Section 337.251, F.S.***, FDOT may use a Board of Advisors to assist in review of the proposals received.

10.9.1.5 Revenue generated through a joint public/private lease will be returned to the

district for use the following fiscal year in accordance with ***Right of Way Manual, Section 11.1, Funds Management***.

10.9.2 Application Fee

The monies due from a proposer applicant to cover the costs associated with evaluation of the joint public/private right of way development proposal are payable in the form of an initial payment which must accompany the proposal. Additional payments may be required by FDOT should evaluation costs exceed those covered by the initial payment. Should the costs associated with the proposal evaluation by FDOT (and, if applicable, the Board of Advisors) exceed the initial payment, the proposer applicant will be informed in writing by FDOT of the additional payment(s) due from the proposer applicant to cover the cost of the proposal evaluation. Any application fees paid by the proposer applicant which remain unused after the final evaluation is complete shall be refunded to the proposer applicant. ***Form No. 350-080-14, Application for Refund from State of Florida***, must be completed for refunds.

10.9.3 Audit

10.9.3.1 If applicable, the audit shall be sent to the Office of Inspector General (OIG) for review and acceptance within 5 working days of receipt by the District Right of Way Office.

10.9.3.2 The OIG shall have 30 working days to review the audit and submit the review findings and recommendations to the district.

10.9.3.3 The district shall act as needed on the OIG findings and recommendations within 10 working days of receipt. These actions may include, but are not limited to:

(A) Request for additional information or verification of information provided by the lessee for the OIG to complete the audit review;

(B) Collection of additional rental payments due which were revealed in the audit review with assistance from the Office of the General Counsel as needed; and

(C) Notification to the lessee that the audit has been reviewed and accepted by FDOT.

10.9.4 Documentation

The following information must be compiled and retained by the District Office:

(A) All items required by the ***Right of Way Manual, Section 10.6, Right of Way Property Leases***;

(B) Evaluation criteria for the proposal(s) and the complete proposal package;

(C) Documentation supporting selection of the proposal;

(D) Any appraisal(s) performed in accordance with the joint public/private development process;

(E) If a Board of Advisors reviewed the proposal(s):

(1) The names and addresses of the individual advisors;

(2) Documentation supporting the total payments made to the advisors, including that establishing the hourly rate and the hours spent reviewing the proposal(s);

(3) The board's recommendation, including the analysis of the proposal(s); and

(F) Copies of all audits and OIG findings.

HISTORY

04/15/99, 11/29/00, 01/12/07, 4/29/09